

Occupational Safety Negligence as a Special Criminal Offense in the Industrial Sector under Indonesian Law

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Abstract

Occupational safety and health (OSH) constitutes a fundamental legal obligation within industrial activities, particularly due to the inherent risks faced by workers in production processes. Negligence in fulfilling OSH obligations may result not only in administrative or civil consequences, but also in criminal liability. This paper examines occupational safety negligence as a special criminal offense within the industrial context under Indonesian law. Using a normative legal method, the study analyzes statutory regulations governing occupational safety and criminal responsibility, with emphasis on the concept of negligence (*culpa*), the elements of criminal offenses, and the application of the *lex specialis* principle. The findings demonstrate that occupational safety negligence may be categorized as a special criminal offense when legal duties are breached and protected interests are endangered. The paper underscores the role of criminal law in strengthening industrial compliance with occupational safety standards.

Keywords: Occupational Safety; Criminal Negligence; Special Criminal Offense; Industrial Law

Introduction

Occupational safety and health (OSH) represents a fundamental legal obligation in industrial activities, aiming to protect workers from occupational accidents and work-related diseases. Industrial operations inherently involve various risks arising from the use of heavy machinery, hazardous materials, high-temperature processes, and complex production systems. In such environments, inadequate safety measures may expose workers to serious physical injury, long-term health problems, or even fatal outcomes. Consequently, OSH cannot be perceived merely as a technical or administrative requirement, but rather as a core legal duty imposed upon employers and other responsible parties. (Frick, 2011)

From a legal standpoint, the obligation to implement occupational safety measures is grounded in statutory regulations that mandate employers to ensure a safe working environment. Indonesian law explicitly requires employers to prevent workplace hazards by providing adequate protective equipment, establishing safety procedures, and maintaining proper supervision over industrial activities. Failure to comply with these obligations reflects a breach of legal duty and undermines the protective purpose of labor and safety regulations enacted by the state. Such breaches raise questions not only of regulatory non-compliance but also of potential criminal liability when the resulting risks endanger legally protected interests.

In criminal law theory, negligence (*culpa*) constitutes a distinct basis of criminal responsibility. (Moore, 2010) Negligence is generally understood as the absence of due care that a reasonable person should exercise under given circumstances, resulting in harm or the risk of harm. Unlike intentional conduct, negligence does not involve a deliberate desire to cause damage; however, the law recognizes that careless behavior may still produce severe consequences warranting criminal sanctions. In the context of occupational safety, negligence may arise when employers fail to anticipate foreseeable risks or neglect preventive measures that are legally required to safeguard workers.

The classification of occupational safety negligence as a criminal offense becomes particularly significant within the framework of special criminal law. Certain statutes governing occupational safety contain penal provisions that operate outside the general criminal code, thereby establishing a *lex specialis* regime. Under this regime, violations of specific safety obligations may directly trigger criminal sanctions without reliance on general provisions of criminal law. This special regulatory structure demonstrates the legislature's intention to afford heightened protection to workers by attaching criminal consequences to breaches of safety norms.

Furthermore, the industrial context amplifies the relevance of criminal law intervention. Industrial activities often involve systemic risks that may affect not only individual workers but also the broader community and environment. Consequently, persistent or serious negligence in

occupational safety may justify criminal enforcement as a means of deterrence and accountability. Criminal law, in this regard, functions as an instrument to reinforce compliance, promote a culture of safety, and ensure that economic efficiency does not prevail over human safety.

Based on these considerations, this paper addresses the central question of how occupational safety negligence may be conceptualized as a special criminal offense within industrial activities. By examining the legal framework governing occupational safety and the principles of criminal liability, this study seeks to clarify the conditions under which negligent conduct in industry may give rise to criminal responsibility. The analysis is intended to contribute to a deeper understanding of the role of criminal law in strengthening occupational safety protection in industrial settings.

Based on the background presented in the abstract and introduction of this paper, the problem formulation can be stated as follows. This formulation is designed to address the key questions arising from the context of occupational safety and health (OSH) law in industry (Andersen et al., 2019), with a focus on negligence as a special criminal offense under Indonesian law. This problem formulation employs a normative legal method, in accordance with the approach mentioned in the abstract.

