

Health and safety legislation in malaysia construction



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Malaysia construction industry is the higher fatalities compared with among all the industry in Malaysia table 1 Occupational accident by sector for the category of death from 2009 April to 2011 April shown at below.

(Department of Occupational Safety and Health (DOSH), 2009-2011).

Implementing safety and health requirement should be part of Contractors responsible. (Dongping. F, et al., 2006, p: 434) Contractors comply with Occupational Safety and Health Act 1994 and Factories and Machinery Act 1967 to implementing safety and health requirement for the construction site to make the act effectively minimize the accident rate and fatalities.

(Omran, et al., 2008)

A study into the effectiveness Occupational Safety and Health Act 1994 and Factories and Machinery Act 1967 in reducing fatalities and injury rates in Malaysia construction site.

Objectives

- To study of Occupational Safety and Health Act 1994 and Factories and Machinery Act 1967 the effectiveness by contractors to implement at construction site.
- To identify the barrier facing by contractor of implementing Occupational Safety and Health Act 1994 and Factories and Machinery Act 1967 on construction site.
- To identify the implement of Occupational Safety and Health Act 1994 and Factories and Machinery Act 1967 on actual construction site.

Background

The OSHA Malaysia is effective on 24 February 1994(Act 514). An act is to ensure safety, health and welfare of persons who are at work and to protect other person against safety risk or health in connection with the activities of persons at work. (Occupational Safety and Health Act 1994 (OSHA), s. 1)

OSHA 1994 actually is quoted Occupational Safety and Health Act. The objects of OSHA 1994 have written and are under section 4. An object of OSHA1994 is to secure the safety, health and welfare of persons who are at work and to protect persons at a place of work other than persons at work against hazards. Not only for that had the act also had to promote an occupational environment for persons at work which is fit to worker physiological and psychological needs.

The last object of the act is to provide way or method according related to the occupational safety and health legislations can be gradually replaced by an institution of regulations and permitted the industry codes of practice operating in combination with the provisions of the statute, designed to maintain or improve the safety and health standards. (OSHA, s. 4 (a-d))

FMA 1967 (Act 139) is to provide for the control of factories with respect to matters relating to safety , health and welfare of person therein, the registration and inspection of machinery and for matters connected therewith. Those machinery which is high risk for operate such as mobile cranes, tower cranes and etc must be certified and inspected by DOSH. (Factories and Machinery Act 1967 (FMA), s. 1)

According to DOSH government website mentioned that, all factories and general machinery must be registered with DOSH before they can be installed and operated. Factories or any companies require to use machinery their must require to obtain a permission to install machinery by submitting relevant documents to their nearest DOSH offices. The permission to install machinery is for each time certificated machinery or new auxiliaries installed.

Methodologies

Data collections methodologies categorized as two main ways there are secondary source and primary sources. Secondary source is get information from documents such as personal records, service record, books, journals, newspaper and etc. Primary source are few methods such as questionnaire, interview, case study and etc. (Kumar, 2005, p: 118)

For this research title is relative with safety and health requirement therefore the secondary data source will obtain a lot of information which is collected from book, relevant title of articles and relevant record publish from the departments of occupational safety and health.

The objective one and two of this research paper which is to study of Occupational Safety and Health Act 1994 and Factories and Machinery Act 1967 the effectiveness by contractors to implement at construction site and to identify the barrier facing by contractor of implementing those two acts at construction site. The first objective can be achieved by reading those two acts to understand which should implement by the contractors. The second objective can be achieved by reading more books to find out the

effectiveness and barrier that contractors may be facing when they implement the two acts at construction site.

In addition, questionnaire is appropriate primary data source to get information for this research paper. Because of the research is time-limited and questionnaire is the easiest and quick methodology.

