

# Legal Consequences of Occupational Accidents in the Construction Industry a Criminal Law Perspective

Eko Suliyanto<sup>1</sup>, Hambali<sup>1</sup>, Sami'an<sup>2\*</sup>, A.H. Asari Taufiqurrohman<sup>2</sup>, Aulia<sup>2</sup>

<sup>1</sup>Master of Construction Law Students Faculty of Law, University of Pekalongan, Central Java, Indonesia

<sup>2</sup>Master Lecturer in Construction Law Faculty of Law, University of Pekalongan, Central Java, Indonesia

DOI: <https://doi.org/10.36348/sijlcrj.2024.v07i08.004>

| Received: 21.06.2024 | Accepted: 02.08.2024 | Published: 10.08.2024

\*Corresponding author: Sami'an

Master Lecturer in Construction Law Faculty of Law, University of Pekalongan, Central Java, Indonesia

## Abstract

The increasing number of accidents and losses due to work accidents, as well as potential hazards in the production process, require effective, comprehensive, and integrated Occupational Safety Management in the management of the company. Work accidents are often caused by unsafe activities, which can be caused by lack of knowledge and skills, physical disabilities, fatigue, and unsafe attitudes and behaviors. This study uses normative legal research methods with a statutory approach and a case-based approach. Sources of legal materials used include primary, secondary, and tertiary legal materials. The results showed that corporate crimes, including criminal liability of negligent companies in managing worker safety, can result in the loss of workers' lives. The government has very little control over the implementation of occupational safety laws, and companies are still minimal in capital to improve K3 services for employees. In addition, the lack of publications and information on Occupational Safety and health, especially in rural communities, contributes to the aggravation of this condition.

**Keywords:** Criminal Law Aspects, Work Accidents, Construction Industry.

**Copyright © 2024 The Author(s):** This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

## INTRODUCTION

The government has the responsibility to enforce the protection of workers as stipulated in the legislation. This task includes supervision and law enforcement to ensure that the company complies with established occupational safety standards. In addition, each company also has a responsibility to implement safety policies and procedures effectively in their work environment. Cooperation between the government and the company is essential to ensure the safety and security of employees. The government should provide support in the form of clear regulation and strict supervision, while companies should be proactive in identifying and managing risks in the workplace. With the synergy between the two parties, the protection and safety of workers can be realized to the maximum.

To carry out the construction, the work as capital of the company must be equipped with guarantees of the rights of all workers. The protection of workers is

the responsibility of the government and is regulated in laws and regulations. Every company has a duty to ensure that safety policies and workers' rights are effectively implemented [1].

Cooperation between the government and the company is very important to realize the guarantee of safety and security of employees. The government is in charge of creating and enforcing regulations that protect workers, while companies are responsible for implementing and complying with these regulations. The synergy between these two parties is necessary to create a safe and fair working environment for all workers.

Job development has many dimensions and relationships. The relationship is not only related to the interests of workers at the time, before and after work, but also with the interests of employers, government, and society. Therefore, a whole and comprehensive organization is needed, which, among other things, includes the development of human resources, increasing

<sup>1</sup>Samodra Kharisma Aji Sugiyanto et al "aspects of Criminal Law in workplace accidents", Jurnal Daulat

Hukum, Vol.1, No. 1 Michigan 2018.[jurnal.unissula.ac.id/index.php](http://jurnal.unissula.ac.id/index.php)

labor productivity and competitiveness, as well as improving labor market relations. Labor as a human resource needs special attention both ability, safety, and health work. The risk faced by the workforce is the risk of accidents and occupational diseases, due to a combination of various factors, namely labor and the work environment [2]. In relation to workers as human resources, special attention should be paid to skills, safety and occupational health. Labor risks include accidents and occupational diseases that result from the interaction of various factors, namely labor and the work environment. According to Article 7 Paragraph 7 of the law of 2017, an occupational accident is an occupational accident, including an accident that occurs on the way from home to work or vice versa [3].