How is the concept of negligence (*culpa*) in the context of occupational safety applied to industrial activities in Indonesia? How is the *lex specialis* principle applied in the regulation of special criminal offenses related to occupational safety negligence in the industry, particularly based on Indonesian legislation?

Research Method

This study employs a normative legal research method, focusing on the analysis of legal norms governing occupational safety and criminal liability in industrial activities. Normative legal research is appropriate for this study because the primary objective is to examine statutory provisions, legal doctrines, and scholarly opinions related to occupational safety negligence as a special criminal offense, rather than to collect empirical data from the field.

The research adopts a statutory approach and a conceptual approach. The statutory approach is used to analyze legislation regulating occupational safety and health, particularly Law Number 1 of 1970 concerning Occupational Safety (as amended by subsequent regulations, such as Law Number 13 of 2003 on Manpower), as well as relevant criminal law provisions under the Indonesian Criminal Code (KUHP) and other related statutes. This approach allows the study to identify the scope of legal obligations imposed on industrial actors and the criminal consequences arising from their violation. The conceptual approach is applied to examine key legal concepts such as negligence (*culpa*), legal duty, criminal liability (Sayre, 1930), and the principle of *lex specialis* within the framework of special criminal law.

Sources of legal materials in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations related to occupational safety and criminal law, such as government regulations, ministerial decrees, and court decisions. Secondary legal materials comprise textbooks on criminal law, labor law, and corporate criminal liability, as well as academic journal articles discussing occupational safety and negligence. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used to support the interpretation of legal terms and concepts.

The collection of legal materials is conducted through library research, involving systematic identification and review of relevant legal sources from online databases, academic repositories, and official government websites. The collected materials are then analyzed using a qualitative legal analysis method, which involves interpreting legal norms, doctrines, and scholarly arguments to construct coherent legal reasoning. Through this analytical process, conclusions are drawn regarding the classification of occupational safety negligence as a special criminal offense and the attribution of criminal liability within industrial contexts. This method ensures a comprehensive and objective examination of the legal framework, contributing to the theoretical and practical understanding of occupational safety enforcement in Indonesia.

Result And Discussion

The the concept of negligence (*culpa*) in the context of occupational safety applied to industrial activities in Indonesia

General Concept of Negligence (*Culpa*) in Criminal Law

Negligence, or *culpa* in Latin, is a fundamental concept in criminal law that serves as a basis for attributing liability without requiring proof of intent (*mens rea*) (Badar, 2013). In general criminal law theory, negligence refers to the failure to exercise the degree of care that a reasonable person would have exercised under similar circumstances, resulting in harm or the risk of harm to legally protected interests. This concept is distinct from intentional acts (*dolus*), as it involves inadvertent or careless behavior that nonetheless produces culpable consequences. Under Indonesian criminal law, as enshrined in the Indonesian Criminal Code (KUHP) (Butt, 2023), negligence is recognized in various provisions, such as Article 359, which penalizes negligent acts causing death, and Article 360, which addresses negligent acts causing injury. These provisions emphasize that criminal liability can arise from omissions or failures to act, provided that the actor had a duty to prevent foreseeable harm.

Specialized Application in Occupational Safety and Health (OSH) Contexts

In the specific context of occupational safety and health (OSH), negligence takes on a specialized application, particularly within industrial activities where inherent risks such as exposure to hazardous machinery, toxic substances, or high-risk processes demand heightened vigilance. Occupational safety negligence occurs when employers, managers, or other responsible parties fail to fulfill their legal obligations to ensure a safe working environment, thereby endangering workers' lives, health, or well-being. This form of negligence is not merely a breach of administrative standards but can constitute a criminal offense when it violates statutory duties designed to protect public interests. The application of *culpa* in OSH (Sánchez-Herrera & Donate, 2019) is grounded in the principle that industrial operations must prioritize human safety over operational efficiency, reflecting the state's role in safeguarding labor rights.

