

## LEGAL CONSEQUENCES AGAINST BUSINESS ACTORS WHO DO NOT IMPLEMENT OCCUPATIONAL HEALTH AND SAFETY STUDIED FROM POSITIVE LAW

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### Abstract

Work accidents caused by companies that are negligent in implementing Occupational Safety and Health (K3) can endanger workers or laborers who are carrying out their activities in the company. They can experience minor or serious injuries, permanent disabilities, and in the worst case, can result in death for workers or laborers. Development companies must not be negligent in implementing K3 protocols in their production areas and construction areas because it can cause discomfort for workers or laborers in working and the level of work accidents has the potential to be very high. In this study, a normative legal research method was used, research materials were mostly accessed from the literature, namely materials containing new or up-to-date scientific knowledge, or new understandings of known facts or ideas, in this case including books, journals, dissertations or theses, and other legal materials. The results of the research obtained were the legal consequences for perpetrators who do not implement K3 as stated in Article 35 paragraphs (2) and (3) in conjunction with Article 186 paragraph (1) of Law Number 13 of 2003 concerning Manpower explains that companies that provide workplaces for workers or laborers are required to provide protection that includes welfare, safety and occupational health for workers/laborers from the beginning of recruitment to work placement. Legal protection for workers who experience work accidents is an important aspect of the employment system in Indonesia, as stipulated in Law Number 13 of 2003 35 paragraphs (2) and (3) jo. Article 186 paragraph (1) and concerning Manpower.

**Keywords:** Occupational Safety, Legal Effects, Legal Protection of Workers

## INTRODUCTION

Labor development has many dimensions and interrelationships. The interrelationship is not only with the interests of labor during, before and after the working period but also with the interests of employers, government, and society. For this reason, a comprehensive and comprehensive arrangement is needed, including human resource development, increasing labor productivity and competitiveness, and fostering industrial relations.

In the current era of globalization, there is a lot of growth of new companies that require skilled workers both physically as manual labor, as well as educated workers as experts who can build companies for the better. The high need for this workforce is a positive impact caused by the globalization era. This also has a negative impact, i.e. the increasing number of work-related accidents, which each company should protect the safety and health of its workforce.

The manufacturing sector is one of the sectors with a high proportion of occupational accidents. The manufacturing sector includes several industries such as the textile industry, electrical industry, consumer industry and chemical industry. These industries pose various occupational safety and health hazards to workers during work activities or processes.

Occupational health and safety (OHS) is something that inseparable from the employment system and human resources. Occupational health and safety is not only very important for workers, it also determine the productivity of a job. Occupational health and safety has a positive impact on work. Therefore, occupational health and safety is not only an obligation that must be considered by workers, but a necessity that must be fulfilled by the work system. In other words, occupational health and safety is not an obligation but a necessity for workers and for the form of work activities. Companies need to implement occupational health and safety (OHS) programs which are expected to reduce the level of work accidents. Various factors that cause accidents in the workplace include: lack of maintenance of work equipment, work equipment and work equipment that is not available or not suitable for use (Buntarto, 2015).

The background of the problem related to sanctions against business actors who do not implement occupational safety and health (K3) in the company is an increasingly urgent issue in the context of industrialization and increased productivity. Violations of K3 standards often result in high safety risks for workers, which can lead to work accidents, occupational diseases, and even death. Poor implementation of K3 is often related to low legal awareness among business actors, accompanied by a lack of strict law enforcement (Cikdin, 2022) (Hikmah, 2023)

The importance of law enforcement in the K3 aspect cannot be separated from efforts to increase legal awareness in the company environment. The younger generation, as part of the future workforce, must be involved in improving understanding and implementation of K3 in the industry (Cikdin, 2022). Research shows that weak implementation of laws in terms of enforcing sanctions against K3 violations worsens the situation (Hikmah, 2023; Kushadianto & Putra, 2024). Suboptimal practices in supervision and sanctions for business actors who ignore K3 result in a situation where violations can take place without significant consequences (Pardede, 2020; Antoni, 2019).

Although there are clear regulations regarding sanctions for K3 violations, their implementation is often hampered by various factors, such as political intervention, corruption, and limited capacity of legal institutions (Febriani & Mintarsih, 2023; Hibatullah & Romsan, 2023). This shows that there needs to be synergy between government policies, strict law enforcement, and the creation of a good K3 culture among business actors (Ernatudera et al., 2023; Bambang et al., 2021). The synthesis between a strong understanding of the law and systematic policy implementation is essential to achieve the goal of protecting workers through effective K3 policies in Indonesia (Zahra et al., 2024; Nasution, 2020; Faktawan & Kautsar, 2022).

Against this background, it is important for policy makers to formulate strategic steps that not only consider sanctions, but also preventive approaches that can encourage business actors to voluntarily implement K3 in their operations. Fair and progressive law enforcement can be the key to improving occupational safety in the industrial environment (Novarizal et al., 2024; Hasri et al., 2024).

