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Noncompliance of the occupational safety and health legislation in the Malaysian construction industry

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Abstract. Occupational Safety and Health Act 1994 (OSHA 1994) is a tool for the employer, employee and manufacturer to put efforts in securing safety, health and welfare at work place. But, the increase in prosecution cases under OSH legislation indicates the lack of compliance to the regulations. A prosecution can be translated as one of the frequently employed instruments for the enforcement of health and safety legislation. The objective of this study is to analyze the most common non-compliance cases of OSH legislative provision from 2005 until October 2017 compiled by the Department Occupational Safety and Health (DOSH). The data of the cases were analyzed using frequency distribution analysis and content analysis. The result of the study shows that the most non-compliance with OSH legislation in Malaysia relates to the general duties of employers and self-employed persons to their employees (Section 15(1)). The second most common non-compliance of OSHA is section 17 regarding employer's failure to provide safe work system. The third and fourth most common non-compliance of OSHA is section 32 and 29 regarding the employer's failure to report the accidents and the employer's failure to provide competent safety and health officer. To increase compliance to legislation, full top management commitment, active worker engagement and effective safety and health committee are amongst top preferred solutions.

1. Introduction

In Malaysia, occupational safety and health (OSH) matter is under the jurisdiction of the Department of Occupational Safety and Health (DOSH). This government agency is responsible for administering, managing, and enforcing legislation related to occupational safety and health (OSH) in this country with the vision to cultivate an OSH culture in every workplace and to make every job and task safe



and healthy for everybody [1-2]. Other agencies which also monitor the construction safety is the Construction Industry Development Board (CIDB). Construction Industry Development Board Malaysia (CIDB) has taken the initiative to ensure that all workers in the construction sector possess a Green Card which required workers to have a safety training certificate before they start working. Besides ensuring construction workers to be aware of the importance of the workplace safety, the green card program also aims to provide information on the legal requirements and welfare for them.

Occupational Safety and Health Act 1994 (OSHA 1994) is a tool for the employer, employee and manufacturer to put efforts in securing safety, health and welfare at the workplace [3]. But, the increase in prosecution cases under OSH legislation indicates the lack of compliance to the regulations. Many employers have not established comprehensive accident prevention policies, but instead concentrate on maximizing profit [4-6]. The increase in the statistics for the prosecution cases in the construction industry reflects a lack of awareness of safety law in the construction industry in Malaysia.

In 2015, a total of 140 construction workers, which consists of 47 locals and 93 foreigners (DOSH) suffered fatal injuries from on-site accidents. These workers were prone to be involved in mishaps due to unsafe use of tools and inexperienced handling of machines and materials in construction sites. In order to prevent accidents in construction sites, the government imposed the Occupational Safety and Health Act 1994 for employers or firms to use as a guideline in managing the safety of labourers. According to the available data on Prosecution Cases under Malaysian Occupational Safety and Health Legislation for Construction Industry, there are various prosecution cases, but the issues are similar. According to the number of accidents presented by the DOSH's data in construction, we can see that the compliance of OSHA in the construction industry is frail. Besides, enforcement and monitoring from DOSH seem to be less strict or insufficient for employers due to many reasons such as lack of enforcement officers.

According to the number of accidents presented by the DOSH's data in construction, the compliance of OSHA in the construction industry is frail. Besides, enforcement and monitoring from DOSH seem to be insufficient due to many factors such as lack of enforcement officers. Yearly, there are around 24,000 active construction sites in operative but with only 110 DOSH officer available, only one third of the sites got inspected. Enforcement of regulations is very vital in ensuring the efficiency of regulations [7-9]. Legislation or regulation is a guideline to control the activities in the construction industry for safety. In the year 2016, about 838 compounds and court proceedings were charged for offenses related to occupational safety and health in the workplace.

About 300 employers were taken to court annually by the Department of Occupational Safety and Health (DOSH) for various offenses under the Occupational Safety and Health Act 1994. The offenses often committed by the employers included failure to register their companies and employees, as well as late reporting of accidents at their workplaces. There are also employers who are prosecuted for failing to ensure the safety, health and welfare of their employees and also for not complying with the work system based on a standard set by the DOSH.

