

Exploring the Malaysian Occupational Safety and Health Act 1994 as a Tool to Control Industrial Accidents at Workplace

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Abstract: The increasing numbers of accidents at workplace, that involved the lost of ability and fatal accidents, which post a question on the role of the occupational safety and health, in this country. Prior to the establishment of the Occupational Safety and Health Act 1994, there was no single legislation focusing on the occupational safety and welfare at workplaces and moreover the numbers of accidents at workplaces are really worrying. In the year 1994, the Occupational Safety and Health Act 1994 has been enacted by Malaysian parliament to deal with these problems. This brings a question, whether this legislation is capable to control the industrial accidents in Malaysia. Therefore, the purpose of this study is to observe on how this legislation may be used as means to handle and entertain accidents problems at workplaces. The most important thing is that every stakeholder is required to understand the provisions stipulated in the prescribed legislation.

Key words: Occupational safety and health, industrial accident, control measures, workplace, legislation

INTRODUCTION

The rapid growth of the industry has created employment prospects. Estimated about 9, 996, 848 employees that registered in this country and 29, 780 workers from industrial sector were involved in accidents at workplace (PERKESO, 2003). The numbers of accidents have shown worried scenario since this scenario involved the increasing operational cost for the company and unfortunately decreasing of the productivity. As the result, the application on the legislation is very essential in order to ensure the safety and health of the employees is secured.

Prior to the establishment of the legislation, that is the Occupational Safety and Health Act 1994, the number of cases on the occupational accidents, which has been recorded was 133, 293 cases in the year 1993 and after the establishment of the said legislation, in the year 1994 itself, the was only 122, 688 cases. However, the number of cases on the occupational accidents has been

increased the year 1999 (92, 074 cases) in comparing the year 1998 (85, 338 cases). Therefore, the purpose of this study is to observe on how the Occupational Safety and Health Act 1994 can be used as a tool to control industrial accidents at workplace in Malaysia.

THE HISTORICAL BACKGROUND OF THE LEGISLATIONS ON THE OCCUPATIONAL SAFETY AND HEALTH

The historical background of the legislations on occupational safety and health in Malaysia began before the year 1914 i.e., the establishment of the legislations that governed the safety inspection on boiler. There were a few state enactments which concerned about the matter which include Selangor Boiler Enactment 1892, Perak Boiler Enactment 1903, Pahang Boiler Enactment 1908 and Negeri Sembilan Boiler Enactment 1908 (Kadir and Jamaluddin, 2001).

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After 1914 all the state enactments on boiler had been changed by a standardised legislation. The Legislation was enacted and known as Federal Machinery Enactment 1913. The scope of this legislation has been extended from the safety in operation of boiler to the safety in operation of all kind of machineries. However, the implementation of this legislation only took effect until the year of 1952 (Kadir, 2002).

In 1953, the Federal Machinery Enactment 1913 had been changed by another legislation which known as Machinery Ordinance, 1953. This legislation had laid down new provisions which suitable with those years since the rapid growth in the industrial sector. The Machinery Ordinance, 1953 had highlighted the scope of the legislation by focusing on the employees safety when operating those machineries. However, this ordinance failed to protect employees that work without using machinery and failed to cover on the occupational welfare and health aspects.

In 1960s, The Malaysian parliament had made amendment towards the machinery ordinance, 1953 and replaced the Machinery Ordinance, 1953 by the Factories and Machinery Act, 1967. This Factories and Machinery Act, 1967 had improved all the necessary provisions in the Machinery Ordinance, 1953. This Act, among others, covers on the safety working in factories, handling machineries, the surrounding environment and also mankind.

Meanwhile, in the year of 1994, Malaysian Parliament once again passed an Act, which focusing on the occupational safety and health. This legislation is known as Occupational Safety and Health Act 1994. This legislation covers in all sectors on the occupational safety and health in Malaysia.

THE AIMS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT 1994

According to Ismail (2005), this legislation consists of 4 main aims. These aims have been stipulated under section 4 of the Occupational Safety and Health Act 1994. The objectives are:

- Section 4 (a) to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work.
- Section 4 (b) to protect person at a place of work other than persons at work against risks to safety or health arising out of the activities of persons at work.
- Section 4 (c) to promote an occupational environment for persons at work which is adapted to their physiological and psychological needs.

- Section 4 (d) to provide the means whereby the associated occupational safety and health legislations may be progressively replaced by a system of regulations and approved industry codes of practice operating in combination with the provisions of this Act designed to maintain or improve the standards of safety and health.

