



LEGAL REVIEW OF JUSTICE IN OCCUPATIONAL SAFETY AND HEALTH PROTECTION

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Abstract

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This study aims to determine how the implementing legal provisions and utilization of forest land conversion into plantations are oriented towards capitalism. This study uses a normative legal research method with the types of approaches, namely the legislative approach and the conceptual approach. The legal materials used are primary, secondary, and tertiary legal materials, obtained by conducting a literature study. The results of the study indicate that Occupational Safety and Health (OHS) is an integral part of the protection of workers' rights, aims to create a safe and healthy work environment, and prevent work accidents and occupational diseases. In the Indonesian context, OHS is regulated through various legal instruments such as Law Number 1 of 1970 concerning Occupational Safety, Law Number 13 of 2003 concerning Manpower, and other derivative regulations that explain the standards and guidelines for the implementation of OHS. In addition, Indonesia has also ratified a number of international conventions from the International Labor Organization (ILO) which emphasize the importance of OHS protection for every worker. However, in its implementation, OHS regulations in Indonesia still face various challenges that lead to injustice in the protection of workers. Workers in the formal sector, especially those working in large companies, tend to get better OSH protection because the companies have sufficient resources to comply with existing regulations. In contrast, workers in the informal sector and small and medium enterprises (SMEs) often face more vulnerable situations, where OSH protection is minimal or even non-existent. This inequality raises questions about how the

value of justice has been applied in OSH regulations in Indonesia. The analysis in this study shows that the inequality of OSH protection can be seen from several aspects. First, there is a difference in access to OSH training and facilities between large and small companies, where large companies are better able to provide adequate facilities. Second, informal workers, such as contract workers, casual daily workers, and outsourced workers, are often not covered by OSH regulations, so they do not get proper protection. Third, the OSH supervision system in Indonesia is still weak, especially in supervising the informal sector and SMEs, which results in uneven implementation of OSH standards across sectors. From a legal perspective, this inequality is contrary to the principle of justice specified in the constitution and various employment regulations. Article 86 of Law Number 13 of 2003 clearly states that every worker has the right to OSH protection. In addition, Indonesia as a country that has ratified ILO Convention Number 155 on OSH has an obligation to guarantee equal protection for all workers, regardless of employment status or type of industry.

Abstract

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Penelitian ini bertujuan untuk mengetahui bagaimana ketentuan hukum pelaksana dan pemanfaatan alih fungsi lahan hutan menjadi perkebunan yang berorientasi kepada kapitalistik. Penelitian ini menggunakan metode penelitian yuridis normatif dengan jenis pendekatan yaitu pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan yaitu bahan hukum primer, sekunder, dan tersier, diperoleh dengan melakukan studi kepustakaan. Hasil penelitian menunjukkan bahwa Keselamatan dan Kesehatan Kerja (K3) merupakan bagian integral dari perlindungan hak-hak pekerja, bertujuan untuk menciptakan lingkungan kerja yang aman dan sehat, serta mencegah terjadinya kecelakaan kerja dan penyakit akibat pekerjaan. Dalam konteks Indonesia, K3 diatur melalui berbagai perangkat hukum seperti Undang-Undang Nomor 1 Tahun 1970 tentang Keselamatan Kerja, Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, serta peraturan turunan lainnya yang menjelaskan standar dan pedoman penerapan K3. Selain itu, Indonesia juga telah meratifikasi sejumlah konvensi internasional dari Organisasi Buruh Internasional (ILO) yang menekankan pentingnya perlindungan K3 bagi setiap pekerja. Namun, dalam penerapannya, regulasi K3 di Indonesia masih menghadapi berbagai tantangan yang mengarah

