THE ISSUE OF SAFETY AND HEALTH IN EDUCATIONAL INSTITUTIONS: WITH REFERENCE TO LAWS AND PRACTICES IN MALAYSIA

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Abstract

Safety and health is a diverse subject, but essentially and it is based on one core principle, namely preventing harm and danger. And that means keeping people safe and healthy. Safety and health can also be defined as a freedom from hazard, protection from or not being exposed to the risk of harm or injury, inability to cause or result in harm, injury, or damage, and in terms of a place it is a place where damage or harm is very unlikely. Educational institutions which includes schools and universities should provide a safe and healthy environment for all. There are various forms of safety and health issues which can occur in educational institutions like bullying, fighting, gang activity, the use of weapons, shootings, violence against authority, violence against peers, racial, religious, sexual, gender or bias-motivated violence or intimidation as well as vandalism. The issue of safety and health can also include the suitability of the building structures itself to the occupants. Sometimes the structures itself is not suitable to be occupied and be used as educational settings. The issue can also be extended to include pollutions where students and workers in the educational settings are being exposed to unsafe and unhealthy environment from the surrounding. Such pollutions might come from air, water soil and many more. Foods hygiene can also become an issue when discussing about the issue of safety and health in educational settings. With the spread of Covid-19 pandemic in early 2020, the issue of safety and health has become a very hot topic of discussion by everyone including those belong in educational settings. Students, their parents and guardians, along with their educators and administrative staffs now demanding a more safe and healthy environment for them to teach and learn. A safe and healthy learning environment will allow students and all workers in educational institutions to focus with their respective duties and responsibilities. Similar like other workplaces, the issue of safety and health in all educational institutions should be the prime concern for everyone. And similar like other workplaces, employer in the educational institution play very important role to ensure their educational premises is safe and healthy for everyone. Employer in such institution should take responsibility if there is any neglectful breach on their part to ensure safety and health issue in their educational settings. All educational settings should provide conducive space where everyone can come to teach and learn without having worry over their own safety and health. Safety and health of the students and workers which includes educators and the administrative staffs in the educational settings should be given top priority for everyone. There cannot be any compromise on such issue. As such, it is the object of this paper to examine further the issue of safety and health further and identify the existing laws and practices in Malaysia in dealing with such issue particularly the Occupational Safety and Health Act 1994 [Act 514]. Possible recommendations will also be included in the paper to further strengthen the issue of safety and health in all educational institutions in the country.

Keywords: Safety, health, education
1. INTRODUCTION

The issue of safety and health is the hot topic of discussion for everyone. Regardless of their background and the county which they belong to, the issue of safety and health is the prime concern for all. Everyone want to be safe and stay health not only for themselves but also for their family and anyone they know. Only insane peoples who are not care about their own safety and health. The issue of safety and health becomes more important when it’s come to our children. Being young, wild and naïve, some children and young people might expose themselves to the risk of danger which can affect their own safety and health. In this situation, adults mostly parents and educators will often play an active roles to protect the children and young people from any possible harm and danger. When it comes to safeguarding children and young people, prevention is much better than cure. Children and young people trust us with their lives because that’s what parents and educators will normally do. Children and young people are often not aware that they are being subjected to harm or danger until they grow older. This is because they still cannot properly distinguish between what is safe or unsafe situation or healthy or unhealthy situation. For this simple reason, educators take the responsibility to monitor the behaviour of their students at school, while parents should take note of any changes in behaviour at home. Among the harm or danger which might be expose to children and young people includes bullying, assault, violence, any forms of illegal substances abuse like drug and alcohol, smoking, and many more. (Study Cruise, March 4, 2022). The issue of safety and health has always become main topic discussion and concern for everyone even before the spread of Covid-19 pandemic in early 2020 begin.

This issue not only been focus in today’s post pandemic world after the spread of Covid-19 in early 2020 which has badly affected the safety and health of everyone on the planet but it also been topic. The Covid-19 pandemic, also known as the coronavirus pandemic, is an ongoing global pandemic of coronavirus disease 2019 (Covid-19) caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) (Saniasiya J, Islam MA, and Abdullah, B, April 2021). The novel virus was first identified from an outbreak in Wuhan, China, in December 2019 (Page J, Hinshaw D, and McKay B, February 26, 2021) Attempts to contain it there failed, allowing the virus to spread to other areas of China and later worldwide. The World Health Organization (WHO) declared the outbreak as a public health emergency of international concern on 30 January 2020 and a pandemic on 11 March 2020. As of 1 September 2022, the pandemic had caused more than 603 million cases and 6.49 million confirmed deaths, making it one of the deadliest in human history (Johns Hopkins University and Medicine Coronavirus Resource Center, September, 2022). As a result of the spread of this virus, many countries including Malaysia has taken many strict measures to control and curb the spread of Covid-19 within their border. The most notable measure which been taken is the implementation of total lockdown for all working sectors including educational sectors. In Malaysia, the government had introduced the

Movement Control Order (In Malay: Perintah Kawalan Pergerakan Kerajaan Malaysia), commonly referred to as the MCO or PKP. It was a series of national quarantine and cordon sanitaire (Restriction of movement) measures implemented by the country federal government in response to the Covid-19 pandemic in the country starting on 18 March 2020 (Bunyan, John, March 16, 2020). The orders have been commonly referred to in local and international media as “lockdowns”. MCO measures encompassed restrictions on movement, assembly and international travel, and mandated the closure of business, industry, government and educational institutions to curb the spread of Covid-19 (Sukumaran, Tashny, March 16, 2020). The closure of all educational settings in the country which includes schools and universities could reduce and prevent the spread of Covid-19 virus which can bring severe harm and danger to the safety and health of the pupils. Students and educators in all education settings are permitted to stay at home and resume their teaching and learning process through online (Khairah N. Karim, March 28, 2020). The spread of Covid-19 has force the government in the country to take strict measure to protect the safety and health of everyone in the educational institutions. Those who violates the orders can be prosecuted under the Prevention and Control of Infectious Diseases Act 1988 [Act 342] and the Police Act 1967 [Act 344] (Tang, Ashley, March 16, 2020).