This legislation covers all provisions on the matters for securing the safety, health and welfare of persons at work, for protecting others against risks to health or safety in connection with the activities of persons at work and this Act shall apply throughout Malaysia to the industries except those who are working on board ships governed by the Merchant Shipping Ordinance 1952, the Merchant Shipping Ordinance 1960 of Sabah or Sarawak or the armed forces.

THE POSITION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT 1994 IN CONTROLLING INDUSTRIAL ACCIDENTS AT WORKPLACE

In general, this legislation consists of 15 parts which focusing on the matters for securing the safety, health and welfare of persons at work, for protecting others against risks to safety or health in connection with the activities of persons at work.

Preliminary (part I): Part I contain 4 sections, which cover short title and application, prevailing laws, interpretation and objectives of the Act. According to the Section 2 of the Act stipulated that the provisions of this Act shall be in addition to and not in derogation of, the provisions of any other written law relating to occupational safety and health and in addition, in the event of any conflict or inconsistency between the provision of this Act and that of any other written law pertaining to occupational safety and health, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written law shall, to the extent of the conflict or inconsistency, be construed as superseded. Meanwhile, Section 4 of the Act stated some of the essential interpretations. The essential interpretations are as follows:

- Contract of service means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract.
- Council means the National Council for Occupational Safety and Health established under section 8.

- Employee means a person who is employed for wages under a contract of service on or in connection with the work of an industry to which this Act applies.
 - Employer means the immediate employer or the principal employer or both.
 - Government means the Federal Government, the Government of a State or a local government.
 - Immediate employer, in relation to employees employed by or through him, means a person who has undertaken the execution at the place of work where the principal employer is carrying on his trade, business, profession, vocation, occupation or calling, or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the trade, business, profession, vocation, occupation or calling of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such trade, business, profession, vocation, occupation or calling and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer.
 - Industry means the public services, statutory authorities or any of the economic activities listed in the First Schedule.
 - Occupier, in relation to a place of work, means a person who has the management or control of the place of work.
 - Officer means the occupational safety and health officer appointed under subsection 5 (2) and includes the Director General, Deputy Directors General, Directors, Deputy Directors and Assistant Directors of Occupational Safety and Health.
 - Place of work means premises where persons work or premises used for the storage of plant or substance.
 - Plant includes any machinery, equipment, appliance, implement or tool, any component thereof and anything fitted, connected or appurtenant thereto.
 - Premises include any land, building or part of any building any vehicle, vessel or aircraft; any installation on land, off shore installation or other installation whether on the bed of or floating on any water and any tent or movable structure.
 - Prescribed means prescribed by this Act or the regulations.
 - Principal employer means the owner of an industry or the person with whom an employee has entered into a contract of service and includes a manager, agent or person responsible for the payment of salary or wages to an employee; the occupier of a place of work; the legal representative of a deceased owner or occupier and any government in Malaysia, department of any such government, local authority or statutory body.
 - Secretary means the secretary appointed under subsection 12 (1).
 - Self-employed person means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others.
 - Substance means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour or any combination thereof.
 - Substance for use at work means any substance intended or supplied for use, whether exclusively or not, by persons at work.
 - Supply, in relation to any plant or substance, means the supply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent for another.
 - Trade union means any association or combination of workmen or employers within the meaning of the Trade Union Act 1959.
- Appointment of officers (part II):** Part II of this Act discuss on appointment of officers which cover by 3 sections of this Act. Section 5 of the Act highlighted that the Minister shall appoint a public officer to be the Director General of Occupational Safety and Health, in this Act referred to as the Director General, for the purpose of exercising the powers, performing the functions and discharging the duties assigned to him under this Act. As for section 6 of this Act stated that Director General may, as he deems fit, appoint a person or an independent inspecting body from any of the industries to advise or assist him in carrying out the objects and purposes of this Act. Finally, section 7 laid down The Director General shall issue to every officer appointed under this Act a certificate of authorization which shall be produced on demand to the occupier or any person in charge of a place of work which the officer intends to enter pursuant to this Act.
- National council for occupational safety and health (part III):** Part III of this Act discuss on the establishment, membership, power and function of the National Council for Occupational Safety and Health. These matters have been stipulated under section 8, 9, 10 and 11 of this Act. The Council shall consist of not less than 12 and Council not more than 15 members who shall be appointed by the Minister, of whom 3 persons shall be from organizations representing employers; 3 persons shall be from

organizations representing employees; 3 or more persons shall be from Ministries or Departments whose responsibility is related to occupational safety and health and 3 or more persons, or whom at least one shall be a woman, shall be from organizations or professional bodies the activities of whose members are related to occupational safety and health and who, in the opinion of the Minister, are able to contribute to the work of the Council.

