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Legal Protection of Work Safety Crimes Victims In Indonesia

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Article	Abstract
<p>Keywords: Community safety; Victim's rights; Work safety crimes.</p> <p>Article History Received: Jul 31, 2021; Reviewed: Nov 17, 2021; Accepted: Jan 26, 2022; Published: Jan 31, 2022.</p> <p>DOI: 10.28946/slrev.Vol6.Iss1.1363.pp24-40</p>	<p>Between 2014 and 2018, the Indonesian Ministry of Manpower recorded 89,625 cases of work accidents, and 1,193 of them resulted in death. During this period, 34,075 companies were reported for alleged work safety crimes. From the 2,074 cases, only four have been sentenced to prison. The most interesting issue is that the victims of work safety crimes do not get any kind of restitution or even compensation. This article aims to investigate the legal protection for victims of work safety crimes from the criminal law perspective. The method used is normative qualitative research on primary data, such as work safety legislation, the Criminal Code, and criminal court decisions. As a result, the work safety law stipulates that the purpose of law enforcement on work safety is recovery for victims, repairs and prevention. They are carried out to protect the public interest. Work safety regulations also regulate the qualifications of actions categorized as work safety crimes. Unfortunately, the regulation does not provide a mechanism for resolving work safety crimes. So that the settlement of work safety crimes relies on the general criminal justice system that adheres to retributive objectives in law enforcement. The purpose of law enforcement on work safety cannot be applied because victims do not get restitution or compensation. Thus, to obtain legal protection in accordance with the objectives of law enforcement on work safety, the alternative solution is a criminal policy to establish a special criminal mechanism for the settlement of work safety crimes.</p>

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INTRODUCTION

A work accident is an unexpected event that can result in injury, death, or loss. In general, work accidents are caused by negligence, omission by the company, workers, or both. For workers, injury, disability, or death will reduce the quality of life and their families. As for the company, work accidents result in overall production losses. They are starting from treatment, replacement and repair of machines, damage to production machines and workplaces, degrading the company's good name in society and trade, stopping the production process, wasted time having

to follow the work accident investigation process, as well as other costs that may arise for a legal process for claims for work safety crimes and environmental damage in the vicinity of the workplace accident. Unfortunately, a surprising list of victims mars the achievements of modern industry. One of the immediate effects of the Industrial Revolution with the mechanization of the industry was the dramatic increase in the number of health hazards and accidents faced by workers. The following steps in the industry have created conditions for these risks to increase and accumulate.¹

During the last five years (2014-2018), the Indonesian Ministry of Manpower recorded 89,575 victims of work accidents, 1,193 of whom died. A relatively high number of work accidents. During the five years, at least 34,075 companies were reported to police investigators related to alleged work safety crimes. A total of 2,047 case files reached the investigation stage, 395 investigations were discontinued, and the criminal court sentenced four work accidents.²

This reduction in the number of work safety crimes cases shows that in practice, several possibilities cause these cases in the further investigation to be unsubstantiated so that the case is discontinued. However, there is also the possibility that work safety crimes cases are settled out of court or settled amicably. This amicable settlement is not the same as an out-of-court settlement mechanism as is the case in civil and business law, which recognizes particular institutions other than the judiciary in resolving the problem. This family settlement is closer in meaning to negotiations between perpetrators and victims over a certain amount of compensation so that the practice of “kinship” settlement is not recorded in criminal statistics. This practice is carried out because the mechanism for resolving work safety crimes through the criminal justice system is considered by the perpetrators to have not provided legal protection for victims of work safety crimes.

Although criminal Law in Indonesia expressly stipulates that every criminal investigation process case cannot be discontinued even though it has been settled amicably between the perpetrators and crime victims. Provisions regarding this are governed in Chapter VIII Book 1, Articles 76-85 of the Criminal Code concerning the dismissal of the authority to prosecute crimes and execute sentences. However, the practice of resolving work safety crimes through kinship settlement is still undeniably a custom carried out by perpetrators and victims.

From the perspective of victimology, the phenomenon of crime victims looking for alternative solutions like this kind naturally occurs. The reason is that the crime problem is not seen and understood according to the actual portion of the dimensional, rational criminal etiology, valuable and responsible by legislators. Problem-solving is not based on the perspective of the right person (not seeing and dealing with perpetrators and victims as humans). As a result, deciding criminal policy pays attention to the regulatory perspective, not prioritizing the regulated perspective. If this happens, the policies taken will not create welfare and social justice for crime victims.³

¹ Earl E Muntz, “Industrial Accidents and Safety Work,” *The Journal of Educational Sociology* 5, no. 7 (1932): 397–412.

² This data comes from the author's interview with officials at the Ministry of Manpower of the Republic of Indonesia.

³ Arif Gosita, *Masalah Korban Kejahatan: Kumpulan Karangan* (Jakarta: Akademika Pressindo, 1993).

