
**REGULATION ON SOCIAL SECURITY SYSTEM FOR WORKERS TO
ACHIEVE SAFETY AND HEALTH AT WORK;
COMPARISON BETWEEN INDONESIA AND MALAYSIA LABOUR LAW****Ayup Suran Ningsih**Faculty of Law, Semarang State University
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Abstract

Occupational safety and health (OSH) is a human right and an integral part of people-centered agenda for development. Safe work also underpins sustainable enterprises which benefit from improved productivity, quality and workforce motivation. A healthy workforce and safe and productive enterprises are part of successful and sustainable development strategies. The government is obliged to protect workers through the making of public policy. The Implementation of public policy in order to protect workers is the public enactment of the rules in the field of occupational safety and health. Laws and regulations that are public are made to reduce the freedom of the individual worker and workers, so worker "forced" to meet the health and safety rights of the workers responsibly. Indonesia and Malaysia have relations in foreign workers, so many Indonesian works in Malaysia until today. It is important to know and analyze the labor law within the two countries. The aim of this paper is to examine the comparison labour law between Indonesia and Malaysia in supervision safety and health at work.

Keywords: *Labor Law; Occupational Safety and Health; Social Security System; Worker*

INTRODUCTION

Worldwide approximately 6,000 workers lose their lives every day of the year as a result of work-related accidents, injuries, or diseases. It is estimated that about 2.2 million people worldwide die every year from work-related accidents and diseases. Annually, 270 million others suffer serious injuries and 160 million endure short or long term illness related to their work. The call to protect against

sickness, disease and injury arising out of employment has been at the heart of the ILO's agenda. Occupational safety and health (OSH) is a human right and an integral part of people-centered agenda for development. Safe work also underpins sustainable enterprises which benefit from improved productivity, quality and workforce motivation. A healthy workforce and safe and productive enterprises are part of

successful and sustainable development strategies.¹

Safety and health is an instrument that protects workers, the company, the environment and surrounding communities from danger due to accidents. Such protection is a fundamental right that must be met by the company. Safety and health aimed at preventing, reducing, and even nullify the risk of workplace accidents (zero accident).

The application of this concept should not be considered as prevention of occupational accidents and occupational diseases that are expensive (cost) of the company, but should be regarded as a form of long term investments that benefited abundant in the future.

Safety and health actual existence coincided with the industrial revolution in Europe, especially the UK, Germany, and France as well as the industrial revolution in the United States. This era marked a shift in the use of large-scale production machines replacing human labor.

Workers only acts as the operator. The use of the machines produce goods doobled in number compared with workers who worked previously.

However, the impact of the use of the machines is unemployment and the risk of accidents in the workplace.

It can lead to physical disability and death for workers. Also can cause huge material losses for the company. The industrial revolution also marked by increasingly found chemical compounds that may endanger the safety and physical and mental health workers (occupational accidents) as well as the community and the environment. The aim of this paper is to examine the comparisson labour law between Indonesia and Malaysia in supervision safety and health at work.

ANALYSIS AND DISCUSSION

Indonesian Labour Law in Safety and Health at Work

The government is obliged to protect workers through the making of public policy. Implementation of public policy in order to protect workers one of which is the public enactment of the rules in the field of occupational safety and health. Laws and regulations that are public are made to reduce the freedom of the individual worker and workers, so worker "forced" to meet the health and safety rights of the workers responsibly.²

¹ILO <http://www.ilo.int/jakarta/areasofwork/safety-and-health-at-work/lang--en/index.htm> viewed on 14th April 2019 at 2:45 pm

² Hari Supriyanto, 2003, *Perbahan Hukum Privat ke Publik, Studi Hukum Perburuhan di Indonesia*, Universitas Atmajaya, Yogyakarta, p 74.

That is why the government issued Law No. 1 of 1970 on Occupational Safety, (State Gazette of the Republic of Indonesia Year 1970 No. 1), in lieu of legislation in the field of safety that existed before the *Veiligheids Reglement* No 406 of 1910. Though his name Law on Occupational Safety, but also about the coverage of the material, including occupational health³, it is because the field used to be called or *arbeidsbescherming* labor protection, nowadays commonly referred to occupational health⁴.