Open question is the respondent could be answer in their own words. This open question can be generated mainly qualitative data. The advantages for open question are providing depth and valuable information provided by respondent able to expressing their own opinions. Respondents have the opportunity to express themselves freely, resulting in a wider variety of information. (Kumar, 2005, p: 132)

According to Kumar (2005) stated that questionnaires restricted two basic types of question there are closed-ended which called as closed question and open-ended or called as open question. Closed question is researcher set out the answer such as " yes" or " no" and let the respondent to answers.

Although there is a disadvantages of closed question which is not enough of depth and variety of the information obtained, sometime the answer provided are not truly reflect respondent their own view or opinion. Through the closed question for questionnaire is to ensure that literature view the view and ideas that is appropriate for respond from the respondents.

For this research paper will be total 100 sets of questionnaires given to respondents regarding objective two and three will be set for the question. The respondents could be contractors, site staff, site agent, project manager

and other parties which experience and knowledge for safety and health at construction site.

Guides to Research Report

In this research paper will be content total five chapters. Chapter 1 is the introduction and problem statement of the research title. Then is the aim and objective of the research paper. The aim is achieved by through implemented the objective that have be set out.

Chapter 2 is the literature review is through reading more articles and books or other resources which are concern to the research title and obtain the similar idea for those sources and write out the literature review base on the objective stated.

Chapter 3 is research methodology for this research paper will carry out the questionnaire. The target of the respondents will be contractor and persons who are related to construction site. Those questionnaires will be set out 100 sets and data will be collected base on this stage which mean in this chapter.

Chapters 4 are analysis the data and carry out the result of the analysis in chapter. After the result had been analysis the issues can be identified from the findings. Those data will be presented by using bar chart and etc.

Chapter 5 will be the last part of the research paper. This chapter will be conclusions and recommendations after those progresses had been gone through. This chapter also is to ensure that the research aim has achieved through implementing those three objective and the recommendations will be suggested in this chapter.

CHAPTER 2: LITERATURE REVIEWS

Introduction

Occupational Safety and Health Act 1994(OSHA) and Factories and Machinery Act 1967(FMA) is a legislative framework in Malaysia construction industry to give promote to the construction industry, advance and assist to have better or high standards of safe and healthy working culture. The legislations are enforcement by Department of Occupational Safety and Health (DOSH). The DOSH are under Ministry of Human Resources Malaysia. The department is agency of government to enforce those legislations to promote and enhancing Malaysia construction site quality of working life. (Mudrikah, 2010)

In this research paper, the method to reducing the accident rate in construction industry is Contractors have to implementing with the strict safety and health regulatory frameworks for preventing, monitoring and reporting adverse events for the construction site. Contractors should comply with those effective safeties and health requirement to effectively minimize the accident happen on construction worksite. (Dorji et al, 2009)

Problems and barrier to implement of OSHA 1994

Table 1 showing that construction industry is among the highest accident rate and fatalities industry in Malaysia occupational rankings. The highest accident rate and fatalities happen in construction site one of the reason may because the act is not effective and there have a little bit of legal loophole.

Before amend the OSHA 1994 section 29 safety and health officer there is no penalty. But after amended become the OSH (Safety and Health Officer) Regulations 1997 and OSH (Safety and Health Officer) Orders 1997 have a penalty if the contractors do not comply to employ competent person as safety and health officer and other duties in ensuring such personnel could perform his duties effectively and define class of industry to appoint competent safety and health officer both are penalty same condition which is maximum RM5000. 00 or maximum six months imprisonment or both.

Section 29 has been amended by the Minister to OSH (Safety and Health Officer) Regulation 1997 after amended stated that any building operation and any work of engineering construction when the total contract price of the construction project which is exceeding twenty million of ringgit Malaysia the contractors should employ a safety and health officer or other duties in ensuring such personnel could perform his duties effectively at the construction site. (Safety and Health Officer) Order1997. (Occupational Safety and Health Regulation 1997, s. 29)

Some of the construction project the total contract sum may not exceeding twenty million according to OSH (Safety and Health Officer) Regulation 1997 mentioned that, means contractors is not necessary to comply and appoint the safety and health officer on their workplace. If unfortunate accident happened cause site workers injury or death at construction site is that whether should be the negligence of the contractor because his has full comply with the OSHA or the legal is indeed imperfect because only the project exceeding twenty million of ringgit Malaysia contractor should to appoint a safety and health officer on the construction site.