Referred to the results of the 7th UN congress in 1985 in Milan, which discussed The Prevention of Crime and the Treatment of Offenders, which resulted in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, it eventually became UN General Assembly Resolution Number 40/34. What is meant by crime victims are people who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial damage to their fundamental rights, due to an act or omission that violates the criminal law, including criminal abuse of power:⁴

“Persons who individually or collectively, have suffered harms, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omission that violate criminal laws operative within member states, including those law proscribing criminal abuse of power”

The definition of the victim is under the victim of work safety crimes. Victims of work safety crimes are individuals and people who collectively suffer physically and mentally from the threat of dangerous, unsafe conditions and unsafe behaviour in the workplace. Several journals discuss the protection for victims of crime related to aspects of public safety, community safety or social defence. For example, David Seidman wrote about the “Public Safety: Crime Is Up, But What About Punishment.”⁵ In this journal article is discussed legal justice against the imposition of punishment on perpetrators of public safety crimes. Tarah Hodgkinson and Graham Farrell wrote about “Situational Crime Prevention and Public Safety Canada's Crime-Prevention Programme.”⁶ They argue that the crime prevention program carried out by the National Center for Crime Prevention in Canada or Canada's National Crime Prevention Center (NCPC) can protect public safety. Steve Tomb in his article entitled Violence, Safety Crimes and Criminology⁷ discusses the relationship between violence and works safety crimes from a criminological perspective.

The originality of this article is a discussion of legal protection for victims of work safety crimes in Indonesia. This includes efforts to protect individual safety and the safety of the worker community from the threat of work accidents and criminal consequences arising from work safety. It is related to the prevention function in criminal law and the prevention function in Indonesian work safety law, namely Law No. 1 of 1970. Through action and prevention (general-specific), the threat of occupational safety hazards is eliminated or reduced so that individual workers and the workers' community do not become victims of workplace safety crimes in the future.

RESEARCH METHODS

This study uses a statutory approach in normative legal research. This approach analyses criminal law norms related to legal protection for victims of work safety crimes. The primary

⁴ UN. Secretariat, “Report on the Seventh United Nations Congress on the Prevention of Crime and The Treatment of Offenders,” *United Nations*, 1986, 45.

⁵ David Seidman, “Public Safety: Crime Is up, but What about Punishment?,” *JSTOR* 435 (1978): 248–67, <https://www.jstor.org/stable/1043098>.

⁶ Tarah Hodgkinson and Graham Farrell, “Situational Crime Prevention and Public Safety Canada’s Crime-Prevention Programme,” *Security Journal* 31 (2018): 325–42.

⁷ Steve Tombs, “‘Violence’, Safety crimes and Criminology,” *JSTOR* 47, no. 4 (2007): 531–50, www.jstor.org/stable/23639564.

data are the Constitution, Law No. 1 of 1970 concerning Occupational Safety, Criminal Law, and the Criminal Justice System. This study uses secondary data on the criminal law system in Indonesia. Secondary data consists of primary legal materials, such as Law Number 1 of 1970 concerning Occupational Safety, the Criminal Code, and the Criminal Procedure Code. At the same time, the secondary sources of legal materials are legal books, legal journals, work safety journals, and articles related to occupational safety crimes. The collected data is then analyzed and studied to find answers to the legal issues in this article.

ANALYSIS AND DISCUSSION

Work Accidents and Work Safety crimes

We begin with a historical review of work safety crimes in the industrial world. Work safety crime is a crime that occurs in a work agreement relationship between a company and an employee, in which there are elements of orders, work and wages. While carrying out the work order, a work accident befalls the employee. The position between the company and the employee is not in a balanced position. There is a subordinated relation of the principle of relationship the *master-servant*. So that the company as the employer, by the state, is charged with the obligation of work safety requirements for the people who serve the company, following the orders. If the company violates this obligation, and the violation results in loss of life and bodily injury for the employee, then this act is deemed as a work safety crime.

Work safety crimes existed long before the industrial revolution. At that time, the mindset of industrial society was still dominated by the strong influence of the belief that a work accident that befell a person was fate or unavoidable destiny. However, this way of thinking gradually began to be abandoned as rationalism developed, which then shifted the dominance of thinking that the cause of work accidents was caused by fate. The erupting industrial evolution in the UK and other European countries has contributed to the emergence of various theories, studies and scientific research in finding the causes of workplace accidents scientifically and rationally. Moreover, the use of boiler-based production machines also increases the level of damage and the threat of *work-related deaths*:⁸

“The industrial revolution in England can be described as the transformation of an essentially commercial society into one in which industrial manufacturing became the prevailing model of economic life. After 1850, the factory was the most important institution shaping politics, social problems, and the character of daily life. The factory provided a new and uncongenial social habitat. It is little wonder that English labourers, still more used to rural ways than urban ways, feared and hated the advent of the "machine". Through the early years of the industrial revolution, workers attacked the invading army of machinery and actually burned and wrecked entire factories.”

Before the industrial revolution, no general standards were governing the protection of work safety for workers set by the state or associations of traders and capital owners. Each worker independently brings and provides personal protective equipment, and the risk of work accidents is everyone's responsibility.⁹

Initially, the rules were made to protect machines and tools from the risk of damage, fire and explosion during use, not safety protection for workers. However, this practice is considered the

⁸ Thomas J. Anton, *Occupational Safety and Health Management* (New York: McGraw-Hill College, 1989).