However, crucial to note, the issue concerning safety and health within educational settings in the country does not being restricted to Covid-19 pandemic only. For the last many years and very recently, the issue concerning safety and health of involving everyone belonging to the educational settings in the country has become main topic of discussion. In July 2022, the Malaysian Education Ministry has identified 351 dilapidated schools in Sarawak, of which 107 have been deemed unsafe by the works department (JKR). Education minister Datuk Dr. Mohd Radzi Jidin said the 244 other schools deemed dilapidated involved unsafe buildings, adding that this was
confirmed by the district education offices. In a written parliamentary reply, he said 282 upgrading projects for dilapidated schools in Sabah had been approved from 2016 to 2022, involving RM1.9 billion in costs. As of July 6, 186 of these projects had been completed while 32 were ongoing and 64 were at the pre-construction stage. Radzi was replying to Larry Sng (PBM-Julau) and Ma’mun Sulaiman (Warisan-Kalabakan) on the number of dilapidated schools in Sabah and Sarawak. He also said the reconstruction of SMK Kalabakan, which was categorised as dilapidated, was still at the negotiation stage because the land involved had yet to be placed under the federal land commissioner’s ownership (Free Malaysia Today, July 21, 2022). Following are some of the reported news which highlight the issue concerning safety and health which involved educational settings within the country. On 29 August, 2022, the police have arrested 11 teenagers in connection with the assault of three male students of a boarding school in Chukai, Terengganu. Kemaman Police Chief Hanyan Ramlan said the suspects, aged between 13 and 16, were picked up from the school hostel and their homes in Kemaman. Police had received reports from the three victims, aged 13 to 15, alleging that several seniors at the hostel beat them up. “The victims claimed they were assaulted for reporting to a school teacher that the suspects were vaping at the hostel. “The beating caused the first victim’s right eardrum to burst while the second and third victims suffered various injuries on their bodies,” he told reporters. Hanyan further said the 11 suspects had been remanded for four days beginning today for investigation under Section 147 of the Penal Code [Act 574] for rioting and Section 235 of the same code for causing grievous hurt. Hanyan had also advised school managements to be more sensitive to bullying cases and to take immediate action if there were reports of such incidents happening on their premises (Free Malaysia Today, August 29, 2022). The issue of safety and health can also occur while students or workers are their way to the educational setting. On August 16, 2022, a school van skidded into a drain in Tikam Batu, Kedah, leaving 16 pupils injured. The van was reported to have travelling without insurance coverage and road tax. This was discovered after traffic police opened an investigation into the 7.40am incident which also left the van’s 43-year-old driver with a minor head injury. Kuala Muda Police Chief Assistant Commissioner Zaidy Che Hassan said checks revealed that the insurance and road tax for the van had expired on March 9 this year. “Initial investigations showed that the driver from Pantai Merdeka, Kota Kuala Muda did not doze off behind the wheel when he lost control of the vehicle. “We have reclassified the case, it is now being investigated under Section 43(1) of the Road Transport Act 1987”, he said in a statement. The van was travelling from Taman Sejati to send the victims which consist 10 boys and six girls aged between seven and 12 years old to SMK (A) and SK(A) Al-Islah Pinang Tunggal when it skidded and crashed into a drain near Taman Rhu. One of the girls broke her right arm while the other victims escaped with minor injuries. They were rushed to the Sultan Abdul Halim Hospital, here, for treatment (New Straits Times, August 16, 2022). Students and workers in educational settings might also face the risk of harm and danger while they are within or close to the educational settings compound. On August 9, 2022 several students of Sekolah Menengah Kebangsaan (SMK) Melor in Keterah, Kelantan were injured after the school's water tank burst near the school's pedestrian pathway today. Senior Education Minister Datuk Dr Mohd Radzi Jidin said the students had been sent to the hospital for further treatment. He said he was informed of the incident after the oral question and answer session at Dewan Negara. “They were taken to the hospital for further treatment. Let’s all pray that those involved in this incident will recover and all affairs will be eased” he said in a post on his Facebook. Radzi said he had instructed the Kelantan Education Department to carry out immediate repair and maintenance work to ensure that the facilities and infrastructure at the school were in good condition and safe for use. Meanwhile Kelantan acting Police Chief Datuk Muhamad Zaki Harun said two of the five students involved in the 10.05 am incident were still receiving treatment at the Universiti Sains Malaysia Hospital (HUSM). He said earlier four of the students were sent to HUSM while another victim was brought to the Mahligai health clinic to seek treatment. “One of the students suffered a cut on the head and received two stitches while the other had pain in the neck. “However, the other three students were not injured and were allowed to go home”, he said when contacted today. Muhamad Zaki said police received a report regarding the incident from the school’s senior assistant teacher who had heard a loud explosion coming from behind the office building during break time for Form 1, 2 and 3 students. “The complainant proceeded to the area and found that the main water tank had burst”, he said. Muhamad Zaki said the incident resulted in severe damage to the main tank, engine house, footpath, notice board and musolla (The Sun Daily, August 9, 2022).