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According to OSHA (Safety and Health Officer) Regulation 1997 regulation 18 duties of safety and health officer his had a important duties at the construction site one of it is to advise contractors measure of the site workers their interests of the safety and health and their responsibilities also included to inspect the workplace determine whether any machinery or equipments or process of work may have the chances liable site worker injuries or harmful their body.

If accident is happen safety and health officer have to submit report informs on the number and types of accidents which had occurred in the workplace to the Department of Occupational Safety and Health (DOSH) according to OSHA (Safety and Health Officer) Regulation 1997 regulation 19 stated.

Since section 29 of OSHA had been amended mentioned that only total contract sum exceeding twenty million construction projects is required to appoint a safety and health officer. Moreover, the workplace is happen any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or may have chance occur on the workplace according OSHA section 32 to inform the nearest DOSH office. If accident had occurred which is construction project not exceeding twenty million total contract sum who are going to take safety and health officer his duties to report the accident happen on workplace to DOSH is that means small project is not an accident happen.

The purpose of reporting of accident incidences to DOSH is to ascertain the root causes and enable to take remedial actions for prevention future occurrences similar condition. The report incidence is important database for

DOSH the database is to analyze strategic planning, management and law enforcement for improving and prevention for accident can be minimize in future. The data recorded by the safety and health officer is required in order to analyze the results of unification and to ensure statistical validity. (DOSH, 2004, p: 4)

Safety and health organization shall be implementing by the contractors those person are profession and get training for safety and health programme. Those safety and health officer with qualified their role are provide appropriate advice to the site workers their responsibility for the safety in the site and to promote and encourage the planning and implementation of the necessary and effective measures in minimizing the risk and to reduce the accidents rate. (Construction Confederation, 2008)

The problem may be arise if contractors they do not appoint safe and health officer or site safety supervisor there is no professional person at worksite to train for new site workers or instrumental promote a safe and healthy working environment on workplace.

Furthermore, most of the site workers are foreigners like Indonesia, Pakistan, Myanmar, Bangladesh or etc. Those foreigner workers they may be lack of knowledge to protect themselves. They might never been exposure with the construction not to mention that they have experience to cope with the huge construction projects. Therefore, the bad attitude and behavior is belonging to the construction it will then rapid increasing the accidents rates. (Wee Lee, 2010, p: 22)

According to Wee Lee (2010) his article mentioned that, there may have another legal loophole in Malaysia. Malaysia safety and health officer they do not have autonomy power therefore they cannot strictly implement the regulation in the construction site. Moreover, the safety and health officer is employed by the contractor. The contractors may tend to hiding the accident occurrence on site and do not comply with reporting accident happen on their site or even threatened their safety management staff do not report to DOSH that is because the accident of worker may make lost productive time. DOSH officer may come over the construction site which had happened the accident to do inspection for the accident areas. The construction site accident rate has been increasing simply because of these unhealthy practices in Malaysia. (Wee Lee, 2010, p: 15)

Although appoint a safety and health officer of construction site have effective reduce the risk of accident rate. But according to Rabani (2010) mentioned that many contractors they are not aware the important role for appoint a safety and health officer at construction site. Therefore, many contractors they neglect to appoint a safety and health officer to the construction site. (Rabani, 2010, p: 3)

According to Kit Keng (2004) mentioned that, when the accident happen at site it may cause contractors suffer losses in term of the productivity and affected their profit. Accident happen may lower down the productivity this may simply because of the site workers may because their co-worker happen accident cause injury or death which may affect their physical and psychological fear they were worry to become the next victims. Therefore, may occur a shortage of workers on site because they may do not want to <https://assignbuster.com/health-and-safety-legislation-in-malaysia-construction/>

work in an accident workplace. That is why cause the construction work delay and cannot be completed on time. Contractor will suffers losses and affect his profit due to paid site workers to work over-time to speed up the works and completed at schedule time.

