

THE PSYCHOLOGY BEHIND COMPLIANCE AND NON-COMPLIANCE WITH LAWS

The seminar title poses a question – OSH: ARE WE DOING ENOUGH?

My short answer is NO.

Workplace incidents are happening very frequently as if there are no laws to comply with. There have been several very bad cases just within the last few months.

In this short paper I want to discuss the psychology behind people's attitude towards laws and the reasons why there is still so much non-compliance, or disrespect, for laws. Why is there no fear of the laws? Can anything be done about this state of affairs?

We should look at the existing attitudes or mental state of the parties involved in the whole picture – especially that of the top managements because attitudes flow down from the top, and those lower down the rung are mere followers of decisions or attitudes of their bosses.

The enforcement agency (DOSH) is there, but non-compliance is high judging by the frequency of incidents causing deaths and injuries. This begs the question why some responsible people are not complying with the laws and how to make the recalcitrant comply?

People need to change their attitude towards these incidents. They are not “accidents”. An accident is something that could not be foreseen, e.g. an asteroid hitting you. Workplace incidents are preventable if all work procedures; quality control of materials and workmanship; careful, stringent engineering standards are adhered to and of course if there is strict, no nonsense enforcement that puts the fear of the law in those responsible for carrying out all the processes involved.

There is a tendency to quickly label some incidents, e.g. landslides and floods, as “acts of God” or *takdir*. This is to divert attention from the fact that it was man's activities that led to these incidents happening.

Laws, however good, however severe the penalties on paper, are by their mere existence, not a deterrent. Our education system has failed to inculcate respect for laws and rules so that society will obey laws and rules without being punished.

There must be respect for laws and for the enforcement mechanism in order for people to comply with laws. Put another way, there must be fear of the law and of the enforcement mechanism.

Just look at how some people beat the red lights and get away with it. They don't respect (fear) the law. Chance of getting caught is very slim. If caught, don't pay and discount will be given after some

time (to encourage them to pay!). If they still don't pay, the summons may even be written off if election is near!

DOSH has not been able to put the fear of the law into those under its purview. DOSH is not seen to be tough with the recalcitrant contractors and project developers. Just like schools where indiscipline is rampant – it is because the school authorities have not been tough in enforcing strict discipline.

What exactly is the role of DOSH?

Is it just **monitoring**, reporting, advising, pleading and giving warnings that are not carried out, or is it being tough and **enforcing** the law without fear or favour in every case of a breach, however minor to send a strong message that safety laws must be observed strictly at all times, and if not, there is a heavy price to pay?

On 02 Dec 2016 it was reported in Free Malaysia Today (FMT):

Department of Occupational Safety and Health (DOSH) director-general Mohtar Musri said despite the inspections conducted, contractors failed to comply with prescribed safety procedures.

“The enforcement is already there, but employers’ implementation is not effective”

“For example, during inspections we found that construction safety helmets weren’t used and torn safety nets were not replaced.

“It also involved design issues. The material does not meet specifications and installation does not fit”.

This raises some questions:

- a) Do the above non-compliances not breach any law or regulations?
- b) If so, what are the penalties?
- c) Were any penalties or other sanctions imposed? If not, why?
- d) Is enforcement limited to inspections and reporting but not taking any punitive action (like the Auditor General’s Reports)?
- e) Is there a government policy on the how?, when?, why?, what? of enforcement action that the DOSH can take against whom?
- f) Has enforcement action to be politically right?
- g) Is there political interference in DOSH’s enforcement work?

The same FMT report also stated that:

“Mohtar said the contractors should take more stringent and decisive steps because they had employed safety supervisors and engineers to perform safety supervision and promote safety conduct at construction sites”.

This raises the questions:

- a) Whose duty is it to enforce the laws if not that of government agencies such as the DOSH?
- b) Has the DOSH no jurisdiction over the safety supervisors and engineers employed by the contractors?
- c) If not the DOSH, then which authority is responsible to ensure these persons carry out their duties diligently and in compliance with the ethics of their jobs?

In practice, DOSH is seen to be pleading with those in breach of some law/regulations, thus giving them face (*beri muka*) E.g. in a letter (July 2016) to a condominium management, it said:

“Walau bagaimanapun, Management telah gagal menjalankan tanggungjawab untuk mematuhi notis-notis dan arahan-arahan yang dikeluarkan oleh pihak Jabatan sejak (March 2015) sehingga sekarang walaupun telah berulang-kali perbincangan dibuat.”