⁹ Sri Redjeki, *Occupational Health and Safety* (Jakarta: Ministry of Health of the Republic of Indonesia, 2016).

starting point for the emergence of attention to workers, at least the operators who run the machines and equipment. Workers began to be given training education, taught discipline, and companies began to provide standard personal protective equipment to workers. Initially, damage to machinery and equipment was the company's principal capital. However, in its development, defects and death of skilled workers who can operate machinery and equipment properly are also a loss for the company. At this time, workers who have skills are company assets that must be maintained for their safety and health. Incidents of work accidents began to be recorded. Starting from the time of the incident, the victims, the chronology, the consequences, and the calculation of the losses suffered by the company. Although the recording is still simple, this practice is believed to be the starting point for the emergence of studies on the theories of preventing work accidents, setting the forerunner of regulation and prevention of work accidents.¹⁰

According to DannisPolan, a work accident is an event whose consequences cannot be prevented, but what can be prevented is the cause, which should have been able to be done earlier. In other words, the term work accidents contain two meanings: namely *accident* describes an unexpected accident, suddenly it just happens, it is difficult to identify the potential danger, and *incident* which means work accidents that can be prevented from the start are realized, identified the potential danger. So that when preventive measures have been taken, the impact can be overcome, and the spread of the consequences can be minimized.¹¹

According to DeReamer, basically, work accidents are caused by unsafe acts or unsafe conditions, which have been recognized from the start, the risks of danger to those involved in a work environment are known. The occurrence of work accidents is just waiting for momentum. Because in principle, everyone involved in a specific work environment should know the type of risk that will occur to him if unsafe work behaviour is carried out, unsafe working conditions are neglected and left unattended. However, these things are still deliberately ignored or left for various justifications. So it is not appropriate to define work accidents by using the definition of accidents in general. For example, using stairs that are already rickety, driving at excessive speeds, lifting weights beyond the equipment's capacity, being at heights but not using safety harnesses, operating machinery unattended. As Russell said below:¹²

“This definition, however, would not be acceptable to the experienced safety engineer. Some accidents are ‘planned’ unintentionally but, nevertheless, planned; for instance, using a rickety ladder, operating a power press without a guard, and driving at excessive speed are essentially preplanned accidents just looking for a place and a time to happen. And death from a fire, a fall, or a motor vehicle collision is clearly an expected accident. Their occurrence is anticipated. But, of course, no one knows in advance when and where they will occur. It is doubtful that any single definition can be devised that would cover all types of events that could be called “accidents”. The psychologist would focus on the so-called behaviour accidents, those unintentional acts such as forgetting an appointment, losing things, or making a wrong turn. The industrial hygienist would likely view occupational disease, dermatitis, silicosis and so on as the consequence of a series of recurring events or accidents. The safety engineer, on the other hand, would view an accident as the end product of a sequence of acts or events that result in some consequence that is judged to be ‘undesirable’, such as a minor injury, major injury, property damage, interruption, production delay, or undue wear and tear.”

¹⁰ Anne Marie Feyer and A Williamson, *Occupational Injury: Risk, Prevention and Intervention* (Bristol: Taylor & Francis, 1998).

¹¹ Dennis P. Nolan, *Loss Prevention and Safety Control: Terms and Definitions* (Florida: CRP Press, 2011).

¹² Russell Dereamer, *Modern Safety and Health Technology* (Canada: John Wiley & Sons, 1980).

Initially, the theories on the causes of work accidents stated that unsafe work behaviour (*unsafe act*) and unsafe working conditions (*unsafe conditions*) were the leading causes of work accidents, especially theories included in the classification of the accident sequence model.¹³

"In the development of theories on the causes of work accidents, many theories describe the factors that cause work accidents. Broadly speaking, the theories of the causes of accidents are classified into four models, namely the accident sequence, additional causes (additional accident causation), human factors (human factors) and decision factors (decision model)."

In subsequent developments, there were theories of causes of accidents stating that although work behaviour is not secure and working conditions are not safe is still a significant source of causes of accidents. However, both of them are under control monitored by the company through a work safety management system. So, the primary cause of work accidents is management failure *or lack of management* to control and prevent. *The word "control" is used because it connotes prevention as well as correction of unsafe conditions and circumstances.* Control of work accident prevention includes monitoring, supervision, analysis of worker capabilities, machine capabilities, carrying capacity of the physical environment, all of which are carried out as preventive, corrective actions.¹⁴

So currently, the adopted theories on the causes of work accidents based on *the accident sequence* no longer position unsafe work behaviour (*unsafe act*) and unsafe working conditions (*unsafe condition*) as the first domino in the chain of work accident components (*Component of the Accident Chain*). The first domino cause of work accidents was replaced by management failure. The chain of work accident components is an *accident, the result of an accident, immediate causes of accidents, and contributing causes*.¹⁵

The latest theory of causes of work accidents has placed *lack of management* as the first domino that will determine whether or not a work accident occurs in a workplace. When this management failure occurs, criminal responsibility is imposed on the corporation and/or the management of the corporation, not criminal responsibility for the individual perpetrators. On the other hand, these work safety crimes are also a violation of work agreements in employment relations regarding orders, work and wages as generally regulated in labour legislation and health legislation.

Because this work safety crime is an event that occurs in industrial relations, there is also a latent conflict of interest between the working class and the class of capital owners. As Katz and Kochan said in the working relationship between workers and companies, there is *inherent nature of conflict* in the form of *"That conflict arises out of the clash of economic interests between workers seeking high pay and job security, and employers pursuing profits"*. The working relationship between them (employee-company) has historically been dominated by the

¹³ H. W. Heinrich, Dan Petersen, and Nestor Roos, *Industrial Accident Prevention: A Safety Management Approach* (New York: McGraw-Hill College, 1980).

¹⁴ Heinrich, Petersen, and Roos.

