

A Qualitative Study on Implementation and Avoidance of Labor Policy and Occupational Health and Safety Law in Malaysia

MUSTAFA RASHID ISSA

School of Law, University Utara Malaysia, Kedah, Sintok, Near Changlune, Malaysia

Abstract

The employment laws are becoming strict due to malpractices by the organizations in the developing countries. The main reason behind conducting research in implementation and avoidance of employment law is that, it is considered as the core responsibility of all organizations to fulfill legal requirements of the employment laws. The main objective of this study is to identify the implementation of labor policy of Malaysia in the corporate sector of Malaysia. The study will focus on the implementation of Malaysia Labor Law 1955. The study will also cover the Occupational and Safety Law (1994), what is the practical implementation of these two laws in the corporate sector. The study is qualitative and will collect the data with the help of interviews. The results of the study will help both the policy makers and the practitioners. Policy makers will come to know the shortcomings in the policies and the law and the practitioners will know the problems faced by the workforce, which if resolved, may improve the productivity of the employees. The industry chosen for analysis of petroleum industry because it has a significant contribution in the economic development of Malaysia.

Keywords: Labor Policy, Occupational Health, Safety Law, Malaysia

1. Introduction

In many developing countries the employees and labors are treated as commodity. This causes stress among them. Stress is preventable risk-accessible disease (Chan-Moka, Caponecchia, & Winder, 2014). Due to direct and indirect costs linked with job stress, it has now become a national issue. The main reasons behind stress are lack of implementation of labor laws and health and safety laws in the public and especially private sector organizations (Chen & Zorigt, 2013).

Work stress is the outcome of prolonged working hours, psychological hazards, improper work environment, poor work design, and organizational policies (Shamsudin, Md, Hasnaa, & Mahmood, 2015). The laws related to health and safety all over the world specifies that the corporations should take necessary measures to reduce accidents at the workplace. This is one of the major issues of employee stress and dissatisfaction (Pاناتik, et al., 2012).

In Malaysia all the industries are facing the issues of employee turnover. Employee turnover rate in Malaysia is almost 18% (Wong, 2013). This rate is very high and a very high cost is associated with it. Many factors are linked with employee turnover in corporate sector. The basic reason behind employee turnover is exploitation. Exploitation is because of lack of law and order or lack of implementation of law and order in the corporate sector (Raj-Reichert, 2013).

In this study petroleum industry of Malaysia is chosen. The main reason behind choosing this industry is that it is one of the leading industries of Malaysia. Petroleum industry of Malaysia has employed almost 27% of the labor force (Recruiting Expert in Oil and Gas, 2013) out of total labor in Malaysia.

As reported by Malaysian Employers Federation (MEF) in their recent Salary Survey for Executives/Non Executives 2010:

Industry	Non Executives	Executives
Petroleum	1.56%	0.87%
Overall	1.97%	1.35%

Source: Malaysian Employers Federation (MEF)

Two petroleum companies are considered as best for employment in Malaysia. Moreover, it is critical to understand that avoidance of labor laws and occupational health and safety laws is a big crime. Therefore, in this paper the implementation and avoidance of labor laws and health and safety laws have been discussed.

2. Petroleum Industry of Malaysia

Petroleum industry is regulated by the government of Malaysia and PETRONAS. The establishment of PETRONAS was to being a global axis in Oil and Gas industry. The aim was to overlap international projects. Flowing local projects was later intention of the company. The government applied decisive and pliable strategies in order to attract foreign direct investment. All such measures along with others were to enrich attendance in the multinational companies that keeps on going to be crucial in easy available to Malaysian Oil and Gas industry to the international market. The leading companies of Malaysia in the petroleum products are PETRONAS, Shell, and Exxon Mobil.

The issues faced by foreign workers are relatively higher than the issues faced by the local workers. In

all industries including petrochemical industry, problems are related to imaginary and fake promises in terms and conditions of the employment (Chen & Zorigt, 2013). For example, they wrongly mention the salary package in the contract, there is no annual committed leave or sick leave and they don't provide compensation for extra working hours. There is another problem that is really common in Malaysia is the terms and conditions written in employment contract (Shortland, 2014). There are different terms and conditions used by different countries and most of them are in favor of the employees but in Malaysia they are at minimum standards.

3. Literature Review

Fatalities and hazards at workplace are not only losses of individuals but also for societies. The main responsible person for this are the management of the concerned company, because they have to ensure safety. It applies to our working relationships with others because it affects our choices about them. Management is about putting together organizations that work to accomplish a mission.

