

# Reconstruction on the Regulation of Occupational Safety and Health in Indonesia Based on Justice

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## Abstract

This study aims to find the weaknesses in the current implementation of occupational Safety and Health (OSH) supervision and how a law reconstruction is expected to solve the problems of OSH supervision in Indonesia Currently. The method used in this research is non-doctrinaire legal research methods, with descriptive-analytical research specifications. The results show that the weaknesses of OSH Protocol in Indonesia Currently are the nature of OSH supervision in the form of a written report to the Head of the Regional Labor Inspection Unit like in Banyumas for example, which is carried out within a maximum of Three Week, without direct monitoring and evaluation from the Labor Inspection Unit, violations of reporting obligations are only in the form of sanctions fines as referred to in Article 15 (2) of Law Number 1 of 1970 concerning Work Safety. Based on this, it is necessary to reconstruct the regulation in Article 3 of the Safety Law with the need to regulate work safety requirements to prevent and control the emergence of occupational diseases, both physical and psychological, poisoning, infection, and transmission as well as prevention of the return of pandemic diseases. 15 (2) Law No.1 of 1970 needs to emphasize the deterrent effect of offenders with a maximum imprisonment of 5 years and a maximum fine of 1 billion rupiah and additional d points. in Article 86 of Law no. 13 of 2003 Employment for prevention and cure of pandemic diseases.

**Keywords:** Regulation, Reconstruction, Occupational Safety and Health, Value of Justice.

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## INTRODUCTION

The various problems in the implementation of the Occupational Safety and Health program are inseparable from the existence of regulations that are expected to provide legal certainty of workers' rights to occupational safety and health when carrying out their work. For employers, the Occupational Safety and Health program as regulated in the Regulation of the Minister of Manpower Number: PER, 05 / MEN / 1996 concerning the Occupational Safety and Health Management System, will require costs both for the provision of a workplace and environment that is in accordance with the provisions and the procurement of the safety equipment, and of course, this will increase production costs which have an impact on product sales. For workers who are not used to it, occupational safety and health equipment are considered to be disturbing because it limits their activities. Meanwhile, the Regional Government will consider the competitiveness of investors who will invest in their territory.

In connection with the Regulation of the Minister of Manpower Number: PER, 05 / MEN / 1996 concerning the Occupational Safety and Health Management System, based on the data obtained by the author regarding the number of companies that are obliged to implement provisions concerning Occupational Safety and Health (OSH) and supervisory officers from the Manpower Office and Transmigration in the Banyumas and Cilacap districts, it is known that the number of companies in Banyumas Regency that are obliged to implement regulations on Occupational Safety and Health is 807 companies with a composition of 21,256 male workers and 11,511 female workers, while the number of supervisors is only 3 (three) people from the Office of Manpower and Transmigration of Banyumas Regency. From this data, it can also be seen that the number of companies in Cilacap Regency that are obliged to implement regulations on Occupational Safety and Health is 788 companies with a composition of 17,625 male workers and 10,111 female workers, while the number of supervisors coming from the

Manpower Office and Transmigration Cilacap Regency, are only 3 (three) people [1].

From the description of the data, it seems ironic that there are only 3 (three) supervisors that are assigned the task of supervising 807 companies, so this shows an imbalance between the supervisory personnel and the companies being supervised. In addition to data relating to the number of companies in Banyumas Regency and Cilacap Regency that are obliged to implement regulations on Occupational Safety and Health, based on data obtained from the Manpower and Transmigration Office of Banyumas Regency and Cilacap Regency, it can be seen that there have been work accidents in the Banyumas Regency such as in the year 2016 where there is as many as 49 cases, in 2017 as many as 27 cases, as for Cilacap Regency in 2016 as many as 38 cases, in 2017 as many as 19 cases. This shows that occupational safety and health issues are a serious problem because as stated earlier, an unbalanced position between employers and workers has the potential for exploitation of workers by the employers because workers are considered part of the production factor and not a company asset. Employers as service users of workers always try to optimize production by extorting workers, which is often done by employers by neglecting the safety and health of their workers. So that in such conditions, the State government is obliged to be present to protect workers through public policies that it makes through legal products, in order to achieve human welfare, especially workers based on the values of justice, protection, and welfare development as mandated in the formation of the 1945 Constitution of the Republic of Indonesia and the primary function of law in the rule of law.