Legal Framework Regulating Negligence in Occupational Safety under Indonesian Law

Under Indonesian law, the concept of negligence in occupational safety is primarily regulated by Law Number 1 of 1970 concerning Occupational Safety (as amended by Law Number 13 of 2003 on Manpower and subsequent regulations, such as Government Regulation Number 50 of 2012 on the Implementation of Occupational Safety and Health Management Systems). These statutes impose affirmative duties on employers to prevent workplace hazards, including providing personal protective equipment (PPE), conducting risk assessments, implementing safety protocols, and ensuring proper training and supervision. For instance, Article 86 of Law Number 13 of 2003 mandates employers to maintain a safe and healthy work environment, while Article 87 requires the provision of adequate facilities to mitigate occupational risks. Failure to comply with these obligations, if it results in foreseeable harm, can be deemed negligent under criminal law.

The legal framework governing occupational safety negligence in Indonesia is primarily anchored in statutory regulations that impose explicit duties upon employers and other responsible parties within industrial activities. Occupational safety norms are designed to prevent workplace accidents and occupational diseases by requiring the anticipation and mitigation of foreseeable risks. These norms establish binding legal obligations, the breach of which may trigger legal consequences extending beyond administrative sanctions into the realm of criminal law. Law Number 1 of 1970 concerning Occupational Safety constitutes the central legislative instrument regulating occupational safety obligations. The statute mandates employers to ensure that workplaces meet safety standards, including the provision of protective equipment, the maintenance of safe working conditions, and the implementation of preventive measures. The legal duties prescribed by the statute are formulated in mandatory terms, indicating that compliance is not optional but compulsory. Failure to fulfill these duties reflects a violation of statutory obligations that may endanger workers' safety and health.

Elements and Manifestations of Negligence in Industrial Settings

The elements of negligence in this context typically include: (1) the existence of a legal duty to act (e.g., the employer's obligation under OSH laws); (2) a breach of that duty through failure to exercise reasonable care; (3) foreseeability of harm (e.g., risks from unguarded machinery or inadequate ventilation); and (4) causation linking the breach to the harm or risk. In industrial settings, negligence may manifest in scenarios such as neglecting to install safety guards on production lines, failing to monitor hazardous material handling, or ignoring repeated warnings about unsafe conditions. For example, if an employer in a manufacturing plant disregards mandatory safety inspections, leading to a worker's injury from an industrial accident, this could qualify as culpable negligence under Article 359 of the KUHP, potentially resulting in imprisonment or fines.

From a criminal law perspective, the existence of a legal duty to act is a crucial element in establishing negligence-based liability. Criminal negligence presupposes that the offender had a legal obligation to prevent harm and possessed the capacity to do so. In the context of occupational safety, such obligations arise directly from statutory provisions that define the scope of employer responsibility. When an employer neglects to perform these legally mandated duties, the omission may be construed as negligent conduct capable of satisfying the elements of a criminal offense. The concept of *culpa* in criminal law further elucidates the normative basis of occupational safety negligence. *Culpa* refers to a failure to exercise due care as required by law under specific circumstances. Unlike intentional wrongdoing, negligence does not involve a conscious desire to cause harm; however, the law attributes responsibility when harm or danger results from a lack of caution that a reasonable person should have exercised. In industrial activities, where risks are inherent and often foreseeable, the standard of care imposed upon employers is correspondingly high.

In addition to the general concept of negligence, occupational safety offenses are often characterized as either formal or material offenses. Formal offenses focus on the violation of statutory duties irrespective of whether actual harm has occurred, while material offenses require the occurrence of harmful consequences. Occupational safety regulations frequently adopt a preventive approach by criminalizing conduct that creates dangerous conditions, even in the absence of actual injury. This preventive orientation reflects the protective purpose of occupational safety law, which prioritizes the avoidance of harm over post-incident accountability.