In the legislation explained that the company is obligated to protect the safety of workers is to give an explanation to the workforce about workplace conditions and hazards, provide personal protective equipment required in the workplace and a safe manner and attitude in carrying out the work.⁵

Based on article 27 (2) the constitution of Republic Indonesia of 1945 “each citizen shall be entitled to an occupation and an existence proper for a human being”. This article gives the meaning that the state guarantees everyone's right to protection and comfort in performing his job. Protection that is

intended to ensure commonality and treatment without discrimination on any ground for the welfare of workers and their families with regard to the development and advancement of the business interests of entrepreneurs.

There are so many regulations regarding occupational safety and health at work. The main regulations regarding occupational safety are law of Republic Indonesia No 1 of 1970 and law of Republic Indonesia No 13 of 2003 concerning manpower. There are some of the important articles in law of Republic Indonesia Number 1 of 1970 concerning occupational safety:

1. Scope of space⁶

What is ruled by these laws is the work safety in all workplaces, including in the land, under the ground, on the waters surface, on the water or in the air, which is in under the legal authority of the Republic of Indonesia.

2. Work safety requirements⁷

By the law regulation, it is established the work safety requirements in order to :

- a. Prevent and decrease the number of accidents;*

³ Lula Husni, 2007, *Hukum Ketenagakerjaan Indonesia. Edisi Revisi*. Raja Grafindo Persada, Jakarta, p 138.

⁴ Abdul Rachmad Budiono, 1995, *Hukum Perburuhan di Indonesia*, Raja Grafindo Persada, Jakarta, p 187.

⁵ Suma'mur, 1996. *Keselamatan Kerja dan Pencegahan Kecelakaan*, Haji Masagung, Jakarta, p 29.

⁶ Article 2

⁷ Article 3

- b. Prevent, decrease, and extinguish fire;
- c. Prevent, and decrease the dangerous explosion;
- d. Give chance or way to do self-rescue when the fire or other dangerous event happens;
- e. Give helps in accident;
- f. Give self-safety equipments for the workers;
- g. Prohibit and control the emergence or the spread of the temperature, humidity, ash, dirt, smoke, steam, gas, blast of wind, weather, light or radiation, sound and vibration;
- h. Prohibit and control the cause of illness as the result of work physically or psychically, poisoning, infection and contagion;
- i. Get the adequate and appropriate lighting;
- j. Conduct the good temperature and humidity;
- k. Conduct the refresh or adequate air;
- l. Keep the cleanliness, healthiness, and orderliness;
- m. Achieve the harmony among, workers, tools, environment, ways, and the process of working;
- n. Secure and accelerate people, animals, plants, or goods transportation;
- o. Secure and keep all kinds of building;
- p. Secure and accelerate removal jobs, treatment and storage of goods;
- q. Prohibit the dangerous high voltage current;
- r. Appropriate and complete the safety system in which the dangers and accidents rates are getting higher.

Besides the regulations in occupational safety and health at work, Indonesia also has special council which is concerning regarding occupational safety and health. It is The National Occupational Safety and Health Council (DK3N). The vision, mission, policy, strategy, and program of this National Occupational Safety and Health plan are intended to encourage the world of business and the world of work in Indonesia to base its operation on occupational safety and health culture in compliance with both national and international laws and regulations.

Safety and health also become concern in law of Republic Indonesia Number 13 of 2003 concerning

manpower. These are the main articles concerning safety and health at work :

Article 86

- (1) Every worker has the right to receive:*
- a. Occupational safety and health protection;*
 - b. Protection against immorality and indecency;*
 - c. Treatment that shows respect to human dignity and religious values.*
- (2) In order to protect the safety of workers and to realize optimal productivity, an occupational health and safety scheme shall be administered.*
- (3) The protection as referred to under subsection (1) and subsection (2) shall be given in accordance with valid statutory legislation.*

Article 87

- (1) Every enterprise is under an obligation to apply an occupational safety and health management system that shall be integrated into the enterprise's management system.*
- (2) Rulings concerning the application of the occupational safety and health management system as referred to under subsection*

(1) shall be determined and specified with a Government Regulation.

