

Criminal Liability by the Company in the Implementation of Occupational Safety and Health Management System

Muh Zhahir Adhiyaksa¹, Andi Muhammad Sofyan² and Haeranah³

Abstract

The purpose of this research is to find out how companies can be held accountable for their violations of the occupational safety and health management system. This research was conducted qualitatively using empirical data and legal sources of legislation. This research was conducted at the South Sulawesi Provincial Manpower Office and BPJS Employment Makassar City Branch. The results show that businesses can be criminally liable if they commit errors or omissions, such as not reporting work accidents, not registering employees in the BPJS employment social security program, and not having OHS certification for employees and operators. Criminal liability accepted by organisations includes imprisonment. In addition to criminal penalties, companies may also face administrative reprimands or fines. If companies do not implement an Occupational Safety and Health Management System, they must receive a warning. If the company does not follow the warning, the Indonesian Law No. 8 of 1981 on Criminal Procedure Law will be applied, in accordance with the provisions in PERMA No. 13 of 2016 on Procedures for Handling Criminal Cases by Companies. Companies that do not implement the Occupational Safety and Health Management System will be subject to imprisonment for a maximum of 3 months according to Article 15 of Law No. 1 of 1970 on Occupational Safety and Article 186 of Law No. 13 of 2003 on Labour.

Keywords: Liability, Safety, Health

INTRODUCTION

Every company must implement an Occupational Safety and Health Management System (SMK3) integrated with the management of the company. SMK3 must be implemented based on Government Regulation of the Republic of Indonesia Number 50 of 2012 for companies that employ workers/laborers of at least 100 people, have a high level of potential hazards, including companies engaged in mining, oil, and gas, and companies that have high potential hazards based on the determination of the Director General and/or Head of the Provincial Office. The determination is based on the results of inspection and testing in the company by labor inspectors (Based on Permenaker No.26 of 2014). However, there are still some companies that have not implemented SMK3 effectively, resultings in criminal consequences. This can be categorised as a crime committed by the company or as a corporation (Hadi Supriyanto, 2020: 6).

In the context of corporate crime, studies relating to white-collar crime itself began to be popularized by Edwin H. Sutherland in 1939, when speaking before the 34th annual meeting of the American Sociological Society in Philadelphia on December 27, which he referred to as crimes committed by people who are respectable have a high status and are associated with their work. Corporate crime in Indonesia continues to develop in line with the economic and technological developments that occur both within and abroad. (Intansasmita, 2015: 15). Criminal liability does not only mean 'entitled to be sentenced' but also 'entitled to be accused'. Criminal responsibility is the first of all circumstances that exist in the maker when committing a criminal offence. Criminal responsibility also means connecting the state of the maker with the acts and sanctions that should be imposed (Muladi and Dwidja, 1998: 39).

Thus, the assessment was conducted in two ways. First, criminal responsibility is placed in context as a factual condition (conditioning facts) of punishment, thus carrying out preventive aspects. Second, criminal liability is

¹Bachelor of Law, Department of Criminal Law, Hasanuddin University. Email: muhzhahir02@gmail.com

² Professor, Department of Criminal Law, Hasanuddin University

³Doctor of Law, Department of Criminal Law, Hasanuddin University.

a legal consequence of factual conditions, therefore, it is part of the repressive aspect of criminal law (Herlina Manullang, 2020: 9). In a previous study entitled *The Nature of Corporate Crime in the Law Enforcement of the Criminal Justice System in Indonesia* in the *Journal of Volkgeist Law Journal* Volume 4 Edition 2 provides research results that there is a need for articulation of corporate criminal liability by the state specifically through legislative and executive institutions and what kind of liability can be formally prosecuted against corporations as objects of criminal liability (legal policy), because the assessment of corporate guilt is a material basis for corporate criminal prosecution. In this study, we discuss how companies can be held criminally liable if they do not implement the an occupational safety and health management system. The correlation between previous research and the research that will be discussed is how the Company or Corporation is criminally liable if the company is proven to have done something that is not ordered by Law.

