

Influence of Legal Literacy and Communication in the Enforcement of Environmental Laws

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Abstract

Legal literacy and communication have become a crucial matter in today's environment. Lack of legal awareness has led to the failure of in the execution of many laws. Ensuring the enforcement of environmental laws has made it crucial of enforcement officers to be legally literate. However, legal literacy itself has a various approaches. There are two approaches to legal literacy, the continuum approach and legal literacy as a metaphor. In this paper, a study was done to assess the influence of the both approaches based on document analysis on Department of Environment (DOE) documents used in the enforcement of environmental laws. The study was carried out by identifying the analyzing the themes and subthemes of the legal literacy approaches that influence the enforcement of open burning cases. Qualitative study was conducted using the environmental laws and enforcement documents by data analysis using Nvivo 11 software. The findings show that the continuum approach influence the enforcement through the elements of Literacy and Expertise while legal literacy as a metaphor approach influence enforcement through Thought and Judgement elements. The results of this analysis is observed to be dynamic, whereby the themes of both approaches cannot stand alone but is interdependent with other themes in the process of enforcement. In conclusion, based on the document analysis, both legal literacy approaches influences the process of enforcement of environmental laws in Malaysia.

Key Words: legal literacy, enforcement, environmental law

1. Introduction

Malaysia is one of the largest environmentally rich and diverse countries in the world. But at present, her traditions and heritages have been facing numerous environmental degradations. To cope with these problems, the Government of Malaysia has already passed some important environmental laws and policy [1]. The Department of Environment under the Ministry of Natural Resources & Environment has the mission to ensure sustainable development in the process of nation building [2]. Sustainable development is defined as development that meets the needs of the present without compromising the ability of future generations to meet their own need [3]. However, the question arises whether the sustainable development mission has been effective with regards to enforcement of environmental laws in Malaysia.

Chong (1992) had identified that inadequate capability on the part of enforcement officers can cause problems. Enforcement problems occurs in all sectors but no one has investigated its

causes [4]. The abilities that a person needs to deal effectively with law related issues is defined as legal capability. Legal capability is divided into three areas: knowledge (legal literacy), skills and attitudes. The person who has the legal capability is a person who has knowledge (legal literacy), skills and attitudes to deal with issues of law relating to effective [5]. Federal Court judge Datuk Azhar Mohamed said there was no shortage of environmental laws that have been enacted to establish a balance between development and environmental conservation. "While various legal environment laws were introduced, the problem here that I see is in the enforcement of this law" [6]. Despite the significant numbers of breaches of environmental law, the proportion of prosecutions or other enforcement action is extremely low. The officers entrusted to make environmental protection policies and regulations also lack legal qualifications as they are trained in the planning, engineering, survey or architectural areas and not law. This largely reduces the effectiveness of the legal provisions [7].

Ruslan dan Amirul (2006) stated that one of the issues and challenges in the enforcement of legislation is knowledge of the inspection officers from the Department of Environment. The effectiveness of the enforcement is only possible through careful planning and site inspection. The challenging task is to develop the inspection officers thinking so that careful thought and good judgement shall always be applied as no amount of checklist can substitute careful thinking besides understanding the whole law [8]. The Environmental Quality Act 1974 is related to the prevention, abatement, control pollution and enhancement of the environment. However, the enforcement of the Act, its rules, regulations and orders are subjected to interpretation, the capabilities of enforcement officers, their expertise and human factors [9].

Officers must be able to read and comprehend legal concepts [10]. The best officers can comfortably read and navigate legal statutes and apply them accurately on the job. The need for attention to detail is directed through critical and active reading by officers of the important documents they examine daily. A thorough knowledge and ability to read laws and statutes is needed in order to write reports that will be upheld and honored by a judge in court. Writing skills are critical to the development of every effective law enforcement officer. Officers must write clearly, include all relevant details, and present themselves professionally in their reports in order to ensure conviction or a guilty plea from a suspect. In addition, effective writing skills help establish an officer's authority as one that can ensure convictions through detailed paperwork. The reports officers write are reviewed and critiqued by lawyers, who are many times more familiar with the legal language, minutia, and statutes than officers. Legal literacy skills and effective performance of those skills by officers is not a casual convention in order to avoid confusion, but a critical skill that determines their authority on the street and in the courtroom [11]. The failure of execution of many laws has been attributed to the lack of awareness, in the sense of legal literacy [12].