So far, there is very little published data and analysis of the prosecution cases under the Malaysian OSH legislation. Therefore, this research examines the most common cases, non-compliance with the OSH legislation in the construction industry. This study focuses on the prosecution cases under OSH legislation in the Malaysian construction industry based on data compiled by the Department of Occupational Safety and Health (DOSH).

2. Occupational safety and health law non-compliance

A prosecution for criminal law is fundamental and it must be administered in an appropriate fashion as stated by Gunningham [10]. He also added that the legislature had chosen to emphasize the importance of occupational health and safety matters by creating absolute offenses. The prosecution is the last action that must be executed because there are employers who violate the legal provisions. Employers often do not want to spend money to comply with safety working practices to employees. But after an accident occurs, the employer will have to spend a lot of money for compensation of accidents and

penalty imposed by DOSH. Accidents contribute to the cost of construction, directly through increased compensation and insurance, and indirectly through decreased productivity, quality non-conformance and schedule overruns. According to Aziz et al [11], an effective implementation of OSH can reduce accident rates and thus reduce the compensation paid.

As Hawkins [12] suggested, prosecution is a ceremonial restatement of norms by which people and individuals' order social life. Its use sustains the moral world which the regulatory organization inhabits. One way it does this is through the satisfaction given by the prosecution of a blameworthy defendant that moral boundaries are being maintained and reinforced. In fact, the OSH legislation is to ensure that both employers and employees are in a safe condition. Prosecution act in this legislation matter is not to find fault with anyone but rather to maintain a safe working environment.

Generally, a prosecution can be translated as one of the frequently employed instruments for the enforcement of health and safety legislation but it is not used arbitrarily without using proper procedures. Mekos [13] mentioned that in Greece, the penal procedure for such issue usually starts on an initiative of a labor inspector who sends a complaint report to the public prosecutor. Companies would face the same mean of legislative act if the employer and the employee do not comply with the act that has been enforced.

A previous study by Johnstone [14] mentioned that a failure to comply with a legal act would generally lead to prosecution. In addition, he also stated that a guideline which had set out six circumstances in which prosecutions would generally be taken; a Victorian OSH inspectorate's 1985 Prosecution Guidelines enlisted the rules below:

- where the alleged breach has resulted in a fatality or 'serious accident'
- the wilful repetition of the same offense
- non-compliance with a provisional improvement notice
- offenses in relation to inspectors
- discrimination against an employee or prospective employee
- where the issue of notices is not considered appropriate for ensuring compliance

Guo et al. [15] reported that to improve the construction safety performance, continuous efforts have been made by both researchers and practitioners to enforce OSH laws. From the following procedures that the offenders going through, there are several types of prosecution cases that happened in the construction industry. Cases are subject to the specific sections of the OSHA 1994. These are the types of offense in OSH prosecution cases in Malaysia:

- Not establish an OSH committee under Section 30(1), OSHA 1994
- Failed to appoint Safety and Health Officer under Section 29(2), OSHA 1994
- Failed to report the accident at the construction site to the nearest DOSH office under Section 32(1), OSHA 1994
- Failed to provide safe work procedures under Section 15(1), OSHA 1994
- Failed to comply with a prohibition notice under Section 49(1), OSHA 1994
- Failed to check up and maintenance scaffolding structure until causes fatal accident under Section 17(1), OSHA 1994

Based on the previous study, there are many cases of prosecution in occupational, safety and health legislation. This legislation is a mandatory act for every workplace, whether for the employee or the employer in order to prevent an accident and resulted in a prosecution. Some factors of non-compliance to legislation are:

- Safety Management such as Inadequate instruction; Rules are not enforced; Safety Ignorance; Hazard ignorance and No safety device
- Conditions of workers such as Lack of safety awareness and Lack of co-ordination
- Physical Conditions such as Fatigue and Unqualified workers

OSHA 1994 empowers the National Council for Occupational Safety and Health to: enforce and implement OSH measures in the workplace; promote the protection of lives and properties; promote OSH awareness; carry out an inspection of the workplaces and monitor the compliance of all regulations or other OSH measures enshrined in the act. Among the barriers to comply the OSH legislation are lack of skilled person power, political influence, the severity of penalties, the judicial system, corruption and bribery, inadequate funding, inadequate legislation, lack of governmental commitment, insecurity, inadequate information, technology, economic growth and Culture [7,16-21].