Corporations regulated in the Criminal Code (KUHP) clearly only regulate natural human beings who are the subject of criminal offences, so corporations that are part of legal subjects cannot be held accountable in real terms. Article 59 of the Criminal Code states as follows: "In the event that the offence is determined by a criminal offence against the management, members of the board of directors or commissioners, the management, members of the board of directors or commissioners who apparently did not participate in committing the offence shall not be punished". According to Article 59 of the Criminal Code, normatively, the fault of the corporation is the responsibility of its management only, and cannot be imposed on the corporation itself (Ferinda K Fachri, 2024).

Similar to the actions taken by companies in the Occupational Safety and Health Management System, the actions of companies that are negligent in the implementation of OSH in the workplace are criminal acts that can be categorized as crimes (Rainma Rivardy Remy Runtuwene, 2017: 8). Suppose that the company neglects the security and safety of its employees while working. Thousands of occupational accidents and diseases that often occur when workers perform their duties, mostly occur in the workplace, especially for companies with high potential hazards. Economic losses such as damage to tools and materials for production, accident compensation, halted operational processes, loss of working time, and non-economic losses such as death and, injury to workers are the result of the company's negligence in implementing the Occupational Safety and Health Management System.

One of the strategies that the company must do so that productivity remains stable and increases is to pay attention to all *Standard Operating Procedures* (SOP) running and all workers follow the rules set by the company, so that all targets desired by the company can be achieved. When doing their work, workers are also entitled to protection. For example, health and safety insurance at work (Ngabidin Nurcahyo, 2021: 7). Health insurance must be owned by every worker, whether it is a worker with a specific time work agreement (PKWT) or an indefinite time work agreement (PKWTI). Article 86 of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower reads "Every worker or labourer must obtain protection for occupational safety and health."

Work accidents occur for three reason, the first is due to the negligence of the workforce itself (*Human Error*), errors in the application of *Standard Operating Procedure* (SOP), and supervision of the workforce carried out by the company (Muhammad Fahrur Rozi, 2022: 6). According to Suma'mur, 80-85% of work accidents are caused by unsafe human acts and human error. Accidents and human errors include age, gender, work experience and education. Errors increase when workers experience stress at abnormal workloads or when work capacity decreases due to fatigue (Sucipto and Cecep Dani, 2020: 25).

One of the government's efforts to reduce work accidents is by issuing the Law of the Republic of Indonesia Number 13 of 2003 concerning labor. Article 87 of Law No. 13 of 2003 concerning Labour states that it requires every company to implement an Occupational Safety and Health Management System (SMK3) as part of safety leadership plays a role in achieving the goal of building a safety culture in its work that can improve safety leadership performance and become part of a leader in the success of occupational safety and health performance (Gatot Sutrisno and Tatan Sukwika, 2021: 6). Thus, when the company implements this SMK3, there will be many benefits that the company will get, such as reducing the company's losses to workers who experience work accidents that require treatment which incur considerable costs. Even if there is a work

accident that makes production stop, it will make a big loss for the company, hence, the importance of implementing this SMK3.

However, in practice in the field there are still several companies that have not implemented SMK3 effectively, especially in the field of Construction or Mining. Some companies neglect the implementation and supervision of occupational safety and health, such as the use of Personal Protective Equipment (PPE). According to data released by the Employment Social Security Agency (BPJS), the number of work accidents from 2020-2023 continues to increase (BPJS Employment, 2024). One of the causes of this increasing number of work accidents is that companies do not implement SMK3, that is, companies consider SMK3 to be a matter of course. As a result, if things happen that are not desirable, the company does not consider it its responsibility.

This is caused by several factors, one of which is the management of companies that do not understand the importance of implementing SMK3 in companies with a high rate of work accidents. Some companies have data on work accidents, but they do not report the incident to the Minister of Labour through the Labor Inspector at the provincial level. The appointment of labor inspectors is a mandate given by the Minister of Manpower, with all the authority given as a form of the government's role in supervising employers or companies in implementing SMK3 in the workplace environment (Maulidiah Maskat and Siti Hajati Hoesin, 2022: 8).