On July 31, 2022, eighty per cent of the Sekolah Menengah Kebangsaan Agama (SMKA) Dato Haji Abu Hassan Haji Sail hostel building in Pedas, Negeri Sembilan, was destroyed in a fire on Sunday. Rembau fire and rescue station chief Mohd Izwan Md Said said they received a distress call at 1.18pm and arrived at the scene three minutes later. “The fire involved the male hostel building on the third floor which has 10 rooms, measuring 12 x
60 sq ft”. “The building was 80 per cent damaged but no casualties were reported as the rooms were vacant at the time of the incident,” he told the reporter. He said apart from the Rembau fire and rescue team, the operation to put out the fire was also assisted by personnel from the Kota and Senawang fire stations. “The fire was completely put out at 3.51pm. The cause of the fire is still being investigated,” he said. Meanwhile, it was understood that parents who were sending their children to the hostel were asked to go back home following the incident. (Norafidah Assan, July 31, 2022). On July 27, 2022 local media has exposed a news over a video clip of a group of students in Keningau, some 109km from Sabah’s capital, risking their lives crossing a river using a water pipeline, has gone viral. The 92-second clip was posted on a FaceBook account belonging to one Siti Hafizah Leezah, who lamented that the people of Kampung Mansiang Baru, Keningau, have no other alternative but to use the water pipeline during the rainy season. She claimed the villagers had applied for a suspension bridge and an assemblyman had gone down to the ground in April this year and promised to help solve the problem. However, she claimed that to date there has been no action, forcing her to upload the video on her social media. When contacted, Tulid assemblyman Flavia Ng said she was aware of the problem and confirmed there was no bridge in the said area. She said she was looking into the matter seriously for the welfare of the people in her constituency. Meanwhile, Tulid community development leader Casmir Silip said the application for the suspension bridge had already been approved. “There’s already an approval to build a suspension bridge at Kampung Mansiang. The matter is with the Sook sub-district office which is setting up a tender to seek a qualified contractor for the project”. “The project with an estimated construction cost of RM100,000 will be implemented after identifying a qualified contractor,” he told the New Straits Times over the phone”. The media has been highlighting several incidents involving students who risk their lives to go to school due to poor infrastructure. In Nabawan, pupils use bamboo rafts and ziplines to get to school. In Sandakan, students use a dilapidated suspension bridge to go to class. In the interior villages of Pitas, pupils risk their lives by travelling on overcrowded boats to get to school (Ersie Anjumin, July 27, 2022). On 24 July 2022, approximately 33 wooden huts at the Madrasah Al-Imaniyah tahfiz school in Kampung Darat, Jalan Sungai Ular, Kuantan, Pahang were destroyed in a fire early. However, no casualties were reported as all occupants were on school break. Pahang Fire and Rescue Department operations assistant director Ismail Abdul Ghani said they received the distress call at 9.39 am and 16 firefighters with three engines from Gebeng and Indera Mahkota fire and rescue stations were rushed to the scene. “There were 100 wooden huts there and they were situated close to each other, causing the fire to spread rather quickly”. “We managed to put the blaze under control at 10.29 am, but 33 of the huts were completely destroyed”, he said when contacted, adding that the cause of fire and losses were still being investigated (Astro Awani, July 24, 2022).

On July 20, 2022, four rooms at the Universiti Utara Malaysia (UUM) student hostel block in Sintok here were damaged in a fire incident on the third floor of the building. Kedah Fire and Rescue Department deputy director Mohamadul Ehsan Mohd Zain said they were alerted at 10.55am, and 13 firemen from Bukit Kayu Hitam and Jitra fire stations arrived at the scene at 11.08am. “Upon arriving at the scene, the firefighters found fire engulfing four out of 12 dormitory rooms in the hostel building. No casualties were reported”. “The fire had caused 90 per cent damage to two of the rooms, while the other two were about 70 per cent damaged”, he said in a statement here today. He said the cause of the fire and total losses were still under investigation. Meanwhile, UUM vice-chancellor Prof Datuk Dr Ahmad Bashawir Abdul Ghani said the affected students were placed at a nearby block. He said the university will also provide cash assistance and necessities to help ease the burden of the students involved in the fire. He added that the university would also arrange for the replacement of students’ travel documents destroyed in the fire, besides providing counselling support (The Malay Mail, July 20, 2022). On May 24, 2022, it was reported that a 20-year-old accounting student from Universiti Utara Malaysia (UUM) in Sintok, Kedah is suspected to have died from an electric shock in her hostel room last Saturday. S Vinosiny, who was in the fourth semester of her accounting and information system studies, returned to the campus a week before the tragedy. (Ng Xiang Yi, May 24, 2022). This incident has brought many outcry from the Malaysian society. The victim family also demand the university to investigate the incident immediately and also would like to take legal action against the university. (Ng Xiang Yi, May 31, 2022).

