

Issues in Centralized Housing for Foreign Workers in the Manufacturing and Construction Sectors in Malaysia

Nasreen Miza Hilmy Nasrijal¹, Suhaida Mohd Amin², Mohd Faizal P. Rameli³, Mohamad Idham Md Razak⁴

^{1,2,3}University Technology MARA Cawangan Melaka, Malaysia

⁴Universiti Technology MARA Cawangan Selangor, Malaysia

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ABSTRACT

Living conditions of migrant or foreign workers have been a grave concern in countries relying on external workforce. The outbreak of Covid19 pandemic confirmed the dreadful living conditions of foreign workers which inevitably contributed to the spread of the disease. In Malaysia, the Employees' Minimum Standards of Housing and Amenities Act 1990 (Act 446) regulated the accommodation of workers. The amendment to Act 446, which was implemented in 2020, was timely to improve the living conditions of the workers. One of the outcomes of Act 446 was the expansion of usage of Centralized Labour Quarters (CLQ) to house foreign workers. While this is a positive step towards improving the living conditions of foreign workers, there are obstacles involved. The objective of this paper is to examine the issues encountered by the employers in housing foreign workers in CLQ and employers' effort to comply with Act 446. Focus group discussion (FGD) was conducted with representatives of employers from relevant industries. The findings revealed that while CLQ provides better housing of foreign workers, there are issues which affect both employers and workers. Lack of CLQ in appropriate location is a challenge for employers from the manufacturing and construction sectors, necessitating temporary accommodations to be permitted. Division of responsibilities between the employer and foreign workers for incidental costs caused by the workers need to be addressed.

Keywords: foreign workers, housing, accommodation, law.

INTRODUCTION

The International Labour Organization (ILO) recorded an estimation of 169 million international migrant or foreign workers globally which makes up 4.9 per cent of the global labour force [1]. Among the top countries hosting migrant workers in the world are: America (25.6 per cent), Europe, Central Asia (37.7 per cent), Arab States (14.3%), Asia and the Pacific (14.2 per cent), and Africa (8 per cent). With enormous number of migrant or foreign workers in the host countries, there are inevitable issues concerning them, particularly the lower-level labour. One of the major concerns on the welfare of the foreign workers is their living condition and accommodation. The ILO has urged for better accommodation, in addition to other rights and benefits, of foreign or migrant workers globally. Previous research has highlighted the problems of affordability and habitability of the accommodation [2] faced by foreign workers, hygiene and health hazards among foreign workers [3] and safety issues of foreign workers [4]. During the pandemic, it was revealed that among the challenges faced by low-wage migrant workers were poor housing, poor sanitation, and food insecurity [5]. Post-pandemic, similar issues of overcrowded living spaces, commonly shared sanitation facilities, and poor hygiene practices among foreign workers still exist. Foreign workers are either housed in accommodations provided by employers or opt to live on their own. Hostel or stay-in accommodation provided by the employers for foreign workers is generally found to be safer than staying outside on their own [6], which is possibly due to better security. However, employers and operators of hostels for workers are often reluctant to shoulder the increasing costs of accommodation and increasing security would result in additional cost. It is common for these costs to be passed on to the consumers in the form of products or services of such industry [7]. Some tried to cut cost by cramming foreign workers into constrained space despite sufficient space being

essential for foreign workers as it would affect their emotions, sense of belonging and would lead to sense of unworthiness [8]. Issues on accommodation of foreign workers had necessitated host countries to regulate better accommodation as advised by the ILO and advocated by NGOs concerned about the welfare of foreign workers. Malaysia is one of the countries in South East Asia with significant numbers of foreign workers and housing of foreign workers is a controversial issue. Hence, the objectives of this paper are: firstly, to examine the development of the laws regulating the accommodation of foreign workers in Malaysia, and secondly, to examine the issues in complying with the accommodation as required by the law.