The Indonesian Manpower Act mandated every enterprise to apply Occupational Safety and Health (OSH) management system to protect the safety of the workers and to realize the optimal productivity. The cooperation of workers within the enterprise is vital for the prevention of occupational accidents and diseases. Workers' duties in hazard control have as their counterpart the recognition of certain basic rights, and these should also be reflected in the enterprise policy.

In particular, workers have the right to remove themselves from danger, and to refuse to carry out or continue work which they have reasonable justification to believe presents an imminent and serious threat to their life or health.

The guideline regarding the implementation of occupational safety and health at work is enacted on Laws of The Republic Indonesia Number 24 Of 2011 concerning Social Security Administrator (*BPJS*⁸). There are 4 responsibilities are covered by *BPJS*. They are employment accident benefit, death benefit, pension

⁸ Indonesia term for Social Security Insurance Administrator

fund benefit, and health care insurance as mention in article 6.

All workers and their family (including spouses and up to three children below the age 21 years who are not married and not working) are entitled to social security. Workers and their family are to be paid to compensate for lost and/or reduced earning as a result of accidents, illness, pregnancy, old age and health.

Worker must register him/himself and the workers to be a member of BPJS, that includes social security for healthcare, work accident, old age, pension, and death. BPJS will provide a registration form that must be filled within 30 days.

Worker can choose whether to use BPJS or another service provider for healthcare, as long as they provide better services than BPJS. Worker must keep records of workers and their families, payroll including any amendments, and all workplace accidents in the enterprise. Within 7 days after registration and submission of the first contribution, BPJS will provide the enterprises with a membership certificate, and each worker will be given a membership card and a healthcare card.

These are the two main topic (the responsibilities which is covered by employer and the presentage of the contribution) which i would like to compare with Malaysian regulation law regarding social security system in occupational safety and health at work.

Malaysian Labour Law in Safety and Health at Work

Laws have been formulated to provide systems and standards for workplaces; when these laws are not observed, or if someone suffers personal injury at the workplace, the law maybe invoked and there may be a trial in court.⁹

Common law has always recognised the obligation of an employer to provide a safe working environment for his workers. It is an implied term of every contract of employment that the employer will ensure safety at work for his workers. To further emphasise this responsibility, Malaysia has introduced laws which make it compulsory for worker to introduce certain measures relating to safety. Nevertheless, as the statistics show,

⁹ Brenda Barret and Richard Howells, 1997, *Occupational Health & Safety Law Third Edition*, Kuala Lumpur, Financial Times Pitman Publishing, p 9

accidents are still a major problem in the workplace.¹⁰

In Malaysia there is two main act concerning occupational safety and health at work. They are The Factories and Machinery Act 1967 and The Occupational Safety and Health Act (OSHA) 1994. There are also two acts to deal with the accidents and diseases. They are The Worker's Social Security Act 1969 and The Workman's Compensation Act 1952 to foreign workers.

Occupational Safety and Health Act (OSHA) was enacted on 25th February 1994 with the intent to ensure safety, health and welfare of all persons at all places of work. It was promulgated based on the regulation concept with the primary responsibility of ensuring safety and health at the workplace lying with those who create the risks and work with the risks. The Act also provides for a consultative process at the policy level with the establishment of National Council for Occupational Safety and Health. This consultative process extends to where safety and health programs are implemented with both worker and workers representative as

members of safety and health committee.¹¹

This act consists of 15 parts, 67 sections, and 3 schedules. OSH 1994 is an act to make further provisions for securing the safety, health, and welfare of persons at work and protecting others against risks to safety or health in connection with the activities of persons at work. As mention in section 4, the objectives of this act are:

- 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;*
- b) *To protect persons 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;*
- c) *To promote an occupational environment for persons at work which is adapted to their physiological and psychological needs;*
- 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*

¹⁰ Maimunah Aminuddin, 2013, *Malaysian Industrial Relations & Employment Law Eighth Edition*, Malaysia, Higher Education, p 86

¹¹ Guidelines on Occupational Safety and Health Act 1994

of this Act designed to maintain or improve the standards of safety and health.