In relation to the State's function to provide legal protection to its citizens (including workers), I.S. Susanto [2] stated that in the rule of law, the primary function in the constitutional state of Indonesia as reflected in the Preamble to the 1945 Constitution of the Republic of Indonesia are:

1. Protection. The law has a function to protect the community from the threat of danger and harmful actions that come from each other and community groups, including those carried out by power holders (government and state) and those that come from outside, aimed at the physical, mental, health, norm, and human rights.
2. Justice. Another function of law is to protect, protect and provide justice for all people. Negatively, it can be said that the law is unfair if the law in question is seen as violating the values and rights that is believed to must be safeguarded and protected for all people.
3. Development. The third legal function is development, in the context of creating welfare for all Indonesian people. This implies that development in Indonesia is fully aimed at improving people's welfare in all aspects of life

such as economic, social, political, cultural, and spiritual aspects. Thus the law can be used as a vehicle both in determining the direction, objectives, and implementation of development fairly. This means that law is simultaneously used as a development tool but also as a means of control so that development is carried out fairly.

In relation to these primary functions of law, the holders of power are given the obligation and responsibility to realize them, especially through the development of legal institutions and intermediaries, that is the legal promise, moral role, and ideas expressed and implied in the Preamble to the 1945 Constitution of the Republic of Indonesia. That is the legal paradigm that must be used by state administrators according to our constitution.

Based on the description above, the authors feel it is important to conduct research on Occupational Safety and Health Regulations (OSH) based on the value of justice where the discussion of this problem will be divided in to 2 main problems as follows:

1. What Are The Weaknesses Of The Current Regulations For The Implementation Of Occupational Safety And Health (OSH)?
2. How Is The Reconstruction Of Occupational Safety And Health (OSH) Regulations Based On The Value Of Justice?

## **METHOD OF RESEARCH**

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in social science is a critique of the positivist paradigm. According to the constructivism paradigm of social reality that is observed by a person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of a non-doctrinal research that seeks to describe and seek answers fundamentally about cause and effect by analyzing the factors that cause the occurrence and appearance of a particular phenomenon or event.

The method of approach in research using the method (Socio-Legal Approach). The sociological juridical approach (Socio-Legal Approach) is intended to study and examine the reciprocal relationship that is associated in real terms with other social variables [3].

Sources of data used include primary data and secondary data. Primary data is data obtained from field observations and interviews with sources; While Secondary Data is data consisting of:

1. Primary legal materials, namely binding legal materials in the form of prevailing laws and regulations and have something to do with the issues discussed [4].

2. Secondary legal material, namely legal material whose nature provides an explanation of the primary legal material.
3. Tertiary legal materials are legal materials that provide further information on primary and secondary legal materials.

Research that is associated with the socio-legal approach is research that analyzes problems that are carried out by combining legal materials (which are secondary data) with primary data obtained in the field, supported by prior to secondary legal materials, in the form of writings of experts and existing legal policies [5].

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses Of The Current Regulations For The Implementation Of Occupational Safety And Health (OSH)

To be able to answer what are the weaknesses of OSH implementation, the authors took a sample of a company with large criteria with 280 male employees and 246 female employees, all of whom were Indonesian citizens at PT. Pundi Indokayu Industri. The total workforce at the PT is 526 people. The type of business of this company is wood processing and is located at Siliwangi Street, Kalibagor District, Banyumas Regency. Of the 526 workers, all of them are BPJS participants. The Occupational Safety and Health Committee (P2OSH) in the company was formed on January 15, 2019 (the last dated) [6]. The formation of this P2OSH is as mandated by CHAPTER VI concerning the Committee for Occupational Safety and Health, Article 10 Paragraph (1 and (2) of Law Number 1 of the Year 1970 concerning Work Safety (UUKK), which states that:

- a. The Minister of Manpower has the authority to form a Committee for the Development of Occupational Safety and Health in order to develop cooperation, mutual understanding, and effective participation of entrepreneurs or managers and workers in workplaces to carry out joint duties and obligations in the field of occupational safety and health, in the framework of launching a production business.
- b. The composition of the Committee for Occupational Safety and Health, duties, and others shall be determined by the Minister of Manpower.

The provisions regarding P2OSH are further regulated in the Regulation of the Minister of Manpower of the Republic of Indonesia Number Per.04/MEN/1987 concerning the Committee for Occupational Safety and Health and the Procedure for Appointing Work Safety Experts. In the consideration section it is stated in this Ministerial Regulation that, in order to prevent the occurrence of interference with workforce safety and health in the context of increasing work efficiency and productivity, it is necessary to

apply work safety, company hygiene, and occupational health in companies; therefore, companies need to have a Supervisory Committee. Occupational Safety and Health task is to assist company leaders in the implementation of occupational safety, company hygiene, and occupational health; for this purpose, it is necessary to stipulate a Regulation of the Minister of Manpower concerning the Committee for Occupational Safety and Health.

