

Work Safety Concept in the Perspective of Law Number 1 of 1970 Concerning Work Safety

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Abstract: Work safety protection is employees' rights that should be accommodated by the employers so that the employees feel safe in doing their jobs. The norms of work safety are regulated in the Law Number 1 of 1970 concerning Work Safety. This study uses normative-juridical method and data collecting was conducted through library research. The results indicate that work safety norms regulated in the Law Number 1 of 1970 do not fully accommodate work safety of the employees yet. In addition clear concept of work safety and its elaboration are also not available yet. The concepts of work safety are about the coverage, the limitations that cannot be violated by the parties, and the unavailability of clear punishment as the restraint effects for both the employers and employees whenever the work safety norms are violated. In this matter, the form of punishments can be civil punishment, administrative punishment, or even criminal punishment. The existing punishment written in the law today is still light so that it may potentially allow the employers to violate the existing norms. Then, at the end this violation will harm the employees both materially and immaterially. Therefore, it is suggested that the norms of work safety regulated in the Law Number 1 of 1970 need to be amended to cover work safety interest of the employees.

Keywords: Work safety, legal protection, employers, employees

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I. INTRODUCTION

Employees are important part of the company by which every company must be aware about that. The legislation about employment obliges employers to protect their employees in any aspects including occupational health and safety in running business. OHS philosophically means an idea and attempt to guarantee humans circumstances, integrity, and perfection both physically and spiritually. It is also an attempt to guarantee human works and culture for the prosperity of society especially the workers. Article 2 verse (1) of the Law Number 1 of 1970 concerning Work Safety emphasizes that, the matters regulated in this Act is all about work safety in all types of workplaces on land, underground, under the water, and on the sky in the territory of Republic of Indonesia.

Occupational health and safety is employees basic rights especially for the employees who work in the industrial sector, so that the administrators and employers oblige to fulfill the occupational safety and health for the workers based on national and international standards, and nation legislation in all types of works. Work safety is categorized as technical protection which is the protection for workers to be safe from all dangers caused by heavy machineries or works materials used by the workers.⁴ Workers' health and safety is obliged to be fulfilled by the employers so that all the job contracts and occupational health and safety become the normative rights of employees. Moreover, it needs to be mentioned and included in the employment agreement.⁵

For the last couple of years, the number of accidents in working places increases every year. Working accident has caused lots of deaths, permanent impairments, and temporary impairments. The number of accidents at work in Indonesia is high. Social Insurance Administration Organization released the statistic that up to present, there have been 105,182 cases of accidents at works. There are 2,375 cases of heavy accidents that

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⁴ Erni Darmayanti, "Perlindungan Hukum Terhadap Pelaksanaan Keselamatan dan Kesehatan Kerja (K3) pada Perusahaan [Law Protection of Occupational Health and Safety]", *Journal of Cendekia Hukum*, Vol. 3, No. 2, March 2018, pages. 283-296.

⁵ Henry Arianto, "Implementasi Undang-Undang Keselamatan dan Kesehatan Kerja [the Implementation of Law about Occupational Health and Safety]", *Journal of Lex Jurnalica*, Vol. 7, No. 1, Desember 2009, pages 1-8.

end in death. In addition, there are also more than 101,367 work accidents in 17,069 companies by which 2,382 workers lost their life.⁶

Article 15 verse (2) of the Law Number 1 of 1970 concerning Work Safety states that any worker who violates the regulations may be assessed a criminal penalty of imprisonment up to 3 (three) months or a civil penalty up to IDR 100,000,- (a hundred thousand rupiah). In the article mentioned above, the light punishment of imprisonment and penalty is not comparable to the effects caused by the violations of occupational health and safety. There is no any strict legal threat to the company which ignores the safety protection and work safety in the place of work. The strict supervision is needed to avoid any violation in the work safety so that worker safety can be ensured well.⁷ Based on the background mentioned above, the problem highlighted in this research is how the concept of work safety applied in Indonesian legislation of the Law Number 1 of 1970?

II. RESEARCH METHODOLOGY

The type of this research is normative-judicial research which is a study of literature review and relevant regulations of the issue being researched. Library material and legislations are secondary data which are also called library research.