Literacy, by its original definition is the ability to read and write. In its expanded meaning, literacy is defined as being knowledgeable in a certain subject or field [13]. Seawight (2012) describes that the effective definition of literacy for the purpose of enforcement, as provided by W. S. Gray, that a person is functionally literate when he has acquired the knowledge and skills in reading and writing which enable him to engage effectively in all those activities in which literacy is normally assumed in his culture or group. This definition is effective because it highlights an officer's responsibility to be literate among his peers and the legal culture, i.e. lawyers, judges, and others. The people in these positions must share a common legal language and knowledge in order to conduct the business of law enforcement [11].

Originally, the term legal literacy was used to refer to an aspect of professional legal education. To be legally literate meant that you were capable of reading and writing the legal arguments, briefs, opinions, judgments and legislation that contribute to the body of law. Later, a broader meaning of legal literacy became more common as a result of different approaches to the concept [14].

The continuum approach considers legal literacy as a capacity spread along a continuum, with lawyers and judges at one end and relatively incapable laypersons at the other [15]. White considered legal literacy to mean “that degree of competence in legal discourse required for meaningful and active life in our increasingly legalistic and litigious culture.” Bilder (1999) describes legal literacy as a spectrum of functional skills related to the conduct of litigation [16]. According to the continuum approach, a certain degree of legal literacy is required for effective participation in modern society, but it is not necessary to reach the professional standard that law schools traditionally require [14].

The second approach to the meaning of legal literacy is to consider it as a metaphor. According to this view, the term is intended to suggest some parallels between the institution of the law, and a system of language to be mastered, knowledge gained and understanding achieved [14]. Full legal literacy goes beyond the development of a basic legal competence and implies the acquisition of knowledge, understanding and critical judgement about the substance of law, legal process and legal resources, enabling and encouraging the utilization of capacities in practice [17]. The study of enforcement is extremely broad. As such, the scope of enforcement of this study focused on the preparation of investigation papers by the Department of Environment officers for prosecution in Malaysia.

2. Research Method

The method conducted in this research is qualitative in nature based on the analysis of documents obtained from secondary data. Document analysis technique in qualitative methods was used for exploring a problem, developing a detailed understanding of a central phenomenon, analyzing the data for description and themes using text analysis and interpreting the larger meaning of the finding, which would not be able to be obtained from quantitative analysis [18]. The technique used involves analysis of 5 documents from secondary data sources related to enforcement of environmental laws in Malaysia. The documents are given the code to facilitate the discussion in the Table 1.1 as below:

Table 1.1 Name and Code of Documents Consulted

Document Name	Code
1. Environmental Quality Act 1974 (Act 127)	Document number (1)
2. Criminal Procedure Code (Act 593)	Document number (2)
3. Evidence Act 1950 (Act 56)	Document number (3)
4. Practical Enforcement Manual	Document number (4)
5. <i>Garis Panduan Penyediaan Kertas Siasatan</i>	Document number (5)

The themes were assessed based on Reliability Index Cohen Kappa. The kappa coefficient is generally regarded as the statistic of choice for measuring agreement [19]. Validation of quotations was conducted by two expert assessors to determine the reliability of every quotation used to describe the theme and subtheme. The reliability index value were 0.95, which is almost perfect using the scale as set by Fleiss and Gardner [20, 21, 23, 24]. Content Analysis method was conducted using Nvivo software version 11 for the purpose of processing the document analysis from secondary data. The software was used in analysis of the theme which was established by research questions in intention to obtain the objectives of the study.

3. Data Analysis

The information from the documents was analyzed using the Nvivo version 11. By using the software, the coding scheme had been formed and tested, to assess its reliability. Richard (2005) has been used as reference to conduct the steps in document analysis, as follows [22, 23, 24]: (i) The document was analyzed using NVivo 11 in accordance with the objectives and research problems. (ii) The theme and sub-themes was built using the data concerned. (iii) All documents are read and reviewed the transcript repeatedly carefully to ensure that the theme and sub-themes is build is appropriate. Paragraph by paragraph was read to identify themes and sub-themes that focus on the approaches of legal literacy in the environmental enforcement (iv)The display of the theme and subtheme is changed into a model diagram using the Nvivo software. The Document analysis process flow is shown in figure 1.1 below.