On January 24, 2022 two fires broke out at two different branches of Maahad Tahfiz Assyatirie within 24 hours. It was reported that 240 students escaped from a fire at the hostel of the school’s Sungai Dedap branch in Yan, Kedah, at about 4.50pm. It followed a fire which broke out at the Kampung Dulang Besar branch in the same district on Saturday. In the incident, none of the students were at the hostel as they were in a different study block. The fire, which broke out at the top floor of the three-story hostel building, was put out by staff members of the tahfiz school using fire extinguishers before the firemen arrived, according to Yan district fire and rescue
department chief Fauzi Shuaib. Utusan Malaysia quoted him as saying that the ceiling and several mattresses were damaged. The fire, which also broke out on the top floor of the two-story hostel building at the Kampung Dulang Besar branch, caused slight damage but no one was hurt as the students were doing outdoor activities (Free Malaysia Today, January 24, 2022). On January 18, 2022 ten schools located within a 10km radius of the Pulau Burung landfill on the mainland of Penang were ordered to close from Wednesday (Jan 19) to Friday (Jan 21) following a fire at the landfill that broke out last Wednesday (Jan 12). Southern district education chief Mohamad Dziauddin Mat Saad said the decision was made after a district disaster management meeting on Monday (Jan 17). “The meeting concluded that the Air Quality Index of the areas around the schools located within the 10km radius was at Acute Exposure Guidelines (AEGL) Level 3, meaning the air quality could affect the health and threaten the lives of residents,” he said in a statement on Tuesday (Jan 18). He said the decision was forwarded to state education director Abdul Rashid Abdul Samad, who then issued the order for the 10 schools to be closed from Jan 19 to 21. The schools affected by the closure are SJK (T) Ladang Byram, SJK (C) Pai Teik, SMK Seri Nibong, SJK (T) Nibong Tebal, SK Seri Sentosa, SK Keledang Jaya, SJK (T) Ladang Changkat, SMK Methodist, SK Methodist and SK Nibong Tebal. Mohamad Dziauddin said the affected schools have also been instructed to inform parents, canteen operators, bus operators and others about the closure of the schools. “We also instructed the schools to provide staff on Wednesday (Jan 19) morning in case there are students who did not receive the news of the school closures”, he said. He also said the district education office will announce any decision on the reopening of the 10 schools no later than this Saturday (Jan 22), based on the decisions and advice of the South Seberang Prai district disaster management committee. Mohamad Dziauddin said that during the closure, students will resume their learning through online classes and the schools are required to inform teachers and parents about the online classes. It was reported that some 400 residents from 86 families living near the Pulau Burung landfill had to be evacuated following the unhealthy Air Quality Index reading as a result of the fire that broke out at the landfill. Meanwhile, state police chief Comm Datuk Mohd Shuhaily Mohd Zain has assured the residents who have been ordered to evacuate their homes not to worry about the safety of their neighborhood. Comm Mohd Shuhaily said police personnel on duty including the Motorcycle Patrol Unit (URB) as well as the South Seberang Prai district Patrol Car Unit (MPV) will conduct regular patrols in the affected areas. “The police will conduct patrols in the affected areas and residents who have been instructed to move to a temporary relief centre don't have to worry”, he said in a post on the Penang PDRM Facebook page on Monday (Jan 17). Comm Mohd Shuhaily visited the landfill site on Monday, accompanied by the South Seberang Prai OCPD Supt Lee Chong Chern and his deputy DSP Baeyah Abdul Wahab. Present during the visit were Fire and Rescue Department Prai zone chief Nor Hailuddin Norainid, who briefed Comm Mohd Shuhaily on the latest in the fire incident. (Imran Hilmy, January 18, 2022).

As stated earlier, the issue of safety and health in educational settings can also include the issues concerning assault, bullying and harassment. On June 1, 2017, a 21 year old local university student, Zulfarhan Osman Zulkarnain was found dead in hospital after suffering from a very severe physical act of bullying. The act was believed to have done by several numbers of youth belonging to the same university and from other local university. According to the news report, when the victim was rushed to the hospital, his body was found to have been 80% covered in bruises and burn marks which was believed due to a belt, rubber hose, iron and hanger. Further investigation which was carry out to identify the main cause which lead to the dispute and it was believe that it all happen because of a dispute over a laptop. A total number of 36 suspects have been remanded and the case are being investigated for murder under the Malaysian Penal Code [Act 574] (The Star, June 3, 2017). On November 2, 2021, the Malaysian High Court sentenced six students which was involved in the case to 18-year jail after they were found guilty of culpable homicide not amounting to the murder of Zulfarhan Osman Zulkarnain. The judge ordered them to serve the sentence from the date of their arrests on June 1, 2017. The judge, in his decision, said that the court found that all of the accused guilty under Section 304 (a) of the Malaysian Penal Code [Act 574] of causing injuries to the deceased with no intent of murder, which carries imprisonment for a term of up to 30 years, and shall also liable to fine, upon conviction. The court also sentenced five of the accused and their 12 friends after finding them guilty of injuring Zulfarhan Osman. They were found guilty of deliberately injuring the victim to coerce a confession from him that he had stolen a laptop, as charged under Section 330 of the Malaysian Penal Code [Act 574]. The judge, however, allowed a stay of execution of the jail sentence for the 12 accused pending appeal (Daniah Dzulkifli, November 2, 2021). In July 2020, one student from local university in the country had lodge a police report over what she claimed was inaction taken by the university authorities which she studied over the alleged sexual harassment of her by an associate professor in the university. The victim (student) has urged the police to investigate saying that there
were no details of the internal probe conducted by the university into the incident which happen (Wong Kai Hui, July 15, 2020). However, later the police have confirmed ending their investigation on the allegations. According the police, the police had investigated and referred the case to the Deputy Public Prosecutor (DPP) on August 13, and the DPP had stated No Further Action (NFA) because the suspect has already faced disciplinary action from the university (Rameiza Wahid, August 27, 2020). Recently the country also has been exposed with an allegation made by a 17 year old student who exposed her school teacher who making a jokes about rape during physical and health education class at her school. Feeling uncomfortable, the student lodge a report to the police. The student also received rape threat from her colleague after exposing the issue to the public and as a result had to lodge another police report because of it. (Geraldine Tong, 2021). However, similar with the sexual harassment issue involving one local university mentioned earlier, the police has decided that No Further Action (NFA) will be taken in for school girl case as the police received a No Further Action (NFA) notice from the Deputy Public Prosecutor regarding the case. (Free Malaysia Today, August 5, 2021). Not only that, the accused teacher has decided to take legal action against the student for defamation (Shahrin Aizat Noorshahrizam, November 30, 2021).

