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(IJLGC)**www.ijlgc.com**THE RISING IMPACT OF INFORMAL EMPLOYMENT IN
MALAYSIA: POST COVID-19 PANDEMIC**Azlina Mohd Hussain¹, Mohd Syahril Ibrahim^{2*}

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DOI: 10.35631/IJLGC.625007.This work is licensed under [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)**Abstract:**

Even before the COVID-19 pandemic, the informal employment sector has been experiencing steadily increasing popularity. Although market trends and most workers enjoy the flexibility and challenges of informal employment, such employment does have its own risks, especially now, amid the COVID-19 pandemic crisis, employee protection have been side-lined for more important considerations such as businesses and/ or employers struggling to stay afloat and not file for bankruptcy proceedings and/or being wound-up. Extenuating circumstances such as economic sustenance, employer-reduced mobility for expansion, employee movement, etc. have all contributed to the more precarious position of informal employees. Yet, there is a great advantage of informal employment in the new norm. This paper aims to address current, prominent issues relating to women and children amidst the COVID-19 pandemic. It seeks to examine their roles and status in informal employment, their contributions in mobilizing the county's fiscal economy, and eventually its permanence in the country's employment landscape.

Keywords:

Informal Employment, Employment Contract, COVID-19 Pandemic

Introduction

The lockdown introduced since March 2020 till to date to combat the COVID-19 pandemic has made a marked impact on the socio-economic canvass in Malaysia. Apart from escalating job losses and employment opportunities amidst lockdowns, the closing down of most businesses has severely affected the workforce in Malaysia. Malaysians mostly are bearing the brunt of

the severe and continuous lockdowns. According to (Nation, U. (2020)), most severely impacted are not only the working class with wages but also more acutely, women and children in informal employment. If prior to the COVID-19 pandemic lockdowns and restrictions these socio-economic group were most vulnerable, now even more so.

Traditionally most women and children who are highly impacted by the instability that the COVID-19 pandemic has created, would be in employment that are in its nature of non-permanence viz the agricultural sector, food vendors operating as stalls or sole-proprietorship, family owned, based trade or businesses etc. The social and economic impact of their contributions have long been recognized although due recognition is still yet to be crystalized for their benefits and protection under the law. Reason being these forms of employment are difficult to categorize and validated as a recognized form of employment like a formal employment.

Research Methodology

The cumulative impact of the COVID-19 pandemic on informal employment and informal workers is yet to be seen and affirmed, especially in Malaysia (Lim, L. L. (2020)) as the global labour market is still turning on its axis to contain the adverse economic effects of this pandemic. There is no one method as yet that can be said to successfully chart the movement, direction and migration of informal employment and informal workers (Slonimczyk, Fabián (2014)) as the COVID-19 pandemic is still surging and not showing any signs of subsiding. What is an accepted fact is that the COVID-19 pandemic has caused an added volatility to an already highly fluid and unstable employment sector and work force?

Since most studies and statistics are still highly predictive, due to the unprecedented evolution of the COVID-19 virus, the authors have decided to do a qualitative analysis of literatures in pre-pandemic, during pandemic and post-pandemic COVID-19. It is hoped that with this study, we can find innovative solutions to the informal employment sector and its workers in Malaysia (Tumin, S. A. (2020)).

Literature Review

Informal employment is often misread and misinterpreted as other forms of employment. Some confuse it with part-time employment, non-standardized employment, non-formal employment etc (Husmanns, R., 2004). Whilst all these forms of employment may be valid and may also be regarded at some point or another as an informal employment in some institutions and countries, due to some shared characteristics with informal employment, yet the actual form of informal employment is yet to be categorized and recognized. It is difficult to recognize informal employment due to the different ways in which informal employment is practiced in different institutions and countries.

Confusions may lay probably to the distinction derived between, informal employment and the informal economy. The informal sector is defined in terms of the characteristics of the workplace of the worker, i.e., it is based on the organisation or enterprise (Tumin, S. A., 2020). In contrast, informal employment is seen as a jobs-based concept, referring to the worker's job and the employment relationship and the associated employment protection. This definition underlines the role of state regulation concerning the workplace as well as the employment relationship, i.e., rules and controls, which constitute the legitimate and permissible spheres of economic activities. (Webb et al., 2020)

Those working in the informal economy can be separated broadly into two categories of informal employment (Chen, 2012; Hussmanns, 2004):

1. Self-employed in informal enterprises (e.g., workers in small unregistered or unincorporated enterprises, including employers, own-account operators and unpaid family workers);
2. Wage employed in informal jobs or informal employees (e.g., workers who work in the formal or informal firms or for households and do not have access to secure formal contracts, statutory workers' benefits, social protection or workers' representation; employees with no fixed employer and other informal wage workers such as casual or day labourers; domestic workers; industrial outworkers, notably home workers; unregistered or undeclared workers; and temporary or part-time workers).