pada ketidakadilan dalam perlindungan bagi pekerja. Pekerja di sektor formal, terutama mereka yang bekerja di perusahaan besar, cenderung mendapatkan perlindungan K3 yang lebih baik karena perusahaan memiliki sumber daya yang cukup untuk mematuhi regulasi yang ada. Sebaliknya, pekerja di sektor informal dan usaha kecil menengah (UKM) sering kali menghadapi situasi yang lebih rentan, di mana perlindungan K3 minim atau bahkan tidak ada sama sekali. Ketidakmerataan ini menimbulkan pertanyaan tentang bagaimana nilai keadilan telah diterapkan dalam regulasi K3 di Indonesia. Analisis dalam penelitian ini menunjukkan bahwa ketidakmerataan perlindungan K3 dapat dilihat dari beberapa aspek. Pertama, adanya perbedaan akses terhadap pelatihan dan fasilitas K3 antara perusahaan besar dan kecil, di mana perusahaan besar lebih mampu menyediakan fasilitas yang memadai. Kedua, pekerja informal, seperti buruh kontrak, pekerja harian lepas, dan tenaga outsourcing, sering kali tidak tercakup dalam regulasi K3, sehingga tidak mendapatkan perlindungan yang layak. Ketiga, sistem pengawasan K3 di Indonesia masih lemah, terutama dalam mengawasi sektor informal dan UKM, yang mengakibatkan tidak meratanya penerapan standar K3 di seluruh sektor. Dalam perspektif yuridis, ketidakmerataan ini bertentangan dengan asas keadilan yang diatur dalam konstitusi dan berbagai peraturan ketenagakerjaan. Pasal 86 Undang-Undang Nomor 13 Tahun 2003 dengan jelas menyatakan bahwa setiap pekerja berhak atas perlindungan K3. Selain itu, Indonesia sebagai negara yang telah meratifikasi Konvensi ILO Nomor 155 tentang K3 memiliki kewajiban untuk menjamin perlindungan yang sama bagi semua pekerja, tanpa memandang status pekerjaan atau jenis industrinya. Untuk mewujudkan keadilan dalam perlindungan K3, penelitian ini merekomendasikan beberapa langkah penting. Pertama, rekonstruksi regulasi K3 yang lebih inklusif, yang dapat menjangkau pekerja di sektor informal dan UKM. Kedua, penguatan sistem pengawasan yang melibatkan pemerintah, pengusaha, dan serikat pekerja untuk memastikan penerapan K3 yang lebih merata. Ketiga, pemberian insentif atau dukungan teknis bagi perusahaan kecil untuk membantu mereka mematuhi standar K3 yang ditetapkan.

INTRODUCTION

Work or laborers are components of society that have a risk of occupational accidents. Occupational diseases and accidents experienced by workers not only have an impact on the decline in the health of the worker, but will also have an impact on the economy, family and society, considering that workers are the source of the family's economy, reduced worker productivity will result in decreased or lost family income which will ultimately have an impact on the wider community. ¹Occupational Safety and Health (OSH) is a fundamental issue in protecting workers' rights worldwide. OSH not only aims to ensure that the work environment is safe and free from danger, but also to maintain the physical, mental, and social well-being of workers. In the world of employment, OSH plays an important role in minimizing the risk of occupational accidents, injuries, and occupational diseases. Therefore, OSH regulation is a key element in the labor law system that aims to protect the basic rights of workers.

In Indonesia, regulations related to K3 have been regulated in various legal instruments, including Law Number 13 of 2003 concerning Manpower and Law Number 1 of 1970 concerning Occupational Safety, as well as various ministerial regulations and other policies that regulate technical and operational standards in the implementation of K3. In addition, Indonesia has also ratified a number of international conventions initiated by the International Labor Organization (ILO) which aim to strengthen the protection of workers' rights in terms of occupational safety and health.

However, the implementation of K3 regulations in Indonesia still faces many challenges. Data from various sources show that the number of work accidents in Indonesia is still relatively high, especially in sectors such as construction, manufacturing, and mining, which have a higher level of risk. In addition, there is still inequality in the implementation of K3 standards between large and small companies and between the formal and informal sectors. This is a serious concern because every worker, regardless of the type of work, contract status, or size of the company where they work, has the right to receive the same protection in terms of occupational safety and health.

The gap in the implementation of K3 is often caused by various factors, including limited resources in small and medium enterprises (SMEs) which tend to have more limited capacity to meet the K3 standards set by the government. On the other hand, in the informal sector, such as casual workers, contract workers, and outsourced workers, the implementation of K3 is often ignored due to the lack of adequate supervision. This shows that the current K3 regulations are still not fully able to overcome the problem of inequality in the protection of occupational safety and health. The imbalanced position of employers and workers, both economically and legally, causes workers to be in a weak position when dealing with employers. The large number of workers in Indonesia is not comparable to the available job opportunities, the inadequate level of education and skills of some workers has resulted in a lack of a balanced position and on the basis of mutual need between workers and employers. This imbalanced position has the potential for exploitation of workers by employers, workers are considered as part of the production factor and not a company asset. Employers as users of workers' services try to optimize production by "squeezing" workers. This condition is often carried out by employers by ignoring the safety and health of their workers. For that reason, the Government is obliged to protect workers through public policies that it makes. Implementation of public policies with the aim of protecting workers, one of which is by enacting public regulations in the field of occupational safety and health. These public laws and regulations are made to reduce the