The issue concerning safety and health not only affecting students, it also affects the safety and health of all workers who work in the educational settings itself. This includes teachers, lecturers, administrative staffs, gardeners, as well as security guard. In 2016, a total of 24 students and five teachers of SK Iskandar in Alor Setar, Kedah, suffered from symptoms of food poisoning after having breakfast at the school this morning. State Health director Dr Norhizan Ismail said the Kota Setar district health office received the information from the Sultanah Bahiyah Hospital Emergency Department at 11.30am. He said the initial investigation found that 24 students (21 boys and three girls), aged eight to 12, as well as a male teacher and four female teachers, had shown symptoms of food poisoning such as vomiting. “All the victims were said to have fried rice prepared under the Supplementary Food Programme (RMT) at 7am. After receiving the information, medical teams from the Bandar Alor Setar health clinic and the hospital’s emergency unit were deployed to the school”. All students and teachers were given outpatient treatments. Norhizan also said that the school’s canteen was ordered to close under the provisions of Section 18 (1) (d) of the Prevention and Control of Infectious Disease Act 1988 [Act 324] and further investigations were ongoing to determine the cause of the incident. (Malaysiakini, October 22, 2019). In 2016, a female security guard of a primary school in Lutong died after she was crushed by a 15-foot long school gate. The 5pm mishap took place when the security guard, in her 40s, was standing near the steel gate when it fell on her. The deceased has been identified as a resident of Kampung Api, Lutong. She died on the spot due to serious head injuries. The body has been sent to the Miri Hospital morgue for a post-mortem. (Margaret Ringgit, July 17, 2016). All these example of cases clearly indicate to us that it is very important to remember that, the safety and health of everyone belonging to the educational settings should be the prime concern of all relevant parties particularly the employer. Those who are in charge of the educational settings like principals in schools and vice – chancellor in universities should give serious attention to the issue concerning safety and health of everyone within their educational settings. If there is neglect on their part on the matters, legal action should be taken against them under any existing laws in the country.

2. MALAYSIAN LAWS AND PRACTICES OVER THE ISSUE OF SAFETY AND HEALTH IN EDUCATIONAL SETTINGS

Malaysian laws is heavily influenced from the British. This is due to the fact that Malaysia was colonized by the British from 1786 until 1957. During the period of British colonial in Malaysia, heavy influence of the British judicial and legal system has influence the country judicial and legal system and structures until today (Wu Min Aun, 1990, pp. 1 – 31 and Lee Mei Pheng, 1998, pp. 13 – 48). There are various kind of labour statutes which currently been used and enforced in Malaysia. The main labour statutes which are being enforced in Malaysia includes the (i) Employment Act 1955 [Act 265] (the law applicable in the States of Sabah and Sarawak are the Labour Ordinance Chapter 67 and Chapter 76, respectively); (ii) Industrial Relations Act 1967 [Act 177]; (iii) Employees Provident Fund Act 1991 [Act 452]; (iv) Employees Social Security Act 1969 [Act 4]; (v) Trade Unions Act 1959 (Revised 1981) [Act 262]; (vi) Factories and Machinery Act 1967 [Act 139]; (vii) Occupational Safety and Health Act 1994 [Act 514] and others (Siti Zarahah Jamaluddin, 2000, pp. 153 – 177, Sharifah Suhanah Syed Ahmad, 2012, pp. 179 – 196, Ashgar Ali Ali Mohamed, 2014, pp. 35 – 74 & Marilyn Aminuddin, 1990 at pp 1 – 9). However, worth for us to take note that, there have been many changes and amendments made to the country existing labour law. This is done by taking into account the changes of working landscape in workplaces after the spread of the Covid-19 pandemic. However since the aim of this research paper is to focus with the
issue concerning safety and health, as such the focus will only be given here to the amendments made to the existing Occupational Safety and Health Act 1994 [Act 514] which focus on increasing the quality of safety, health and welfare of workers. The Occupational Safety and Health (Amendment) Bill 2020 were passed by the Malaysian parliament in 2021. They extend the scope of applicability to all places of work in Malaysia, including public services and authorities. The Occupational Safety and Health (Amendment) Bill 2020 and the Factories and Machinery (Repeal) Bill 2020 were passed by the country Dewan Rakyat (House of Representatives) and the Dewan Negara (Senate) on 27 October 2021 (Rohaniza Idris, October 27, 2021) and 13 December 2021 respectively (Shannon Rajan and Jeremiah Ch'ng, February 8, 2022). The Bills will bring about significant amendments to the existing Occupational Safety and Health Act 1994 [Act 514], which as amended by the Occupational Safety and Health (Amendment) Bill 2020. This includes the introduction of 27 new sections, the removal of 2 sections and the amendment of 35 existing sections. Further, with the repeal of the Factories and Machinery Act 1967 [Act 139], the Bills seeks to integrate the Occupational Safety and Health Act 1994 [Act 514] and the Factories and Machinery Act 1967 [Act 139 provisions into one comprehensive health and safety legislation. According to the country Human Resource Minister Datuk Seri M. Saravanan, when tabling the bill for the second reading in the Dewan Rakyat, said that the amendments made to ensure that the country’s labour laws including those related to occupational safety and health, were in line with the provisions in the universal instruments, particularly the Occupational Safety and Health Convention 1981 (C155) (The Malay Mail, October 27, 2021).