III. DISCUSSION

One way that can be done by the employers to let the employees meet their rights is by protecting and maintaining employees' safety. After Indonesian Independence, the work safety implementation has been regulated in Indonesian legislation namely the Law Number 1 of 1970 concerning Work Safety. According to Aloysius Uwiyono, *et al.*, work safety is all regulations and attempts to provide technical protection for workers from all risks in using heavy tools and hazardous materials at workplace.⁸

In its philosophical principal, the Law No.1 of 1970 concerning Work Safety, mentions that all workers have rights to be protected in their work, and for everyone in the work area, even though he/she does not do the work. In addition, employers also need to ensure safety of all workers by doing all possible efforts and attempts, so that the goal of work safety norms can be achieved. As for sociological principal, the law states that work safety norms should be included in law which consists of general provisions about work safety that go in line with the community values, technology and industry development. Then in the economic principal, it contains the source of production that should be safe and efficient by prioritizing the work safety signs.

Rudolf von Jhering with his purposive law theory, as it is cited by Sukarno Aburera, mentions that one side, law ensures individual freedom to achieve his/her goal which means to get benefits and avoid loss⁹. On the other hand, law is able to organize the individual goal and interest to be interconnected and in line with other's interest.¹⁰ Relying on the law of work safety, it mentions that the protection of workers focus more on work safety, either the workers who do the works, or the workers who are in workplace. The fulfillment of work safety by employer is the attempts to let the workers to get benefits and happiness. This can be seen in the condition wherever the workers feel safe and comfortable, automatically, the workers will feel happy. Without the safety in work, it can cause bad effect, for example work accidents, and even impairment which can lead to workers' suffering that later threaten the workers' prosperity.

The number of negative effects that can occur when there are work accidents in the area is not small, especially for the workers who are in the workplace area when the accident takes place. Indeed, it causes health issues that end to illness due to works, and worse, the severe and deathly accident.¹¹ Then, whenever there are serious work accidents, it will also cause bad effect for the environment. This will later threaten the sustainability of job provided by the employer, threaten worker's life who works in the workplace area when the accident happens, and even it will threaten the life of people who reside near the area of company. This will later cause loss to the employer.

⁶BPJS Ketenagakerjaan, The Number of Work Accidents in Indonesia is still high <https://www.bpjsketenagakerjaan.go.id/berita/5769/Jumlah-kecelakaan-kerja-di-Indonesiamasih-tinggi.html> accessed on 22 June 2018.

⁷ Samodra Kharisma Aji Sugiyanto, *et al.*, "Aspek hukum Pidana Dalam Kecelakaan Kerja Serta Tanggung Jawab Korporasi Bagi Keluarga Korban Berbasis Keadilan (Studi Kasus di PT. Semen Gresik Kabupaten Rembang) [Criminal Law Aspect in Work Accident and Corporate Responsibility to the victims' family Based on Justice (A Case Study at PT. Semen Gresik in Rembang regency)]", *Journal of Daulat Hukum*, Vol.1 No. 1 March 2018.

⁸ Aloysius Uwiyono, *et al.*, *Asas-Asas Hukum Perburuhan [The Principles of Labor Law]*, PT. RajaGrafindo Persada, Jakarta, 2014, page 79.

⁹ Sukarno Aburera, *et al.*, *Filsafat Hukum: Teori dan Praktik [Philosophy of Law, Theory and Practice]*, Kencana Prenada Media Group, Jakarta, 2013, page 111.

¹⁰ Bernard L. Tanya, *et al.*, *Teori Hukum (Strategi Tertib Manusia Lintas Ruang dan Generasi [Theory of Law (Humans Discipline Strategy across Space and Generation)]*, Genta Publishing, Yogyakarta, 2013, page 98.

¹¹ Cecep Triwibowo, *Etika dan Hukum Kesehatan [Ethics and Health Law]*, Nuha Medika, Yogyakarta, 2014.

The benefit of law and happiness in society is the benchmark of how the law functions in society. When it is reviewed from sociological values and psychological values, law can be beneficial in the society social life according to life values in the society itself. It cannot be contradict with the good thoughts included in society vision. The vast development of industry and technology should come along with high standard of work safety. This high standard should also be for workers who do a certain job. They should have appropriate work standards that go along with regulations which accommodate all aspects of technology development. Thus, the benefits of law product will bring happiness and prosperity to society.

From the economic perspective, the production source used in the work should be safe and efficient by prioritizing work safety norms in every job. Efficiency in production process is employer's expectation. The implementation of work safety and minimizing work accidents are actually the indirect form of efficiency. Although this does not save the production cost, it restricts the loss caused by work accidents which potentially belongs to every production unit in running their work. By minimizing the work accidents potentials, it means that the employer does not oblige to pay fees for medical treatment after the work accidents. Thus, the beneficial law for employer is as important as the beneficial law for employee.