Workers illness and incidences at the work place due to negligence of the employees or the management is not a pleasant thing to think about. According to health and safety executives on average 200 people lose their lives yearly at work in Britain. Other than death incidences on average 150,000 non-fatal injuries occur yearly (Health and Safety Executive, 2014). This is not the end other than this almost two million cases regarding ill health of workers are caused due to working conditions. Considering these things as unusual or exceptional cases would be a great mistake. If certain actions and measures are taken before the incidence then such situations could be controlled (LS, et al., 2012). This cannot be considered as a mistake but a major crime because all over the world laws have been made to protect labor force. Philadelphia declaration is one of the most common declaration regarding the rights of the labor force. Furthermore all the countries have their labor laws and health and safety laws. Implementation of health and safety and safety measures according to the law are compulsion on all the corporations and these are not very expensive at the same time rather saves the organizations from severe losses. Occupational safety should be the part of everyday decision making. All the safety measures vary according to the type of business and the stage of organizational development.

Employee feedback regarding health and safety measures provide high safety consciousness and contribute well-being of the employees (LS, et al., 2012). The policies, rules, and regulations of the company usually influence the criteria of organizational health and safety. Because the evaluation system determines number of approaches or/and parameters, which are often based on imprecise data (Fernández-Muñiz, Montes-Peón, & Vázquez-Ordás, 2012). Now the companies have developed organizational health and management system to ensure safety of employees. Organizational health and safety systems are the collective efforts as a result of planning, review, arrangements, and programs. All these elements work in a collective way to create synergy for safety of the workers at workplace (McCaughey, DelliFraine, McGhan, & Bruning, 2013).

Similarly, petroleum companies have also adopted certain measures and systems which needs continuous improvement and evaluation. The companies have to attach importance toward implementation of health and safety management systems. This may result to proper attention to the safety and welfare of employees which can save the organizations from severe litigation from the employees or from the health and safety organizations in the country. Therefore, occupational health and safety management should be a central concern of any corporation as it has severe legal implications.

4. Methodology

The study has been conducted using qualitative research methodology. The data has been conducted from the employees of the three top petroleum companies of Malaysia. The respondents were chosen on the basis of experience in the industry. All the respondents chosen for interviews have a minimum experience of 10 years. Initially it was decided to conduct 25 interviews but after 15 interviews data saturation started and the interviewing was discontinued at 18 interviews. The material was then sent to the respondents for audit trial. The names of the respondents have not been displayed considering research ethics and their employment issues. Content analysis of the interviews has been done. Content analysis will help to understand severity of the issue. On the basis of content analysis and the data analyzed the conclusions have been given.

5. Data Analysis

The data as mentioned above has been collected through interviews. The data has been critically analyzed and the finds of all the respondents are mentioned below.

5.1 PETRONAS

According to the company they are providing the highest standards to ensure that their safety process, occupational health and industrial cleanliness. It is the company's policy to provide the largest security, safety and health standard. The company has reformed the Group Health and Safety and Environment Division (GHSED) by boosting HSE inside the organization to have more responsibility. By reforming the GHSED they

are providing a model to make compulsory HSE standard strong. And to ensure all these things they have made their rules and regulations much stricter.

The company claims, they have made their strict rules and regulations. The strict rules and regulations have been built in their culture to secure the employees. They do not monitor the safety and health of their employees but they make sure that they remain accountable to environment and community around them.

The goals of health and safety implementation are clear. Its implementation includes the lower risk related to the job. According to the company they are stabilizing the HSE performance standards and certifying the integrity of assets and carrying the safeguards for every measure to keep the secure environment.

But unfortunately, the situations and conditions are totally opposite of what the company says. There are three separate fire incidents in different sites in the preceding months. Two incidents caused fatalities. There was a most recent incident related to the company which involved fire in an oil tanker and the tanker was exploded on July 26, 2012. The location of the incident was Ranch-Rancha industrial zone which is situated on Pulau Enoe Island near Labuan.

According to the Star Online Report on July 29, 2012, the 38000 ton MISC tanker loaded with 6 ton on methanol got fire during a thunderstorm. The fire became powerful firestorm and caused three major explosions heard throughout the island. It confirmed on July 30, 2012 through a statement which was published on a website, that accident took five human beings and the body of the last deceased was found in a holding tank of the scorched ship. The management of the company told that several days were utilized in the recognition of bodies because the bodies were seriously damaged and the only way to identify them was DNA test.

Likewise, another incident took place on June this year in which fire blazed at the B platform of Petronas Carigali's Takau offshore Miri. According to the company, they forced to stop the production at the platform and five people were severely injured out of 16. Those five people were technicians and they were reported as second-degree burned.