Based on the background described, the researchers took the formulation of the problem, namely, How is the Legal Protection for Workers Due to Work Accidents Reviewed from Positive Law? and How are the Legal Consequences for Business Actors Who Do Not Implement Occupational Health and Safety (OHS) Reviewed from Positive Law?

The purpose of this study is to determine the legal consequences and against business actors who do not implement occupational safety and health (K3) reviewed from positive law and legal protection for workers. The novelty of this study lies in the urgency of K3 regulations which have not been able to coordinate the protection of workers' rights.

## RESEARCH METHOD

In this research, a lot of the research materials are accessed from library, namely materials that contain new or up-to-date scientific knowledge, or new understanding of known facts or ideas, in this case covering books, journals, dissertations or theses and other legal materials. This normative legal research fully utilizes primary legal materials and secondary legal materials (Nasution, 2008).

## RESULTS AND DISCUSSION

### Legal Protection for Workers Due to Work Accidents in Review of Positive Law

Work accidents have several criteria as elaborated in Article 7 Paragraph (2) and (7) Permenaker No. 5 of 2021 concerning Procedures for Implementing JKK, Death Insurance, and JHT Programs. One of the criteria for work accidents is regulated in Article 7 Paragraph (2) Letter b of Permenaker No. 5 of 2021, which is as follows: "Accidents that occur on the way from home to work and vice versa through a normal or commonly traveled road." There are elements in the accident criteria, namely:

1. The accident occurred while on the way from home to work and vice versa;
2. The place of the accident was a normally used road.

In practice, there are deviations that occur, in order to create safe work environment, which is due to:

1. Lack of attention from the company to OHS guidance activities.
2. Lack of safety supervision in the field in order to prevent work accidents.
3. Lack of workers' self-awareness in safety matters.

That at this time the level of awareness of both employers and workers of the importance of OHS efforts is still lacking. First aid is also temporary care for victims affected by illness or accidents so that their condition gets better before getting more complete help from medical personnel and doctors or before being taken to health facilities. In addition, comprehensive and continuous guidance and supervision are also required. Occupational safety is an issue in every production process, traditional or modern. Especially in a society that is transitioning from one habit to another or that is developing, these changes generally cause problems that if not handled carefully, can have many negative and potentially fatal impacts. Therefore, several efforts are needed to overcome obstacles to the implementation of OHS:

1. Human Factors (Workers)
  - a) Counseling and Dialogue. This aims to provide an overview of the importance of OHS for the workers themselves.
  - b) Training. It aims to provide training and procedures that they must do so as not to hinder the implementation of the project itself.
  - c) Reprimands or Sanctions. The aim is to make the workforce disciplined and in accordance with applicable regulations, so they do not work in careless manner which can hinder the implementation of the project.
2. Tools and Facilities Factors. The tools used should be rechecked to ensure remain in the same number.
3. Environmental Factors
  - a) Satisfactory working conditions must be clean. Even leftover building materials or rubbish from the execution of previous works should have been removed, the main rubbish bins should be in place. There should be no accumulation of such waste in the environment.
  - b) Warnings or signs should be posted more at every dangerous place and supervision should be tightened. Signs and warnings can carry a warning message, an instruction message, or a general description.

Signs and warnings are considered to support these kinds of measures. Occupational safety is the employer's obligation. The company should maintain and organize the tools, rooms, where they sends workers to work. This work safety responsibility has the aim that employees can be protected from work accidents and dangers that threaten their bodies, honor and property. This is a right that every worker must receive in carrying out their work. However, the awareness of employers or companies in Indonesia in protecting the safety of their workers is still low. Based on Article 86 Paragraph (1) letter a of the Manpower Law, every worker has the right to obtain protection for work safety. This includes OHS efforts aimed at providing safety protection and improving the level of health of workers. Safety protection can be implemented by preventing occupational accidents and occupational diseases, or controlling hazards in the workplace, health promotion, treatment and rehabilitation. Because of the rights of workers, in Article 87 Paragraph (1) of the Manpower Law, companies implement an OHS management system that is integrated with the company's management system. Related to wage issues, deductions for PPH 21 employees, to payment of

Social Security Agency for Employment (BPJS Ketenagakerjaan) and Social Security Agency for Health (BPJS Kesehatan).

Legal protection of workers who experience work accidents is an important aspect of the Indonesian labor system. In the context of positive law, this protection is regulated by various statutes and regulations to guarantee workers' rights and provide adequate social security. One of the main instruments in this protection is Law No. 13/2003 on Manpower, which regulates workers' rights, including the right to occupational health and safety (Perdana, 2023). Workplace accidents often have a significant impact on workers, both physically and psychologically. Therefore, it is important for governments and companies to implement preventive and repressive measures to protect workers. Preventive measures include the provision of occupational safety training and the implementation of strict safety standards in the workplace, while repressive measures include law enforcement against companies that do not comply with occupational safety regulations (Perdana, 2023).