The scope of this act as mention in subsection 1 (2) first schedule are :

1. *Manufacturing*
2. *Mining and quarrying*
3. *Construction*
4. *Agriculture, forestry and fishing*
5. *Utilities*
 - a) *Electricity;*
 - b) *Gas;*
 - c) *Water; and*
 - d) *Sanitary Servives*
6. *Transport, storage and communication*
7. *Wholesale and retail trades*
8. *Hotels and restaurants*
9. *Finance, insurance, real estate and business services*
10. *Public services and statutory authorities*

As a commonwealth country, the social security system in Malaysia develops earlier and more rapidly than the development of the social security systems in other countries in Southeast Asia.

In 1951, Malaysia has started compulsory savings program to ensure worker retirement (worker provident fund, EPF)

through the EPF Ordinance. The entire private workers and civil servants are not entitled to a pension shall be subject to the EPF program. Ordinance EPF then updated into law in 1991.

Government workers get a pension allowance of government workers. In addition, Malaysia also has a system of accident insurance and disability pensions are administered by the Social Security Organization (SOCSO).

Therefore, the Malaysian federal government is responsible for financing and direct provision of health services for the entire population is relatively free, the health services are not included in the program are covered by the social security system in Malaysia. With a system of health funding by the state, there is no significant risk of health costs for all residents of Malaysia are mild or severe pain.

The informal sector is a sector that is more difficult to mobilize. However, the social security system in Malaysia, the informal sector can be a participant voluntarily EPF or SOCSO. Including the informal sector are those who work independently and housekeeper. Foreign workers and government workers who already have pension rights can also join the program voluntarily EPF.

In the implementation, each group programs and population served has an organizing body. EPF programs administered by the Central Provident Fund (CPF), a legal entity under the auspices of the Ministry of Finance. This institution is a tripartite body consisting of representatives of workers, worker, government, and professional.

For specific tasks, such as investment, these institutions form the Investment Panel. Implementation of pensions for government workers is managed directly by the finance ministry for the program is a program of worker benefits (employment benefits) where the worker does not contribute. Accident insurance program and disability pensions are administered by SOCSO in Malaysia language called *Pertubuhan Keselamatan Sosial*¹² (PERKESO).

SOCSO was mandated to administer and enforce the Worker Social Security Act 1969 and Worker Social Security General Rules 1971. Through the Act and Regulations, SOCSO is able to provide free medical treatment, facility for physical or vocational rehabilitation and financial assistance to workers if they have loss their abilities due to accidents or diseases that have reduced their abilities to

¹² Malaysia term for Social Security Organization

work or rendered them incapacitated. If an worker has died, their dependants are provided for financially through pensions.¹³

Perkeso covers medical benefit, temporary disablement benefit, permanent disablement benefit, constant-attendance allowance, facilities for physical and vocational rehabilitation, return to work programme, dependants's benefit, funeral benefit, education benefit.¹⁴

Principal worker are required to contribute monthly for every worker that is eligible according to the rates as stipulated by the Act.¹⁵ The rates are based on the total sum of the monthly wages received by a worker. Contribution means the sum of money payable to the organization by the principal employer in respect of an insured worker and includes any amount payable by or on behalf of the worker.¹⁶

Contribution begins on the first month when the worker commences employment. Types and Categories of Contribution are:¹⁷ (Section 6 ESSA 1969)

¹³ PERKESO <https://www.perkeso.gov.my/index.php/en/accordion-a/act-regulations> viewed on 14th April 2019 at 2:58 pm

¹⁴ Part III Worker Social Security Act 1969

¹⁵ See Second Schedule of Section 2 Worker Social Security Act 1969

¹⁶ Section 2 (2) Worker Social Security Act 1969

¹⁷ PERKESO [https://www.perkeso.gov.my/images/imej/akta_dan_peraturan/PERATURAN2\(AM\)KSP1971\(BM\).pdf](https://www.perkeso.gov.my/images/imej/akta_dan_peraturan/PERATURAN2(AM)KSP1971(BM).pdf) viewed on 14th April 2019 at 3:02 pm