The council shall have power to do all things expedient or reasonably necessary for or incidental to the carrying out of the objects of this Act. The Council may and when requested by the Minister to do so shall, carry out investigations and make reports and recommendations to him with regard to any matter relating to the objects of this Act and, in particular, but without prejudice to the generality of the foregoing provisions, with regard to changes it considers desirable to occupational safety and health legislation; the improvement of the administration and enforcement of occupational safety and health legislation; the fostering of a co-operative consultative relationship between management and labour on the safety, health and welfare of persons at work; the special problems with respect to occupational safety, health and welfare of women, handicapped persons and other groups in the community; the establishment of adequate methods of control of industrial chemicals at a place of work; the statistical analysis of occupationally related deaths and injuries; the provision of health care facilities at a place of work; the fostering of the development and adoption by law of industry codes of practice related to occupational safety, health and welfare; the development of rehabilitation plans and facilities to assist persons injured at a place of work.

General duties of employers and self-employed persons (part IV): Section 15 of the Act stipulated general duties of employers and self-employed persons to their employees where it shall be the duty of every employer and every self-employed person to ensure, so far as is practicable, the safety, health and welfare at work of all his employees. The matters to which the duty extends include in particular the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risks to health; the making of arrangements for ensuring, so far as is practicable, safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances; the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health at work of his

employees; so far as is practicable, as regards and place of work under the control of the employer or self-employed person, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks, the provision and maintenance of a working environment for his employees that is, so far as is practicable, safe, without risks to health and adequate as regards facilities for their welfare at work.

As for section 17 of this Act highlighted, the general duties of employers and self-employed persons to persons other than their employees. It shall be the duty of every employer and every self-employed person to conduct his undertaking in such a manner as to ensure, so far as is practicable, that he and other persons, not being his employees, who may be affected thereby are not thereby exposed to risks to their safety or health. It also shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons, not being his employees, who may be affected by the manner which he conducts his undertaking, the prescribed information on such aspects of the manner in which he conducts his undertaking as might affect their safety or health.

In section 18 of the Act laid down the duties of an occupier of a place of work to persons other than his employees. An occupier of non-domestic premises which has been made available to persons, not being his employees, as a place of work, or as a place where they may use a plant or substance provided for their use there, shall take such measures as are practicable to ensure that the premises, all means of access available for use by persons using the premises and any plant or substance in the premises or provided for use there, is or are safe and without risks to health. A person who has, by virtue of a contract or lease or otherwise, an obligation of any extent in relation to the maintenance or repair of a place of work or any means of access; or the prevention of risks to safety and health that may arise from the use of any plant or substance in the place of work.

Finally, in Part IV, section 19 of the Act spelt out the penalty for an offence under Part IV of this Act. A person who contravenes the provisions of section 15, 16, 17 or 18 shall be guilty of an offence and shall on conviction, be liable to a fine not exceeding 50,000 ringgit or to imprisonment for a term not exceeding 2 years or to both.

General duties of designers, manufacturers and suppliers (part V): Section 20 of the Act discussed on the general duties of manufacturers, etc. as regards plant for use at work. It shall be the duty of a person who designs,

manufactures, imports or supplies any plant for use at work to ensure, so far as is practicable, that the plant is so designed and constructed as to be safe and without risks to health when properly used; to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him and to take such steps as are necessary to secure that there will be available in connection with the use of the plant at work adequate information about the use for which it is designed and has been tested and about any condition necessary to ensure that, when put to that use, it will be safe and without risks to health. It shall be the duty of a person who undertakes the design or manufacture of any plant for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is practicable, the elimination or minimization of any risk to safety or health to which the design or plant may give rise. It shall be the duty of a person who erects or installs any plant for use by persons at work to ensure, so far as is practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

As for section 21 of the Act stipulated the general duties of manufacturers, etc. as regards substances for use at work. It shall be the duty of a person who formulates, manufactures, imports or supplies any substance for use at work to ensure, so far as is practicable, that the substance is safe and without risks to health when properly used; to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him and to take such steps as are necessary to ensure that there will be available in connection with the use of the substance at work adequate information about the results of any relevant test which has been carried out on or in connection with the substance and about any condition necessary to ensure that it will be safe and without risks to health when properly used. It shall be the duty of a person which undertakes the manufacture or supply of any substance for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is practicable, the elimination or minimization of any risk to safety or health to which the substance may give rise. Meanwhile, section 22 of this Act laid down the Explanations to section 20 and 21.