If Article 10 UUKK states that the authority to form P2OSH, then in the consideration of this Ministerial Regulation, companies need to have P2OSH to assist company leaders in implementing work safety, company hygiene, and occupational health. P2OSH according to this regulation is mentioned as an auxiliary agency in the workplace which is a forum for cooperation between employers and workers to develop mutual understanding and effective participation in the application of occupational safety and health. Furthermore, in Article 2 of the Ministerial Regulation, it is stated that every workplace with certain criteria of an entrepreneur or management is obliged to form a P2OSH.

In relation to workplace obligations that must establish P2OSH, the following paragraph states that the criteria for workplaces that are obliged to form P2OSH are workplaces where the entrepreneur or management employs 100 people or more, from the data presented in the table regarding the classification of companies in the Banyumas, Purbalingga region. Cilacap and Banjarnegara, so companies with a workforce of more than 100 are classified as large companies. The research object of PT. Pundi Indokayu Industri in the Banyumas Regency area is a large classification company and they have complied with the existing regulations, namely the P2OSH which was formed with the last amendment on January 15, 2019.

The data obtained by the author as above is then strengthened by data obtained from the Banyumas Regional Labor Inspection Unit and the Office of Manpower and Transmigration of the Central Java Provincial Government where the legal basis for the Standard operational procedure (SOP) for Examination and Testing of OSH Objects, namely Law no. 3 of 1951 concerning Labor Inspection, Law no. 1 of 1970 concerning Work Safety, Law no. 13 of 2003 concerning Manpower, Law no. 23 of 2014 concerning Regional Government, Presidential Regulation No. 20 of 2010 concerning Labor Supervision, Permenaker No. PER-04 / MEN / 1995 concerning Occupational Safety and Health Service Companies, Permenakertrans No. 03/MEN/1982 concerning Occupational Health Services, Permenaker No. 05/Permen/1985 concerning Aircraft and Transport, Permenaker RI No. 02/Permen/1989 concerning Supervision of Lightning Distribution Installation, Permennaker No. 12 of 2016 concerning OSH Electricity in the workplace,

Permenaker No. 33 of 2016 concerning Labor Inspection Procedures, Permenaker No. 38 of 2016 concerning OSH of Power and Production Aircraft, Permenaker No. 5 of 2018 concerning the Safety and Health of the Work Environment, Instruction of the Minister of Manpower No. 11/ins/M/BW/1997 regarding Special Supervision of OSH Fire Management, Pergub Jateng No. 52 of 2018 concerning the Organization and Work Procedure of the Technical Implementation Unit and Dinkertrans of Central Java Province.

In the connection with the SOP, it is stated that the SOP for the Inspection of OSH norms, the SOP for the Administration of Reporting on the Implementation of Labor and Inspection. The warnings stated in the SOP are related to the inspection and testing of OSH equipment in the company which can be carried out by specialist employees of the labor inspection and/ or OSH experts (OSH service companies according to their competence), and the results of the inspection and testing of OSH equipment are stated in a certificate signed by the Kasatwasker, On behalf of the Kasdinakertrans of Central Java Province.

Through this, it can be seen that the Weaknesses of Occupational Safety and Health (OSH) in Indonesia are analyzed using Aristotle's theory of commutative justice about how the state plays an active role in providing justice for its citizens, the theory of utilitarianism from Jeremy Bentham [7] about how the state provides justice and benefits to a large number of its citizens. Then the work of law and the theory of legal effectiveness are used to answer the weaknesses of OSH in its implementation in Indonesia. Currently, the nature of OSH Supervision is only in the form of a written report to the Head of the Banyumas Regional Labor Inspection Unit within a maximum period of a quarter, without direct monitoring and evaluation from the Labor Inspection Unit so that it is suspected that an iceberg phenomenon occurs that the figure that appears is not the real number. The weakness of Article 15, Chapter XI regarding the closing provisions which state that "the laws and regulations referred to in paragraph (1) can provide criminal threats for violating the regulations with a maximum imprisonment of 3 (three) months or a maximum fine. Rp. 100,000, - (one hundred thousand rupiah)". Such sanctions do not cause a deterrent effect for violators of this, as the data on compulsory KLUI 1 to 6 companies, which are subject to sanctions for not submitting the 2019 quarterly reports are: Banyumas as many as 91 companies, Cilacap as many as 20 companies, Purbalingga as many as 47 companies and Banjarnegara as many as 40 companies company.