The negligence of companies that do not implement an Occupational Safety and Health Management System effectively results in workers experiencing accidents that cause permanent disability and death. Such negligence is a big problem for the company because it involves a person's life where life cannot be replaced with another person's life. Money compensation for disabled workers does not heal the wounds caused by work accidents. Disabled workers will experience life pressure due to the company's failure to implement an excellent Occupational Safety and Health Management System (SMK3) which has been regulated by law.

So far, when a work accident occurs, be it an accident that is paralysed/disabled, even to death, BPJS Employment handles work accidents, both treatment and compensation, BPJS Employment does everything. However, each company has different compensation provisions. The company only submits to BPJS Ketenagakerjaan to take over the treatment while the company continues to produce and carry out of the company's objectives. Even when the company leader is legally processed in his responsibility for causing work accidents the process is not transparent. When a work accident occurs, the company is only temporarily closed and will start production a few days after the accident occurs. The urgency of this research is as a form of answer from a workforce that has experienced work accidents but the workforce has not received satisfaction for what has been received by the workforce and also to find out what liability is right given to the company if it does not implement the Occupational Safety and Health Management System in the workplace.

METHODOLOGY

Qualitative research was conducted by referring to empirical data, laws and regulations. This research was conducted at the South Sulawesi Provincial Manpower Office and the BPJS Ketenagakerjaan Makassar Branch. The empirical data used as a reference in this research are the results of interviews with the Labor Inspector and the Supervisor of the BPJS Employment Examiner (Irwansyah, 2022: 134). The findings of this study are then presented descriptively to provide a systematic and holistic picture.

RESULTS AND DISCUSSION

Criminal Liability by the Company for Labourers Who Have Work Accidents

A company is a legal entity subject to laws and regulations that have been regulated accordingly. Companies carrying out the production and operation processes are required to implement occupational safety and health to improve national welfare and productivity as well as to protect and ensure the safety of workers who work in the workplace. However, companies are not always able to properly implement an Occupational Safety and Health Management System (SMK3) within the company environment (Eka Rakhmat Kabul, Subhan Nur Ramadhan, Sukiman and Harries Madiistriyatno, 2022: 199). It is unfortunate for companies that do not

properly and neglect to implement the Occupational Safety and Health Management System (SMK3) because it can harm the workforce who have worked wholeheartedly but the company does not implement the system and can also harm the company itself which can result in sanctions from existing laws and regulations (Bondroini, S., Kurniawan, Fredy, Tistogondo, and Julistyana, 2020: 43).

Indonesian legislation, more clearly regulates how when a company does not implement good occupational safety and health, the company will be subject to liability either criminally, civilly or administratively. However, when referring to Law Number 13 of 2003 concerning Labor, it is stated that when the company does not implement occupational safety in the workplace which includes all aspects of occupational safety, the company is potentially subject to criminal liability. When looking at research that discusses corporate responsibility for debtor losses during the Covid 19 pandemic, companies and/corporations only use the Limited Liability Company Law to impose sanctions on companies and /corporations that make mistakes (Suwinto, 2021: 20). However, companies that make mistakes in the application of occupational safety and health have laws regulating occupational safety and health.

Company Company has Fault in the form of Intentional / Negligence

In the laws and regulations in Indonesia that regulate the provisions of labor, both the rights and obligations that are owned and must be fulfilled by workers are, Law Number 1 of 1970 concerning Occupational Safety and Law 13 of 2003 concerning Manpower. Both laws certainly regulate the obligations and how the process of running the SOP must be fulfilled by each company in carrying out its production and operations. The company must be responsible for everything that happens in the workplace environment both in terms of the safety and health of workers who are in the workplace, starting from the workforce leaving from home to the workplace and returning to the workforce's home (Hamzah Hatrik, 1996: 92).

Suprpto states that the law allows bodies to perform acts as people through their tools, so it is understandable that in bodies can be found fault when deliberate/negligence is found in the people who become tools, the fault is not individual, because it is about the body as a collective, thus the fault is called a collective fault charged to management (Setiyono, 2002: 132).