¹ G. Kartasapoetra, 1994. *Hukum Perburuhan di Indonesia Berdasarkan Pancasila*. Sinar Grafika, Jakarta, hlm. 94

individual freedom of employers and workers, so that employers are "forced" to fulfill the rights of occupational safety and health for their workers responsibly.²

In the context of justice, every individual has the right to receive equal treatment under the law. This principle is in line with the values of social justice stated in Pancasila as the foundation of the Indonesian state. Justice in protecting occupational safety and health must be reflected in how OHS regulations are applied equally to all workers, regardless of employment status or type of industry. Unfortunately, in reality, not all workers in Indonesia receive the same protection in terms of OHS. Workers in the formal sector with permanent employee status tend to be more protected than workers in the informal sector or those working with contract or outsourcing status. This phenomenon gives rise to injustice in the application of OHS regulations, where the most vulnerable groups often do not receive adequate protection.

This injustice can also be seen from the perspective of access to OHS information and training. Large companies usually have easier access to training and socialization on applicable OHS standards, while small companies and the informal sector often have difficulty in getting the same access. This limitation widens the gap between workers in the formal and informal sectors, and creates greater risks for those working in sectors with minimal OHS protection.

In addition, the aspect of supervision and law enforcement related to K3 is also an important issue in efforts to realize justice in K3 protection. Although there are regulations governing the obligation of companies to provide a safe working environment, the implementation of these regulations is often weak due to limitations in supervision. In many cases, companies that violate K3 standards do not receive strict sanctions, so they do not have sufficient incentives to comply with applicable regulations. This inability to enforce the law fairly contributes to the high number of work accidents in Indonesia.

From a legal perspective, the principle of justice is one of the basic principles in the formulation and implementation of law. A just law must not only be normatively just, namely when existing rules are considered to be in accordance with the principle of justice, but must also be fair in its implementation. This means that the law must be able to be applied consistently and evenly, without discrimination or injustice. In the context of K3 regulations, this means that every worker, regardless of their background or employment status, has the right to receive equal protection from the risk of work accidents and occupational diseases.

Fair K3 arrangements also need to pay attention to the human rights (HAM) dimension. Occupational safety and health are an integral part of human rights, which include the right to life, the right to health, and the right to a decent working environment. Therefore, the state has an obligation to ensure that every worker, including those in the informal sector or with precarious employment status, receives equal protection in terms of K3.

Legal review of justice in K3 protection is becoming increasingly relevant in facing new challenges in the digital and globalization era. Technological developments and changes in work patterns, such as the emergence of the gig economy or sharing economy, create new challenges in the implementation of K3 regulations. Workers in this sector often do not have adequate protection because they are not considered formal workers, so they are not covered by existing K3 regulations. This condition shows that existing K3 regulations need to be reconstructed to be more inclusive and adaptive to changing times.

Fair occupational safety and health protection is one of the crucial issues in the labor law system in Indonesia. Although there are various regulations governing OHS, the

²Agoes Djatmiko, Elly Kristiani Purwendah, Eti Mul Erowati, Elisabeth Pudyastiwi, & Ikama Dewi Setia Triana. (2023). Tinjauan Rekonstruksi Regulasi Keselamatan Dan Kesehatan Kerja (K3) Yang Berbasis Nilai Keadilan. *Jurnal Pacta Sunt Servanda*, 4(2), 11-21.

challenges in their implementation are still great, especially related to the injustice experienced by workers in the informal sector and small companies. Therefore, it is necessary to reconstruct OHS regulations that are fairer, more inclusive, and responsive to changes in employment dynamics, while still upholding the principles of social justice and human rights. This legal review is expected to provide a deeper insight into how OHS regulations in Indonesia can be improved to be more equitable and able to protect all workers equally.

RESEARCH METHODS

The research method used in this study is a type of normative legal research or known as doctrinal legal research, which is a process to find legal rules, and to answer legal problems or issues studied by reviewing library materials. This study uses a statutory approach and a conceptual approach. The statutory approach to analyze or review regulations related to implementing legal provisions and the use of forest land conversion into plantations that are oriented towards capitalism. The conceptual approach to provide views and doctrines of legal science as a basis for analyzing problem solving. The legal material collection technique used consists of primary legal materials, secondary legal materials, and tertiary legal materials obtained by conducting a literature study consisting of legal material instruments that have a direct relationship to the Juridical Review of Justice in Occupational Safety and Health Protection.