Every employee and his family are entitled to social security during working hours. Under the law on job creation regulates social security rights for workers and their families during working hours. Some important articles in this law that are relevant to social security are: Article 81: states that every worker and his family have the right to obtain Social Security at work. This includes guarantees for health services, protection during illness, pregnancy, childbirth, or work accidents. Article 83: regulates the obligation of employers to provide social security and ensure that workers and their families receive these rights in accordance with the provisions in force. Article 86: states that the right to Social Security includes various forms of health care and Financial Protection in situations that require special attention such as illness or pregnancy. Job creation laws not only provide rights to workers, but also protect family members of workers, ensuring that they receive adequate health care and protection. This right aims to improve the welfare of workers and their families, and ensure that they will not experience financial or health difficulties due to incapacity for work. The provision of rights to workers/employees is intended to ensure services if one of the family members of workers/employees is sick or requires other health services, for example in the case of pregnancy and childbirth or a work accident [4].

Work accidents are unexpected and unwanted events, which can disrupt the course of the process of activities that have been arranged. These accidents usually occur suddenly and can cause losses for both the worker and the company. The hierarchy of occupational accident control is the elimination, replacement, technical planning, management and finally the use of

personal protective equipment [5]. The company must minimize the risk of accidents and occupational diseases, because although accuracy can save money, inaccuracies lead to production delays and significant losses for the company and its customers [6].

Although various rules regarding occupational safety and health (K3) have been established, their enforcement still faces various gaps and weaknesses. This is due to the lack of law enforcement officers, limited human resources in the field of K3, and available means. To overcome this problem, further efforts are needed to strengthen K3 institutions, increase socialization, and strengthen cooperation with social partners to ensure that K3 functions properly.

Employment can be divided into two main sectors: formal and informal. Workers in the informal sector are generally motivated by personal desires and work according to their own rules, while formal employment involves rules and regulations established jointly by companies and unions. Within the formal sector, aspects such as working time, salary and rest time are jointly regulated by companies and unions.

Employers and workers in the formal sector have an obligation to carry out work to the best of their authority and ability, as well as to ensure that all regulations and workers' rights are met.

The increasing number of work accidents and damage caused by work accidents as well as the increasing potential risks in the production process require effective management of Occupational Safety, comprehensive and integrated in the company's management. Work accidents can also be caused by unsafe activities, which in certain cases can be caused by lack of knowledge and skills, physical disabilities, fatigue and exhaustion/fatigue, unsafe attitudes and behaviors [7]. Based on BPJS Employment data, the number of applications for work accident insurance or JKK and death insurance or JKM from the job market Social Insurance program continues to increase from 2019 to November 2023, where BPKS Employment data is based on JKK numbers in 2019. 182,835 cases of damage were registered. In addition, the number of JKK claims continued to increase until it reached 221,740 in 2020 and 234,370 in 2021. Then in 2022 the number increased again to 297,725 claims.

<sup>2</sup>Suma'mur. P.K.Hygiene. Company and Occupational Health. Jakarta: PT. Sagung Seto; 2009.

<sup>3</sup>Law No. 7 of 2017 on Social Security Program for Indonesian workers

<sup>4</sup>Maimun, 2004, Labor Law An Introduction,, Pradnya Paramita, Jakarta h.86

<sup>5</sup>Lilian Enggal Ekasari, "Analisis Faktor yang mengenai Kecelakaan Kerja", The Indonesian Journal of

Occupational Safe and Safety Health, Vol 6. No. 1 Jan-April 2017: 123-13.

<sup>6</sup>Depnaker RI, 1996, Journal of Occupational Health and safety hygiene industry of Indonesia Vol . XXIX No. 4, Jakarta: Depnaker, page 42.

<sup>7</sup>Saloni Waruwu, Ferida Yuamita " " Factor Analysis of Occupational Health and safety Singnifikan Affects Occupational Accidents", Journal Of Industrial Spectrum, Vol. 14, No. 1, 2016 1-180.