Companies are criminally liable if they intentionally or negligently fail to implement SMK3. The party responsible for a work accident depends on several factors, such as:

Cause of accident

Company management may be liable to accidents caused by negligence or intent, such as not providing adequate PPE, violating OHS regulations, or poor working environment conditions.

Workers can be held liable if an accident occurs due to negligence or labor error, such as not using the PPE provided or not following the OHS SOP.

Obligations of company management:

Based on the Labor Law, company management is obliged to ensure that the labour force is in good condition. Company management should ensure that the work environment, equipment and work procedures fulfil the OHS standards.

Labour obligations:

Workers also have an obligation to comply with the work safety regulations and SOPs that have been made by the company.

Workers are required to use the PPE provided and to follow instructions from company management regarding work safety.

In practice, an authorized agency, such as the Manpower Office or the Employment Social Security Agency (BPJS), must conduct a thorough investigation and analysis and then, once the results are available, determine who is liable for the accident. The goal was to ensure fairness and protection for both parties.

Company Accountability

In running an occupational safety and health program in a company, it has been regulated in Article 87 of Law Number 13 of 2003 concerning manpower which explains that "(1) Every company is obliged to implement an occupational safety and health management system that is integrated with the company's management system.

(2) Provisions regarding the application of the occupational safety and health management system as referred to in paragraph (1) shall be regulated by Government Regulation".

Basen in these regulations, every company implements an occupational safety and health management system that is integrated with the company's management system in the sense that every company is obliged to do so and adjust to the applicable laws and regulations (Zaeni Asyhadie, 2007: 60). In the implementation of the occupational safety and health management system, the company is obliged to follow the regulations contained in Government Regulation Number 50 of 2012 concerning the Implementation of the Occupational Safety and Health Management System because it is a guideline for companies to carry out occupational safety and health program.

There are differences in the principle of punishment between person/individuals and company/corporation as follows:

Differences in Criminal Principles between Person/Individual and Company/Corporation

No.	Category	Person/Individual	Company/Corporation
1	Nature of Performer	The punishment of a person/individual is based on the personal nature and character of the perpetrator.	Criminalisation of companies/corporations is based on the nature and character of the business entity.
2	Purpose of Punishment	The purpose of punishment against people/individuals is more oriented towards correction, rehabilitation, and prevention of repetition of criminal offences.	The purpose of criminalising companies/corporations is more orientated towards prevention and system improvement within the company.
3	Sanction Type	Criminal sanctions against persons/individuals generally take the form of imprisonment, fines, or supervision.	Criminal sanctions against companies/corporations may include fines, revocation of business licences, or suspension of business activities.
4	Accountability	Individual criminal liability is based on culpability and responsibility.	The criminal liability of a company/corporation is based on the acts or omissions of the management or employees representing the company/corporation.
5	Effects of Punishment	The criminalisation of individuals directly impacts on their personal and family lives.	The conviction of a company/corporation impacts the company's business continuity, reputation, and economy.

Corporate criminalization has different features from individual criminalization, as shown in the table above. This is necessary to ensure so that criminal sanctions can be effective at in preventing and controlling criminal acts made by companies. Despite these differences, corporate liability affects criminal offences.

No Excuses for the Company or Excuses that Exonerate Wrongdoing

Implementing SMK3 is a step that companies take to ensure that the workforce has the right to perform their work in their workplace. SMK3 must be complied with by every company, both the management and workforce who are in the scope of work accidents. The company is responsible for work accidents that cause minor or severe injuries or even death. However, every work accident has several causes that can lead minor or fatal accidents.

Based on Article 44 of the Criminal Code which reads: "Whoever commits an act for which he cannot be held responsible because his soul is defective in growth or disturbed by illness, shall not be punished." With the

company's actions, the company cannot be given excuses and reasons that eliminate guilt, this is in line with Article 35 paragraph (3) of Indonesian Law No. 13 of 2003 concerning Manpower which reads: "The employer as referred to in paragraph (1) in employing labour is obliged to provide protection which includes the welfare, safety, and health of both mental and physical labour."