Among the key changes which been made to the Occupational Safety and Health Act 1994 [Act 514], which as amended by the Occupational Safety and Health (Amendment) Bill 2020 includes “All places of work” include working from home, so that employees are similarly protected under the amendments, duties of principal to ensure safety of contractors and sub-contractors, duty to conduct risk assessments as employer, duty to develop and implement procedures to deal with emergencies as employer, places of work that are not included in any class or description of place of work as gazetted require an Occupational Safety and Health Officer / Coordinator, employees have the right to “remove” themselves from “imminent danger” (danger to life or body injury) at the workplace subject to certain pre-conditions, increase penalties and punishments for employers, self-employed persons, principals and manufacturers (max. RM 500,000 for employers, self-employed persons and principals who breach their duties under the Act, max. RM 200,000 for designers, manufacturers and suppliers who breach their duties under the Act, imprisonment for a term of up to 2 years or both), directors and office bearers including directors, compliance officers, partners, managers, secretaries or other similar officers of a company are be jointly and severally liable for offences committed by the company (defence: offence committed without knowledge or consent, reasonable precautions were taken to prevent the offence, inspection of plant and issuance of certificate of fitness by any person who has been granted a licence by the Minister, and notice of occupation of place of work, installation and inspection of plant required. Employers will have to take a pragmatic approach and ensure a safe working environment for employees who work on site or from home. This includes taking into account ergonomics at workplaces. Further guidelines have not been published yet, even though employers do not have control over the environment at an employees' home (The Malaysian – German Chamber of Commerce and Industry, 2022).

When we discussing about the issue of safety and health in workplaces including in educational settings, there are various circular or guidelines which been prepared by the country Ministry of Education (MOE) and Ministry of Higher Education (MOHE) to ensure the safety and health of the students and all workers in the educational sectors. There are also initiative taken by individual educational institution particularly the university to prepared and developed their own safety and health policy guidelines. However, when we are discussing about the law, it is the researcher humble views that the most suitable piece of legislation which can ensure the safety and health of every single individual belonging to the education sectors is the Occupational Safety and Health Act 1994 [Act 514]. There should be no reason why educational settings in the country be exempted from such Act. Those who are studying and working in the education settings are human being, thus their safety and health should be protected under the existing Occupational Safety and Health Act 1994 [Act 514]. This is also in line with the objects of the Occupational Safety and Health Act 1994 [Act 514]. The objects 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 of this Act designed to maintain or improve the standards of safety and health. This matter has also been agreed by many scholars including local activist like Tan Sri Lee Lam Thye who is the former chairman to the National Institute of Occupational Safety and Health (NIOSH), Ministry of Human Resources, Malaysia (MOHR) (The Malay Mail, September 23, 2017). Every workplaces including educational settings should be free from harms and dangers which can affect the safety and health of its occupants as well as those who come or visit the area. Section 3 of the Occupational Safety and Health Act 1994 [Act 514] has also defined “place of work” as premises where persons work or premises used for the storage of plant or substance. The definition given over “place of work” is very wide and subjective in nature, thus, it might also include educational settings where teachers, lecturers and administrative staffs come to work and make a living. However, it worth to note that this piece of legislation does not applicable to those work on board ships governed by the Merchant Shipping Ordinance 1952 [Ord. No. 70 of 1952], the Merchant Shipping Ordinance 1960 of Sabah [Sabah Ord. No. 11 of 1960] or Sarawak [Sarawak Ord. No. 2 of 1960] or the armed forces. This is been highlighted clearly under Section 1 (3) of the Occupational Safety and Health Act 1994 [Act 514].

Interesting opinion has been given by the country leading social activist namely Tan Sri Lee Lam Thye on the applicability of Occupational Safety and Health Act 1994 [Act 514] towards the educational settings. According to Tan Sri Lee Lam Thye, there is a need for schools to be aware of the existence and importance of the Occupational Safety and Health Act 1994 [Act 514] and its application to educational institutions in the interest of safety and health. The application of the Act to the schools as “the place of work” aims to make all schools safe and healthy places of work for teachers, students or visitors alike. Although the Act is primarily intended for the protection of workers, it does include sufficient provisions for protecting others affected by the activities of the working people. In a school context these others would primarily be the students. Both the schools management and the Department of Education would be the employers of the school while the workers would be the teachers and the administrative and other support staff. In accordance with the Act, the school management and the Department of Education representing the employers have general duties to ensure the safety, health and welfare of their employees (teachers and support staff) as well as to protect the others (students and visitors) affected by the activities of the schools. In line with the provisions in the Act, it is the duty of the employers (school management) to formulate a safety and health policy for the school, implement risk prevention through safety and health inspection and safety and health auditing of schools to identify weaknesses and shortcomings and to decide on remedial measures in the interest of safety and health at the workplaces. Schools with 40 or more employees are required to set up safety and health committees where the staff and school managements are represented to discuss and resolve all matters pertaining to health and safety at work. The most urgent task is of course to create safety and health consciousness among the teaching and support staff as well as among the students and to promote a safety culture. Through safety and health training and education as well as safety and health promotion, every school will be more aware of the potential safety and health hazards in all parts of the school such as the classrooms and school laboratories and be more capable of dealing with them. Ensuring that all schools and educational institutions take an active interest in safety and health will also benefit the students who can learn more about safety and health and be safety conscious from an early and receptive age. School leavers should not only have academic qualifications, but also practical safety knowledge that they can take with them into the working environment (Introduce Occupational Safety and Health (OSH) in schools, July 23, 2017). Similar protection should also be extended to institution of higher learning or universities.