The high number of workplace accidents in Indonesia indicates that employers and workers are still less aware of the importance of using Personal Protective Equipment (PPE). Although the importance of PPE has been regulated, awareness and implementation of consistent use of PPE is still a challenge.

In addition, the results of statistical tests showed that there was no finding of working hours that violated the provisions of the job creation law among the respondents, where their working hours did not exceed 8 hours a day. This suggests that the main problem is not non-compliance with the rules of working hours, but the lack of understanding and implementation of adequate use of PPE in the workplace. Work environment is one of the important factors that affect workplace accidents [8]. Unsafe working environment is one of the important factors to play a role in the incidence of accidents.

Work accidents are unforeseen events that occur without intent and can occur both during work and as a result of the work itself. These accidents can be caused by various harmful factors such as inadequate mechanical protection, poor condition of equipment or work tools, unsafe structures, hazardous working environments, as well as inadequate personal protective equipment.

The Occupational Safety Law of the Republic of Indonesia Number 1 of 1970 regulates the following:

1. Every worker has the right to occupational safety protection for the welfare and improvement of national productivity.
2. All workplaces must have an adequate level of security.
3. All sources of production must be operated safely and efficiently.
4. Efforts should be made to develop occupational health and safety standards.
5. The development of these standards must be carried out through laws that contain general provisions on Occupational Safety, in accordance with the development of society, industrialization and technology.

According to the theory of causation refers to Dan Petersen, an occupational safety expert known for his contributions in the theory and management of safety. Petersen developed the dual causation theory which identifies two main categories of causes of occupational accidents:

1. **Dangerous Acts:** these actions include the behavior of individuals who violate established safety procedures. For example, workers who do not use

personal protective equipment or neglect safety procedures may pose a risk to themselves and others.

2. **Hazardous Conditions:** these include unsafe physical conditions or work environments, such as faulty equipment, hazardous work environments, or poor design of the workplace. This condition can lead to accidents if not treated properly.

Unsafe conditions are dangerous working environment conditions and can directly or indirectly cause work accidents [9].

Based on the theory above, the factors that can affect occupational accidents in the construction industry are organizational factors consisting of service usage needs, financial condition, project management, labor management, occupational health and safety culture and risk management. Labor factors consisting of attitude and motivation, knowledge and skills, as well as health and fatigue; workplace factors due to hazardous locations, work schedules and building maintenance; material and tool factors resulting from material planning and specification, inventory, maintenance and availability of materials and tools [10].

The construction industry often experiences minor accidents as well as major accidents such as falling, being scratched, crushed, glued, falling objects, and others, resulting in injuries and even death. This is due to the carelessness of workers and harmful environmental conditions. Criminal liability comes from the fact that a crime has been committed against a person. Criminal liability leads to punishment for the person responsible for the incident, if he committed a crime and fulfilled the conditions specified in the law, he can be punished.

Based on the above problems and also the lack of research on the responsibility of victims of work accidents, the author is very interested in "the legal consequences of work accidents in the construction industry: a criminal law perspective" in the hope of finding answers to the formulation of problems that will be studied later.

## RESEARCH METHODS

This research method uses normative legal research method, which focuses on the study of theories, concepts, and regulations that are relevant to the problems analyzed. This method relies on a legal and case-based approach to evaluating related legal aspects.

<sup>8</sup>Law No.11 year 2020 on job creation (job creation law)

<sup>9</sup>Hosseiniyan, SS and Torghabeh, ZJ. The Main Theories Of The Causal Models Of Construction Accidents: A Literature Review. International Journal Of Advances In Engineering & Technology. 2012; 4(2):53

<sup>10</sup>Haslam, R. A. , Hide, S. A., Gibb, A. G. F., Gyi, D. E., Pavitt, T., Atkinson, S. and Duff, A. R., "Contributing factors in construction accidents". *Journal of Applied Ergonomics*. 2005; 36: 401- 415.