LITERATURE REVIEW

Foreign Workers in Malaysian Industries

Influx of foreign labour particularly from Indonesia to Malaysia occurred in the mid 80's following the Medan Agreement in 1984 between these countries. [9]. Since then, in addition to foreign workers from Indonesia, employers in Malaysia are allowed to recruit foreign workers from Cambodia, Thailand, Myanmar, Vietnam, Pakistan, Sri Lanka, Laos Nepal, Philippines and India. At present, sectors which are allowed to employ foreign workers are manufacturing, construction, agriculture, plantation, and services [10]. The prevalent sectors employing foreign workers are the construction, manufacturing, plantation as well as low-end services [11]. The Department of Statistics of Malaysia recorded more than 2.0 million employed foreign workers in 2023, which is 12.7% of the total employed labour in Malaysia [12]. Out of that number, the bulk of foreign workers (43%) are in the service sector, while 23.7% are in the agricultural sector. The manufacturing and construction sectors combined, total up to 33.2% whereby 18.3% is contributed by the manufacturing and 14.9% from construction sectors respectively. Manufacturing and construction sectors contribute significantly to Malaysia's economy. The manufacturing sector is the main contributor to Malaysia's total gross output with 49.2% while the construction sector contributed 5.3% [13]. Despite these two sectors' reliance on foreign workers, housing or accommodation for foreign workers is still below satisfaction.

Legislation On Housing and Accommodation for Foreign Workers in Malaysia

Employers in Malaysia must comply with the Employment Act 1955 (Act 265) which provides for the rights of employees (local and foreign) in matters on salary, working hours, holidays, leave, and mechanism of resolving labour disputes [14]. Over the years, Act 265 has been amended and the recent amendment in 2022 which took effect on 1 January 2023 provided stricter rules for employers who wish to employ foreign workers. Section 60K provides that employers must obtain prior approval of the Director General of Department of Labour before they can employ and bring in foreign workers. This new provision in Act 265 is a screening method to prevent employers who have committed labour related offences (or against whom complaints have been made) from employing foreign workers.

Housing for workers (local or foreign), is regulated by another legislation which is the Employees' Minimum Standards of Housing and Amenities Act 1990 (Act 446). Act 446 had gone through a number of amendments, and was initially known as The Workers' Minimum Standards of Housing and Amenities Act 1966. The original act was based on the Rump Labour Code 1933, an international labour code which prescribed provisions on housing, sanitation, health requirements, availability of hospital and medical treatment in estates and mines [15]. The Rump Labour Code provided, among other things, that the labour officers to make regular inspections to ensure that employers kept a conducive workplace and welfare of the workers are looked after, as well as protecting their rights on salary. Act 446 adopted international guidelines contained in the International Labour Organization Workers' Housing Recommendation 1961 (Recommendations 115) dan Code of Conduct for Responsible Business Alliances. In its early stage of implementation, Act 446 was supplemented by various regulations from 1967 to 1991 to monitor aspects of housing and amenities. The initial purpose of Act 446 was to regulate and urge employers to provide housing and basic amenities for workers in the agriculture and mining sectors. Both sectors are usually situated far from residential areas which necessitates housing to be provided within or adjacent to the working area. Part II of Act 446 provides rules which employers must comply on buildings, lands, basic facilities, nursery, community hall and recreational facilities while Part III regulates the establishment of hospitals within the premises of housing and provision of medical treatment for the workers. The minimum standard for housing of workers is that it must be equipped

with basic amenities such as supply of water and electricity, hygiene and safety of the workers.