¹⁵ Russell DeReamer, *Modern Safety and Health Technology* (New York: A Wiley-Interscience Publication, 1980).

master-servant principle, which is a customary practice of Law in Britain (*British common law*) which is also applied in its colonies.¹⁶

In the perspective of Marxism, the occurrence of conflicts between the working class and the capital owner is an essential phenomenon, not a coincidence that cannot be reconciled. The emergence of this class conflict occurs because of the crystallization of antagonism between classes that is protracted between the ruling class and the oppressed class. Nevertheless, that does not mean that people cannot rationally reach class compromises. Antagonism in society is born from conflicts between classes of interests that are comprehensive and cannot be bridged. Class antagonism determines, conditions, and colours all aspects of life such as culture, society and human biology. There is no social meaning that is not conditioned by class antagonism. The money economy that ultimately determines everything in society is known as historical materialism.¹⁷

According to Pamela Davies, crimes in the workplace are also workplace crimes, including health and safety crimes. The crime of work safety or the crime of work accidents is one form of crime that is not visible (invisible crimes) or crime behind closed doors. Together with ecological crimes (environmental and eco-terrorism), crimes in the family (violence and abuse in family relations), fraud crimes, crimes against the criminal offender, crimes against sex workers (sex worker crimes), criminal acts in a war situation and the crime of biopiracy (pillaging and theft of natural resources by corporations). Invisible crime is a term to distinguish it from the typology of criminal acts in general, known as conventional crimes or crime on the streets. Knowing that there are invisible crimes among us means that there are also invisible victims who have escaped the eyes of criminal law instruments. An offence classified as an invisible crime fulfils two conditions: the typology of the crime of work safety itself and the social danger (invisible crimes and social harm) it caused.¹⁸

Initially, work safety laws were used to punish employers who commit crimes related to the death of their workers, such as falsifying work safety documents, leaking the inspection time of work safety inspectors to the company, falsifying information and hiding the facts of the accident, covering up the cause of death of workers, violating environmental statutes, and violations of general criminal law such as negligence resulting in death-related work orders by employers. These actions are categorized as fundamental violations by the entrepreneur or company because they are a deliberate and systematic legal resistance to the work safety laws that have been established so that punishments against employers deserve criminal prosecution.¹⁹

In its development in several countries, work safety crimes are a form of corporate crime. The principle is to prevent criminal acts by controlling corporate behaviour through regulation. Of course, laws are no guarantee that corporations will act rationally. Nevertheless, at least

¹⁶ Harry C. Katz and Thomas A. Kochan, *An Introduction to Collective Bargaining and Industrial Relations* (New York: McGraw-Hill/Irvin, 2004).

¹⁷ A.A.G. Peters dan Koesrini Siswosoebroto, *Hukum Dan Perkembangan Sosial* (Jakarta: Pustaka Sinar Harapan, 1988).

¹⁸ Pamela Davies and Peter Francis CVictor Jupp, *Invisible Crime: Their Victims and Their Regulation* (United Kingdom: The Palgrave Macmillan, 2014).

¹⁹ Jordan B. Schwartz and Eric J. Conn, "Osha Criminal Referrals on the Rise," *Workforce Bulletin*, 2012, <https://www.workforcebulletin.com/2012/12/18/osha-criminal-referrals-on-the-rise/>.

business logic and calculations are always carried out by corporations to ensure that their interests are maintained. Thus they change the responsible behaviour of corporations to act positively in the interests of the corporation and the public interest at the same time.²⁰ In the context of work safety crimes, the form of criminal behaviour is that the corporation does not want to harm someone in particular but knows that his mistakes can harm other people. In contrast to criminal acts in general, which are one-on-one harm as a crime against certain people, work safety crimes cause indirect harm. Therefore, the solution is a community harm approach. Of course, what is being discussed is about the collective welfare of groups of people in some form of collectivity or social units that are often harmed physically or financially as a result of work safety crimes.²¹

Safety Law in Indonesia

A brief history of the development of works safety law in Indonesia was started in 1847. The regulation was initially made to protect the boiler engine from the threat of fire and explosion due to its use. Protection has not been addressed in the context of protection for workers due to work accidents caused by the use of the steam boiler. Under the supervision of the *Dienst Van Het Stoomwezen Institution*, in 1852 the Dutch East Indies government established *Reglement Omtrent Veiligheids Maatregelenbijhet Aanvoeden van Stoom Werktuigen in Nederlands Indie* (Stbl No. 20) as a regulation regarding the use of steam device for companies that had used boiler/steam-powered production machines.

However, in practice, it turns out that the use of boiler-based machines poses a fire and explosion hazard that results in death, disability and injury to workers. Responding to the emergence of cases of work accidents originating from steam boilers, in the form of fire and explosion hazards at that time, in 1905, the Dutch East Indies government issued a safety regulation or *Veiligheidsreglement.1905* (Stbl. No. 251), later updated by *Veiligheidsreglement 1910* (Stbl. No. 406). After Indonesia's independence, Law No. 33 of 1947 was issued concerning Payment of Compensation to Victims of Work Accident, then Law No. 2 of 1951 on the Declaration of the validity of the Accident Law No. 33 of 1947 from the Republic of Indonesia to the whole of Indonesia which came into force since January 8, 1951. Only on January 12, 1970, was issued Law No. 1 of 1970 on work safety, replacing the safety regulation *Veiligheidsreglement 1910* (Stbl. No. 406), which is still in effect today.²²

Systematically, the legal basis that becomes the juridical basis for the legal norms of work safety in Indonesia is derived from the Constitution of the Republic of Indonesia Article 5, 20, and Article 27 paragraph (2) of the 1945 Constitution, Article 86 and Article 87 Paragraph 5 of Law No. 13 of 2003 on Manpower, Law No. 1 of 1970 on Occupational Safety, and other organic implementing regulations of a sectoral and technical nature, such as Government

²⁰ Alvesalo, A., Tombs, S., Virta, E. *et al.* "Re-imagining crime prevention: controlling corporate crime?". *Crime Law Soc Change* 45, 1–25 (2006). <https://doi.org/10.1007/s10611-005-9004-2>

²¹ Hillyard, P., Tombs, S. "From 'crime' to social harm?", *Crime Law Soc Change* 48, 9–25 (2007). <https://doi.org/10.1007/s10611-007-9079-z>

²² Redjeki, *Occupational Health and Safety*.

