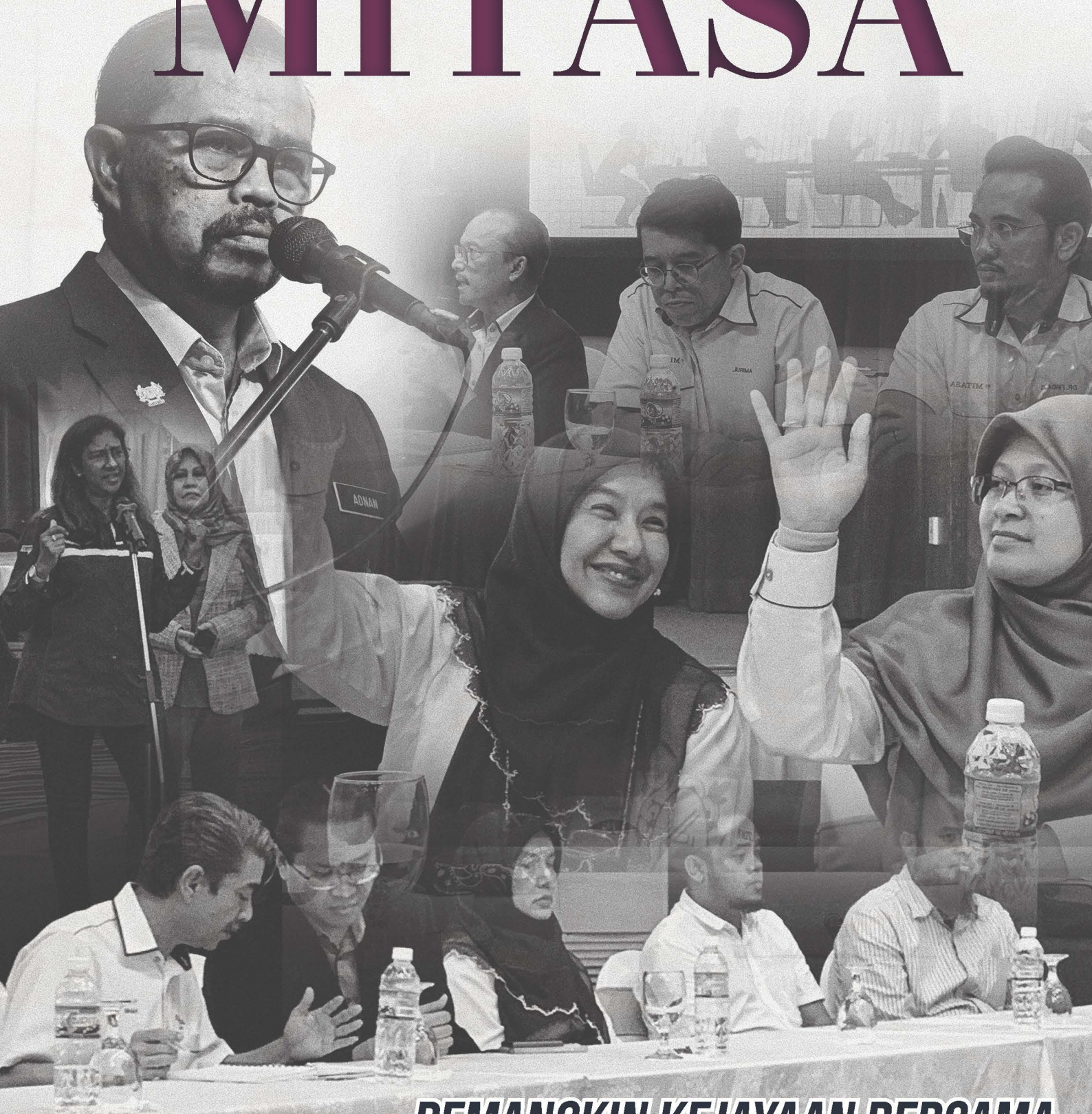


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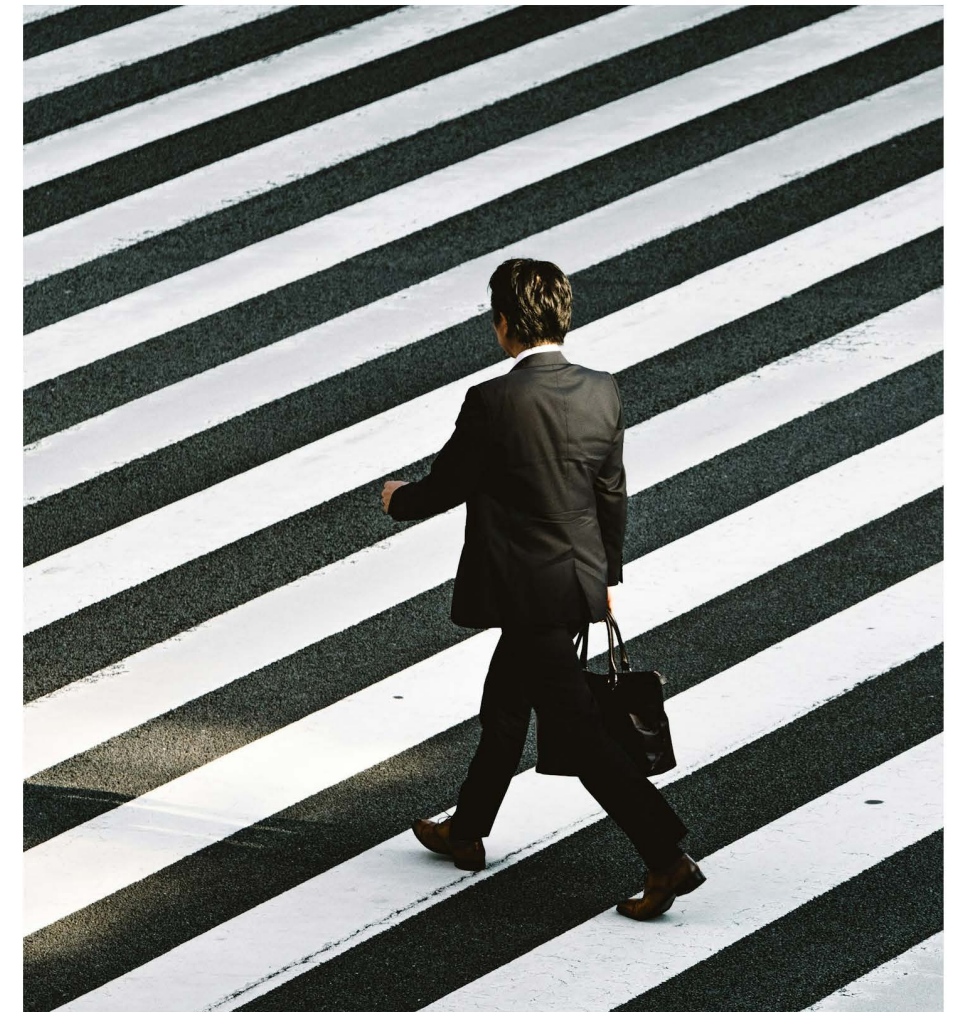
The right to establish a trade union in Malaysia

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The Federal Constitution primarily guides the intricate regulation of trade unions in Malaysia's legal system. This foundational document outlines the rights of individuals and lays out the responsibilities of government in regulating key matters, such as labour relations. Understanding how trade unions come into being in Malaysia requires examining two fundamental aspects: the body responsible for regulating trade unions and the rights of individuals to form such unions.

First, let's examine the regulatory framework governing trade unions in Malaysia. According to the Federal Constitution, Parliament and the Federal Government are responsible for matters related to labour and social security. Item 15 of the Federal List delegates the regulation of these matters to Parliament. As the nation's legislative body, Parliament is responsible for creating laws that govern trade unions, ensuring they operate within the framework of Malaysia's broader labour policies. But Parliament doesn't act alone. Article 80 (1) of the Constitution grants the Federal Government the authority to execute laws passed by Parliament, thereby ensuring that trade union laws are enforced consistently throughout the country.

But what about the individual's right to form a trade union? This section is where the Constitution guarantees citizens critical freedom. Article 10(1)(c) of the Federal Constitution provides that every Malaysian citizen has the right to form an association. The word "association" is crucial here, as it directly includes trade unions. In essence, this provision grants Malaysians the legal right to organise, unite, and advocate for their collective interests, whether as a trade union or any other form of association. It's a right that upholds the components of a democratic society.



However, like all rights, the right to form a trade union is not without its limitations. Article 10 (2) introduces restrictions, allowing Parliament to enact laws that can limit this right in specific circumstances. These restrictions can be made on the grounds of national security, public order, or morality. Further complicating this picture is Article 4 (2) (b), which restricts the judiciary from questioning the intentions of Parliament when it creates laws that limit the right to form associations. It's a legal safeguard that grants Parliament broad powers to regulate trade unions, with minimal judicial interference. This power has been consistently upheld by the Malaysian courts, as demonstrated in the landmark case of *Sivara Rasiah v Badan Peguam Malaysia* (2010). In this case, the Federal Court ruled that Parliament had the authority to restrict a member of Parliament from participating in the Bar Council, affirming the principle that the regulation of associations, including trade unions, falls within the legislative powers of Parliament.