In fact, poor safety background actually will cause high insurance premium according to Kit Keng mentioned contractors there are always think that as long as he had buy a insurance to protect themselves from the direct losses caused by the accident happen at construction site, but actually some of the contractors they do not really know that how much had his paid to the insurance premium.

Lastly, some of the contractor thinks that safety and health officer is not necessary for employ at his workplace. But as a matter of fact the contactors should employ a qualified person's act as safety and health officer. (OSHA, s. 6 (1))

In addition, according to OSHA 1994 Section 16 have been revised to OSH (Employers' Safety and Health General Policy Statements) (Exception) Regulation 1995 by the Minister. The section 16 had been amended that, if the organization has more than five employees than the employer and self-employed person has their duty to formulate the safety and health policy. (Occupational Safety and Health Regulation 1995, s. 16)

However, the OSHA 1994 section 16 had been modified become better and detail for the need of safety and health policy. But after amend the act from pervious penalty maximum RM5000. 00 or maximum two years

imprisonment or both become not penalty required for the Regulation 1995
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which mean the safety and health policy is not an important for the construction site and site workers. In case, the contractors did not provide the safety and health policy to their workers is without any penalty. (CIDB, 2010, pp: 20-21)

According to Kit Keng (2004) mentioned that, the barrier to the implement safety and health requirement at construction site is because the employer seen the safety and health requirements required a big visible cost to implement and employer do not want to paid for it. This may be one of the reasons caused that the contractors cannot implementation the safety and health requirement on the construction site. Therefore, they often do not comply with the legislation requirement in their workplace as provide the safety and health organizations.

Conclusion given the above problem is the OSHA 1994 it still contains a little bit of problems and the contractors have the excuse to bypass some of the responsibilities that he should comply with and implementing at his workplace to reduce the accident occurred at the site.

Effective to implementing OSHA 1994

Construction industry is highest hazard among all industry therefore to effective minimize the accident rate and fatalities the construction project should through a good planning and co-ordination before the construction project start. Therefore, the contractor plays an important role to implement safety and health responsibility from the concept to the construction completion.

One of the effective ways to implementation the safety and health requirements is bring in safety and health in early stages is incorporate safety and health into tendering stage. Therefore, contractors are required to demonstrate that they have an appropriate safety and health management system and to verify its implementation in practice and his required to comply with contract specific occupational safety and health requirement.

(CIDB, 2010, pp: 4-5)

Effectively to minimize the accident at construction site is to select potential contractors which are appropriate evaluate the safety and health for the projects. Implementation the safety and health planning included in contract like PAM Contract 2006. According to PAM 2006 contractors his received letter award his is entitles to starts construction works at site his is required to procure and submit contractor's all risks insurance, workman compensation and performance bond to the architect or quantity surveyor before the contractors only allowed commencing the construction works.

If the government can implementation that the safety and health planning must be bound together or including inside before allow commencing the construction work then all the employer they are not able have the excuse to exist if not comply with that the construction project is not allow to start commencing they construction work then may causing the employer lose of their profit.

Although OSHA 1994 and FMA 1967 is able to take legal action but bound the safety and health include in contract will be more effective. Because of

contract is binding that able enhance strict to implementing safety and health through taking legal action.

Profit is the goal of most business is actually the construction industry is also had the same goal. The way to effective reducing the accident for the construction site may through using approach prevention of injuries and death with implementing occupational safety and health management system. (CIDB, 2010, p: 42)

According to Kit Keng (2004) mentioned that contractors seen the visible larger amount for implementing the occupational safety and health management system in his construction project but implementing the safety and health management systems is effectively reducing of injury and death at construction site and benefits to contractors his are achieved through avoidance of delay to his construction project in order to increase his profit as early as completion of the construction project.