Regulations, Ministerial Regulations, Ministerial Decrees, Ministerial Instructions, Circular Letters and Decrees of the Director-General of Industrial Development and Supervision.

In relation to prevention efforts as a form of legal protection for victims of occupational safety crimes, concerning work safety and occupational health, Indonesia has four core laws, namely Law No. 1 of 1970 on Occupational Safety, Law No. 13 of 2003 on Employment, Law No. 36 of 2009 on Health, and Law No. 1 of 1946 on Criminal Law Regulations, known as the Criminal Code (KUHP). In the Law No. 13 of 2003 on Manpower, general provisions regarding work safety and health are regulated in Articles 86 and 87, while more regulated explicitly in Article 35, Article 69, Article 70, Article 74, Article 76, Article 86, Article 87, and Article 169. The outline of the regulated provisions, among others, is that every worker has the right to protection of worker safety and health. This aspect of work safety is so important that it can cancel the employment agreement between the worker and the company. Suppose the company orders workers to do work that endangers the workers' life, safety, health, and/or morals, which was not notified or notified to the workers when the employment agreement was made. Employers/companies must provide free work safety equipment and maintain a work safety system. At the same time, Law No. 36 of 2009 on Health contains regulations concerning occupational health in Chapter XII Article 164 and Article 166.

Act No. 1 of 1970 on Work Safety regulates the basic principles of work safety, i.e., preventing workplace accidents, reducing accidents and controlling the threat of workplace accidents. The purpose of enforcing the criminal law on work safety is the evaluation of the perpetrators of the crime, recovery of the consequences caused to the victim, improvement of working conditions, and prevention so that work safety crimes and work accidents do not happen in the future other workers. By establishing requirements for work safety and occupational health in all workplaces, it may endanger the safety or health of workers. This law is the only regulation that stipulates work safety crimes. Violation of work safety requirements is work safety crime.

These work safety requirements contain scientific engineering principles, starting from planning, manufacturing, transporting, distributing, trading, installing, using, maintaining and storing materials and goods. Violation of this work safety requirement is a work safety crime. The primary difference between Law No. 1 of 1970 and the accident regulation (*Veiligheidsreglement*) 1910 Stbl. No. 406 is the supervisory approach. On *Veiligheidsreglement* 1910 Stbl. No. 406, work safety supervision is repressive, while work safety supervision in Law No. 1 of 1970 is preventive.

Law No. 1 of 1970 is the legal norm of work protection in Indonesia which is still influential today. The crime of work safety is a crime that arises in industrial relations, which are closely related to the elements of the employment agreement, namely work, orders and wages. In principle, the Manpower Law and the Work Safety Law stipulate several work safety requirements for companies to prevent, reduce accidents and control the emergence of hazards. So when the company's job safety requirements are not fulfilled, it can be said that there has been a work safety crimes violation, especially if the result of neglecting the work safety requirements poses a threat of danger and victims.

Based on the elucidation of Law No.1 of 1970 on Work Safety and Regulation of the Minister of Manpower No. 03/MEN/98 on the Procedures for Reporting and Examination of

Accidents, work accidents are defined as follows: “An unwanted and unexpected condition that can cause human casualties or property. The enactment of requisite safety covers measures to prevent and reduce accidents, prevent and control the incidence of occupational diseases, prevent and reduce dangerousness, and provide help to the accident.”

Accountability on the implementation of safety management systems of work must be carried out by the board, employers and the entire workforce as unity. Based on the Regulation of the Minister of Manpower No. PER.05/MEN/1996 on SMK3 that the OHS Management System is part of the overall management system, which includes the organizational structure, planning, responsibility, implementation, procedures, processes and resources needed for the development, implementation, achievement, assessment and maintenance of occupational safety and health policies in the context of controlling risks related to working activities in order to create a safe, efficient and productive workplace. This means that every structure and function of the personnel administering the work safety system has a shared responsibility as a unit. Supervision of the mandatory work safety requirements is carried out by local labour inspectors (Article 5 of Law No. 1 of 1970).

Law No.1 of 1970 focuses on the criminal liability for work safety on company management so that when a work accident occurs, the management is charged with criminal liability. When viewed from the definition of “manager” in Article 1 of Law No. 1 of 1970, “manager is any person who has the task of directing a workplace or its independent part.” Then the definition of manager can be equated with the meaning of "management" because only management has the authority to carry out a continuous hazard assessment analysis to control risks that have been calculated to prevent unacceptable losses as a risk decision.²³

Through the audit mechanism, safety requirements and investigations should protect workers from becoming victims of work accidents. With the existence of an audit of work safety requirements, it is actually beneficial for investigators to find preliminary evidence for handling work safety crimes. Investigators have been able to find out the point of failure of the safety intervention carried out by management and who will be charged with the crime. Safety Intervention is a method to determine to what extent the administrator of the work safety system has sought to prevent accidents and reduce workplace accidents, finding the presence or absence of errors, mistakes and behaviour.²⁴

According to Heinrich, the term “management” applies broadly to all managerial and supervisory staff in an industrial organization or company. This responsibility relates to the obligations of the work safety system. To determine the limits of responsibility between them, the method is known as the line of demarcation between work safety management and work safety personnel.²⁵

“As herein used, the term "management" applies broadly to the entire managerial and supervisory staff of an industrial organization. In the case of a "one person" company, where the establishment is so small that the owner is also the superintendent and the supervisor, managerial responsibility clearly rests on this one person. Therefore, the line of demarcation between management and employee lies in authority to issue orders or to direct work. A supervisor, a leader, or even a "straw boss" is a representative of management, and because he is authorized to direct the work of employees, he is a part of management.”