From the provisions of the article, it is clearly emphasized that if the company does not provide protection for the safety and health of workers in this case through BPJS Employment, the company must be held accountable for its actions in accordance with Article 186 of Indonesian Law No. 13 of 2003 concerning Manpower which reads: "(1) Anyone who violates the provisions as referred to in Article 35 paragraph (2) and paragraph (3), Article 93 paragraph (2), Article 137, and Article 138 paragraph (1), shall be subject to a criminal sanction of imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a fine of at least Rp 10,000,000.00 (ten million rupiah) and a maximum of Rp 400,000,000.00 (four hundred million rupiah). (2) The criminal offence as referred to in paragraph (1) shall constitute a criminal offence".

If the company takes actions that are not in accordance with what is ordered in the law, it can be said that the company is deliberate or negligent in implementing SMK3 in the company, that is the company does not register / include workers in the BPJS Employment programme concerning K3.

Legal Consequences of Not Implementing the Occupational Safety and Health Management System

Labor is a dimensional pattern of *corporate crime* that develops in line with national and international economic development. Joseph F. Sheley argues, that "corporate crime is always related to economic activities through; defrauding stockholders, defrauding the public, defrauding the government, illegal intervention in the political process, endangering the public welfare (endangering public welfare, including workers/labourers in the workplace) and "endangering employees" (Lilian Enggal Ekasari, 2010: 79).

Hanafi defined endangering employees as a dimension of crime that does not care about Occupational Safety and Health. This action is carried out without attention to safety, and the company's production facilities and infrastructure do not meet Occupational Safety and Health standards. According to Marzuki, economic growth tends to develop towards unfair competition which is difficult to avoid so that it ignores legal provisions and does not care about Occupational Safety and Health. that workers/laborers (employees) are victims of corporate crime due to an unhealthy and unsafe work environment which is a factor in causing accidents (Moeljatno, 2015: 79).

Companies Not Registering Workers in BPJS Employment

The protection of occupational safety and health is one aspect of corporate crime. Hanafi then explained that the use of labor without sufficient attention and concern for work safety is an example of an act of disregard for work safety. Many work accidents occur because production facilities and infrastructure in the workplace do not meet work safety standards. Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia reads: "Every citizen is responsible for work and sacrifices that are so important for human progress." Article 27 of the 1945 Constitution explains that every citizen has the right to fair and decent treatment in labor relations and to receive compensation. Labor is given protection and employment opportunities based on their abilities (capabilities), as well as the right to wages from the work they do for their welfare. It is possible to obtain employment protection through claims, compensation, or recognition of human rights based on labor welfare protection standards (Achmad, 2017: 13).

Social security programs are considered strategic for improving people's welfare in many countries. This is because the purpose of forming a state is to achieve welfare, which is the duty of the government to manage the state. Social welfare development in Indonesia refers to the idea of a welfare state. Seeking or realizing general prosperity and welfare is one of the goals of the state according to the welfare state school. An indicator of the achievement of state goals is the availability of social security for the community. The social security in question, among others, is provided in the form of social insurance. To carry out its production and operations,

the company is obliged to register workers with BPJS Ketenagakerjaan, both PKWT and PKWTT. As according to Article 3 of Indonesian Law No. 40 of 2004 concerning the National Social Security System which reads: "The National Social Security System aims to provide guarantees for the fulfilment of the basic needs of a decent life for each participant and / or his family members." This article explains that social security protection aims to protect workers and their family members in the event of a work accident.

Article 19 of the Law of the Republic of Indonesia No. 24 of 2011 concerning the Social Security Organisation Agency reads: "(1) The Employer is obliged to collect Contributions that are the responsibility of the Participants from their Workers and deposit them to the BPJS. (2) The employe is obliged to pay and deposit contributions that are their responsibility to BPJS. (3) Participants who are not Workers and are not recipients of Contribution Assistance are obliged to pay and deposit contributions that are their responsibility to the BPJS. (4) The Government pays and deposits Contributions for recipients of Contribution Assistance to the BPJS." jo Article 55 which reads: "Employers who violate the provisions as referred to in Article 19 paragraph (1) or paragraph (2) shall be punished with a maximum imprisonment of 8 (eight) years or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."