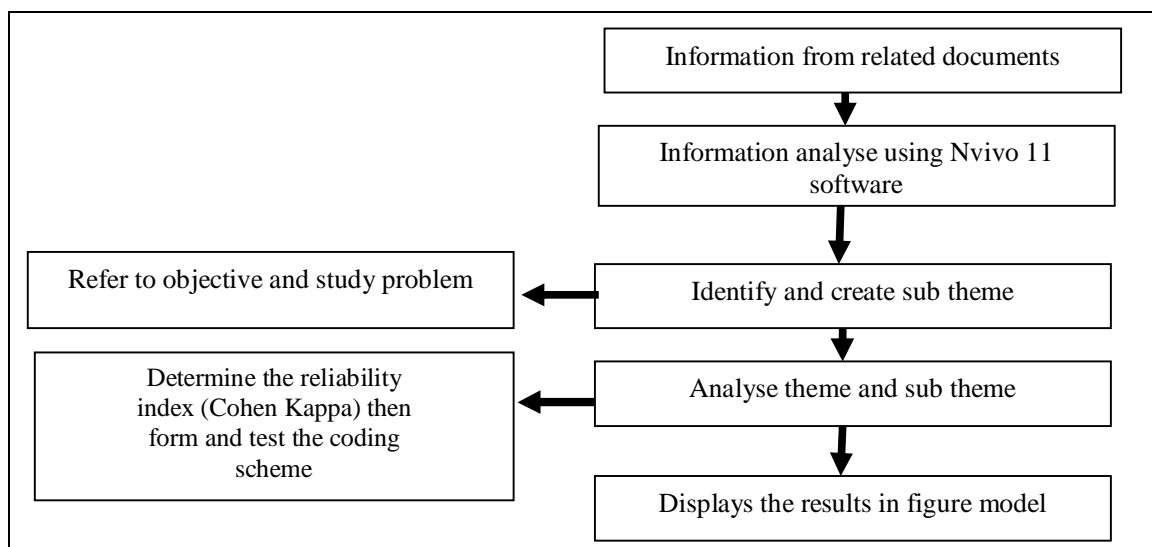


Figure 1.1 Flow Chart for Document Analysis Process

4. Results and Discussions

The findings of the document analysis for the approaches of legal literacy have been identified with 4 themes and 7 sub-themes. The themes were literacy, expertise, thought and judgement while subthemes were reading, writing, individual, bodies, process, resources and substance. All themes and sub-themes are shown in Figure 1.2 below:

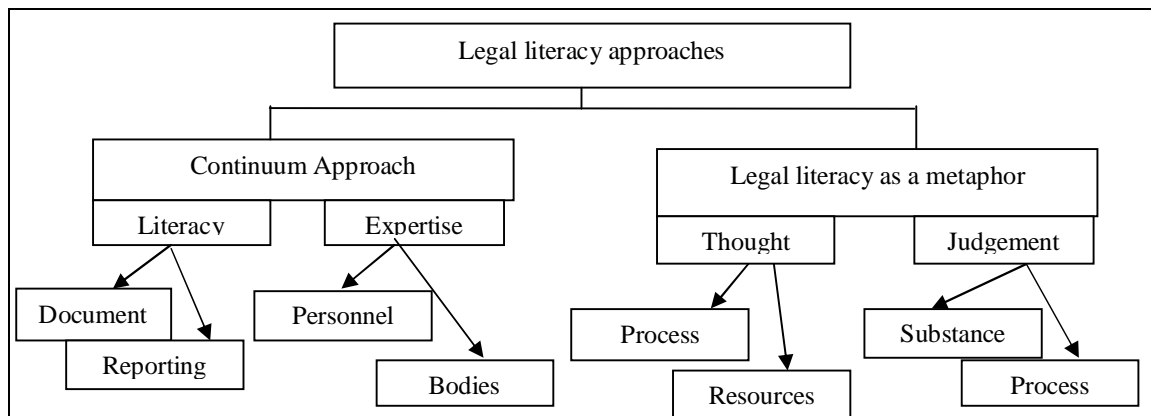


Figure 1.2: Theme and Sub Themes for the Legal literacy approaches

4.1 Literacy Theme

Literacy is an important element in the continuum approach. Legal literacy of the continuum approach emphasizes where officers has the need to know to read and write legal materials to function effectively as enforcement officers. All documents analyzed based on the theme of literacy and subthemes of document and reporting as follows: “To provide a good paperwork (on the investigation paper), an investigating officer should be aware of the law and the core of offenses committed, especially the law on the investigating powers. IO (investigation office) shall be aware of the law on the admissibility of evidence (i.e. the Evidence Act 1950) and the Criminal Procedure Code which is the law on procedures of court. In addition to the Environmental Quality Act 1974, an IO should know the application of the general provisions of the Criminal Procedure Code for procedures where necessary” [Phrase 3.1, Document No. (5)]. “When preparing the IP (investigation paper), it is important for the officer: To understand and analyse the case. To identify precisely the offences. To assess the seriousness of the offences” [Part IV, Document No. (4)] “A witness may also testify to facts mentioned in any such document as is mentioned in section 159 although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document” [Section 160 , Document No. (3)] “If a Non-compliance is serious enough to be prosecuted, the follow up will include preparation of an Investigation Paper (IP). The IP shall be prepared based on the inspection report and evidence collected. A thorough developed inspection report will be the base for the investigation paper or it may constitute the investigation paper. The main purpose of the IP is to facilitate the prosecution by describing the facts and evidence of the case systematically and by listing the witnesses and their statements” [Part IV, Document No. (4)]. “A witness may while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory” [Section 159 (1), Document No. (3)]. “Every information relating to the commission of an offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant” [Section 107 (1), Document No. (2)]. “Every such information shall be entered in a book to be kept by that officer, who shall append to such entry the date and hour on which that information was given, and whether given in writing or reduced to writing as a foresaid shall be signed by the person giving it” [Section 107 (2), Document No. (2)]

The document clearly shows that literacy is required in the enforcement of environmental laws. Officers are expected to know how to read legal words from documents. The officers are then required to conduct those legal words into writing in the form of reporting.

4.2 Expertise Theme

Another important element in the continuum approach is Expertise. Legal literacy with a continuum approach emphasizes the need whereby the officers needs to know how and when call upon a specialist. All documents analyzed based on the theme of Expertise and subthemes of Individual and Bodies as follows: “To co-opt any persons or bodies to form panels of experts whom he considers capable of assisting him in relation to special problems” [Section 3 (1) (h), Document No. (1)]. “The investigating officer shall consult with his/her supervisory officer on the follow-up action plan in the investigation paper. The follow-up action plan must be approved by his/her supervisor officer” [Phrase 20, Document No. (5)]. “When the investigation is completed, the IO (investigation officer) shall prepare a checklist of exhibit prior to investigation paper which is referred to the Deputy Public Prosecutor to make further action. This exhibit checklist assists the investigating officer to ensure that necessary documents are included in the investigation paper. The investigation officer when instructed by the Deputy Public Prosecutor, shall carry out further investigations to obtain other evidence to support the case against the person making the violation and supplying further evidence to the Deputy Public Prosecutor” [Phrase 20, Document No. (5)]. “When the court has to form an opinion upon a point of foreign law or of science or art, the opinions upon that point of persons especially skilled in that foreign law, science or art, are relevant facts. Such persons are called experts” [Section 45(1), Document No. (3)]. “The Director General or any person duly authorized by him may require the assistance of any person in the event of pollution or an imminent threat of pollution to the environment” [Section 48B, Document No. (1)]. “In general it is important to establish a good informal cooperation with the other agencies and authorities with the overall aim to assist each other in strengthening the enforcement activities” [Part IV, Document No. (4)]. “In case of any doubt the Chemistry Department should be contacted in advance, to ensure that the correct procedure for collecting and handling of samples are complied with” [Part IV, Document No. (4)].

The influence in the element of Expertise can clearly be observed in the documents analyzed. Expertise from other relevant bodies include individuals, authorities, departments, agencies or other bodies are in accordance guidelines as laid down by the Department of Environment itself.

4.3 Thought Theme

An important element in legal literacy for the legal literacy as a metaphor approach is Thought (critical or careful thinking). All documents analyzed based on the theme of Thought and subthemes of Process and Resources of the law in regards of enforcement are as follows: “The most important input to ensure the success of the on-site inspection is therefore the ability of the inspection officer to predict problems and to apply careful thought and good judgement” [Part IV, Document No. (4)]. “When preparing the IP, it is important for the officer: To understand and analyse the case. To identify precisely the offences. To assess the seriousness of the offences. To reconstruct the case in sequence from the beginning and to be able to mentally prepare a scenario for the whole case. To conceptualize the essence of the case in the form of a flowchart. To have and use an imaginative, inquisitive and searching mind, patience and last but not least common sense” [Part IV, Document No. (4)]. “Part IV gives some guidelines and practical advice on how to plans and prepare, how to perform and how to follow up the on-site inspection. To assist the

inspection officer, examples of reports and checklist have been provided and referred to. However, no amount of checklist can substitute careful thinking” [Part IV, Document No. (4)]. “A checklist prepared in advance (see Annex E and F) will normally be a useful tool to ensure no vital issued are forgotten that that information and data are collected in a structured way. Consequently, a standard checklist can be normally used with modifications as appropriate. However, checklist should be a result of, not a substitute for careful thought” [Part IV, Document No. (4)]

All the documents analysed show that the element of Thought has vast influence in the enforcement of environmental laws. Thought involves the process and resources of the enforcement of environmental law.