RESULTS AND DISCUSSION

Analysis of the Implementation of K3 Regulations in Ensuring Justice for Workers

Occupational safety and health have the objectives of increasing productivity, increasing work efficiency and reducing health costs. Occupational safety has been a concern among governments and businesses for a long time. Occupational safety factors are important because they are closely related to employee performance and company performance. The more available occupational safety facilities are, the less likely there will be work accidents. Therefore, it is very important for a company to provide occupational safety and health facilities. Occupational Safety and Health is a problem that has attracted a lot of attention from various organizations today because it includes issues of humanity, economic costs and benefits, legal aspects, accountability and the image of the organization itself. All of these things have the same level of importance even though here and there there are indeed changes in behavior, both within the environment itself and other factors that come from external elements of the industry. Therefore, the government issued a policy as stated in Law Article 86 paragraph 2 of Law No. 1 of 1970 every worker/laborer has the right to obtain protection for occupational safety and health, morals and morality, and treatment in accordance with human dignity and religious values. To protect the safety of workers/laborers in order to achieve optimal work productivity, occupational safety and health efforts are carried out.³

³ Leli Sundari, (2022), Analisis Kebijakan Keselamatan Dan Kesehatan Kerja (K3) Dan Perencanaan Terhadap Kejadian Kecelakaan Kerja, *Jurnal Manajemen Bisnis Syariah Vol.2, No.1*

The implementation of Occupational Safety and Health (K3) regulations in Indonesia has been regulated through various legal instruments, such as Law Number 1 of 1970 concerning Occupational Safety and Law Number 13 of 2003 concerning Manpower. Although normatively this regulation has provided a strong legal basis in protecting workers, its implementation in the field shows that there is inequality in the implementation of K3 in various industrial sectors, especially between large and small companies, as well as between formal and informal workers.

In large companies that have more adequate resources, OHS standards are easier to implement because of the availability of funds, technology, and sufficient training for workers. However, in small and medium enterprises (SMEs), the implementation of OHS standards is often less than optimal. This is due to limited resources and a lack of knowledge and awareness of the importance of OHS. The inability of small companies to meet these OHS standards not only poses a higher risk to workers, but also creates injustice in terms of safety and health protection.

In addition, in the informal sector, such as casual workers, contract workers, and outsourced workers, the implementation of K3 is often not a priority. Informal workers, whose numbers are quite large in Indonesia, are often not covered by existing K3 regulations, either due to lack of supervision or because of the nature of the work that is not permanent. This makes workers in the informal sector more vulnerable to the risk of accidents and occupational diseases. The injustice in the implementation of K3 in the informal sector shows a gap that must be addressed through more inclusive and fair K3 policy reforms.

From a legal perspective, existing OHS regulations still do not fully reflect the principle of justice for all workers. Justice in law means providing equal and equal treatment for all parties without exception. However, in reality, there are still groups of workers who do not receive adequate protection. In this context, OHS regulations need to be reconstructed so that they can protect workers more fairly and evenly, regardless of their employment status or the sector in which they work. Strengthening supervision and law enforcement is also needed to ensure that OHS regulations can be implemented properly in all sectors.

Fairness in Supervision and Law Enforcement related to Occupational Safety and Health

Law in its function as protection of human interests has a purpose. In order for human interests to be protected, the law must be implemented. The implementation of the law can be carried out either normally, peacefully or due to violations of the law. In the event of a violation of the law, the law that is violated must be enforced. It is through law enforcement that the law becomes a reality. In law enforcement there are three elements that must be considered, namely, legal certainty (*rechtssicherheit*), benefit (*zweckmassigkeit*) and justice (*gerechtigkei*). Legal certainty is a justifiable protection against arbitrary actions, which means that someone will get something that is expected in certain circumstances. Society expects legal certainty for order. The law in this case is tasked with creating legal certainty because it aims for public order. Society in other cases, expects benefits in

the implementation or enforcement of the law ⁴. Supervision and enforcement of laws related to K3 are key aspects in ensuring that existing regulations can run effectively and fairly. However, in practice, K3 law enforcement in Indonesia still faces various challenges. One of the main problems that often arises is weak supervision in the field, especially in high-risk sectors such as construction, mining, and manufacturing. The lack of trained labor inspectors, as well as the minimal budget allocated for supervision, contribute to the low level of compliance with K3 standards in many companies.