Another weakness is the lack of state budget for OSH supervision, which means that the work accident data is only in the form of data that is reported in the quarterly report, not the result of labor inspectors. The number reported is very small, namely: in 2018,

Banyumas 23, Cilacap 13, Purbalingga 30 and Banjarnegara 21; in 2019, Banyumas 31, Cilacap 20, Purbalingga 6 and Banjarnegara 20.

## 2. Reconstruction Of Occupational Safety And Health (OSH) Regulations Based On The Value Of Justice

OSH is very important, especially in the face of a pandemic, where the certainty of the Safety and Health in the Workplace Protocol is something that continues to receive attention. Therefore, a well-defined OSH protocol was signed on March 14, 2020 by employers' organizations and trade unions at the request of the Prime Minister - the aim of which is to provide guidance to increase the effectiveness of protective measures to eliminate the spread of Covid-19 in non-healthcare settings. Its main objective is to combine the continuation of production activities with the assurance of health and safety in working conditions and the environment. To this end, the Protocol calls for the adoption of a variety of OSH measures, including OSH information, procedures for entry to workplaces, hygiene, and sanitation, hygienic measures, PPE, work organization, asymptomatic management of people in enterprises, health precautions The Italian Joint Protocol to regulate steps to eliminate and prevent the spread of Covid-19 in the workplace Social dialogue on OSH in times of a pandemic In responding to a crisis, the government should, in consultation with the most representative organizations of employers and workers, ensure that all actions are taken. Given is created or promoted through gender-inclusive social dialogue [8].

These suggestions are included in ILO Recommendation No. 205 is essential in the context of a pandemic to ensure that emergency measures taken by governments are effective and implementable. Governments may feel compelled to take serious but urgent action to stem transmission or slow spread. Extraordinary actions of this kind can only be implemented effectively if social partners are involved early on in the decisions to be made and committed to their implementation. Efficient social dialogue at all levels is fundamental to effective and sustainable action, not just to protect physical and mental health. all workers, but also to reduce the economic and labor impact of this pandemic. Employers and their organizations must comply with the advice given by national and local authorities, including regarding work arrangements, and communicate important information to workers. They should assess the potential risk of disruption to the business, review or develop a business continuity plan consistent with the guidelines provided by national and local authorities to increase business resilience and support workers and their families. Employers must identify and reduce risks to workers and others associated with the workplace as a result of the outbreak and promote cleanliness in the workplace.

They should also assess company responsibility for workers' compensation, particularly in high-risk sectors, and seek advice and support from employers and business membership organizations that can channel concerns to the government and shape policy measures conducive to business resilience and sustainability. Workers and their organizations must also play an important role in participating in decision-making and policy responses to the epidemic. At the workplace level, workers and their representatives should actively cooperate with employers in the implementation of preventive and protective measures. They must strictly follow hygienic practices in the workplace and adopt responsible behavior. Workers' organizations should contribute to the prevention and protection of workers by providing up-to-date information.

They must promote solidarity and non-discrimination against workers and the sick. The Joint Statement on COVID-19 by the International Employers' Organization (IOE) and the Confederation of International Trade Unions (ITUC) IOE and ITUC calls for urgent action in key areas, such as business continuity, income security, and solidarity to prevent the spread and protect lives and livelihoods and build a resilient economy and society; policy coordination and coherence; and a strong and functioning health system to combat the pandemic. They acknowledge that the 2019 ILO Centenary Declaration for Future Work contains essential elements that are key to a long-term and sustainable response to the pandemic, including COVID-19. IOE and ITUC are committed and ready to support policymakers in their efforts to help workers and enterprises through the crisis, keeping workers in their jobs, protect them from unemployment and loss of income, and reducing financial ruin.

A special role for OSH practitioners during outbreaks. OSH practitioners are key actors to facilitate access to reliable information for workers and management to promote understanding of the disease and its symptoms as well as self-preventive measures (for example, breathing ethics, washing hands, self-isolation if sick, and so on). They should support employers in the risk assessment process (ie, identification of communicable and non-communicable hazards and associated risk assessment; adoption of preventive and control measures; monitoring and review); as well as in the development or revision of plans for prevention, containment, mitigation, and recovery. Important challenges faced by OSH practitioners are related to a variety of work situations that require special guidance, including health care and emergency response workers, those who are in activities the basic economy (e.g. food and retail supply, utilities, communications, transportation, delivery, and so on), unorganized workers (including the informal economy, odd-jobs, domestic workers and so on) and alternative work arrangements (working from home) Challenges

such as those affected by the COVID-19 pandemic can only be overcome if there is a global and coordinated response with strong cooperation [9], much stronger than before, between governments, social partners, associations, international organizations, economic and financial institutions all around. levels. Many aspects that need to be integrated to reduce the impact of this health crisis on the world of work, occupational safety, and health remain a major investment to protect workers' health and ensure business continuity.