Roles and Status in Informal Employment and Of Informal Employees

The informal employment in Malaysia has been identified in various sectors viz, small industries, business enterprises, agricultural sectors etc. It cannot be denied that the presence of informal workers in the Malaysian economic canvass is pertinent. These workers play a significant role in contributing subconsciously to the Malaysian economy. Their social and economic impact is well justified. They help to mobilize the economy with their work contributions. However, due to their status, they are not well protected under the law. Women and children are most vulnerable especially in trade and agricultural sectors (Mohapatra, K. K., 2012).

The current labour and employment laws do not specifically cater for informal workers. Informal workers do not fall under any of the categories recognized by the Malaysian labour laws to afford protection. Further, most will not even have the protection of a formal contract with their employers. Generally, these workers tend to be from the most vulnerable classes of people viz, illiterate, migrant, low-income wage earners (Vasta, E., 2004). Whilst most employers would benefit from having not to give informal workers the same benefits as permanent employees, yet the informal workers are still entitled to some basic protection of the law.

It is difficult to maintain a fair and equal balance in treating informal employees. Whilst there is no specific legislation which caters for informal employees there are a few legislations that the informal workers can refer to viz;

- i) Capital Markets and Services Act 2007
- ii) Children and Young Persons (Employment) Act 1966
- iii) Employees' Provident Fund Act 1991
- iv) Employees' Social Security Act 1969
- v) Employment (Part-Time Employees) Regulations 2010
- vi) Employment (Termination and Lay-Off Benefits) Regulations 1980
- vii) Employment Act 1955
- viii) Employment Insurance System Act 2017
- ix) Industrial Relations Act 1967
- x) Self-Employment Social Security Act 2017

- xi) Trade Unions Act 1959
- xii) Workmen's Compensation Act 1952

These legislations are not exhaustive and may be referred to by the informal employee based on the relevant facts of their cases. Most often than not the protection afforded is insufficient to protect the interests and wellbeing of informal workers.

The COVID-19 pandemic has further added on to the uncertainty of informal employment. If before informal workers had some form of structure as to their existence, the COVID-19 pandemic has altered the landscape of job seeking among informal employees. Great shifts in informal economy are seen with some sectors focusing more on informal employment as a result of the instability in the job market and recruitment. Former jobs existing on permanent employees have shifted to informal employment as business owners and employers struggle to keep their doors open. Most employers can't afford to keep permanent employees on their payroll with the risks of liabilities escalating and facing complete bankruptcy and total shut down or winding up of their businesses (Williams, et.al.,2014). Thus, now, not only we have the former existing informal employees before the COVID-19 pandemic but now informal employees that have started to exist since the advent of the COVID-19 pandemic.

However unstable informal employment may seem, yet it has been a welcomed side-line employment and initiative by the job seeking individuals and employers alike. The human nature, in its struggle for survival in this crucial time of the COVID-19 pandemic have found numerous ways and means to diversify and create job opportunities which may have otherwise found no and/ or less market during the times of the pre-COVID-19 pandemic. The COVID-19 pandemic has caused loss of employment in most work sectors but on the flipside, it has also created new job opportunities which may have otherwise been unexplored except with the unforeseen pressure caused by the COVID-19 pandemic (Pratap, S., & Quintin, E., 2006), (Slonimczyk, Fabián., 2014). The paradigm shift and change in the job market in the new norm probably has its boon. Whilst before the COVID-19 pandemic informal employment received less recognition, now, in the new norm it seems to have secured a firm footing and a job sector to be reckoned with. Experts say that these new expanded forms of informal employment are here to stay not only during the fiscal time of the COVID-19 pandemic but also in the post-COVID-19 pandemic period to come (Lim, L. L., 2020).

Women and children generally regarded as the most vulnerable and easily exploited sector of the informal workers may have found a firm footing and recognition as informal employees. Greater movement and pressure are being made towards the government and employers to formalize the position of informal employees. Laws and regulations are being framed by relevant organizations to be addressed to the government on the importance of giving social and economic protection to the vulnerable working-class sector of women and children (Mohapatra, K. K., 2012) in informal employment. Most recognized economic sector would be the low-income group (B40) and the middle-income group (M40 and T20). Although it has been argued that these economic groups are receiving specific and special funding in numerous government-driven incentive packages, yet these solutions are not and will not resolve the far-reaching social and economic problems presented by the increasing number of informal employees.

The difficulties in framing laws and regulations to govern informal employment lies in the very nature of informal employment viz; its fluidity and dynamism in altering and adapting to the fast rapid changing of workforce and demand. The very element that makes informal employment so progressive and an untapped wealth and economic income to the government, is the very element, on the flip side, makes it very volatile, arduous and challenging for lawmakers to solidify the position of informal workers to afford them the necessary social and economic protection and benefits they need (Nation, U. (2020)).