Sources of legal materials used include:

1. **Primary Legal Materials:** Primary sources of law, such as statutes and regulations.
2. **Secondary Legal Material:** Information obtained from literature or writing that addresses primary legal material.
3. **Tertiary Legal Materials:** Sources that provide additional guidance and references, such as legal encyclopedias and legal dictionaries.

In this study, secondary legal materials from the author's literature and relevant literature sources were used to explore and understand the applicable legal context.

## DISCUSSION

The government sets laws and regulations to ensure occupational safety and health. These regulations include a variety of laws and regulations designed to ensure that the work environment is safe and healthy. Some of the main rules include:

1. Law No. 1 of 1970 on Occupational Safety: establish rights and obligations related to occupational safety to protect workers and improve welfare and productivity.
2. Law No. 11 of 2020 on job creation: regulating various aspects of employment and worker protection, including provisions on Occupational Safety and health.
3. Government Regulation No. 50 of 2012 on the establishment of Occupational Safety and Health Management System (SMK3): establishing standards of Occupational Safety and health management system that must be applied by the company.

This occupational safety and health regulation aims to provide vision and hope in the management of risks and hazards in the workplace, and not just as a standard or code of conduct. These norms are often referred to as rules that regulate the social life of individuals in society to ensure a safe and healthy work environment. These norms are often called norms or rules that regulate the social life of individuals in society [11].

The purpose of Occupational Health is to ensure the protection and well-being of workers, as well as to increase labor productivity by preventing accidents and occupational diseases. The main objectives of Occupational Health include:

1. Protecting employees from occupational health risks: taking steps to reduce or eliminate health risks that may threaten workers.
2. Improving employee health: implementing programs and policies that support the physical and mental health and well-being of workers.

3. Ensure the health of employees and those around them: adopt practices that not only protect workers but also ensure that the work environment is safe for the surrounding community.
4. Ensuring safe and efficient production: managing production processes in a safe and efficient manner to prevent disruptions that may result in accidents or damage.

In the context of regulation of working hours, Law No. 11 of 2020 on job creation stipulates the following provisions:

- a. Working hours are seven hours per day and 40 hours per week for six working days in one week.
- b. Alternatively, working hours can be set at eight hours per day and 40 hours per week for five working days in a week.

According to Zainal Asikin, national common problems become the main source of dissatisfaction, usually related to [12]:

1. Salary.
2. Social insurance.
3. Cup behavior that sometimes seems less in accordance with the personality.
4. Labor force and work capacity, which is perceived as a shortage as a result of the work done.
5. There are personal problems.

In addition, they often lack legal protection in the area of non-permanent workers and are not treated the same as permanent workers. The bylaws of the Company shall not conflict with the prevailing laws and regulations, and shall enter into force upon the approval of the appointed official. Employers are obliged to inform their workers and explain the rules of the company. The protection of workers against the power of the employer is realized when the regulations concerning working life that require or compel the employer to act according to the law are actually implemented by all parties, because the validity of the law cannot be measured only in a certain way. juridically, but measured sociologically and philosophically. 6 legal bases that are often used when referring to K3, namely: Law No. 1 Of 1970 On Occupational Safety.

1. Law No. 21 of 2003 on the ratification of the ILO Convention.
2. Law No. 13 of 2003 on employment, especially
3. Minister of Labor's decision: no.155 / MEN/1984
4. Regulation of the Minister of Labor RI No: PER.04 / MEN/1987
5. Regulation of the minister of manpower RI No. 05 / MEN / 1996

<sup>11</sup> Soerjono Soekanto, 2013, Factors Affecting Law Enforcement, Cet. 12th, Jakarta, Rajawali Press, P. 23.

<sup>12</sup>R. Joni Bambang S., S.H., MM, 2013, Labor Law, Bandung: Pustaka Setia, P.289.



The application of sanctions against violations in the labor sphere is provided for in law No. 11 of 2020 on job creation. In this law, sanctions are divided into two main categories: criminal sanctions and administrative sanctions.