- i. First Category (Employment Injury and Invalidity Schemes)
- All workers who have not attained 60 years of age are required to contribute under the first category, except those who have attained 55 years of age and have made no prior contributions before they reach 55 years. (Amendment Act w.e.f. 1 January 2013).
 - The rates of contribution under this category comprise of 1.75% employer's share and 0.5% worker's monthly wages.
- ii. Second Category (Employment Injury Scheme)
- For workers 60 years old and above and still working
 - For workers above 55 years old when he first register and contribute to SOCSO
 - Insured Person receiving Invalidity Pension and still working and receiving less than 1/3 of the average monthly wages before the invalidity.
 - Under this Category, the contribution is paid by the employer for the Employment Injury Scheme.
- The rate of contribution under this category is only 1.25% of the worker's monthly wages solely borne by the employer.
- The list of injuries deemed to result in permanent total disablement and the percentage of loss of earning capacity describe in second schedule of section 2 worker social security act 1969.
- The provisions under ESSA 1969 have made it compulsory for worker to insure their workers against injury under the two insurance schemes. The differences between the two schemes is that the employment injury insurance scheme is where certain benefits are available to the worker who suffered any injury or diseases arising out of and in the course of his or her employment whereas, the invalidity pension scheme is where certain benefits are available to an worker who becomes invalid due to any reason.
- Nevertheless, the law forbids an injured worker from receiving benefits from both schemes for the same injury. The provisions, however, are still not clear in determining which scheme a permanently disabled worker should choose from and he could get his or her compensation in installments. These provisions require improvement for the purpose of efficacy and efficiency so that a worker

should get the maximum benefit available.¹⁸

In Malaysia, the worker in the private sectors who earns less than RM3000 a month are protected by the Worker's Social Security Act 1969 (ESSA 1969). They are covered under two insurance schemes; Workers' Injury Scheme and Invalidity Pension Scheme.

To qualify for compensation from the Workers' Injury Scheme the workers must have been injured while commuting to and from work, commuting in the course of work, and while working, workers who develop occupational disease is also covered under this scheme. There is no age limit to this scheme, the insurance scheme will continue while the person is still working and contributing to the scheme. The list of compassable occupational diseases was listed in Fifth Schedule of the ESSA 1969.

The second scheme is the Invalidity Pension Scheme where the workers is qualify for invalidity pension if he suffers from chronic diseases that makes him unable to earn more than 1/3 of his usual wages. This scheme only covers workers up to 55 years old.

Other than the two schemes under ESSA 1969, individual who are protected under other insurance scheme can also apply for compensation. In this case the amount and quantum of payment will depends on the agreement between the insurance company and the insured party.

The amount of compensation to be paid to the insured person who was involved in an accident or from occupational disease depends on the degree of impairment. If there is no impairment sustained as a result of the occupational accident or disease then compensation would not be paid. However the medical and surgical cost for the treatment would be borne by the Social Security Organization. The insurer needs to consult the Social Security Organization on their entitlement for the medical and surgical treatment.

For the "Workers Injury Scheme" under the ESSA the quantum is given in Second Schedule of the ESSA. The Social Security Organization have come up with the "Guidelines on Impairment and Disability Assessment of Traumatic Injuries, Occupational Diseases and Invalidity" since the Second Schedule only contained a limited list of impairment. The main purpose of the guideline is to be used as a guide for evaluating medical issues, diseases and the estimation of inva-

¹⁸ Rooshida Merican Binti Abdul Rahim Merican, 2010, *Workers' Rights under the Malaysian Social Security Organisation*, Journal of Politics and Law, Vol. 3 No. 1, p 36

lidity especially on issues. that are not stated in the Second Schedule of ESSA. The amount to be paid depends on the assessment by independent medical assessor appointed under the ESSA.

CONCLUSION

Laws have been formulated to provide systems and standards for workplaces; when these laws are not observed, or if someone suffers personal injury at the workplace. today, society is largely shaped by regulatory legislation. Parliament enacts statues to redirect the law, or to provide for matters which have never been addressed by case law. Social security system in Malaysia better than Indonesia. Malaysia covers more detail betten than Indonesia. Employee Social Security Act 1969 can be a guidance for Indonesia Social Security Act. The principal duty imposed on the employer is to ensure ‘so far as reasonably practicable the health safety and welfare at work of all his employee’. This duty expressly includes the provision and maintenance of safe plant and systems of work, without risks to health and has adequate welfare facilities. However, there remain the needs of many small employers, (and indeed of many firms in the construction industry) who lack the skills, knowledge,

or sophistication to devise their own least cost solutions to occupational safety and health problems.

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