“Pihak Jabatan mendapati kesemua lif yang diuruskan oleh Management telah beroperasi tanpa mematuhi perundangan yang dikuatkuasakan oleh Jabatan iaitu”

“Untuk pengetahuan pihak Condominiumpihak Jabatan telah mengeluarkan 6 Notis Larangan JKJ 110 (No. Siri) pada (Mac 2015) dan semua operasi lif telah diarahkan untuk berhenti beroperasi dengann serta merta.”

“Kegagalan pihak tuan mematuhi boleh menjadi kesalahan dan jika disabitkan kesalahan boleh didenda **tidak melebihi RM 150,000 atau dipenjara untuk tempoh tidak melebihi tiga tahun** atau kedua-dua nya.”

This raises some pertinent questions:

- When the first notice was not complied with, why was no punitive action taken – no compound or better still, court action?
- What is DOSH’s SOP in cases of non-compliance with its notices?
- What is the value of such notices when they can be ignored with impunity?
- Was there dereliction of duty on the part of the DOSH officer handling the case?
- From March 2015 to July 2016 (17 months), DOSH’s repeated notices were ignored.

- A complaint came to CAP from residents of the condominium. We wrote to DOSH and received a copy of the above letter.
- Even after non-compliance (of several notices) is reported by the public, why is no enforcement (meaning punitive) action taken but only a “warning” letter is issued?
- How to stop the recalcitrant non-compliers when DOSH *tak sampai hati* (has no heart) to punish them?

Advise and warnings, without any follow-up firm, punitive action that hurts the pockets, or even their freedom (jail sentences) don’t educate people, or change their attitudes. This is the root cause of the widespread non-compliance with laws.

Educating people, or changing their attitudes or mind-sets.

Futile exercises – the so-called soft approaches: talks, discussions, circulars, notices, reminders, pleadings, warnings, etc.

The best way – strict, firm, no-nonsense, consistent and continuous enforcement of laws from the first offence, with maximum penalties imposed, is the best education about the need to comply with the laws at all times.

A ministry of housing delegation that went on a *lawatan sambil belajar* (study tour) to Germany about 15 years ago learnt that the local authorities there had about 30 laws to enforce. When asked about the rate of non-compliance, they were told it was “0”. When asked how this was achieved, the answer was people knew that for the first offence, they would face the maximum penalty provided, without any compromises. Thus, people had been very effectively educated to have respect for the law, (or fear of it, if you prefer). They know there is no escape from flouting the laws.

How does the attitude or mental state of Malaysians, both the public and the law enforcement officers, compare with this? The inculcation of such attitudes has to start very early in life, i.e. at schools (from kindergarten onwards), and continue with strict, consistent, on-going enforcement of laws. Is this happening in our country?

Enforcement

The DOSH DG reportedly said:

Despite the inspections conducted, contractors failed to comply with prescribed safety procedures.

The enforcement is already there, but employers’ implementation is not effective.

- Are inspections the ‘be all and end all’ of enforcement?

- “Enforce” is defined as “to make sure that people obey a particular law or rule”.
- How to make sure people will obey the laws if they are not punished for not obeying it?
- Is it morally, politically, or for any other reasons, not right to be drastic with people who do not follow safety laws?

For enforcement to result in compliance, breaches discovered the first time have to be severely punished. There are no two ways about this.

Is there a fear for the physical safety of DOSH officers if they go tough with the recalcitrant contractors and developers, like teachers who fear disciplining their students as their cars would get damaged, or they may be assaulted by the students themselves or the students’ friends or even parents?

Proposal for third party organisations to monitor safety at construction sites

Works Minister Datuk Seri Fadillah Yusof has proposed that “the Government would like to take over the job of monitoring safety at construction sites away from developers following a string of deaths as a result of mishaps in the last three months” (Star 03 Dec 2016).”

- The government’s job (through DOSH) should be enforcement, i.e. taking action against those not complying with the laws and rules, not monitoring.
- Isn’t monitoring the responsibility of the contractors, developers, or whoever is carrying out the projects, through their appointed safety officers, engineers etc.?
- “How independent the health and safety officers can be when they are under the contractors’ payroll”? depends on whether the law enforcer can impose the maximum penalties on the employers, holding them vicariously liable for any acts and omissions of their employees. Will we ever see this happening?
- Will the third party monitors have the power to charge anyone who is found not complying with the law or rules?

12 officers to monitor 600 sites

“Currently the Department of Occupational and Safety Hazard (sic) (DOSH) monitors government projects but it is reportedly too understaffed to keep track of every project.” (Star 03 Dec 2016)

- What was DOSH set up for – to enforce the law, or to monitor projects?
- “Monitoring” and “enforcement” are not synonymous.
- “Monitoring” or keeping track of projects and all matters related thereto should be left to the safety officers and consultants for the projects.