3. Methodology

In this study, database and document search method was used from primarily Malaysian Department of Occupational Safety and Health (DOSH) 1009 prosecution cases from the year 2005 until October 2017. A total of 394 prosecution cases in the construction industry were analyzed using frequency distribution analysis and content analysis method. The data were categorized on non-compliance with OSHA 1994 provision divided into section and sub-section which carried penalties. The results were discussed and presented in fishbone diagram to simplify the understanding on the subject matter.

4. Results and discussion

The objective of this study was conducted to identify the most common non-compliance of OSH legislation provisions from the prosecution cases. In a literature review, prosecution act in this legislation matter is not to find fault with anyone but rather to maintain a safe working environment. The prosecution is the last action that must be executed because there are employers who violate the legal provisions. Employers often do not want to spend money to comply with safety working practices to employees. Based on data prosecution cases from DOSH, below are the results about the most common non-compliance of OSH legislation provisions from the prosecution cases in the construction industry.

Figure 1-3 show the most common non-compliance OSH legislation related to general duties of employers and self-employed persons to their employees which in Section 15(1). The percent of Section 15(1) is 36 percent, followed by Section 17(1) general duties of employers and self-employed persons to persons other than their employees, which 19.3 percent and Section 32 notification of accidents, dangerous occurrence occupational poisoning and occupational diseases, and inquiry which 12 percent.

Cases in Section 15(1) that are high is failure to provide safe workplace and to ensure safe work system that cause death of the employee. The diagram shows that many employers or occupiers fail to provide sufficient supervision and risk assessment as well as carry out their responsibilities to ensure the safety, health and welfare of workers and other non-employees, under the provisions of Section 15 and Section 17.

Section 17 noncompliance are normally related to failure to execute safety practices, insufficient provision of safe access, lack of risk control and working in dangerous situation. Most of the prosecution cases under section 32 were due to the failure of the employer to notify the nearest DOSH of the accident occurred in their place and also failed to send DOSH reports within 7 days after the accident occurred. This failure results in an ineffective investigation either in the organization or from the enforcement authority. All parties should be aware that the accident investigation is not to point fingers to the offender but is a process that supports the measurement of safety performance and to improve the overall achievement of this industry. If the reported accident is insufficient, the achievement level will not be accurate and the control measures or proposed improvement action plans will not be accurate.

Section 29(2) require an occupier of a place of work to which this section applies shall employ a competent person to act as a safety and health officer at the place of work. Under section 29 (3) of the Occupational Safety and Health Act of 1994, the safety and health officer shall be employed exclusively for the purpose to ensure due observance at the place of work. While under section 29 (4)

of the Occupational Safety and Health Act of 1994 [22], the safety and health officer shall possess such qualifications or have received training prescribed by the Minister from time to time by notification as in the Occupational Safety and Health (Safety and Health Officer) Regulations 1997 [23], Occupational Safety and Health (Safety and Health Officer) Order 1997 [24], and Guidelines for Registration and Renewal of Safety and Health Officer 2016 [25]. OSHA (SHO) Order 1997 for instance, imposed the following class or description of industries required to employ SHO:

- Any building operation or any work of engineering construction; contract price of the project > RM20 million
- Any ship building / gas processing activity/ petrochemical industries/ chemical and allied industries/ boiler and pressure vessel manufacturing activity; > 100 employees
- Any metal industry/ wood working industry/ cement manufacturing activity; > 100 employees
- Manufacturing activity & service other than the above; > 500 employees

The result of the analysis in figure 3 shows the most noncompliance to section 29 are related to failure to appoint competence and sufficient number of SHO. Section 49 noncompliance is related to failure to comply with an improvement or a prohibition notice. The other noncompliance to the OSHA is issues of unregistered sites, failure to submit internal written notice of certain prescribed forms, and unsafe scaffolding installation.