Reconstruction of Article 3 and Article 15 of Law no. 1 of 1970 concerning Work Safety is very necessary considering that after Covid 19 in Central Java Province, a letter was issued from the Head of the Manpower and Transmigration Office of Central Java Province to the Head of the Office in charge of Regency/ City manpower in Central Java, Head of the Satwasker Disnakertrans, Central Java Province in 6 Regions, and Heads of OSH Service Companies in the Field of Examination, with the subject of the letter, "The Implementation of OSH Testing in the case of Urgent Conditions During the Covid-19 Pandemic". In the contents of the letter, it is stated that in connection to the spread of the coronavirus disease (Covid 19) in the Central Java region and according to the Decree of the Governor of Central Java Number 360/3 of 2020 dated 27 March 2020 concerning the Determination of the Emergency Response Status for Corona Virus Disease (Covid 19) in Central Java Province and following up on the Circular of the Directorate General of Labor Inspection and Occupational Safety and Health Number 5/228 / AS.03.00 / IV / 2020 dated April 8, 2020, concerning Implementation of Labor Inspection during the Covid Pandemic 19. In practice regarding the Covid 19 pandemic, OSH oversight has become so loose and only limited to online reporting that is carried out and even in areas where the PSBB is applied, it cannot be implemented.

Based on this, it can be concluded that the Reconstruction of Occupational Safety and Health Regulations (OSH), where based on Tetrick [10], The weaknesses in are found in the management functions, supervisory leadership, work standards, and performance standards where error correction is very influential in the occurrence of work accidents. Bird and Lotus also made it clear that injury or loss does not only occur to workers but also damage to property or termination of work operations.

The need for regulatory reconstruction is required as is the benchmarking of the OSH (Occupational Safety Health/OSH) system from Singapore, the Workplace Safety and Health Act (Chapter 345 A) (Original Enactment: Act 7 of 2006) Revised Edition 2009 (31st July 2009) An Act Relating to Safety, Health and Welfare of Persons at Work in Workplaces. Especially in the reconstruction of the OSH regulation based on the value of justice, it is

proposed the proportionality of the obligations of the management (in this case, the management of the company or the employer) in terms of guaranteeing OSH in the workplace and changes in sanctions for violations in the form of a fine of Rp. 1,000,000,000, - (one billion) and 5 (five) years imprisonment, the worker's obligation to OSH compliance and sanctions for violations in the form of a fine of Rp. 300,000,000, - (three hundred million) and 2 (two) years imprisonment, the director's obligation to fail to comply with the remedial order will be guilty of an offense and will be subject to a fine not exceeding Rp. 500,000,000, - (five hundred million) or imprisonment for a period of not more than 12 months or both. In cases of continuing violations, a further fine not exceeding Rp. 250,000,000, - for each day as long as the violation continues after the sentence is imposed, the obligation of the OSH Officer who, without reasonable reasons, violates will be subject to a fine of not exceeding Rp. 50,000,000, - (fifty million) and, in case of a second or subsequent violation, until the fine does not exceed Rp. 100,000,000, - (one hundred million) or imprisonment for a period of not more than 6 months or both.

## CONCLUSION

1. The current weaknesses of The OSH Protocol are the nature of OSH Supervision in the form of written reports to the Head of the Banyumas Regional Labor Inspection Unit within a maximum period of a quarter, where without direct monitoring and evaluation from the Labor Inspection Unit, the violations of reporting obligations are only in the form of fines as referred to in Article 15 (2) Law Number 1 of 1970 concerning Work Safety. Even during the Covid pandemic, the reporting system was implemented online for areas with large-scale social restrictions.
2. Based on this, it is necessary to reconstruct the regulations in Article 3 of the Safety Law with the need to regulate occupational safety requirements to prevent and control the emergence of occupational diseases, both physical, psychological, poisoning,

infection, and transmission as well as prevention of healing of pandemic diseases. Article 15 (2) of Law No.1 of 1970 needs to emphasize the deterrent effect for violators with a maximum imprisonment of 5 years and a maximum fine of 1 billion rupiah and additional points d. in Article 86 of Law no. 13 of 2003 Work for the prevention and cure of diseases of a pandemic.

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