Up to 1990s, the application of Act 446 was still confined to the agriculture and mining sectors despite the expansion of other sectors which permitted employment of foreign workers. Housing for foreign workers in the sectors which are not subjected to Act 446 became a dilemma as their safety and cleanliness were neglected [16]. In 2018, the Guidelines for Determining Minimum Standards for Foreign Workers' Accommodation 2018 was implemented which required employers who employ foreign workers to provide accommodation in accordance with the guidelines. Subsequently, in 2019, Act 446 was amended expanding its application to all sectors. The amendments to Act 446 was an attempt to align with the standards prescribed by the International Labour Organization. Enforcement of the amended Act 446 had to be postponed to give time to the employers to comply in view of the Covid-19 pandemic in early 2020. To an extent, the pandemic was a blessing in disguise as it revealed horrendous housing or accommodation which foreign workers had to endure [17] and hence, the amendment to Act 446 was timely. The amended Act 446 imposes an obligation on the employers to obtain the Certificate for Accommodation issued by the Department of Labour to verify that the premises is suitable for accommodation of foreign workers. Before an employer can obtain work permit for foreign workers, they would have to prove that they have arranged for accommodation and documents would have to be submitted to the Department of Labour. Officers from the Department of Labour will conduct inspection on the accommodation to ensure that they meet the requirements of Act 446 and the regulations which supplement the Act before the Certificate for Accommodation can be issued. Hence, until the accommodation is approved, employers will not be able to obtain a work permit for the foreign worker to enable the worker to start working. This new requirement in the amended Act 446 is a protection for foreign workers by imposing obligations on the employers to provide accommodation which has been approved before they can bring in foreign workers to Malaysia.

There are 4 categories of minimum standards for housing and accommodation under the amended Act 446:

- a) The minimum standard for housing and nursery for workers and their dependants (for workers who are allowed to have family in the housing provided. This is usually for local workers as foreign workers are not permitted to bring their family to Malaysia)
- b) Minimum standard of housing which has been authorized to provide hospital in the estate
- c) Minimum standard of housing for workers who are not allowed to have their family and dependants with them
- d) Minimum standard for centralized accommodation/housing

The following part of this paper focuses on centralized accommodation or housing.

Centralized Labour Quarters: Centralized Housing for Foreign Workers

Foreign workers in the construction sector are often placed in a makeshift accommodation within the construction site. They have to endure dreadful living condition as their accommodation are often overcrowded, lacking in basic amenities and unhygienic [18]. Similarly, those working in manufacturing sector were at high risk of contracting disease in view of their cramped and unsanitary living condition [19]. Centralized housing for foreign workers is more commonly used by the manufacturing sector than the construction sector. But even then, prior to the amended Act 446, the centralized housing was lacking in terms of space and facilities. Deplorable living conditions of foreign workers employed in the construction sector has urged the Construction Industry Development Board (CIDB) to construct Centralized Labour Quarters (CLQ) for construction workers in 2017 in line with the Malaysian Standards guideline for Temporary Construction Site Workers' Amenities and Accommodation-Code of Practice [20]. In their study, [20] found various advantages for CLQ; it is practical and economical to house foreign workers in a centralized housing, CLQ provides a safe, clean and conducive area and in return living in CLQ increases workers' performance and improve the workers' social life. However, they also found disadvantages of CLQ such as limited CLQ and cost of transportation.

Although Act 446 allows foreign workers to be placed in centralized accommodation, it does not make it mandatory for employers to build or acquire houses or centralized housing for foreign workers. Section 24B of Act 446 defines “centralized accommodation” as any building used for the housing of employees employed by one or more employers. An employer can delegate the responsibility to acquire and manage the centralized accommodation to a centralized accommodation provider. Under Act 446, a “centralized accommodation provider” means any person who provides and manages a centralized accommodation and supervises the services provided therein for one or more employers. Thus, the foreign workers placed in a centralized accommodation could be employed by different employers.

METHODOLOGY

Focus Group Discussion (FGD) was conducted to examine the issues faced by the employers in complying with the requirements under Act 446. With the assistance of Institute of Labour Market Information and Analysis (ILMIA), the researchers secured a list of key players from four major industries, namely, the manufacturing, construction, plantation and agriculture industries, thereupon invitations were sent out to them explaining the objectives and conduct of the research. Respondents were divided into three groups for the FGD. One of the groups consisted of 13 respondents (R1 to R13) who represented the construction and manufacturing industries as well as other relevant stakeholders for the industries which employ foreign workers. At the outset of the FGD, procedures were explained to them and with their consent, audio recording was used to capture the discussion. The respondents were given equal time to answer the same questions and the ARC technique [21], [22] was also utilized to capture the consensus of the respondents on issues discussed which validated the views of the respondents which had reached saturation point. Respondents representing the manufacturing and construction industries discussed at length on the viability of CLQ as housing for foreign workers in Malaysia and other issues on compliance with the requirements of Act 446. The findings are discussed below.