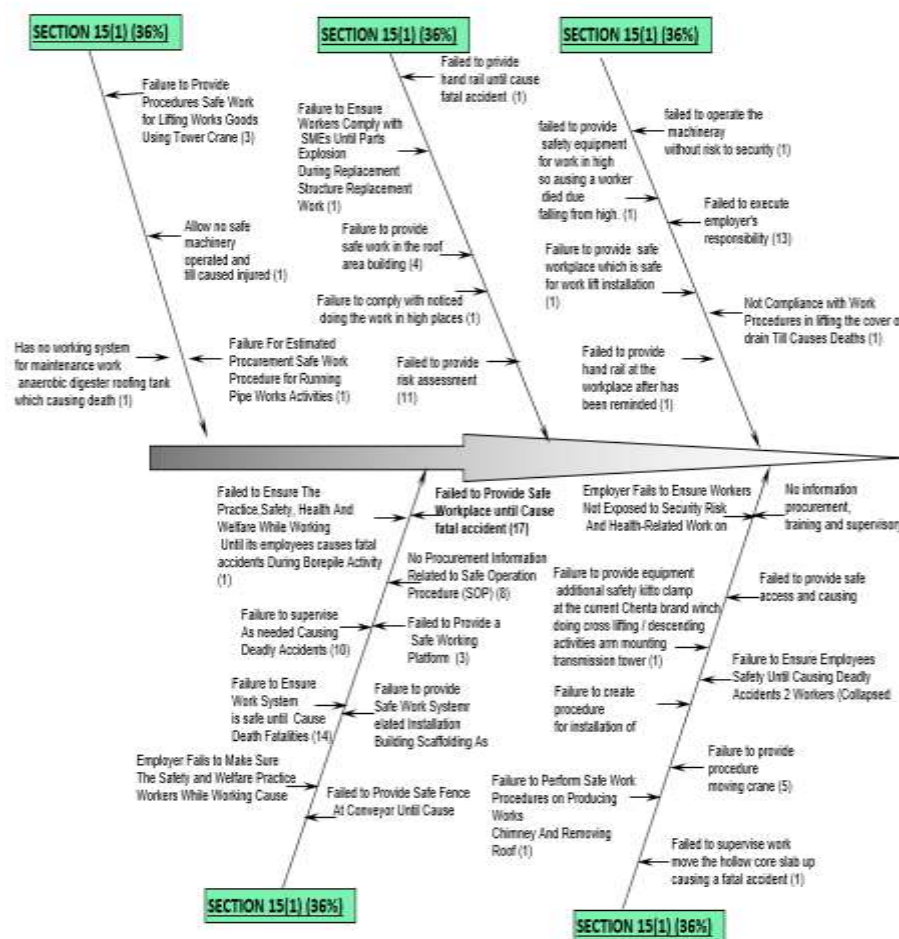


Figure 1. The most common non-compliance of OSHA section 15 related to employer responsibilities.