²³ James Co Van, *Safety Engineering* (New York: John Wiley & Sons, 1995).

²⁴ Feyer and Williamson, *Occupational Injury: Risk, Prevention and Intervention*.

²⁵ Heinrich, Petersen, and Roos, *Industrial Accident Prevention: A Safety Management Approach*.

Based on Article 6 of the Decree of the Director-General of Industrial Relations and Supervision No. KEP. 84/BW/1998), in the event of a work accident, the company management must report the work accident no later than two by 24 hours. Work accident reports come from three sources, namely from the community, management, or the company itself through official reports and the findings of the employees of the labour inspectorate. The local manpower leader follows up the report by issuing an inspection warrant for the workplace accident. The report on the examination results has three types of recommendations: Recommendations for “technical action,” the result of the examination of work accident cases does not find any criminal acts that violate work safety requirements. Recommendation of “further action”, the result of examining work accident cases, finds work safety crimes requirements.²⁶ Recommendation of “control measures,” the result of examining work accident cases finds violations of work safety crimes and causes casualties, bodies and losses. So it is necessary to enforce the law audit the work safety system and control measures so that the hazard and impact of the damage caused are not widespread.²⁷ Based on the explanation above, it can be concluded that the cases of work safety crimes that reach the court are sourced from reports from local labour leaders based on the recommendations of “control measures.”

The crime of violating work safety is related to the neglect of the obligations of work safety requirements as stipulated by work safety regulations. This neglect can be based on negligence or an intentional omission. The principle is that if a person has an obligation to do something and that person intentionally ignores his obligation, allows unsafe work behaviour, or places someone in unsafe working conditions that are dangerous to that person's health or other people, in this case, worker. Work safety crimes are closely related to the consequences arising from violations of work safety on the life, body and/or property of workers or other people in the work environment, such as threats of death, disability, injury, damage and loss. Thus, between the crime of violating work safety and the crime of work safety, it must be seen as a unified series of causes and effects. The evidentiary process determines the qualifications of the type of criminal offence or crime of occupational safety.

Based on the analysis of Law No.1 of 1970, the author concludes that work safety crimes are divided into two types, namely criminal offences and criminal acts. However, both types of crime require the same three conditions so that an act can be qualified as a work safety crime, namely: 1) occurs in an employment relationship, 2) an error is closely related to the element of negligence and/or omission, and 3) arising from injury, disability or death acquired in the work environment. These work safety crimes are in the form of work accidents (the consequences are immediately realized) and occupational diseases (the consequences are not immediately realized).

In general, work safety violations that are submitted to criminal justice are work safety crimes that occur in workplace accidents that result in death or pose a broad threat of danger. Based on the provisions of Law Number 1 of 1970, he was charged with Article 15 of the Work Safety Act. Article 15 is a provision for criminal sanctions for work safety crimes as regulated in Article 3 in the same regulation. Criminals are threatened with imprisonment for three months or a fine of 100 thousand Rupiah. The provisions of this article require that those responsible as

²⁶ Decree of the Director-General of Industrial Relations and Supervision No. KEP. 84/BW/1998.

²⁷ Minister of Manpower Regulation No. PER.05/MEN/1996 on Work Safety Management System.

perpetrators of work safety crimes are the management of the company as the organizer of the work safety system and the management is not the individual perpetrator.

Meanwhile, suppose a work safety crime uses criminal provisions in the Criminal Code. In that case, it uses articles that regulate the consequences of mistakes (omissions or negligence) resulting from criminal acts against life, body and material losses. Such as Article 359 of the Criminal Code (negligence causes another person to die), Article 188 of the Criminal Code (negligence causes a fire, explosion or flood), Article 360 of the Criminal Code (negligence causes another person to be seriously injured) or Article 361 of the Criminal Code (crimes committed in an occupation).

Based on the authors' analysis of the current regulations and settlement mechanisms for criminal acts, there are at least three main obstacles that systematically make it difficult to implement legal protections for victims of work safety crimes, namely the application of the substantive legal norms of work safety and the settlement mechanism. Constraints on the application of the substantive legal norms of work safety, consisting of First, the provisions of Article 15 of Law No. 1 of 1970 on Work Safety are not included in the minutes of investigation at the police level as well as in the indictment of the public prosecutor. This can be seen in court decisions. From the analysis of several decisions on work safety crimes, almost all the perpetrators of criminal acts were indicted based on the evidence of Article 359 of the Criminal Code or Article 360 of the Criminal Code only. Even though the provisions article 15 of Law No. 1 of 1970 is a specific provision for work safety crimes.

Because the prosecution against the perpetrators of the work safety crimes is only based on the provisions of Article 359 of the Criminal Code or Article 360 of the Criminal Code, the court sentence to the perpetrator of work safety crimes is a personal responsibility, not as a responsibility of the position or work of the perpetrator as part of management failure as the administrator of the work safety system in the company. In the context of work safety crimes. It must be remembered that work safety crimes are criminal acts that occur in industrial relations through employment agreements or company regulations, which contain elements of orders, work and wages. So that rationally and ethically, the responsibility for work safety crimes is also jointly accounted for by the individual management and the company as the person in charge of implementing the work safety system.