The company can then be held criminally or administratively responsible if it does not register workers with BPJS Ketenagakerjaan. This is in line with Article 4 paragraph (1) of PP RI No 86 of 2013 concerning Procedures for Implementing Sanctions for Not Getting Public Services which reads: "(1) Every person, other than employers, workers, and contribution beneficiaries who fulfil the provisions of laws and regulations must: a). register himself and his family members as participants in the BPJS; and b). provide complete and correct data on himself and his family members to the BPJS." Jo article 5 paragraphs (1) and (2) which reads: "(1) Employers other than State Operators who violate the provisions as referred to in Article 3 and every person, other than employers, workers, and contribution assistance recipients who violate the provisions as referred to in Article 4 shall be subject to administrative sanctions. (2) Administrative sanctions as mentioned in paragraph (1) may take in the form of: a). written warning; b). fine; and/or c). not receiving certain services."

The second uses Article 35 of Law No. 13 of 2003 on Labour which reads: "(1) Employers who require labor may recruit the required labor themselves or through labor placement executors. (2) Manpower placement executor as referred to in paragraph (1) shall provide protection from recruitment to manpower placement (3) Employer as referred to in paragraph (1) in employing manpower shall provide protection which includes welfare, safety, and9332 ndustry9332 both mental and physical manpower." Jo Article 186 reads: "(1) Any person who violates the provisions as referred to in Article 35 paragraph (2) and paragraph (3), Article 93 paragraph (2), Article 137, and Article 138 paragraph (1), shall be subject to a criminal sanction of imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a fine of at least Rp 10,000,000.00 (ten million rupiah) and a maximum of Rp 400,000,000.00 (four hundred million rupiah). (2) The criminal offence as referred to in paragraph (1) shall constitute a criminal offence."

From the Law of the Republic of Indonesia No. 13 of 2003 concerning manpower, it can be seen that if this is used to ensnare any company that does not register / include workers in the BPJS Ketenagakerjaan social security program, it can be seen that this provision has criminal sanctions resulting in companies that can be held criminally liable. In addition to the 2 provisions of the legislation above, Article 15 paragraph (2) of Law No. 1 of 1970 concerning Occupational Safety can also be related to BPJS Employment which reads: "These laws and regulations can provide criminal sanctions for violations of their regulations with imprisonment for a maximum of 3 (three) months or a fine of up to Rp.100,000, - (one hundred thousand rupiah)."

Although BPJS Ketenagakerjaan provides work accident insurance, the employer's obligation to meet OHS standards still applies based on Article 15 of the Occupational Safety Law. The provision of work accident insurance by BPJS Ketenagakerjaan does not remove the employer's responsibility for OHS in the workplace. Employers who violate Article 15 of the Work Safety Law may be subject to administrative or criminal sanctions, regardless of the existence of work accident insurance from BPJS Ketenagakerjaan.

Therefore, the company must provide social security for, both PKWT and PKWTT workers in the workplace. K3 protection is important. Therefore, companies must pay attention to matters related to SMK3. However, several factors need to be considered when registering workers with BPJS Ketenagakerjaan. This does not

necessarily transfer the responsibility for work accidents from the company management to BPJS Ketenagakerjaan. Some things to note are as follows:

Liability of company management:

The primary duty to ensure the health and safety of company employees remains with company management. Company management should ensure that the work environment, equipment and work procedures fulfil occupational safety and health standards.

The role of BPJS Employment:

BPJS Ketenagakerjaan's task is to provide social security to workers, including work accident insurance.

BPJS Employment will provide compensation to workers who experience work accidents.

However, the liability of company management for work accidents is not eliminated by BPJS Employment benefits.

The responsibility of the company's management:

The company's management remains liable for acts or omissions that cause work accidents.

Company management may be subject to administrative or criminal sanctions if found guilty.

The responsibility of company management for the OHS of its workforce remains in effect even if the workforce is registered with BPJS Ketenagakerjaan. This responsibility was not removed by the compensation provided by BPJS Ketenagakerjaan.