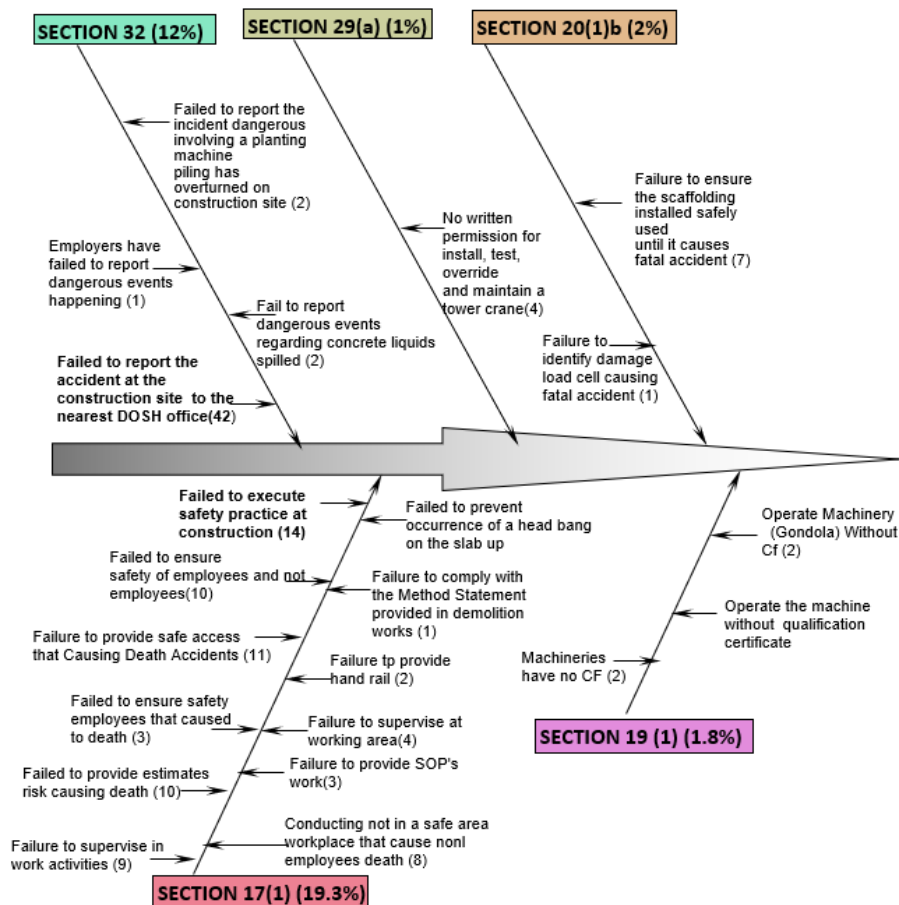


Figure 2. The second and third most common non-compliance of OSHA section 17 and 32 related to employer failure to provide safe work system and fail to report the accidents.

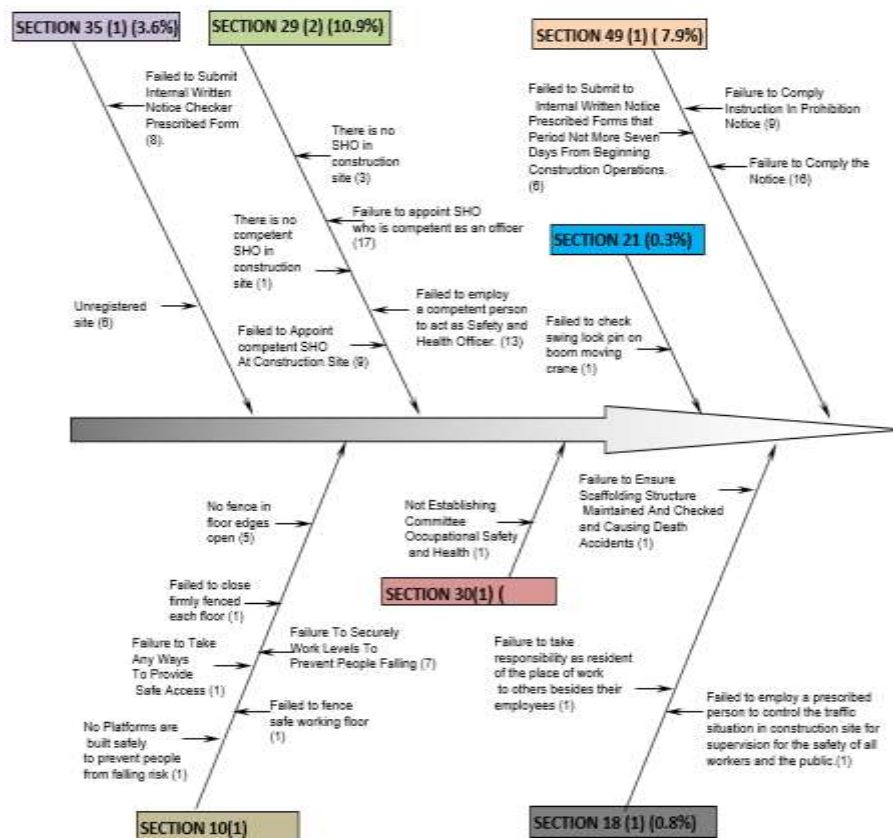


Figure 3. The fourth most common non-compliance of OSHA section 29 related to employer failure to provide competent safety and health officer.

5. Conclusion

Malaysia OSH master plan 2020 is set to inculcate safe and health work culture through five thrust strategies. Among the strategy is to strengthen OSH management through policy and legislation and effective enforcement. The objective of the study is to identify the most common non-compliance of OSH legislation provisions from the prosecution cases. The result of the study shows that the general duties of employers and self-employed persons to their employees (Section 15(1)) such as the provision of the safe work system, welfare and practices, risk assessment and supervision, are the most common non-compliance with OSH legislation. The second and third most common non-compliance of OSHA section 17 and 32 related to the employer's failure to provide safe work system and failure to report the accidents. The fourth most common non-compliance of OSHA section 29 related to the employer's failure to provide competent safety and health officer.

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