The story of trade unions in Malaysia wouldn't be complete without considering the key statutes that govern them. Three primary pieces of legislation frame the rights and responsibilities of trade unions in the country: the Employment

Act 1955, the Trade Unions Act 1959, and the Industrial Relations Act 1967. These laws collectively set the standards for trade union formation, operation, and dispute resolution. The Trade Unions Act 1959 and the Industrial Relations Act 1967 apply to all of Malaysia, but the Employment Act 1955 only applies to West Malaysia and Labuan.

For Sarawak and Sabah, the legal landscape differs slightly. The Labour Ordinance of Sabah (1953) and the Labour Ordinance of Sarawak (1952) govern these two East Malaysian states. However, these ordinances are treated as federal law under Section 73(3) of the Malaysian Act 1963, meaning any amendments to them must be made by Parliament, just as with other federal labour laws. This provision ensures that the legal framework governing labour relations remains consistent, even across Malaysia's more geographically and culturally diverse regions.

In terms of registration requirements, Section 8 of the Trade Unions Act 1959 sets out a clear mandate for the formal recognition of a trade union in Malaysia. Upon establishing a trade union, the union must apply for registration within six months to the Director General of Trade

Unions. This step is vital, as it officially legitimises the trade union and gives it legal standing to operate within the boundaries of Malaysian law. Failure to comply with this registration requirement results in significant consequences. Under Section 19 of the Trade Unions Act 1959, any trade union that operates without registration is considered an unlawful association. Such unions lose legal status, leaving them unable to perform any legally recognised functions, including representing workers in disputes or negotiations.

Furthermore, operating an illegal trade union carries substantial penalties. Under Sections 59 and 63 of the Trade Unions Act 1959, a person who is found guilty of managing an unregistered trade union may be subject to a fine not exceeding RM 5,000. This legal provision emphasises the importance of proper registration as the gateway to lawful operation for trade unions, ensuring that they are subject to the regulatory framework governing their activities and preventing exploitation or unlawful practices.

Section 8 of the Employment Act 1955 enhances an employee's right to join a trade, addressing whether an employer could impose such restrictions. It

stipulates that an employer cannot limit an employee's right to enter, participate in, or associate with a trade union. The same provision can be found in Section 9C of the Labour Ordinance (Sabah) 1953 and Section 10C of the Labour Ordinance (Sarawak) 1952. However, these rights only applied to certain types of employees specified in the First Schedule or as ordered by the Minister. Since the amendment in 2022, it covers any person who has entered into a contract of service. This type of contract is widely applicable to the private sector and covers a range of employment-related aspects.

However, certain restrictions apply to specific categories of workers, particularly public officers and employees of statutory bodies. The law distinguishes between private-sector employees and public-sector workers by recognising different sets of rights and obligations in each case. For public service, Article 132 (2) of the Federal Constitution governs the provision of contract terms for the public officer. It states that the qualifications for appointment and conditions of service of individuals in the public services are regulated by Federal law or the Yang di-Pertuan Agong. The terms and conditions of employment for the statutory

body depend on the law that created it. For instance, Section 23 (1) of the Universiti Teknologi Mara Act 1976 provides that the employment terms for UITM staff are based on what is prescribed by the University's Board of Directors.

For the right to join a trade union, public officers are prohibited from doing so unless the Yang di-Pertuan Agong exempts them as per Section 27 of the Trade Unions Act of 1959. There are several trade unions for public officers, including the National Union of the Teaching Profession (NUTP), the Malaysian Nurses Association (MNA), and the Peninsular Malaysia Customs Officers Union. Those public service unions founded a federation of trade unions under Section 72 of the Trade Unions Act 1959, known as the Congress of Unions of Employees in the Public and Civil Services (CUEPACS).

For statutory bodies, their employees retain the right to join the trade union but are subject to restrictions under Section 27 of the Trade Unions Act 1959. For instance, any individuals in the statutory body holding managerial and professional positions cannot join a trade union unless the Chief Secretary of the Government excludes them in writing.

In conclusion, the regulatory landscape governing trade unions in Malaysia is both comprehensive and nuanced. The requirement for trade unions to register; the penalties for operating without registration; and the specific rules governing union membership and collective bargaining in various sectors all contribute to a carefully constructed legal environment that ensures fair and organised labour relations nationwide.

Furthermore, while employees in the private sector enjoy extensive rights to join trade unions and engage in collective bargaining, the law imposes significant restrictions on public officers and employees of statutory bodies. These limitations aim to strike a balance between the rights of workers and the need for public sector stability and efficiency. This legal framework reflects Malaysia's commitment to ensuring that trade unions operate within a structured and lawful environment while recognising the need for flexibility in managing complex relationships between employers, employees, and the state.

PERFECTION IS NOT ATTAINABLE.

**BUT IF WE CHASE PERFECTION,
WE CAN CHASE**

EXCELLENCE.