Criminal Law Enforcement for Companies that Deliberately / Negligently Implement the Occupational Safety and Health Management System

In Indonesia, the process of resolving criminal cases uses Law Number 8 of 1981 concerning criminal procedures commonly referred to as the Criminal Procedure Code (KUHAP) (M. Said Saile, 2009: 11). However, not all criminal offence settlement processes in Indonesia always refer to the KUHAP as a whole. For example, the criminal offence of a work accident has some resistance before applying KUHAP as a whole in the process of resolving criminal cases in litigation.

To determine criminal offences in a company, several factors need to be considered. The stages carried out are findings or complaints and several types of warnings, but the warnings given have weight in giving them, as follows:

Findings and Results of Inspection by Labour Inspectors

To determine whether an incident that occurs in the workplace is a work accident, the labor inspector must conduct a direct investigation at the scene of the incident that has been designated as the location of the work accident and must examine the cause of the work accident.

Complaints from victims of work accidents/family

In addition to the findings obtained by labor inspectors, complaints from victims or families can also form the basis of reports of work accidents that occur in the workplace but need to show evidence relevant to the reported work accident.

Inspection Note 1

Note 1 is given to the company concerned if there are indications of work accidents that occur containing the facts found in the form of findings of violations, findings that regulate, and the time period given to make improvements and guidance. Inspection note 1, is still in the non-Justitia process.

Inspection note 2

Inspection note 2 is given if the company does not heed inspection note 1, which contains a warning and is pro Justitia.

After the issuance of inspection note 2 by the labor inspector, the next stage is the issuance of a work report to explain the violation/crime committed by the company and then an investigation warrant is issued (Warih Anjani, 2016: 117). Investigators here are PPNS labour inspectors and police investigators who conduct investigations on companies suspected of making mistakes in the workplace resulting in work accidents, and the management or workers who are in the workplace are questioned through the Minutes of Examination and

determine the suspect. For the next process, namely the submission of files in the prosecutor's office and following Law Number 8 of 1981 concerning criminal procedure law (Andi Muhammad Sofyan, Abd Asis, Amir Ilyas, 2014: 215).

In SMK3, the factors that need to be considered to implement K3 are effective. Article 6 paragraph (1) of PP RI No 50 of 2012 concerning the Implementation of Occupational Safety and Health Management System reads: "Establishment of OHS policies, OHS planning, implementation of OHS plans, monitoring and evaluation of OHS performance, and review and improvement of SMK3 performance." In Article 6, there are several things that need to be considered in the application of SMK3. If one of the 5 things that must be considered is not carried out effectively in its application, then SMK3 is not running well. In imposing sanctions on the company, an investigation must first be carried out at the location of the work accident, whether the accident is purely from the actions of the workforce or from the system originating from the company. When the cause of the work accident has been found, it is seen again who is in charge at the location of the occurrence, for example, the cause of the work accident is caused by the negligence of the Company's management who does not pay attention to the operation and production without the application of SMK3 in the Company which causes work accidents so that workers are disabled or cause death, then the management of the Company must be held criminally liable in accordance with the provisions of Article 15 paragraph (2) of Indonesian Law No. 1 of 1970 concerning Occupational Safety which reads: "These laws and regulations can provide criminal penalties for violations of their regulations with imprisonment for up to 3 (three) months or a fine of up to Rp.100,000, - (one hundred thousand rupiah)."

However, when the entrepreneur / employer does this in the event that the employer does not pay attention to all aspects of SMK3 in the workplace, the entrepreneur / employer must be held criminally liable in accordance with Article 186 of Indonesian Law No. 13 of 2003 concerning Manpower which reads: "(1) Any person who violates the provisions as referred to in Article 35 paragraph (2) and paragraph (3), Article 93 paragraph (2), Article 137, and Article 138 paragraph (1), shall be subject to a criminal sanction of imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a fine of at least Rp 10,000,000.00 (ten million rupiah) and a maximum of Rp 400,000,000.00 (four hundred million rupiah). (2) The criminal offence as referred to in paragraph (1) shall constitute a criminal offence."