FINDINGS AND DISCUSSION

From the FGD conducted, six issues have been unanimously raised by the respondents which are:

1. Lack of suitable accommodation and lack of CLQ in strategic location
2. Allowing temporary accommodation
3. Responsibilities of Employer & Foreign Workers for Incidental Costs incurred in CLQ
4. Placing mixed nationalities in the same accommodation
5. The Risk and Consequences of Foreign Workers Absconding
6. CLQ or similar housing to be provided by the government

Lack of Suitable Accommodation and Lack of Clq in Strategic Location

The location on which most CLQs were built depends on the lands approved by the authorities. These areas may not be near the place of work. For instance, the manufacturing sector may not have CLQ built within or adjacent to the employers’ factories for various reasons: health and safety issues, type of land (some lands are gazetted as industrial lands as opposed to residential lands), the factories were built much earlier and there is insufficient land for CLQ to be built in same area.

R1 from the manufacturing sector highlighted the predicament on the location of the CLQ:

“I believe the location (sic) also one of the things that need to be take (sic) into consideration... Because currently the hostels available especially for our sector...is not convenient for the workers...for them to move about from the hostel to the working place and also from the working place to the hostel”.

R4 who is also from the manufacturing sector supported R1 by comparing the difficulties faced by his factories located in two different states in Malaysia:

“I have two sites; one in Johor, one in Ipoh. So...(in) Johor, we just (place them in) the CLQ. So it's just like a walking distance away. But still, even a walking distance away, as we work on shifts, we have a few hundred migrant workers and some local workers living there. But when it comes to Ipoh, CLQ is there, but it's not at the preferred location where you want it to be. They're not very close”.

He explained further that it is difficult to find apartments or flats (which are similar to the required CLQ set up) in smaller cities and rural areas. Obtaining the prescribed accommodation is a challenge for small local industries which is not financially established but the housing requirement is applicable to all employers irrespective of the nature of the industry. In addition, respondents from both manufacturing and construction were of unanimous view that CLQ which is located far from the work place would cause transportation problems for the foreign workers to commute. Most often, these places lack public transport and it is unlikely for foreign workers to have their own mode of transport. Employers would have to arrange for transportation which would result in difficulties for workers who work in shifts and staying in different CLQ or housing locations. It is also not conducive for the foreign workers to travel on their own if transportation is not provided. This is explained by R2 who said:

“So how...where do we...we can't put them...we have to put them within a radius of say, maximum one to two km. Otherwise, how to cycle or walk? Then we have to arrange transport. Then we have logistics issues and managing this. Because we have shift and all that, right? So, these are, I think, the major concerns”.

In sum, respondents from the manufacturing and construction sectors are in consensus on the issue of lack of suitable accommodations and that most CLQ is not within the vicinity of their work place resulting in transportation problems.

Allowing Temporary or Modified Accommodation

In view of the lack of CLQ at a desirable location, respondents from the construction sector were of the view that temporary accommodation within the construction site be permitted while respondents from the manufacturing sector opined that modified accommodation such as shophouses or shop lots be allowed for foreign workers' housing. Temporary accommodation is needed for construction industries in view of the nature of their work which requires them to move about. R7 elaborated on this point:

“Because we are totally different from other industries, because we are like nomad, we move around. Because construction is one trade, after three months....., then other work will come in, you know... so different kind of batch of people. So, we hope our accommodation can be at the site”.

For smaller manufacturing industries, usage of shop lots or shophouses is said to be more practical. R3 from the manufacturing sector was of the view that shop lots or shophouses can be made to comply with the requirements of Act 446 with some modifications to the original setting. R3 said:

“I think to differ on not allowing shop lots to be considered as hostel. Yeah we do understand safety concerns, but ... you know, we can do temporary measures. We can do erm, what you call this, renovate that particular building site”.