Lastly in Part V, section 23 of the Act stated that a person who contravenes the provisions of section 20 or 21 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 20,000 ringgit or to imprisonment for a term not exceeding 2 years or to both.

General duties of employees (part VI): According to section 24 of the Act laid down the general duties of employees at work. It shall be the duty of every employee while at work to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work; to co-operate with his employer or any other person in the discharge of any duty or requirement imposed on the employer or that other person by this Act or any regulation; to wear or use at all times any protective equipment or clothing provided by the employer for the purpose of preventing risks to his safety and health and comply with any instruction or measure on occupational safety and health instituted by his employer or any other person by or under this Act or any regulation. A person who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding 3 months or to both.

Section 25 of the Act stated duty not to interfere with or misuse things provided pursuant to certain provisions. A person who intentionally, recklessly or negligently interferes with or misuses anything provided or done in the interests of safety, health and welfare in pursuance of this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 20,000 ringgit or to imprisonment for a term not exceeding 2 years or to both. As for section 26 laid down that no employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of this Act or any regulation.

Finally, under Part VII, section 27 of the Act highlighted that no employer shall dismiss an employee, injure him in his employment, or alter his position to his detriment by reason only that the employee makes a complaint about a matter which he considers is not safe or is a risk to health; a member of a safety and health committee established pursuant to this Act; or exercises any of his functions as a member of the safety and health committee. No trade union shall take any action on any of its members who, being an employee at a place of work makes a complaint about a matter which he considers is not safe or is a risk to health; a member of a safety and health committee established pursuant to this Act; or exercises any of his functions as a member of the safety and health committee. An employer who, or a trade union which, contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 10,000 ringgit or to a term of imprisonment not exceeding one year or to both.

Safety and health organizations (part VII): Section 28 of the Act stipulated that where it appears to the Minister that in any of the industries or class or description of

industries cases of illness have occurred which he has reason to believe may be due to the nature of the process or other conditions of work; by reason of changes in any process or in the substances used in any process or, by reason of the introduction of any new process or new substance for use in a process, there may be risk of injury to the health of persons employed in the process; persons below the age of 16 years are or are about to be employed in work which may cause risk of injury to their health; or there may be risk of injury to the health of persons employed in any of the occupations specified in the Third Schedule, or from any substance or material brought to the industries to be used or handled therein or from any change in the conditions in the industries, he may make regulations requiring such reasonable arrangements as may be specified in the regulations to be made for the medical surveillance and medical examination, not including medical treatment of a preventive character, of the persons or any class of persons employed in the industries or class or description of industries. A person who contravenes the provisions of this section or any regulation shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 ringgit or to imprisonment for a term not exceeding 6 months or to both.

Section 29 of the Act laid down 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. The safety and health officer shall be employed exclusively for the purpose of ensuring the due observance at the place of work of the provisions of this Act and any regulation and the promotion of a safe conduct of work at the place of work. The safety and health officer shall possess such qualifications or have received such training as the Minister may, by notification in the Gazette, from time to time prescribe. An occupier who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5000 ringgit or to a term of imprisonment not exceeding 6 months or to both.

As for section 30 of the Act required, every employer shall establish a safety and health committee at the place of work accordance with this section if there are 40 or more persons employed at the place of work; or the Director General directs the establishment of such a committee at the place of work. Section 31 laid down the functions of safety and health committee shall keep under review the measures taken to ensure the safety and health of persons at the place of work; shall investigate any matter at the place of work which a member of the committee or a person employed thereat considers is not safe or is a risk to health and which has been brought to the attention of the employer; shall attempt to resolve any

matter referred and, if it is unable to do so, shall request the Director General to undertake an inspection of the place of work for that purpose and shall have such other functions as may be prescribed.