There are several implications of providing liability or criminal and administrative sanctions for companies that commit occupational safety and health criminal offences;

Criminal Sanctions:

Company executives may be subject to imprisonment and/or fines.

Article 166 of the Labor Law states that "company managers who intentionally allow workers to work in workplaces that endanger occupational safety and health may be sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years or a fine of at least Rp 100,000,000 (one hundred million rupiah) and a maximum of Rp 500,000,000 (five hundred million rupiah)."

If it is proven that company's management deliberately violat occupational safety and health regulations, these penalties may be imposed.

Administrative Sanctions:

Company management may face administrative penalties, such as written warnings, restriction of operations, suspension of operations, or revocation of business licences.

These administrative sanctions can be imposed by authorized government agencies, such as the Manpower Office or the Ministry of Manpower.

Administrative sanctions aim to force companies to comply with occupational safety and health regulations.

Other Implications:

In addition to criminal and administrative sanctions, there is a possibility that the company may also be subject to civil compensation claims by workers who have experienced work accidents or their families.

Workplace accidents caused by company negligence can also effect a company's reputation and credibility in the eyes of the public.

This may result in a loss of trust from consumers and business partners, as well as difficulties in obtaining business licences in the future.

The purpose of applying criminal and administrative sanctions to companies that violate OHS regulations is to deter them and encourage them to pay more attention to the OHS aspects. The following is the number of work accidents from to 2020-2023 that already have Inkrah decisions, especially within the scope of S Number of cases of work accidents from to 2020-2023 that have had a final decision

outh Sulawesi Province; (Source: South Sulawesi Provincial Manpower Office)

No.	Company Type	Offence Type	Law/article violated	Sanctions given
1	Automotive	Employing lifting and transporting aircraft who do not have an OHS licence and whose lifting and transporting aircraft do not have a permit.	Article 15 paragraph (2) of Law No. 1970 on Work Safety jo article 2 paragraph (1) jo article 3 jo article 4 jo article 5 jo article 140 jo article 173 jo article 174 Permenaker No. 8 of 2020	a fine of 3 million rupiahs and the administrator is found guilty
2	Cold Storage	Employing production personnel who do not have an OHS licence	Article 5 paragraph (2) of Law of the Republic of Indonesia No. 1 of 1970 concerning Occupational Safety jo Article 129 paragraph (1) jo Article 131 of Minister of Manpower Regulation No. 38 of 2016 concerning aircraft production workers	1 month in detention
3	Restaurants and eateries	Employing lifting and transporting aircraft who do not have an OHS licence and whose lifting and transporting aircraft do not have a permit.	Article 15 paragraph (2) of Law No. 1970 on Work Safety jo article 2 paragraph (1) jo article 3 jo article 4 jo article 5 jo article 140 jo article 173 jo article 174 Permenaker No. 8 of 2020	a fine of 3 million rupiahs and the administrator is found guilty
4	Restaurants and eateries	offences related to Electrical OHS	Minister of Manpower Regulation No 12 of 2015 concerning Occupational Safety and Health in the Workplace of Electricity	a fine of 3 million rupiahs and the administrator is found guilty

Based on the table above, work accidents from to 2020-2023, especially in South Sulawesi, companies are only subject to Article 5 paragraph (2) of Indonesian Law No. 1 of 1970 concerning Occupational Safety. The reason for using this article is that those who make mistakes in the form of intent/negligence are in the management of the company.

CONCLUSIONS

Criminal liability by the company can be done if the company commits intentions or/ negligence such as not reporting work accidents, not registering / including workers in the BPJS employment social security program, and not having K3 certification of operators and work tools. criminal liability given by the company that is, the sanctions are minor criminal offences. Law enforcement for companies that do not carry out SMK3 must go through stages, namely the warning stage, If the warning is not implemented by the company, then the stages in Indonesian Law No. 8 of 1981 concerning Criminal Procedure Law apply by following PERMA No. 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations. The articles that will be imposed on companies that do not implement SMK3 are Article 15 of Law No. 1 of 1970 concerning Occupational Safety and Article 186 of Law No. 13 of 2003 concerning Labour which is a criminal offence.

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