PETRONAS gas process plant in the GPP complex A in Kerteh was suffered by two explosions on May 11 this year. There were 2000 people at the site when the explosion occurred and a worker died on the spot, 23 people were severely injured. There were lots of letters from the employees of PETRONAS. According to the letter the company is not paying the comparative salary as compare to the other industries without any yearly bonus for 33 years, so lots of employees left the company due to this reason.

5.2 Shell

Shell Malaysia is establishing the best level of safety and health environment and they believe that they are first in everything and best in everything. They are following the HSE according to the quality management system. The company already has the environment management system ISO 14001 and occupational health and safety management system OHSAS 1801. By looking these standards one can realize that the HSE on Malaysia is very strong.

Company follows the rule of not harming any person and tries to protect the environment as well. Shell plays an important role of better task doing in the industry. They use all effective material to produce their product and services. The major concern of the company is to manage effectively and carefully the HSE issues and make sure that all employees play their role for this commitment.

By following these strategies Shell Malaysia can have a better HSE performance so that the company can be the proud of their customers, shareholders and society in the wide area and tries to be a good neighbor for a constant development.

5.3 ExxonMobil

According to the ExxonMobil their top most priority is their operational safety. Their objective is to make the injuries, occupational illness and operational incidents lesser to make such environment where they can raise a slogan "Nobody gets hurt". Company accepts that there are lots of operational risks involved in this industry but they can be reduced by managing properly. That's why company is spending lots of money, time and efforts for searching and eliminating all the hazards and dangers before they cause any accident and by spending these things company is getting rewards.

Company takes a policy to change the behavior of the people to improve the safety environment. This policy ensures that everyone feels responsibility for their safety and other as well, whether they are on site work, driving the tankers or taking rest from work. It has helped there business and cut accident rates. It was names as the best oil company initiative.

ExxonMobil followed another strategy by encouraging all the staff and contractors to speak and take initiatives during any unsafe situation. They introduced a policy that motorists working for ExxonMobil in the UK would have a video-based driver safety course that will encourage the terms of defensive driving, observation and care of the vehicle. The company's strong safety records have been approved by the Royal Society for the Prevention of Accidents (RoSPA), the British Safety Council, and the Chemical Industries

Association.

Just like in PETRONAS, in this company there was only one lost-time injury (LTI) in all over the UK workforce including 7,600 employees and 1,600 contractors. LTI is a job related injury in which work days are being lost due to that injury or illness. According to the OSHA, nearly two dozen of safety violations have occurred for which the agency says that there may be a chance of death or serious harm. The company failed to inspect the equipment properly and analyze the dangers and investigates the past incident. These violations could result into a fire.

According to the Exxon spokeswoman Rachel L. Moore, ExxonMobil has got 15 days to respond to OSHA immediately. The company can challenge the citations of OSHA and penalties before the hearing of the Occupational safety and health Review Commission. Spokeswoman further elaborated that company hopes that OSHA will reconsider the findings and take back the citations.

6. Conclusion

While concluding the scenarios of all three companies it is clear that, PETRONAS policies are really strict and towards the safety of environment and society but actually those policies and procedures are causing troubles for employees. Those troubles includes the wrong confirmation of duties, less salaries comparing to the offer confirmation package, no yearly bonus of performance, no extra payments for the extra work hours. Due to the weak check and balance of the PETRONAS health and security measure lots of people has lost their lives, got injured and suffered for the rest of their lives.

Shell's policies are far better than the PETRONAS. They have worked on the policy of securing the human's life and environment both simultaneously. The company already has the environment management system ISO 14001 and occupational health and safety management system OHSAS 1801. The major concern of the company is to manage effectively and carefully the HSE issues and make sure that all employees play their role for this commitment.

ExxonMobil records shows that there no any serious incident that took place anywhere in the company's supply region. They have spent a lot of money, time, and efforts just to have the highest standards in health and safety environment. Company accepts that there are lots of operational risks involved in this industry but they can be reduced by managing properly. To improve the health and safety performance, Company follows a policy to change the behavior of the people to improve the safety environment. This policy ensures that everyone feels responsibility for their safety and other as well, whether they are on site work, driving the tankers or taking rest from work. The company's strong safety records have been approved by the Royal Society for the Prevention of Accidents (RoSPA), the British Safety Council, and the Chemical Industries Association.

According to the Department of the Occupational and Safety Hazard (DOSH), the condition of working environment is really risky. The employees are working in very unsafe environment. The main reason behind this is unclear instructions about their working process. The facilities and the equipment that should be provided to them is not being provided.