According to CIDB (2010) stated that, occupational safety and health management system had mentioned about the safety and health policy. Which means the safety and health policy is need for the construction workplace. The safety and health policy is to introduction the safety and health program for all among the construction site workers. The safety and health policy shall always up-to-date and get aware to the site workers. Contractors have the duties to revise the written statement of the safety and health policy and planning to implement the policy that had amended and deliver the information to the site workers. (DOSH, 2007) All parties at the

site work together to achieve and prevention of the accidents with minimize at site will be the purpose of the safety and health policy.

Besides, implementing and establish a safety and health committee if the situation is build a condominiums it may have forty or more than forty workers including those staffs hired by employer or workers supply by the sub-contractors in this case the management chain will lead to more than forty worker being hiring or work on the construction project. (Wee Lee, 2010, p: 13) Contractors should implement to form a safety and health committee because there are a lot of workers at the construction site.

Otherwise, the contractors get instructed by the Director General of DOSH that the workplace is required that to form the safety and health committee.

Both employee and management are represented for the safety and health committee this is to keep on reviews the construction site conditions.

Because of lack of reviews conditions on worksite there may affect worker on site or public surrounding their safety and health. (OSHA, s. 30)

According to OSHA section 29 and 30 actually contractors should employ a full time competent person act as safety and health officer and then establish a safety and health committee at construction. Safety and health committee must be keeping on reviews the construction site condition.

Therefore, at least once every three months the safety and health committee shall conduct periodical inspection and audit on site and provide essential advice on safety issues besides drafting and improving the company's OSH guidelines and procedure. (Rabani, 2010, p: 47) (OSHA, s. 29, s. 30)

Introduction of FMA 1967

Contractors not only had the responsibilities to comply with the OSHA 1994 but Contractors had the obligation need to comply with the FMA 1967 too. FMA 1967 mainly is applying by factories and construction site. The Contractors should understand more about the Factories and Machinery Act 1967, which will help the contractors able to implementing the act on the construction site.

This is responsibility of the contractors to maintain all their machinery which is appropriate and safe to operating condition and provide with implement safety measures in construction site operations.(Rabani, 2010, p: 52)

Besides, the FMA 1967 section 36 and regulation 7 of FMA (Notification, certificate of fitness and inspection) Regulation 1970 stated that any of the machinery should get permission to install the machinery on construction site is required certificate of fitness.

According to FMA 1967 section 35 stated that, any construction project should involve using machinery or plant to carry out the construction work. Only in the case that the construction project is able completed in a period less than six week and does not need or involve using any machinery for their construction project then the contractor is does not require to notify to DOSH.

FMA 1967 Section 56 have been revised to FMA (Building Operations and Works of Engineering Construction) (Safety) Regulation 1986 by the Minister. (FMA, s. 56) Part I regulation 3 Application stated that these regulations are applied by the building operations and to works of engineering construction.
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Section 56 Regulations have total 17 parts divided showed in arrangement of regulation. (Factories and Machinery Regulation 1986, r. 3)

In this research paper was discussing about the construction project which contractors should implementing to minimize the machinery hazard cause site workers injury and death at construction. Therefore, in this research papers will be focus on Part II General Provisions.

Statutory of FMA 1967

Since table 1 showing that construction industry is the highest accident of fatalities rates. Therefore, machinery at construction shall also to consider and comply with FMA 1967. According FMA regulation 1986 regulation 25 appoint a site safety supervisors to inspecting and rectifying any unsafe place of work and correcting any unsafe practice on construction site this is to ensure the safety , health and welfare of site workers.

Appoint a site safety supervisor will be same requirement with safety and health officer which is person who is qualification. Site safety supervisor there must have at least minimum of two years site foremen experience. Purpose to appoint a site safety supervisor is to check the sub-contractors work which is to ensure the sub-contractors have comply with the Malaysia legislation.