The purpose of Indonesian work safety law norms requires a deterrent effect on the administrator of the work safety system, namely by punishing individuals as officials or company managers for mismanagement of the work safety system. Frank E. Birds called it a lack of management in renewing his domino theory.²⁸ Not imposing criminal liability on individual perpetrators as a personal mistake. The omission of Article 15 of the Work Safety Law is a basis for a prosecution because investigators do not know that a workplace safety law specifically regulates criminal liability for perpetrators of work safety crimes. Special criminal provisions can hold liable the company as a legal subject of a criminal act. Law No. 1 of 1970 on Work Safety is actually *looking* in punishing perpetrators of work safety crimes.

“The *forward-looking* perspective on the theory of the purpose of punishment is known in the relative theory of sentencing as a prospective trait, which means that the purpose of the crime is prevention.

²⁸ Heinrich, Petersen, and Roos, *Industrial Accident Prevention: A Safety Management Approach*.

Punishment must prevent crime for the benefit of the public welfare. Prevention is not the end goal, but a means to achieve a higher goal, namely the welfare of society. Used as a criminal reaction for a crime of negligence.”²⁹

According to the authors, imposing criminal liability on the company for workplace safety crimes is an ethical and rational choice. Ethical choice means that the perspective of criminal liability for work safety crimes is responsible for actions and responsibility for the consequences. Responsibility for actions is in the form of re-fulfilment of work safety requirements that have been violated, while responsibility for the consequences is in the form of recovery and repair actions. Both types of responsibility must be seen as a single series of causal events. In the end, the two types of legal responsibility are intended as prevention efforts so that work accidents and work safety crimes do not recur in the future.

Rational choice means that technically, financially, and in power, only the company has the ability to recover and repair the consequences of a work safety crimes. In fact, all forms of recovery and repair efforts carried out are for the good of the company itself. As Steve Tomb and Dave Whyte said, only the company has the power to create safe working conditions, the power to prevent the spread of damage, and the authority to break the chain of work accidents so that they stop and do not spread so that work accidents do not befall the workers again in the future.³⁰ The only approach that fits with rational business thinking is the deterrence-based approach developed from the theory of prevention. Prevention theory is based on the idea that individuals are shaped by the costs and benefits that may follow as a consequence of a rational calculation that weighs the chances of being caught and convicted against the 'benefits' of committing a crime. Become an 'economic man' who thinks rationally and chooses to be selfish. First, the choice depends on the subject having perfect knowledge of the risks. Second, the rational choice depends on the individual's ability to make judgments.³¹

Second, although Law No. 1 of 1970 is a *lex specialis* criminal provision, this law does not explicitly regulate the settlement mechanism and the types of criminal sanctions to follow up on recommendations for "control measures" issued by labour inspectors. So that the process of proving the alleged crime of work safety in work accidents is completed through the general criminal justice mechanism. The consequence is that the purpose of the work safety law, which should be able to punish the company as the highest person in charge of implementing the work safety system, cannot be carried out. The following consequence is that the type of punishment also follows the provisions of general punishment as regulated in Article 10 of the Criminal Code.

Because the basis for criminal charges is only based on Article 359 of the Criminal Code (causing the death of people due to negligence) or Article 360 of the Criminal Code (causing serious injuries or injuries to people due to negligence), the consequence is that criminal liability claims can only be imposed on the private individual perpetrator (*natuurlijkpersoon*). The Criminal Code does not recognize corporate criminal responsibility (*rechtspersoon*) as the subject of criminal acts.

²⁹ Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 1984).

³⁰ Steve Tombs and Dave Whyte, *Safety crimess* (United Kingdom: Willan Publishing, 2007).

³¹ Tombs, Steve, and David Whyte. "The Myths and Realities of Deterrence in Workplace Safety Regulation" *The British Journal of Criminology* 53, no. 5 (2013): 746–63. <http://www.jstor.org/stable/23639788>.

“Corporations as the subject of criminal acts in developments outside the Criminal Code. Exceptions to the principle that only humans are subjects of criminal law can be carried out based on criminal provisions outside the Criminal Code. This exception is the basis of the third teaching of the interpretation of Article 59 of the Criminal Code. Those corporations can become perpetrators of criminal acts as well as be responsible for these actions. In Indonesia, this exception is regulated in Law No. 7 Drt/1955 concerning Economic Crimes. The corporation's acceptance as the subject of a criminal act means that there has been an expansion of the meaning of “*dader*”. So the next thing that is needed is proof of the existence of an error (*schuld*) in the corporation. The first teaching is that corporations are not responsible according to criminal law thus managers who do not fulfil the burden of obligations to manage the corporation are personally responsible according to criminal law. The second teaching is that corporations can be recognized as “*dader*” perpetrators, but the criminal responsibility (prosecution and punishment) rests with the management.”³²

The legal purpose of Law Number 1 of 1970 on Work Safety is the prevention of work accidents by imposing liability on corporations. The imposition of liability on the company is intended to be willing to evaluate the work safety system in its place. The responsibility is imposed on the company to improve the safety system and simultaneous improvement of industrial productivity with the approach perspective of immediate and long-range approaches.³³

Because the basis for criminal charges is Article 359 of the Criminal Code or Article 360 of the Criminal Code, which is examined and proven at trial, the type of crime also follows the provisions of Article 10 of the Criminal Code, namely the leading crime and additional penalties. Article 10 of the Criminal Code reads that the criminal consists of the main punishments, namely: death penalty, imprisonment, detainment, fines, criminal closure and additional penalties consisting of the revocation of certain rights, confiscation of certain goods, the announcement of the judge's decision".