Alignment with Corporate Criminal Liability and Enforcement Practices

Furthermore, the application of *culpa* in Indonesian industrial law aligns with broader principles of corporate criminal liability, as outlined in Law Number 31 of 1999 (as amended by Law Number 20 of 2001) on Corruption Eradication (Zulyadi, 2020), which extends to environmental and safety violations. Courts have interpreted negligence in OSH cases by assessing whether the actor's conduct deviated from the standard of a „reasonable employer“ in the industry. This subjective-objective hybrid approach ensures that liability is not overly punitive but accounts for the specific risks of industrial operations. In practice, enforcement often involves administrative sanctions first, but escalation to criminal proceedings occurs when negligence endangers multiple workers or causes severe outcomes, underscoring the deterrent role of criminal law in promoting compliance with OSH standards.

The classification of occupational safety negligence as part of special criminal law further strengthens its legal significance. Special criminal law operates as a *lex specialis* that derogates from general criminal provisions, thereby enabling more specific and effective enforcement mechanisms. The inclusion of penal sanctions within occupational safety legislation indicates a legislative policy choice to elevate workplace safety violations to the level of criminal offenses. This approach underscores the recognition that industrial safety is a matter of public interest deserving of heightened legal protection. Moreover, the legal framework recognizes that occupational safety negligence may involve systemic failures rather than isolated acts. Industrial accidents often result from organizational shortcomings, inadequate supervision, or deficient safety management systems. Consequently, the attribution of criminal liability may extend beyond individual actors to encompass corporate entities responsible for establishing and maintaining safety standards. This development aligns with modern criminal law theories that acknowledge corporate responsibility for harm arising from organizational negligence.

The *lex specialis* principle applied in the regulation of special criminal offenses related to occupational safety negligence in the industry, particularly based on Indonesian legislation

The principle of *lex specialis derogat legi generali* (the specific law supersedes the general law) is one of the fundamental tenets in Indonesian criminal law and is highly relevant in cases of occupational accidents involving elements of negligence.

In general, criminal acts of negligence (for instance, those resulting in serious injury or death) are regulated in the Criminal Code (KUHP), which functions as the *Lex Generalis* (General Law).

However, within the context of Occupational Safety and Health (OSH) in the industry, there is a specific law that regulates safety norms, employer/management obligations, supervision, and specific criminal sanctions in detail, namely Law Number 1 of 1970 concerning Occupational Safety. This law acts as the *Lex Specialis* (Specific Law).

Occupational safety negligence attains the status of a special criminal offense when statutory safety obligations are breached in a manner that endangers legally protected interests. Unlike ordinary regulatory violations, special criminal offenses are characterized by their specific subject matter, specialized norms, and distinct penal provisions enacted to address particular social risks. In the industrial context, occupational safety regulations are designed to prevent foreseeable hazards inherent in production activities; consequently, negligence in fulfilling these obligations may trigger criminal liability under a *lex specialis* regime.

A defining feature of occupational safety negligence as a special criminal offense lies in the existence of a clearly articulated legal duty. Statutory provisions governing occupational safety impose affirmative obligations upon employers to anticipate risks, implement preventive measures, and maintain safe working environments. The violation of such duties whether through omission or inadequate action constitutes the core of the offense. Criminal liability arises not merely from the occurrence of harm, but from the failure to adhere to mandatory safety standards established by law. From a doctrinal perspective, the elements of occupational safety negligence typically encompass (Posner, 1972): (a) the presence of a legal obligation to ensure safety; (b) negligent conduct in the form of a breach of that obligation; and (c) the creation of danger or the occurrence of harmful consequences affecting workers' safety and health. The fulfillment of these elements enables the classification of negligent conduct as a criminal offense, even in the absence of intent. This doctrinal structure underscores the preventive orientation of occupational safety law, which seeks to avert harm before it materializes.

The preventive rationale of criminalizing occupational safety negligence is further reflected in the recognition of formal offenses within occupational safety legislation. Formal offenses criminalize the mere violation of statutory duties regardless of whether tangible harm has occurred. By contrast, material offenses require proof of actual injury or damage. The inclusion of formal offenses in occupational safety statutes demonstrates a legislative commitment to safeguarding workers by penalizing unsafe conditions at an early stage, thereby reducing the likelihood of serious accidents.