4.4 Judgement Theme

Another important element in legal literacy for the legal literacy as a metaphor approach is Judgement (using ones discretion, decision making or good judgement). All documents analyzed based on the theme of Judgement and subthemes of Substance and Process are as follows: “The basic objective of the on-site inspections is to bring about compliance with the Environmental Quality Act 1974 and subsidiary regulations in as smooth and resource efficient manner as possible. To this end the inspection officer must exercise his own judgement as to what constitutes and appropriate enforcement response to observed non-compliance. All observed non-compliances must be brought in line with the formal requirement of the EQA and subsidiary regulations soonest possible. However, the enforcement response shall be proportionate to the severity of the non-compliance in question” [Part IV, Document No. (4)]. “To provide a good paperwork (on the investigation paper), an investigating officer should be aware of the law and the core of offenses committed, especially the law on the investigating powers. IO (investigation office) shall be aware of the law on the admissibility of evidence (i.e. the Evidence Act 1950) and the Criminal Procedure Code which is the law on procedures of court. In addition to the Environmental Quality Act 1974, an IO should know the application of the general provisions of the Criminal Procedure Code for procedures where necessary” [Phrase 3.1, Document No. (5)]. “If upon a police investigation made under this Chapter, it appears to the officer making the investigation that there is sufficient evidence or reasonable ground of suspicion to justify the commencement or continuance of criminal proceedings against any person, the officer shall require the complainant, if any, and so many of the persons who appear to the officer to be acquainted with the circumstances of the case, as he thinks necessary, to execute a bond to appear before a magistrate’s Court therein named and give evidence in the matter of the charge against the accused [Section 118 (1), Document No. (2)]. “Depending on the results of the above assessment and considerations the preliminary program for the inspection officer’s inspection may be modified substantially” [Part IV, Document No. (4)]. “The most important input to ensure the success of the on-site inspection is therefore the ability of the inspection officer to predict problems and to apply careful thought and good judgement” [Part IV, Document No. (4)]. All the documents analysed show that the element of Judgement influences the enforcement of environmental laws. The Judgement involves the substance and the process in the enforcement of environmental law.

4.5 Dependence on Legal Literacy Themes

The document analysis indicate that there is a dependence on the themes of legal literacy approaches in the enforcement of environmental laws. The documents show that the theme of

Literacy has a dependent element with the theme of Thought as highlighted as follows: “When preparing the IP (investigation paper), it is important for the officer: To understand and analyse the case. To identify precisely the offences. To assess the seriousness of the offences. To reconstruct the case in sequence from the beginning and to be able to mentally prepare a scenario for the whole case. To conceptualize the essence of the case in the form of a flowchart. To have and use an imaginative, inquisitive and searching mind, patience and last but not least common sense” [Part IV, Document No. (4)].

Other dependency of elements is observed was in the theme of Literacy and Judgement as follows: “To provide a good paperwork (on the investigation paper), an investigating officer should be aware of the law and the core of offenses committed, especially the law on the investigating powers. IO (investigation office) shall be aware of the law on the admissibility of evidence (i.e. the Evidence Act 1950) and the Criminal Procedure Code which is the law on procedures of court. In addition to the Environmental Quality Act 1974, an IO should know the application of the general provisions of the Criminal Procedure Code for procedures where necessary” [Phrase 3.1, Document No. (5)]

From these documents analysed, it can be clearly seen that enforcement is dynamically influenced by the approaches of legal literacy through the dependency in the themes of Literacy, Thought and Judgement. The themes concerned cannot stand alone (independent) but need the support of another theme and then create the concept of interdependence theme in influencing the enforcement of environment laws in Malaysia.

5. Conclusion

The document clearly shows the legal literacy influences enforcement of environmental laws through the Literacy, Expertise Thought and Judgement elements in the document of procedures and laws used by the Department of Environment Malaysia. The study found that there was an interdependence of the themes in legal literacy approaches in environmental enforcement. Literacy, Thought and Judgement, which cannot stand on its own (independent) but requires the support of other themes in approaches of legal literacy. A complex interdependence that is dynamic is found through the approaches of legal literacy in the enforcement of environmental laws in Malaysia.

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