Salmond legal protection theory in Satjipto Raharjo's book explains that the purpose of law is to combine and manage the various interests of society found in the society's life. Protection to a specific interest could only be implemented by limiting some interest on the other side¹². The aspect of work safety protection is the main interest need to be fulfilled by the parties such as employer and employee. Employee's interest has to be favored in creating the work safety protection, as the work safety training has to be provided by the employer, as well as provision of appropriate work safety tools, a safe workplace from potentially dangerous work accidents. On one side, it will cost the employer a lot of money to accomplish these work safety aspects, and reducing production cost as minimum as possible. However, fulfilling all aspects of work safety is a bigger interest and has a positive impact on the continuity of a business, which is the interest of employee in performing his work safe from any potential work accident.

Similarly, the safety of other people around the workplace also needs to be guaranteed, even though they do not work on the location. Since the safety of people, as well as the environment surrounding a workplace, is employer's responsibility as keeping a much larger public interest. The embodiment of work safety protection to the public surrounding the business unit area is an important interest that needs to be preferred than business interest such as gaining more profit.

Justice, finality, and certainty are three aspects in law according to Gustav Radbruch, as quoted by Bernard L. Tanya. Justice aspect is the equal rights under the law. Finality aspect is the goal of equity, implemented in encouraging the good in human's life who determine contents of the law. A certainty is a form of warranty that the law, containing the values of justice and norms that encourage good things, truly function as rules obeyed. Without the certainty aspect, it can be confirmed that the justice and finality aspect would be hard to implement.¹³

In the legislation, the work safety law in this case, has to accommodate the work safety protection norms and values of justice to all parties involved in a project. The values of justice and kindness in consideration to the philosophical foundation ought to be applied in a form of norms in the laws, especially to the parties who have a weak position in performing the work. Not only the one who directly involved in the work, if employee or society or even anyone who in that time located on specific working area got on a work accident or on a work accident prevention, their safety needs to be assured, which has to be applied as a form of written norms in laws.

The norms of work safety have to be inputted in the laws according to the norms that live and developed in society, industrial growth, and technology. As the norm of living a healthy life for the people in the industrial area, prevention of work accident that affect local communities require proper facilities and infrastructures for work safety. It is because the existence of work accident could harm the environment and has a big impact on the health and endurance of local communities. Work safety protection also needs to mind the dynamic industrial growth and technology, which keep being more modern each day, so the implementation in business and industry will not be out-of-date. This ought to become a standard for every employer side in the application, so standardization of work safety tools is essential as a reference, and this also needs to be printed as the norms in the laws regarding work safety.

The use of industrial tools including work safety tools has to meet the standard of safety and efficiency by keep prioritizing the signs of work safety. The need for safety and efficiency is worker's aspiration both employers and employees. There is no exception in the work safety protection, a sense of security in working and efficiency in production cost and work, creating a space of equal interest in implementing an interest as the

¹² Satjipto Raharjo, *Ilmu Hukum [Legal Science]*, PT. Citra Aditya Bakti, Bandung, 2000, page 55.

¹³ Bernard L. Tanya, *et. al., Op. Cit.*, page 118.

legal purpose. Employer wants a working condition to be safe in every aspect including work safety, which automatically resulted in saving some production cost and avoiding work accident.

Employees also want a safe working place including work safety, since the sense of security and safe condition could increase work productivity which resulted in a fortune for businessman and the employees themselves leading to also increasing the work welfare. An efficient condition, both in working and maintaining the production cost by prioritizing the values of work safety, would also economically provide a good income for the employers and employees. The existence of clear norms in the laws gives legal certainty to involving parties to accommodate every interest in a single line of interest.

Protection of work safety in the working place is important to be implemented especially for the workers, then the people nearby who located in the working area, and surrounding environment which directly affected if working accident occurs either in a small or large scale. The norms of work safety protection have to be clear and elaborately written in specific law. However, the norms of work safety protection as discussed in this paper has not yet written clearly in a structured and detailed manner in the Law Number 1 of 1970 yet.

IV. CONCLUSION

The norms of work safety protection in the Law Number 1 of 1970 concerning Work Safety have not yet fully accommodated the interest of the party who is in a weak position namely workers. There is no clear concept written in the law regarding how far work safety has been elaborated, among the others: the scope of work protection, restriction that should not be violated by the employer and employee, a distinct penalty that could be applied for the employer and the employee if work safety norms are violated either civil punishment, administrative penalty, or criminal punishment. All these types of protections are not clearly written yet in the Law Number 1 of 1970 so that it may open an opportunity for the employers to ignore work safety of the employee. Therefore, it is suggested that all clear concept of work safety norms as elaborated above should be written clearly so that work safety of the employees will be protected.

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