According to the Occupational Safety and Health Act 1994 [Act 514], employer must try their very best to protect the safety and health of their workers. Section 15 (1) of the Occupational Safety and Health Act 1994 [Act 514] states clearly that "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". Section 15 (2) of the Occupational Safety and Health Act 1994 [Act 514] further states without prejudice to the generality of subsection (1), the matters to which the duty extends include in particular: (a) the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risks to health, (b) 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, (c) 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, (d) so far as is practicable, as regards any 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, (e) 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 (Refer further to the case of Rexallent Construction Sdn Bhd v MSIG Insurance (Malaysia) Bhd and other cases [2022] MLJU 1736, Rashidah bt Abd Ghani (as the administrator of the estate of the deceased Rohaizad bin Naim) v SJ Classic Industries Sdn Bhd [2020] MLJU 2168, Petronas Carigali Sdn Bhd v Pendakwa Raya [2019] MLJU 2166, Jabatan Kesihatan dan Keselamatan Pekerjaan v Sri Kamusan Sdn Bhd [2015] 7 MLJ 397 and Jabatan Kesihatan Dan Keselamatan Pekerjaan v Sri Kamusan Sdn Bhd [2013] MLJU 1549). So far as is practicable is a term that comes up a lot in safety and health issues and cases. But what does it mean? How to decide if something is practicable or reasonably practicable? In an ideal workplace, there would be no risk. Everyone would be completely safe. But that’s not practical, we don’t live in an ideal world. There are risks everywhere. When we cross a road, climb the stairs, or go for a walk. From the moment we get out of bed in the morning accidents can (and do) happen. And it’s the same at work. Notice it’s not a legal duty for employers to remove all risks, or stop all accidents. Not even to remove risks “as far as is possible”. It would certainly be possible to remove all falls from height by preventing all work at height. That’s possible. But it’s not practical because some work needs to get done at height. As an employer, you are not expected to completely eliminate all of the risks that your workforce is exposed to. Everything carries a risk, even everyday activities like walking down the stairs or crossing the road. It would be impossible to remove all of the risks all of the time, and importantly, it would not be reasonably practicable. Just because something is possible doesn’t mean it is reasonably practicable to put it in place. The costs or the consequences of controlling a hazard might far outweigh the small risk it presents. But just because something is expensive or will take time to do, doesn’t mean that you wouldn’t be expected to do it. Determining that risk has been reduced so far as is reasonably practicable, as required by the regulations, is a question of balance. It involves assessing the risk to be avoided and compare this with the sacrifice (in time, money and trouble) in taking measures against that risk. Section 3 of the Occupational Safety and Health Act 1994 [Act 514] has also defined the word “practicable”. According to the Act, the word “practicable” means practicable having regard to (a) the severity of the hazard or risk in question, (b) the state of knowledge about the hazard or risk and any way of removing or mitigating the hazard or risk (c) the availability and suitability of ways to remove or mitigate the hazard or risk and (d) the cost of removing or mitigating the hazard or risk.

A reference can also be made to the case of Edwards v The National Coal Board [1949] 1 KB 704. This was an important case in English case law. This 1949 case revolved around whether it was “reasonably practicable” to prevent even the smallest possibility of a rock fall in a coal mine. In this case, Mr. Edwards died in an accident after the supporting structure for the mine roadway gave way. The National Coal Board argued that it was too expensive to shore up every roadway in all of the mines. The case turned when it was decided that it was not “all of the roadways” that needed shoring up; just the ones that required it. In essence this established the need to carry out a risk assessment to establish the cost, time and trouble to mitigate a risk balanced against the risk of any harm it might cause. Asquith LJ stated in his judgment: "Reasonably practicable is a narrower term than 'physically possible' and implies that a computation must be made... in which the quantum of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk (whether in time, trouble or money) is placed in the other and that, if it be shown that there is a great disproportion between them – the risk being insignificant in relation to the sacrifice – the person upon whom the obligation is imposed discharges the onus which is upon him". This case established the concept of "reasonable practicability". The Court of Appeal decided that “reasonably practicable” was a more narrowly defined phrase than what was “physically possible”. This allowed for the creation of equations that measured the risk present in a given situation against the reasonable practicability of mitigating that risk. In other words, the equation asked if averting the risk was worth the effort it took to negate that risk. In addition, the court in Edwards determined that the size and wealth of the company should have no bearing on such decisions.