- DOSH should concentrate strictly on enforcement which should be carried out at random and not on a fixed time-table basis.
 - Not all 600 sites may be recalcitrant. From experience, DOSH should know which projects, developers or contractors are problem cases. They should be given more attention.
 - DOSH should swoop down on project sites like eagles, without warning, and if any breaches are found, however minor, impose the maximum penalties provided without any sympathy. This will send very strong messages to all “not to play with DOSH”.
 - The enforcement should cover both government and private projects.
 - All monitoring of private and government projects should be left to their respective consultants.
 - DOSH should penalise both the government and private sector consultants who “overlook” things or are negligent or incompetent.
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- 12 officers can make 4 teams of 3 officers each (or call them ‘flying squads’ if you wish).
 - If each team swoops down on just 1 (one) site a week, (minus holidays and other contingencies), it should be able to cover about 40 sites in a year.
 - 4 teams x 40 sites = 160 sites a year.
 - If the teams are really ‘tough’ and hard on every minor breach, a strong message would reverberate in the industry not to *main-main* (play-play) with DOSH.
 - Even if the number is halved to just 80 sites a year, tough, no-nonsense enforcement would still send the same strong message not to play with DOSH.
 - The heaviest penalties provided by law should be imposed from the very first offence, without any compromises.

Conflict of interest situations

As a law enforcement agency, DOSH has to guard itself against getting into conflict of interest situations that will, whether you admit it not, compromise its enforcement work.

- Do the DOSH staff, sports and social associations accept any invitations to participate in any social or sports activities organised by the developers, contractors or other businesses, whether or not they have any ongoing projects?
- Do they accept any sponsorships, for whatever purposes, from businesses that come under the purview of the laws enforced by DOSH?

Relationships

- Do DOSH officers exchange Raya, New Year and other greeting cards and messages with contractors, developers, etc?
- Business people under the purview of enforcement agencies would like to develop good, friendly relationships with officers of those agencies. Such relationships would cause the enforcement officers to have no heart (*tak sampai hati*) to penalise their friends.

Why is DOSH ineffective?

- Has enforcement by DOSH to be politically correct?
- Is there political interference in its enforcement work?
- Are its officers not confident about being strict with law breakers?
- Is it a case of "*tak sampai hati*" to impose the severest penalties instead of "compounds"?

If the industrialists feel that it is cheaper to pay the compound fines and disregard the law, instead of having to spend more in order to meet the requirements of the law, they will not change their attitudes.

Overlapping jurisdictions

At least three authorities (DOSH, CIDB and the local authority) have jurisdiction over construction sites.

- a) Are there clear lines between their jurisdictions, or do their jurisdictions overlap?
- b) If jurisdictions overlap, then the laws must be amended because overlapping jurisdictions can cause finger-pointing by one agency against another.

How thorough are DOSH's forensic investigations of disasters?

1. The tower crane incident

- The driver is blamed for being unlicensed and for swinging the arm outside of the work-area perimeter.
- Someone is blamed for tampering with the mechanism limiting the movement of the arm.

All these would have gone unnoticed if not for the incident that killed someone in a car on the road outside the work area. For how long had this been going on?

- It was found that the huge hook fell because the cable broke.

So the principal cause is the breakage of the cable.

Where does the forensic investigation stop, and against whom will action be taken?

- At the driver?
- At the person who employed an unlicensed driver?
- At the person who tampered with, or directed the tampering of the mechanism limiting the swing of the arm? Did the unlicensed driver have the knowledge to do it?
- At the competent person responsible for the proper maintenance of the crane?
- At the owner of the crane who might have 'cut costs' in the maintenance of the crane, e.g. using sub-standard cable, or overusing the cable beyond its service life?
- At the person(s) who thought it was time-saving to lift construction materials from trucks on the road outside than having them manoeuvre into the construction site?
 - Did the cable comply with the specifications?
 - For how many hours can a cable be used? (like car timing belt)
 - Is there a tamper-proof system for recording the number of hours a crane is in use to determine when and what parts need to be serviced or replaced?

2. The KL Eco City pedestrian bridge collapse

From the photos in the news, it looks so obvious that the manner the bridge was anchored to its footings is so flimsy. This would be a serious engineering/design problem. It is without doubt a man-made disaster.

- Was the person who designed the anchorage points competent in his job?
- Where did he graduate from?
- Was the design the work of one person, or was it team work?
- Was the design double-checked or approved by a senior or more experienced person?
- Was this a cheaper way of anchoring the bridge on its supports?
- Why shouldn't the person(s) responsible be sent to jail to "educate" them and others that such incompetency / negligence comes with a heavy price, not just for the victims of the disaster, but also for those who create the disaster?

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05 December 2016