The primary and additional criminal sanctions are types of retributive criminal sanctions intended only for legal subjects (*rechtspersoon*). Neither the principal punishment nor the additional crime provides a punishment that presents a solution for victims of work safety crimes. For example, restitution, compensation, remedial actions or repairs for the consequences. The criminal law approach must function as crime prevention for individual safety and community safety. The emphasis is not only on how crime can be reduced but also on how criminal law maintains and strengthens social communities to act collectively and to improve their quality of life.³⁴ From the explanation above, it can be summarized that although the provisions of Article 15 of Law No. 1 of 1970 on Work Safety are deemed no longer relevant to the current condition of Indonesian industrial relations, the omission of the provisions of Article 15 in settlement of work safety crimes has major implications, especially legal protection for victims of work accidents. The criminal sanction is insignificant, but the effect is very beneficial when combined with the provisions of Article 359 of the Criminal Code or Article 360 of the Criminal Code. With the use of the provisions of Article 15, the provisions of Article 361 of the Criminal Code can also be used simultaneously.

³² Mardjono Reksodiputro, *Kemajuan Pembangunan Ekonomi Dan Kejahatan* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, 2007).

³³ Heinrich, Petersen, and Roos, *Industrial Accident Prevention: A Safety Management Approach.*, (New York, McGraw-Hill Book Company, 1980).

³⁴ Manon Jendly, Valerie Sagant And, and Margaret Shaw, *International Report on Crime Prevention and Community Safety: Trends and Perspectives* (Montreal, Quebec, Canada: International Centre for the Prevention of Crime (ICPC), 2010).

The second obstacle is that although the provisions of Article 15 of Law No. 1 of 1970 are used in the prosecution process, as long as the settlement mechanism is through the general criminal justice system and follows the type of criminal sanctions as stipulated in Article 10 of the Criminal Code, the purpose of the legal norms of work safety will not be achieved. The solution is that the settlement of work safety crimes must have a special settlement mechanism so that the objectives of work safety law and legal protection for victims of work safety crimes can be executed. Given the strong influence of retributive theory in general criminal justice.

“Retributive theory is giving sanction both retrospective or forward-looking, punishment is a pure reproach, and the aim is not to correct, educate or re-socialize the perpetrators of the crime. The retributive theory of punishment is divided into two theories: the revenge theory and the expiation theory. The meaning of revenge is to be returned to the perpetrator (the criminal is back). For example, in the theory of revenge, it is said, "you have hurt X, then we will hurt you". In the expiation theory, for example, it says, "you have taken something from X, then you must give something of equal value to X.”³⁵

The mechanism for resolving cases of work safety crimes still relies on the settlement mechanism and the type of punishment adopted by the general criminal justice system. As a result, the purpose of the work safety law is not optimally applied. Types of criminal sanctions in general criminal justice are imprisonment, confinement and fines. At the same time, the sanctions for work safety crimes are carried out in stages based on the degree of crime. Work safety law in its settlement principle is oriented towards sanctions which contain the utility of prevention, repair and recovery. The criminal provisions adopted by the Indonesian Criminal Code do not provide space for the benefit of the victim, which is to restore, repair the damage. Such as rehabilitation, restitution, reparations, compensation or other forms that restore the nature of the suffering they have experienced. Justice is considered to have been upheld when the perpetrators of criminal acts are severely punished, while victims' rights are clearly ignored in court decisions.

On the other hand, the criminal justice system also does not provide space for perpetrators to introspect their mistakes recover and repair the damage they have caused to victims and the community of workers as a form of responsibility for their mistakes. The criminal justice system does not provide space for victim-perpetrators to reintegrate, agree to listen to each other, forgive, joint deliberation agree on a solution as an approach to resolving work safety crimes as the legal ideals of work safety regulations (Law No.1 of 1970). In other words, looking at the current state of regulation and its implementation, the authors see that in the future, it will be necessary to renew work safety law regulations and possible approaches to conflict resolution in criminal justice, so the settlement of criminal law able to provide legal protection solutions for victims of work safety crimes will be better, As stated by Howard Zehr, finding a "solution" is when the question of what to do, about what has happened in the past and what will happen in the future can be answered.³⁶

CONCLUSION

³⁵ Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung, Alumni, 1984).

³⁶ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Canada: Herald Press, 1995).

Based on the discussion above, it is concluded that the regulation of legal protection for victims of work safety crimes in Indonesia is currently still unable to be implemented optimally. Although normatively, the purpose of work safety law is forward-looking, namely the enforcement of criminal law by means of recovery for victims, improving working conditions, and prevention so that work safety crimes do not happen to other workers in the future. There are at least two obstacles to the enforcement of the current objectives of the criminal law on work safety. First, the practice of punishment is only imposed on private actors, not criminal sanctions on company management or the company as the organizer of the work safety system, so that there is no behavioural improvement effect. Second, work safety regulations regulate the forms of actions classified as work safety crimes without specifically regulating the formal legal mechanism for the settlement of work safety crimes. As a result, the settlement of work safety crimes cases is carried out through a criminal justice system that is still backwards-looking and retributive. The suggested solution is that criminal policy must create a particular criminal justice mechanism for the settlement of work safety crimes that support enforcing work safety laws based on Law No. 1 of 1970, which is reconciling, restorative, repairing and preventing.

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