3. POSSIBLE SOLUTIONS

Whatever views peoples might have, the issue of safety and health of every individual in educational settings should not be taken for granted. The safety and health of students, educators, administrative staffs, and anyone who come to the premises should be the prime concern for everyone. As leader, employer in educational settings must take this issue very seriously. They must ensure everyone in the educational settings received proper protection as much as possible. The duties and responsibilities over such protection should not be restricted to peoples inside the educational settings compound only. Employer must also ensure every concern parties to the educational setting are safe when they are travelling to and from the educational setting itself. In
National Institute of Occupational Safety and Health (NIOSH) has called on the public to implement the occupational safety and health (OSH) management system at all places of work, including schools and educational institutions. The then NIOSH chairman Tan Sri Lee Lam Thye said OSH should be made the people's agenda and it was also even more urgent now in the wake of the recent fire at the Darul Quran Ittifaqiyah residential religious school in Jalan Keramat Ujung, which claimed 23 lives. According to him, "Fatal tragedies including fires at tahfiz schools could be prevented if a good OSH management system was implemented at workplaces and safety audits carried out". "With the help of other agencies and non-governmental organisations, NIOSH will continue to educate the public and create awareness on safety and health at work among workers and their family members". He also explained that schools were also considered as workplaces under the Occupational Safety and Health Act 1994 [Act 514], and as such an OSH committee must be set up if it had 40 workers or above. He said NIOSH would bring the ideas and aspirations of OSH practitioners to the government, including those which were gathered during the then 2050 National Transformation session on OSH at the workplace. He also added that NIOSH would also promote the Vision Zero campaign which emphasises that injuries and ill health at the workplace were preventable if good OSH practices were given attention. "Vision Zero is not a new target but a change in our mindset that all injuries and ill health can be prevented. The pursuit of it was not about achieving zero accidents but to find solutions to help prevent injuries and ill health". (The Sun Daily, September 27, 2017).

Malaysia already have many laws beside the Occupational Safety and Health Act 1994 [Act 514] which can protect people’s safety and health in any workplaces including for educational settings. The only issue now is the monitoring and enforcement process of such laws. As such, it is very important for relevant authorities in the country to this issue very seriously and do all the monitoring and enforcement process. Stern action must be taken against anyone who violated all the existing laws in the country. The country has made many news laws recently to further protect individual rights. Such new laws can also be used to protect the safety and health of everyone in the educational settings itself. Among the new laws is the Anti-Sexual Harassment Bill 2021. On July 20, 2022, Malaysian Parliament has voted to pass a bill to enact laws to protect both men and women against sexual harassment. "The law is for all Malaysians. It is a manifestation of the commitment of the government to prevent sexual harassment among the genders", Women, Family and Community Development Minister Datuk Seri Rina Harun said in Parliament. Although the law is more towards protection of women against sexual harassment, she noted the law will also apply to men also. “The sexual harassment laws cover all individuals irrespective of gender”, she said. Under the law, those found to have those committing sexual harassment may end up paying their victims a sum of up to RM250,000 in compensation or in default, serve a two-year jail term. Apart from being ordered to make restitution for losses suffered by the victim, an offender will also be required to issue an apology. If the sexual harassment was done in public, the offender will be required to make a public apology. Rina also said that companies will also be required to display anti-sexual harassment poster or materials in the workplace. “We have also agreed to increase the penalty from RM10,000 to RM50,000 for companies who fail to manage incidents of sexual harassment in the workplace”, she added. She said an action plan has been drafted to implement the law once it becomes enforceable. The minister also said that that sexual harassment cases will be dealt with by a 12-member Anti-Sexual Harassment Tribunal to be set up for the purpose. The tribunal will comprise a president and deputy president, who will be appointed from among members of the judiciary. The remaining members will be made up of former members of the judiciary or experienced practising lawyers and those with expertise in sexual harassment laws. She said both the complainant and accused have the right to be present during proceedings. A victim will have the right to legal representation. This right is extended to the accused if the victim engaged a lawyer. However, the right to legal representation will only apply if the case involves complex legal issues. An award made by the tribunal is akin to a court order and is final with appeals to the High Court for a judicial review allowed on serious breaches of procedural matters. A victim of sexual harassment will still have the right to lodge a police report or file civil proceedings against an offender. The tribunal has the power to reject complaints that are unreasonable and frivolous (Martin Carvalho, Tarrence Tan and Raganathini Vethasalam, July 20, 2022). The Malaysian Ministry of Education (MOE) has also taken a very innovative step to ensure students safety in school by launching a portal for complaints on bullying incidents in schools. It was launched in August, 2022 to enable bullying incidents to be reported directly to the Ministry of Education (MOE). Senior Education Minister Datuk Dr Radzi Jidin said the portal, which can be accessed at https://www.moe.gov.my/aduanbuli, provides three channels for members of the public, parents or guardians to report any bullying incident in school. The channels are through a special hotline at 03-88849352, email at adubuli@moe.gov.my or through the MOE Public Complaint Management
System (SISPA). The special hotline can be contacted round the clock and every complaint will be responded to immediately by the MOE (The Malay Mail, August 18, 2022). However, it is the researcher humble view that besides having a special portal addressing the issue of bullying, having a strong and comprehensive legislation in place addressing the issue of bullying in all educational settings is also very important (Muzaffar Syah Mallow, May 24, 2022). The researcher also would like to propose the government to strongly consider implementing online teaching and learning process in educational settings as it would serve many benefits which also includes ensuring safety and health of all parties (Muzaffar Syah Mallow, July 19, 2022).

REFERENCE LIST