Another critical aspect of occupational safety negligence as a special criminal offense concerns the standard of care applied to industrial actors. Given the heightened risks associated with industrial activities, employers are subject to a higher standard of diligence compared to ordinary actors. This elevated standard reflects the principle that those who engage in inherently hazardous activities must exercise greater caution to prevent harm. Consequently, conduct that may be deemed acceptable in non-industrial settings may constitute criminal negligence when evaluated within an industrial environment.

The special criminal nature of occupational safety negligence also manifests in the interaction between general criminal law principles and sector-specific regulations. While general criminal law provides foundational concepts such as culpability and legality, occupational safety statutes specify the content and scope of safety obligations. In cases of conflict or overlap, the *lex specialis* principle dictates that specialized occupational safety provisions prevail over general criminal norms (Lindroos, 2005). This ensures legal certainty and enhances the effectiveness of enforcement in industrial contexts.

Furthermore, occupational safety negligence often involves systemic or organizational failures rather than isolated individual acts. Industrial accidents frequently stem from inadequate safety management systems, insufficient training, or the absence of effective supervision. Recognizing this reality, modern criminal law increasingly accommodates the attribution of liability for organizational negligence. The classification of occupational safety negligence as a special criminal offense thus enables a broader assessment of responsibility that encompasses both individual and structural dimensions of industrial safety failures.

In sum, the characterization of occupational safety negligence as a special criminal offense reflects a comprehensive legal response to industrial risks. By combining mandatory safety obligations, negligence-based liability, preventive criminalization, and the *lex specialis* principle, the legal framework seeks to ensure robust protection for workers. This approach underscores the central role of criminal law in reinforcing occupational safety norms and promoting accountability within industrial activities.

Criminal Liability in Industrial Context

Criminal liability for occupational safety negligence within the industrial context raises complex questions regarding the identification of responsible subjects and the scope of

accountability. Industrial activities are typically organized through hierarchical and collective structures, where decisions related to safety policies, operational procedures, and resource allocation are distributed across various levels of management. Consequently, occupational safety violations often result not from isolated individual acts, but from cumulative failures within organizational systems (Reason et al., 1998). This reality necessitates a nuanced approach to criminal liability that accounts for both individual and corporate responsibility.

At the individual level, criminal liability may be imposed on employers, directors, managers, or supervisors who possess legal authority and control over workplace safety. Criminal law requires the presence of a legal duty and the capacity to fulfill that duty. Individuals occupying positions of authority within industrial organizations are legally obligated to ensure compliance with occupational safety standards. When such individuals negligently fail to implement required safety measures, their omissions may constitute criminal negligence. The attribution of liability in this context is grounded in the principle that authority entails responsibility.

Beyond individual liability, modern criminal law increasingly recognizes corporations as subjects of criminal responsibility. Corporations operate through their organs and agents, and decisions affecting occupational safety are frequently made at the organizational level. Negligence in occupational safety may therefore reflect corporate policies, inadequate safety management systems, or a failure to allocate sufficient resources to risk prevention. In such cases, criminal liability may be attributed to the corporation itself, rather than solely to individual actors. This development aligns with the broader trend toward recognizing corporate accountability for harm arising from organizational negligence.

Several theoretical models have been developed to justify corporate criminal liability in cases of occupational safety negligence. One such model is vicarious liability, which attributes responsibility to the corporation for offenses committed by its employees within the scope of their employment. Another approach emphasizes the concept of corporate culture, whereby liability arises from organizational norms, practices, or policies that tolerate or encourage unsafe conduct (Schwartz, 2013). These models underscore the notion that corporate negligence may be embedded within institutional structures rather than confined to individual misconduct.

The imposition of criminal liability in the industrial context also serves important preventive and deterrent functions. Criminal sanctions signal societal condemnation of conduct that endangers workers' lives and health, thereby reinforcing the normative importance of occupational safety. The prospect of criminal liability may incentivize industrial actors to prioritize safety compliance, invest in effective safety management systems, and foster a culture of risk prevention. In this sense, criminal law operates not merely as a mechanism of punishment, but as a tool for promoting responsible industrial governance.