Mobilizing the County's Fiscal Economy

The most attractive aspect of informal employment that has been recognized by most experts is its role in contributing to the fiscal economy, income, and profit of the country. It is recognized as an untapped resource of income in by way of taxes ((Department of Statistics. (2020). (rep.)).).

This here lies another challenge. To tax informal employees, they need to be recognized as taxable individuals. So, there would be a need to formalize their status to enable the state to validly impose and deduct tax (Chen, Martha Alter (2007)). Tax deduction works both ways and would benefit both the country and the informal workers. For one, in return for the tax paid, informal employees would have better recognition of their rights in law and rights to the benefits and social protection afforded by the law to worker/ labourers (Webb, et.al., (2020)). This may include, wage entitlement, paid leave, medical care and benefits, housing, education, savings plan, insurance etc.

At the moment, informal employees do not have direct access to the provisions of employment law. They would be at the mercy of their employers who would choose what rights and benefits that can be given to the informal employees except for certain forms of informal employment where there would be a private employment contract between the parties (Husmanns, R. (2004)). These individual form of employment contracts afforded by the employers, would only address the terms of employment for that particular informal employment sector and workers. These individual employment contracts are not standardize and will not encompass all other kinds of informal employment and workers.

Seeking Permanence in The Country's Employment Landscape

It is our prediction that informal employment will continue to grow and may become the new form of employment. To this end, some workable solutions are needed to ensure the informal workers are given the necessary benefits and protection they need. Short term solutions have always been applied. What is needed now is due recognition and some form of long-term solution where there would be a certain kind of stability for the growing sector of informal employment (Pratap, S., & Quintin, E. (2006)). The future reads more into informal employment as it provides sufficient movement and freedom to employers and workers alike. Except for certain job scope which requires permanent employees, informal employees work better in the current market trends which favour flight movements, fast acquiring job experience and skills, different and multiple job skills within the same work sector, growing and knowledgeable workers, transfer and sharing of job skills, skills acquired in the fast-changing and volatile new work demand and needs etc., it is predicated that informal employment may evolve and set the trend for the future job market post-COVID-19 pandemic (Tumin, S. A. (2020)), (Webb, et.al., (2020)).

Solutions

As discussed, the challenges in having to recognize informal employment is in its nature of volatility, fluidity, and dynamism. Benefits from informal employment can be obtained if it can be contained in some form that can be validly recognized. So, the question now is how do we capture this relatively obscure yet not so obscure form of employment? The best module and suggestion are to bring informal employment within the confines of laws, rules, and regulations. In this way, the state can validly tap into this invaluable source of income made taxable upon its recognition under the specific laws, rules, and regulations (Kucera, David Leanne Roncolato (2009)), (Lim, L. L. (2020)).

The first form of recognition of informal employment is to get these enterprises, business interests and sectors validly registered (Williams, Colin C, Ioana Alexandra Horodnic (2016)). Upon registration, these businesses, entrepreneurial exercises, and sectors would acquire a legal status and recognition under the law. The law can afford certain protections and benefits for the informal employment as well as the informal employee. Registration would also attract liabilities such as chargeable income tax, the right to sue and be sued, audit and any other duties and obligations required by and under the law on the informal sector and the informal employees (Williams, et.al., (2014)).

The next form of capturing informal employment and informal employees is to introduce and implement a minimum wage scheme and/ or deductions and contributions by the employer into the informal employees' Employee Provident Fund (EPF). This requirement can help the state to validly identify and recognize informal employment and informal employees (Williams, Colin C., Mark A. Lansky (2013)).

Next, at the state and/ or ministerial level, since there are no specific statutes that address informal employment and the informal employee per se, subsidiary legislations can be introduced and implemented, where applicable, to ensure the compliance of laws by the informal sector and informal employees. It is important to note here however that although a Minister may derive his powers to make subsidiary legislations from the statutes, his powers may only be limited to the powers afforded under the relevant parliamentary legislations. This exercise of power must be thread cautiously by the Minister as a non-existent power to make laws cannot be read into the statutes where such power to make laws does not exist and/ or was not given to the Minister under the relevant parliamentary legislations (MP Jain., 2011). Thus, having said that, pursuant to such limitations, subsidiary legislations can and may, to a certain extent, subject to the powers derived under the statutes, address the needs of the informal employment and the informal worker.

Conclusion

The informal worker to this day remains an elusive worker. His rights have yet to be formally defined and recognized. His position sways from being volatile and dynamic. His future remains uncertain. Yet through it all, he has managed to survive the uncertainties and embrace each day as it comes. It seems he is content in being indefinable. Such unrecognizability leaves him in a precarious position. Either of his own volition or due to unavoidable circumstances he is forced to accept his fate. Yet, the time would come for his day of recognition. Question is, would he like to be constrained within the four corners of the law or remain free to set his own terms and conditions in life, fully unrestrained? Will the decision be his to make or decided for him? It yet remains to be seen. Until then, he will continue to exist, as he has always been,

walking on the fine thin line of recognizability and unrecognizability, forever existing in that realm.

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