Fairness in supervision and enforcement of laws related to occupational safety and health (OHS) is a very important principle to guarantee workers' rights, protect them from accidents, and create a safe working environment. OHS does not only focus on preventing the risk of accidents, but also on fulfilling workers' rights to a decent and hazard-free working environment. The implementation of fairness in the context of OHS must be carried out through a transparent, accountable, and law-based system, where parties who violate OHS regulations can be subject to strict sanctions in accordance with applicable provisions.

Effective supervision of the implementation of K3 is carried out through various mechanisms, such as regular inspections by the government or related institutions, internal company audits, and the involvement of labor unions in monitoring working conditions. This supervision must be carried out objectively and impartially, with the main goal of protecting workers from accidents and occupational diseases. In addition, existing regulations must provide access for workers to report unsafe conditions without fear of retaliation from management. This transparent and safe reporting mechanism is one form of justice that must be guaranteed by K3 law.

Law enforcement related to OHS is also crucial in achieving justice. When there is a violation of occupational safety and health standards, the sanctions given must be fair and commensurate with the level of violation committed. This includes both violations by employers who fail to provide a safe working environment and workers who do not follow safety protocols. The application of proportional sanctions is not only intended to punish violators, but also as a form of education so that similar incidents do not happen again in the future. Justice in OHS law enforcement also demands transparency in the legal process and decisions taken, so that all parties can understand the logic behind the sanctions imposed.

On the other hand, justice in the supervision and enforcement of K3 law must also pay attention to the protection of the rights of workers who are victims of work accidents. When an accident occurs, the victim has the right to receive appropriate compensation, either in the form of financial compensation, health insurance, or rehabilitation. Justice in this case means ensuring that the rights of the victim are recognized and fulfilled without a complicated or discriminatory process. This process also includes ensuring that the victim's family receives adequate social protection.

To realize justice in the supervision and enforcement of OHS laws, collaboration between the government, companies, unions, and related institutions is very important. All parties must have the same commitment to creating a safe and

⁴ Elly Kristiani Purwendah, (2023), Konsep Keadilan Ekologi Dan Keadilan Sosial Dalam Sistem Hukum Indonesia Antara Idealisme Dan Realitas *Jurnal Pacta Sunt Servanda* Vol 4 No 1 (2023)

healthy work environment, and support each other in monitoring and enforcing existing regulations. Justice in the context of OHS is not only about punishing violators, but also about preventing risks and ensuring the overall welfare of workers. Fair law enforcement, strict supervision, and protection of victims of work accidents are key components in efforts to create a just OHS system.

CLOSING

Conclusion

Occupational safety and health (OHS) is a fundamental aspect in the world of work, functioning not only to protect workers from potential hazards, but also to ensure the sustainability and productivity of an organization. In a legal review, justice in the protection of OHS is very important to create a safe, fair, and sustainable work environment. An effective legal system must guarantee that every worker has the right to work in safe and healthy conditions, and provide a clear mechanism for them to report violations without fear of retaliation. From the analysis conducted, it can be concluded that justice in the protection of occupational safety and health must include three main aspects: effective supervision, fair law enforcement, and protection of workers' rights, especially those who are victims of work accidents. A transparent and accountable supervision system, balanced with strict law enforcement against violators, is an important step to create a sense of security for workers. In addition, special attention to the rights of victims of work accidents is very important to ensure their justice and welfare. Thus, justice in the protection of OHS not only protects workers, but also encourages the creation of a better and more responsible work culture in the company environment.

Suggestion

In an effort to improve fairness in occupational safety and health protection, some suggestions that can be implemented are as follows:

1. **Improved OHS Education and Awareness:** There needs to be an educational program targeting workers and company management about the importance of OHS and existing legal obligations. This can be done through regular training and workshops.
2. **Improved Reporting Mechanism:** Establish a more accessible and secure reporting system for workers to report unsafe working conditions without fear of repercussion.
2. **Collaboration between Stakeholders:** Better cooperation is needed between the government, employers, and labor unions in the efforts of monitoring and enforcing OHS laws. With this collaboration, all parties can contribute to creating a safer working environment.
- Evaluation and Update of OHS Regulations:** Existing regulations must be evaluated periodically to ensure that they are relevant to current working conditions and able to address new challenges that arise.

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