Notification of accidents, dangerous occurrence, occupational poisoning and occupational diseases and inquiry (part VIII): Section 32 of the Act required an employer shall notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work. Under section 33 of the Act stated that if in the opinion of the Director General, an inquiry ought to be held into the nature and cause of the accident, dangerous occurrence, occupational poisoning or occupational disease, he may cause such an inquiry to be held by an occupational safety and health officer. Where section 34 of the Act prescribed that for the purpose of holding an inquiry under this Act, an occupational safety and health officer shall have the power to administer oaths and affirmations and shall be vested with the powers of a First Class Magistrate for compelling the attendance of witnesses and the production of documents, maintaining order and otherwise duly conducting the inquiry and all persons summoned to attend the inquiry shall be legally bound to attend.

Prohibition against use of plant or substance (part IX): Section 35 of the Act laid down that the Director General may by order published in the Gazette prohibit the use of any plant or substance which in his opinion is likely to affect the safety and health of persons and work. Meanwhile, under section 36 of the Act required that a person who is aggrieved by an order made under subsection 35 (1) may, within thirty days of the order, lodge an appeal with the secretary to the Council who shall transmit the appeal to an appeal committee appointed by the Minister under section 63.

Industry codes of practice (part X): Based on section 37 of the Act, the Minister may, upon the recommendation of the Council or the Director General, approve industry codes of practice comprising such directions as may appear to him to be necessary or proper for the guidance of persons in complying with the requirements of the provisions of this Act. The Minister may, upon the recommendation of the Council or the Director General, from time to time revise the industry codes of practice by amending, deleting, varying or adding to the provision of the industry codes of practice. As for section 38 of the Act, in any proceedings under this Act or any regulation

in which it is alleged that a person has contravened or failed to comply with a provision of the Act or any regulation in relation to which an approved industry code of practice was in effect at the time of the alleged contravention or failure the approved industry code of practice shall be admissible in evidence in the proceedings and if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention.

Enforcement and investigation (part XI): Section 39 of the Act gave an occupational safety and health officer, in this Part referred to as the officer, may, for the purpose of carrying out the objects of this Act or any regulation, at any reasonable time and upon the production of his certificate of authorization enter, inspect and examine any place of work other than a place used solely for residential purposes. Section 40 emphasized in every case where information is given on oath to a Magistrate that there is reasonable cause for suspecting that there is in a place of work or residential place any article, thing, book, document, plant, substance, installation or part thereof which has been used to commit or is intended to be used to commit an offence under this Act or any, he shall issue a warrant under his hand by virtue of which an officer named or referred to in the warrant may enter the place of work or residential place at any reasonable time by day or night and search for and seize or seal the article, thing, book, document, plant, substance, installation or part thereof. Where an officer is satisfied upon information received that he has reasonable grounds for believing that, by reason of delay in obtaining a search warrant, any article, thing, book, document, plants, substance, installation or part thereof in a place of work or residential place used to commit or intended to be used to commit an offence under this Act or any regulation is likely to be removed or destroyed, he may enter the place of work or residential place without a warrant and seize or seal the article, thing, book, document, plant, substance, installation or part thereof found therein, which laid down by section 41 of the Act.

Section 42, 43, 44 and 45 of the Act stipulated powers given to the officer which include power of forceful entry and service on occupier of signed copy of list of things seized from premises, further provisions in relation to inspection, power of investigation and power to examine witnesses. Under section 46 of the Act required the owner or occupier of, or employer, any place of work and the agent or employee of the owner, occupier or employer shall provide such assistance as the officer may require for any entry, inspection, examination or inquiry or for the

exercise of his powers under this Act. As for section 47 of the Act laid down offenses in relation to inspection shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 10,000 ringgit or to imprisonment for a term not exceeding one year or to both.

Section 48 gave power to the officer to serve improvement notice or prohibition notice if an officer is of the opinion that a place of work, plant, substance or process is likely to be a danger, or is likely to cause bodily injury or is a serious risk to the health of any person, or is likely to cause damage to any property. Under section 49 spelt out the penalty for failure to comply with notice and under section 50 a person who is aggrieved by a notice issued by an officer under section 48 may, within 30 days from the date of such notice, appeal to the Director General who may, after considering the appeal, by order in writing confirm, revoke or vary the notice

Liability for offenses (part XII): Section 51 stipulated that a person who by any act or omission contravenes any provision of this Act or any regulation shall be guilty of an offence and if no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding 10,000 ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a fine not exceeding one thousand ringgit for every day or part of a day during which the offence continues after conviction. Under section 52 laid down that where a body corporate contravenes any provision of this Act or any regulation, every person who at the time of the commission of the offence is a director, manager, secretary or other like officer of the body corporate shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the body corporate or severally and every such director, manager, secretary or other like officer of the body corporate shall be deemed to be guilty of the offence.