The respondents from the construction and manufacturing sectors have encountered challenges in securing suitable housing which meets the requirements of Act 446 and at the same time practical for their businesses. Hence, they need some flexibility in the types of housing permitted.

Responsibilities of Employer and Foreign Workers for Incidental Costs Incurred in Clq

Act 446 allows employers to deduct a sum of RM100 from each worker's salary for the accommodation provided or arranged by the employer. This amount would not be sufficient for rental in most places in

Malaysia and thus, the employer would have to pay for the rest. Respondents from the manufacturing sectors are in a predicament because although Act 446 allows deductions to be made, this is not in line with the requirements in the Responsible Business Alliance Code of Conduct (RBA). In addition to Act 446, employers in the manufacturing sector are also subjected to international practices and would be audited based on international standards. Thus, auditors would make a finding of non-compliance when employers deduct the worker's salary for accommodation.

R1 expressed the view shared by others from the manufacturing sector:

"They got many audits and one of the audits for example like RBA audit and social audit, right, it is mandatory that you cannot deduct anything you know from the workers from the place. It is mandatory, they are more stringent, okay. So again, for me it's like conflict... So, this one needs to be clearer, because currently like deducting is not aligned with the RBA especially".

Apart from that, the respondents also highlighted the issue on additional costs which the employers have to incur for workers placed in CLQ or similar accommodation. Section 24I of Act 446 requires the accommodation to be equipped with "decent and adequate amenities". Respondents expressed their disappointment as regards the ambiguous provision on the extent of responsibilities of the employer and workers for the cost of amenities. According to them, it has to be clear as to whether the employer or workers should be responsible for certain costs in relation to accommodation. The respondents are dissatisfied that they would have to foot the bill or incur additional expenses when the foreign workers breaks electrical items in the housing or runs up exorbitant electricity bills. R10 who manages CLQ confirmed that damages in the CLQ facilities caused by the workers will become additional costs on the employer:

"For this workers' responsibility, when they stay in the house, they bring things. Because we manage hostels almost 10 years, we have a lot of issues. They bring stuff, they bring things. They throw things in this disposal. So it end up cost for employers".

In general, the respondents are of the view that the division of responsibilities as regards the responsibilities on the costs of housing, the costs of amenities and damage thereof in Act 446 appear to be unclear.

Placing Mixed Nationalities in The Same Accommodation

As stated in Act 446, the CLQ can be managed by a centralized accommodation provider which provides services to different employers and by doing so, they would have to place foreign workers from different nationalities into the same unit. R1 expressed the view which was concurred by other respondents:

"... we have many nationalities working in our companies, like India, Pakistan, Nepal, Bangladesh. One of the challenges is you cannot mix them. It's not any other reasons, but based on experience, they cannot stay together..."

It would not be cost-effective for employers or the centralized accommodation provider to place the foreign workers according to nationalities because the numbers of foreign workers to be placed in each unit in the CLQ may vary according to the requirements of each employer as well as the applications approved by the authorities. This would result in uneven distribution of numbers of foreign workers of a specific nationality in each unit. Therefore, when employers engage the services of centralized accommodation provider of the CLQ, there is bound to be situation where foreign employees from different nationalities are placed together. This would cause social problems when foreign workers of different nationalities cannot live in harmony as they may have to deal with communication difficulties in view of language barriers, inability to understand different culture and religious practices.

The Risk and Consequences of Foreign Workers Absconding

Employers take the risks in employing foreign workers because they have to pay a hefty sum to bring them into the country and comply with various requirements such as ensuring accommodation for the workers and that the workers pass the health screening to obtain work permit. But there is no certainty that the workers will

remain working throughout the contract period. Employers have to be responsible for foreign workers who abscond and pay the penalty to the authorities when they report the foreign workers had absconded. In addition, they would have to pay for any costs in relation to the accommodation or housing of the foreign workers. R3 voiced the common view of the respondents:

“When they *cabut* (abscond), they run. Don’t know where they are. They become illegal. But the thing is, in the system, it’s showing the company who bring (sic) them in. And then you have to pay. You have to pay. At no fault of the fellow (employer)... Like I say, all the processes that you have to follow”.