If the contractor appoint a part time site safety supervisor and the particular part time site safety supervisor shall spend at least fifteen hours per week and promoting safe conduct of work at construction site. (Factories and Machinery Regulation 1986, r. 25)

Otherwise appoint a part time site safety supervisor if the construction site employed more than twenty site workers on workplace contractors shall appoint a contractor's safety supervisor. The contractor's safety supervisor shall spend at least five hours per week and promoting a safe conduct to his site workers. Contractor's safety supervisor requirement will be same with site safety supervisor with at least two years site foreman experience and qualification. (Factories and Machinery Regulation 1986, r. 26)

Some inconsistencies in OSHA 1994 and FMA 1967 in this part the FMA stated the construction work site which is employed fifty persons or more than it shall establish a safety committee but in this part of OSHA are stated employed forty or more than forty workers the contractors shall establish a safety and health committee. In fact, it should be the same consistent for establish a safety and health committee.

The safety committee members will be both employee which mean including sub-contractors and contractors and also management members to be represented. Purpose for safety committee is to keep and review safety and health condition in workplace. (Factories and Machinery Regulation 1986, r. 27)

The safety committee shall appoint senior member of contractor's staff at construction site and the safety committee shall consist the site safety supervisor, the entire contractor's safety supervisors and others site worker. The safety committee should meeting at least once a month. (Factories and Machinery Regulation 1986, r. 27)

Furthermore, contractors should implement strict on machinery installed rules on FMA Regulation 1986 regulation 6 just like machinery installed on any floor above the ground floor there have a regulation to control over like any floors above the ground of any building or structures are not allowed to use machinery.

Only if the floor or structure has been designed or constructed there are able to support the loading of the machinery or additional strengthen purpose then contractors is allow to use or operate the machinery on the particular building or structures. Contractor should maintain their machinery which is always in good and safe condition his is require to ensure around the machinery surrounding meaning that the passenger walk way is free from any loose material or non-slippery condition. This is to prevent those site workers would not fall down towards to the machines and caused injury or death. According to this regulation 6 if the contractors are not comply with it his will be fines not exceeding RM2000. 00.

Besides, slipping is easy to happen on construction site. Therefore, Contractors should make sure the surfaces of the passageway sanded or covered or removed. If any passageway such as platform, scaffold or otherwise of elevated working surface is slippery and causing the workers fall down found out is the negligence of the contractor they do not provide slip-safe footing to minimize the slipping hazards on the construction safe according to the FMA Regulation 1986 regulation 8 the contractors would be penalty not exceeding RM2000. 00.

Contractors have the obligation to keep or remain the worksite passageways with do not have any dirt and debris or other obstruction object may cause site workers tripping. Contractor should minimize those accumulations of dirt and debris on worksite by instructed his site agent to maintain for it and site agent is contractor's representative on construction site. In addition, the debris shall be handled and disposed-off by a method which will not harmful to person and the debris is not allow to accumulate is may constitute a hazard to the worker on site.(Factories and Machinery Regulation 1986, r. 22)

Moreover, contractors should also have to ensure at worksite there is do not have any projection may or could cut site workers if any, contractor or his representative should removed it or made safe to prevent site workers injury or death. (Factories and Machinery Regulation 1986, r. 9)

Construction site the most important is provide workers a safe access to workplace. Firstly, contractors must ensure the construction site provided proper stairways; ramps or runways. (Factories and Machinery Regulation 1986, r. 10)

According to FMA Regulation 1986 regulation 15 stated that, some of the worker who are work in wet concrete may wet their foot contractors shall provide suitable waterproof boots to protect site workers foots get injuries. Malaysia weather is always raining and it cannot be predicted therefore sometime site worker inevitably work on raining day. Contractor shall provided worker waterproof coat and hat when site workers work on raining

day at construction site. The penalty to those contractors they are do not provide is fines not exceeding RM2000. 00.

Besides, site workers should get protective apparel just like if worker their do not wear a safety helmet access to construction site when the construction project is construct more than two storey high building the workers may get higher risk to get serious head injury or may cause death and all people who are perfor