Meanwhile, based section 53 stated that where a trade union by any act or omission contravenes any provision of this Act or any regulation, every officer, employee and person purporting to act on the instruction of any officer of the trade union shall be deemed to have contravened the provision and may be charged jointly in the same proceedings with the trade union or severally and every such officer, employee or person shall be deemed to be guilty of the offence. Section 54 stated that a person who would be liable under this Act or any regulation to any penalty for anything done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing had been done or omitted by his agent.

As for section 55 laid down that it shall be a defense if any proceedings against a person for an offence under this Act or any regulation to satisfy the court that the offence was committed without his consent or connivance and that he exercised all such due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances. Section 61 highlighted the prosecutions in respect of offenses committed under this Act or any regulation, with the prior written consent of the Public Prosecutor, be instituted and conducted by an occupational safety and health officer or by an officer specially authorized in writing by the Director General subject to the provision of the Criminal Procedure Code. Lastly, Part XII, where based on section 62 has laid down several provisions on compounding of the said offenses.

Appeals (part XIII): According to section 63 the Human Resource Minister shall appoint appeal committees for the purpose of considering any appeal made under section 36 or 50. An appeal committee shall consist of a Chairman to be appointed by the Minister from among members of the Council and 2 other persons to be appointed by the Minister who, in his opinion, has wide experience and knowledge in matters relating to the subject matter of the appeal. Every member of an appeal committee may be paid an allowance at such rate or rates as the Minister may determine.

Regulations (part XIV): According to the section 66, the Human Resource Minister may make regulations for or with respect to the safety, health and welfare of persons at work in order to achieve the objects of this Act.

Miscellaneous (part XV): Section 67 (1) stated that save for an inquiry under this Act or in any court proceedings relating to the commission of an offence under this Act or any regulation, no person shall disclose any matter including any manufacturing or commercial secret which has come to his knowledge or which he has acquired while performing his duties under this Act.

Finally, section 67 (2) spelt out that a person who contravenes the provision of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 20,000 ringgit or to imprisonment for a term not exceeding 2 years or to both.

CONCLUSION

Based on the above discussion, the above-mentioned Act, i.e., the Occupational Safety and Health Act, 1994 (Act 514) has laid down sufficient measures in controlling industrial accident at workplace in Malaysia. This legislation has been divided into 15 different parts which cover all aspect on occupational safety and health i.e., duties of employers and self-employed persons to their employees; general duties of manufacturers, designers and suppliers; general duties of employees at work; notification of accidents, dangerous occurrence, occupational poisoning and occupational diseases and inquiry; prohibit the use of plant or substance; industry codes of practice; investigation, enforcement and prosecution by the authority in controlling industrial accidents at workplace in Malaysia. In addition, according to Kementerian Sumber Manusia (2006), there are increasing numbers of cases which have been filed at the industrial court specifically on the matters under the Occupational Safety and Health Act, 1994. This phenomenon has shown that the stakeholders are aware on their responsibilities towards the legislation in order to ensure the industrial safety in Malaysia.

REFERENCES

- Akta Keselamatan dan Kesihatan Pekerjaan, 1994. (Akta 514), 2004. Kuala Lumpur: International Law Book Services.
- Ismail Bahari, 2005. Pengurusan keselamatan dan kesihatan pekerjaan. Ed.ke-2. Kuala Lumpur: McGraw-Hill (Malaysia) Sdn. Bhd.
- Kadir Arifin, 2002. Pencegahan Kemalangan Pekerja di Malaysia. Dlm. Jamaluddin Md. Jahi, Mohd Jailani Mohd Nor, Kadir Arifin and Muhammad Rizal Razman (pnyt.). Isu-isu persekitaran di Malaysia, Bangi: Pusat Pengajian Siswazah, pp: 307-321.
- Kadir Arifin and Jamaluddin Md. Jahi, 2001. Keselamatan pekerja dan pengurusannya di Malaysia. Proc. National Seminar Environ. Manage., pp: 379-387.
- Kementerian Sumber Manusia, 2006. Jumlah kes yang dirujuk ke mahkamah perusahaan (2000-2004). (atas talian). http://www.mp.mohr.gov.my/mp_baru/Itemid68.htm.
- Pertubuhan Keselamatan Sosial (PERKESO), 2003. Laporan Tahunan 2003 perkeso.