Research shows that many workers are not registered in social security programs, such as Social Security Agency for Employment (BPJS Ketenagakerjaan), which could potentially result in financial losses for them in the event of an accident (Dewi et al., 2022). In addition, legal protection also includes aspects of compensation for workers who experience accidents. According to the Manpower Law, workers are entitled to receive adequate compensation if they experience work accidents. This is regulated in government regulations governing employment social security, which require companies to enroll their workers in social security programs (Perdana, 2023). However, challenges remain in the implementation of these protections, including a lack of worker awareness of their rights and weak government oversight of company compliance (Perdana, 2023). Furthermore, research also shows that the legal protection of workers who experience workplace accidents must involve the active participation of all stakeholders, including the government, employers, and trade unions. This cooperation is essential to create a safe and healthy working environment, as well as to ensure that workers' rights are effectively respected and protected (Perdana, 2023). Thus, legal protection of workers who experience work accidents is not only the responsibility of the government, but also a shared responsibility of all elements of society.

Occupational Health and Safety is an issue that has caught the attention of many organizations nowadays because it includes issues of humanity, economic costs and benefits, legal aspects, accountability and the image of the organization itself. All of these things have the same level of importance even though there are changes in behavior, both within the environment itself and other factors that enter from external elements of the industry. These changes can affect the company's production process and of course for its workers or laborers. Thus the implementation of Occupational Health and Safety (OHS) is very important for companies through an excellent management system. All aspects ranging from organization, operations, logistics, marketing, finance, and human resources must be managed in a good way. The importance of implementing a Health and Safety Management System aims to provide a sense of security and comfort for workers or laborers and also to avoid an event or situation that is not desired by the company. With this Occupational Health and Safety Management System, of course, it can also prevent losses that can be caused by unwanted accidents or circumstances.

Work accidents caused by companies that neglect to implement Occupational Health and Safety (OHS) can harm workers or laborers who are carrying out their activities in the company. They can suffer from minor or severe injuries, become permanent disabilities, and worst, lead to the death of workers or laborers. Development companies must not be negligent in implementing OHS protocols within the scope of their production areas and construction areas. Because it can result in worker or labor inconvenience at work and a high level of work accidents. The definition of a work accident is an unexpected and undesirable event that disrupts a process of activity that can result in losses of both human and property casualties. Meanwhile, the definition of occupational health and safety is all efforts and thoughts that exist and are aimed at ensuring the integrity and perfection both physically and spiritually of the workforce who are carrying out work (Sri Kiswati and Umami Chasanah 2019).

The negligence of companies that do not apply OHS results in workers or laborers suffer from accidents resulted in workers or laborers becoming permanently disabled and even death. Such negligence is a huge problem for the negligent company, because it involves a person's life which cannot be replaced with the life of another person. Money compensation for disabled workers or laborers does not cure the injuries caused by work accidents, the disabled workers or laborers will experience life pressure due to the company's failure to implement a good Occupational Health and Safety Management System and which has been regulated by law.

In Law Number 13 Year 2003 concerning Manpower, there are two sanctions that can be given by the company.

First, is Administrative sanctions, these sanctions are sanctions applied by the authorities (officials) without going through the judicial process and these sanctions are applied as a reaction because there is a violation of Administrative Law norms, both written and unwritten Administrative Law norms. The application of administrative sanctions is a result of companies that are negligent in implementing Occupational Health and Safety (OHS) in production and operation activities. The imposition of these sanctions is based on supervision from authorized officials and the Minister who have conducted audits of companies which aim to review if companies really implement the Occupational Health and Safety Management System properly according to the standards set by the Minister.

These sanctions are given to provide a deterrent effect to companies that are negligent and do not implement the Occupational Health and Safety Management System. The second sanction is criminal sanctions. This sanction posed to companies that are negligent in implementing the Occupational Health and Safety Management System. Not only administrative sanctions that can be given to the company but there are criminal sanctions. In this case is the imposition of fines aimed at the company or to the one in charge who is the superior of the company, and also the imposition of imprisonment.

Article 35 paragraphs (2) and (3) jo. Article 186 paragraph (1) of Law Number 13 of 2003 on Manpower explain that companies that provide workplaces for workers or laborers are obliged to provide protection that includes welfare, safety and health for workers or laborers from the beginning of recruitment to job placement. Companies in this case must not neglect in taking care of their workers or laborers, by implementing an Occupational Health and Safety Management System workers or laborers will feel comfortable in carrying out their work. If the company is negligent and does not pay attention to its workers or laborers, it will be subject to a maximum imprisonment of 4 (four) years and a maximum fine of Rp 400,000,000 (*four hundred million rupiah*). The criminal provisions is intended to have a preventive effect on anyone not to carry out actions, activities, actions, and movements that are contrary to the existing order in society.

## CONCLUSION

These sanctions are given to provide a deterrent effect to companies that are negligent and do not implement the Occupational Health and Safety Management System. The second sanction is criminal sanctions. This sanction posed to companies that are negligent in implementing the Occupational Health and Safety Management System. Not only administrative sanctions that can be given to the company but there are criminal sanctions. In this case is the imposition of fines aimed at the company or to the one in charge who is the superior of the company, and also the imposition of imprisonment.

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