### 1. Criminal Sanctions:

Article 162 to Article 164: provides provisions on criminal sanctions for violations in the field of Labor. These criminal sanctions can be imprisonment, confinement and fines. It aims to provide a deterrent effect for violators and ensure compliance with the provisions of the law.

### 2. Administrative Sanctions:

Article 185: provides for the application of administrative sanctions against offenses in the Labor field. These administrative sanctions usually involve actions such as revocation of business licenses, freezing of permits, or official warnings. These sanctions are designed to ensure that companies comply with regulations without having to resort to criminal channels.

These criminal and administrative sanctions aim to enforce labor regulations, protect workers' rights, and maintain safety and well-being in the work environment. The implementation of these sanctions is expected to encourage employers and related parties to better comply with labor regulations.

The Occupational Safety and Health Administration (K3) system is a key element in efforts to prevent accidents and occupational diseases, as well as improve safety in the workplace. Based on the following analysis, it can be concluded that:

1. **Priority Of K3 Administration System:** The importance of emphasizing the K3 administration system to prevent significant deaths and injuries due to work accidents. A good administrative system not only involves implementing effective K3 procedures but also ensuring that all parties adhere to established safety standards.
2. **Application of legal aspects and sanctions:** Based on the results of the application of the legal aspects of security, the sanctions imposed on violators are regulated in accordance with the rules established by the company and applicable laws. These sanctions include criminal sanctions stipulated in Article 162 to Article 164 of Law No. 11 of 2020 on job creation, in the form of imprisonment, confinement, and fines. The application of these sanctions aims to enforce compliance with regulation K3 and prevent labor violations.
3. **Prevention of accidents and occupational diseases:** Implementation of K3 in accordance with the provisions of the law not only serves to prevent accidents and occupational diseases but also improves job efficiency and safety. With clear regulations, it is expected to reduce the risk of accidents and improve safety.

4. **Employee Development:** Ongoing coaching and training efforts are needed to ensure employees understand and comply with K3 regulations. This guidance is important to reduce abuses and ensure that all workers can work in a safe environment.
5. **Personnel Quality Improvement:** An effective employment management system has the support of governments and companies to improve the quality of personnel. Trained and competent employees will be more effective and efficient in carrying out their duties, so they can contribute to the achievement of company goals.

Overall, good management of K3, the application of appropriate sanctions and the improvement of personnel quality are important measures to create a safe and productive work environment. Therefore, it is necessary to provide guidance to employees to follow the regulations set by the government or company so that there are no accidents at work. The employment management system has been appreciated by the government and companies that the quality of personnel must be improved to create a qualified, competent, effective and efficient workforce to achieve the company's goals.

In the Occupational Safety and Health Act no.1 Article (2) of 1970 provides for the protection of Occupational Safety and health covering all aspects of hazardous work in all workplaces, whether on land, land, water, water or air under legal jurisdiction. Republic Of Indonesia. Here are some possible causes of accidents and health problems, including:

1. Working environment condition
2. Air arrangement
3. Lamp control
4. Use of work tools
5. Physical and mental condition

The solution to this problem is to impose strict sanctions on the company, and the implementation of these regulations requires close supervision so that violations do not recur and the health of employees is maintained. To overcome this problem, the Indonesian government or occupational health and safety institutions must implement special measures to overcome this problem, such as providing education to rural communities about the importance of Occupational Safety and health in the work environment so that they understand the importance of Occupational Safety and health. Implementation is in the work environment. One way is to implement the mandatory policy of the Ministry of manpower and migration of the Republic of Indonesia in 1978 on Occupational Safety and Health in the transportation of timber and logging.

It is expected that the extension or socialization can reduce the number of work accidents, because this work is quite risky (High Risk). Therefore, this work must be equipped with a complete IKV and also requires

insurance such as BPJS work, so that workers feel safe and secure in the event of an accident, so that they can work optimally.