Thus, employers would have to bear the costs on accommodation and other additional sum in relation to accommodation even when the foreign workers absconded.

Clq Or Similar Housing to Be Provided by The Government

Employers from the manufacturing and construction sectors encounter difficulties in securing suitable housing in residential areas which complies with Act 446. CLQ provides appropriate housing which not only complies with Act 446 but is also important to protect the foreign workers by placing them within their circle. R5 highlighted an important view on the safety of foreign workers:

“And also, most people also forget something. Why CLQs are relevant? Because sometimes when you stay in houses and some apartments, the local gangsters come and disturb them, you know. And then sometimes they come into the house and steal things from them. Which is not controlled. So we need a proper place where everything can be controlled... The safety of the workers and service is paramount”.

As there are limited CLQ in the areas which are near the industrial areas, respondents from the manufacturing and construction sectors suggested that the government, through the regulating body for the respective sectors, build more CLQs to house the foreign workers. They are of the view that since they are paying levy to the government and the regulating body such as the Construction Industry Development Board (CIDB), part of the amount should be utilized to construct CLQ. R2 said:

“Use the portion of the levy to be collected for the cost of housing... government should provide designated areas for foreign workers. Foreign workers’ housing, and... the industry will provide the transportation, and the transportation is payable by the workers”.

Building a CLQ would require permission from the local authorities and as stated by R2, only the government (through the local authorities) is capable of identifying the areas that can be designated for foreign workers’ housing. Although Act 446 allows employers to build housing for the workers, not all employers own property which are categorized as residential property. In the manufacturing sector, for example, the employers (company) may own the lands on which factories are built but these lands are industrial lands where housing cannot be built on it except with permission from the relevant authorities.

RECOMMENDATION AND CONCLUSION

Based on the FGD conducted, it is found that generally, employers from the manufacturing and construction sectors are amenable as regards central housing for foreign workers. However, there are issues which they have highlighted as above. Firstly, the location for CLQ or centralized housing is a predicament for both sectors. For the manufacturing sector, the location of CLQ is the main issue as it would involve additional costs for transportation of the workers who work in different shifts. Conversely, for the construction sector, the nature of their work requires the workers to move from one destination to another. The findings of this research is in line with previous studies on construction sector [4], [20] and this finding is extended to the manufacturing sector. Building new CLQs will take time and until then, it is essential for temporary housing to be allowed as long as they fulfil the general requirements of Act 446 in terms of space and basic amenities. Secondly, it has to be made clear as regards the responsibilities on the incidental costs of the facilities in the CLQ or temporary housing, particularly when the foreign workers caused the damage to the facilities or in the event they abscond. In a usual tenancy contract, it is common practice for a tenant to pay a deposit which will be forfeited if the

tenant causes any damage or if the tenant moves out without giving notice to the landlord or house owner. On the same principle, it is essential for employers or the centralized accommodation provider to be permitted to obtain some deposit from the foreign workers as a security.

Thirdly, as placing foreign workers of mixed nationalities in the same housing or units of CLQ invites conflict, it is important for the employers to employ a batch of foreign workers from specific country only at one time so that it will ease the housing arrangements. Alternatively, it would be helpful if the centralized accommodation provider can allocate certain blocks or units for certain nationalities. This is to protect the emotional well-being of the foreign workers as being isolated in the presence of workers from other countries can affect their mental health as found by previous study [8]. Finally, on the issue of the CLQ being provided by the government, it is suggested that a further study be conducted to identify the viability of providing CLQ for all sectors as each sector has their own peculiarities which might not be sufficiently covered by a blanket regulation. The findings of this study is limited to two sectors, namely the manufacturing and construction sectors, and may not be applicable to those in other sectors where housing must be provided within an estate. It is also essential to determine whether the levy paid by the employers are sufficient to construct CLQs at various places. Instead of the government building CLQs for all sectors, it is suggested that certain tax incentives be given to the employers who comply with Act 446 and have not committed any labour related offences.

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