7. Recommendations

In Malaysian oil and Gas industry, time and resources both are spent to complete only written procedures, review, and harmonize procedures. The contractors should be enforced to follow safety and operational integrity management systems. This enforcement should be imposed by the oil and gas industries operating in Malaysia. Furthermore, the frontline staff should be held responsible for any misappropriation in the implementation of rules and regulations imposed by the company.

It should be ensured that adequate engineering documentation is provided and reviewed before initiating operations. The main reason behind this is that the same utility equipment may be having different configuration, with possible subtle differences. The main reason behind any incident is maintenance by a non-standard operating procedure. The main focus should be given on correction and suitable implementation of procedures in doings carried out by management persons especially who are in the forefront. Whenever, there is a need for deviation proper review should be conducted in order to ensure that if any new risks is identified then it has been managed adequately.

The workers working in oil and gas exploration companies should be properly educated regarding the safety management systems. It must be the standard operating procedure that the work should immediately discontinued if any security lapse is found. Education of workers in oil and gas exploration companies should be a regular process and it should be enforced by law.

Other than the safety procedures and workforce culture, there are certain other technical considerations. The top most among them are business and financial decisions taken by top management of the companies. A business decision regarding operating and maintaining an asset that has passed its maximum time period is a critical one. Because management prefer not to maintain it properly as it has to be discarded after a few months so they consider that cost as useless cost and the management prefer savings for the company. These savings

may result in the facility running at a sub-optimal safety level. Without a conforming shrinking of the surveillance of the equipment and the work environment, the risks of failure run higher. Consequently it could be catastrophic. So law enforcement bodies should make sure that all such negligence are dealt with strict punishments and heavy fines.

References

- Chan-Moka, J. O., Caponecchia, C., & Winder, C. (2014). The concept of workplace bullying: Implications from Australian workplace health and safety law. *Psychiatry, Psychology and Law*, 21(3), 442-456. doi:10.1080/13218719.2013.829399
- Chen, J. K., & Zorigt, D. (2013). Managing occupational health and safety in the mining industry. *Journal of Business Research*, 66(11), 2321–2331. doi:10.1016/j.jbusres.2012.04.013
- Fernández-Muñiz, B., Montes-Peón, J. M., & Vázquez-Ordás, C. J. (2012). Safety climate in OHSAS 18001-certified organisations: Antecedents and consequences of safety behaviour. *Accident Analysis & Prevention*, 45, 745–758. doi:10.1016/j.aap.2011.10.002
- Health and Safety Executive. (2014). Retrieved from Health and Safety Executive: <http://www.hse.gov.uk/aboutus/occupational-disease/index.htm>
- LS, R., CM, S., PA, S., III, A. B., EL, I., DE, E., PL, G. (2012). A systematic review of the effectiveness of occupational health and safety training. *Scand J Work Environ Health*, 38(3), 193-208.
- McCaughey, D., DelliFraine, J. L., McGhan, G., & Bruning, N. S. (2013). The negative effects of workplace injury and illness on workplace safety climate perceptions and health care worker outcomes. *Safety Science*, 51(1), 138–147. doi:10.1016/j.ssci.2012.06.004
- Panatik, S. A., Rajab, A., Shaari, R., Saat, M. M., Wahab, S. A., & Noordin, N. F. (2012). Psychosocial work condition and work attitudes: Testing of the effort-reward imbalance model in Malaysia. *Procedia - Social and Behavioral Sciences*, 40(1), 591–595. doi:10.1016/j.sbspro.2012.03.235
- Raj-Reichert, G. (2013). Safeguarding labour in distant factories: Health and safety governance in an electronics global production network. *Geoforum*, 44(1), 23–31. doi:10.1016/j.geoforum.2012.05.007
- Recruiting Expert in Oil and Gas. (2013). *Oil and Gas Global Salary Guide*. Recruiting Expert in Oil and Gas.
- Shamsudin, Md, N., Hasnaa, N., & Mahmood, N. (2015). Relationships of learning in occupational safety and health training and occupational related injuries. *Learning*, 11(13).
- Shortland, S. (2014). The ‘expat factor’: the influence of working time on women's decisions to undertake international assignments in the oil and gas industry. *The International Journal of Human Resource Management*. doi:10.1080/09585192.2014.938681
- Wong, G. S. (2013, September 19). Factors causing staff turnover in the SME manufacturing sector In Northern Malaysia. Masters Thesis. Penang, Penang, Malaysia: University Sains Malaysia.