Labor law provides legal protection in the area of Occupational Safety that is relatively safe for a short or long period of time and the worker is assured of his safety. Due to the legal protection of workers, the state obliges employers to equip their workers with work Protection Equipment. Regarding the responsibility of workers, in the event of an accident at work while performing their duties in the workplace, the employer bears the material burden by reimbursing the costs incurred as a result of the accident.

Legal protection is defined as the action or actions of the government given to legal entities in accordance with their rights and obligations and carried out under Indonesian positive law. Legal protection arises due to the existence of a legal relationship. Legal relations are interactions between legal entities that have legal meaning or legal consequences (the emergence of rights and obligations).

## CONCLUSIONS AND ADVICE

### 1. Conclusion

To overcome the problem of Occupational Safety, the Indonesian government or K3 institutions must make special efforts to overcome the problem, for example by providing public awareness of the importance of Occupational Safety and health in the work environment. they understand how important it is to implement K3 in the work environment. One way is to implement the mandatory policy of the Ministry of manpower and migration of the Republic of Indonesia in 1978 on Occupational Safety and Health in construction projects.

Criminal liability against companies that fail to properly manage the concept of employee safety resulting in workers losing their lives, is also part of corporate crime. This responsibility is considered absolute responsibility so that the managers of such enterprises and legal entities can be punished. Directors are threatened with imprisonment, while companies or corporations are threatened with fines.

Providing preventive action means that citizens are given the opportunity to express their objections or opinions before a government decision becomes final. Strict legal protection after a dispute guarantees legal protection. The purpose of this oppressive legal defense is to resolve disputes.

### 2. Advice

- a. To address risks such as workplace accidents, companies must continue to optimize the health and safety efforts of their employees.
- b. The system of supervision and law enforcement against violators of the Occupational Safety and health system will be further developed so as to provide a deterrent effect for employees and companies that commit violations.
- c. Companies must provide the best protection to ensure labor safety. So that employees can comfortably carry out their activities and the company is not criminally liable for negligence in protecting employees.

## BIBLIOGRAPHY

- Depnaker R. I. (1996). Indonesian Journal of Industrial Hygiene Occupational Health and Safety Vol. XXIX No. 4, Jakarta: Depnaker.
- Haslam, R. A., Hide, S. A., Gibb, A. G. F., Gyi, D. E., Pavitt, T., Atkinson, S., & Duff, A. R. (2005). Contributing factors in construction accidents. *Journal of Applied Ergonomics*, 36, 401- 415.
- Hosseinian, S. S., & Torghabeh, Z. J. (2012). Major Theories of Construction Accident Causation Models: A Literature Review. *International Journal of Advances in Engineering & Technology*, 4(2), 53.
- Joni Bambang, R. 2013, Labor Law, Bandung: Pustaka Setia.
- Lilian Enggal Ekasari, "Analisis Faktor yang mengenai Kecelakaan Kerja", The Indonesian Journal of Occupational Safe and Safety Health, Vol 6. No. 1 Jan-April 2017: 123-13.
- Maimun, 2004. Labor law An Introduction, Pradnya Paramita, Jakarta h.86
- Saloni, W., & Ferida, Y. (2016). Analysis of Occupational Health and safety factors that Singnifikan affect occupational accidents. *Journal of industrial spectrum*, 14(1), 1-180,
- Samodra Kharisma, Aji Sugiyanto et al. 2018. "Aspects of Criminal Law in workplace accidents", Jurnal Daulat Hukum, Vol.1, No 1 Maret.jurnal.unissula.ac.id/index.php
- Soekanto, Soerjono. 2013. Factors Affecting Law Enforcement, Cet. 12th, Jakarta, Rajawali Press.
- Suma'mur. P. K. Hygiene. 2009. Company and Occupational Health. Jakarta: PT. Sagung Seto.
- C, C, dk. 2013. Environmental Health and K3. Yogyakarta; Nuha Medika.
- Labor Law No. 13. Year 2013. Jakarta: Ministry Of Manpower.
- Law No. 11 year 2020 about job creation
- Law No. 7 of 2017 on the Social Security Program of Indonesian workers.