Sanctions for occupational safety negligence may take various forms, including fines, imprisonment for responsible individuals, and additional measures such as corporate probation or compliance orders (Schwartz, 2013). The selection of appropriate sanctions should reflect the gravity of the offense, the degree of negligence, and the extent of harm or risk created. In the case of corporate offenders, sanctions may be designed to encourage structural reforms aimed at preventing future violations. Such an approach aligns with the rehabilitative and preventive objectives of modern criminal justice systems.

Nevertheless, the application of criminal liability in industrial settings must be balanced against principles of fairness and proportionality. Over-criminalization may discourage economic activity or lead to defensive practices that undermine productivity without enhancing safety. Accordingly, criminal enforcement should be reserved for serious or persistent violations that demonstrate a substantial disregard for occupational safety obligations. This selective approach ensures that criminal law retains its legitimacy while effectively addressing the most significant threats to worker safety.

In light of these considerations, criminal liability for occupational safety negligence in industry represents a critical component of comprehensive occupational safety governance. By holding both individuals and corporations accountable for negligent conduct, the legal system reinforces the centrality of worker protection within industrial activities. This approach affirms the role of criminal law as a guardian of fundamental labor rights and a catalyst for safer industrial practices.

Conclusion

Occupational safety negligence within industrial activities constitutes a significant legal issue that transcends administrative non-compliance and enters the domain of criminal law. As demonstrated in this paper, statutory regulations impose clear and mandatory obligations upon industrial actors to ensure safe working conditions and to prevent foreseeable risks. The breach of these obligations, when coupled with negligent conduct, provides a sufficient legal basis for criminal liability under a special criminal law regime.

The characterization of occupational safety negligence as a special criminal offense is grounded in the existence of sector-specific norms that operate as *lex specialis* (Bygrave, 2022). These norms specify the content of safety duties, establish heightened standards of care for industrial actors, and attach penal consequences to violations that endanger workers' safety and health. By criminalizing negligent conduct at an early stage often without requiring proof of actual harm occupational safety law adopts a preventive approach that prioritizes the protection of legally safeguarded interests.

Furthermore, the industrial context necessitates an expanded conception of criminal liability that encompasses both individual and corporate actors. Industrial accidents frequently result from organizational failures, inadequate supervision, or deficient safety management systems rather than isolated acts of individual misconduct. Recognizing corporate criminal liability for occupational safety negligence therefore reflects a realistic and effective response to the structural nature of industrial risks. Such recognition reinforces accountability and encourages the development of robust safety cultures within industrial organizations.

Ultimately, criminal law plays a strategic role in strengthening occupational safety governance in industry. Through the imposition of criminal sanctions on negligent conduct, the law reinforces the normative importance of worker protection and promotes compliance with safety standards. The treatment of occupational safety negligence as a special criminal offense thus serves not only punitive objectives but also broader preventive and protective functions, contributing to safer and more responsible industrial practices.

Suggestion

To improve occupational safety governance in industrial activities, it is recommended that employers strengthen the implementation of (Andersen et al., 2019) management systems. Safety standards should not be treated merely as formal or administrative obligations, but must be embedded into daily operational practices. Continuous safety training, regular risk assessments, and the consistent provision of personal protective equipment are essential to minimize negligent conduct and prevent workplace accidents.

Law enforcement authorities are advised to apply criminal law in a selective and proportional manner when addressing cases of occupational safety negligence. Criminal sanctions should be prioritized for serious, repeated, or systemic violations that demonstrate a significant disregard for legally mandated safety obligations. This approach ensures that criminal law maintains its preventive and deterrent functions without leading to excessive criminalization that could undermine industrial efficiency.

Policymakers are also encouraged to refine the regulatory framework governing occupational safety by providing clearer standards of care and more explicit guidelines regarding criminal liability for both individuals and corporations. Enhanced coordination between labor inspection agencies and criminal justice institutions would contribute to more effective enforcement and greater legal certainty in industrial safety regulation.

Finally, future research should consider integrating empirical approaches to complement normative legal analysis. Empirical studies examining the effectiveness of criminal sanctions in improving occupational safety compliance would provide valuable insights for developing more evidence-based policies and strengthening worker protection in industrial settings.

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