



# Tripartite Restorative as a Safety Crimes Resolution Model

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**Abstract.** This article is a response to the mechanism for solving occupational safety crimes resolved through the criminal justice system that is unable to protect workers who are victims. Either individually or collectively by organizers of work safety systems that cause criminal consequences. As the only legal norm that specifically regulates work safety, it should be able to provide proper law enforcement, not only in proportion to the crime, but also because of the consequences of the crime, so that in the future safety crimes will not be repeated. The method uses a qualitative approach, using available data from the results of previous research by the author. The results of the study found the settlement of occupational safety crimes so far through the mechanism of the criminal justice system and informal settlements has not been able to provide legal protection to workers who are victims of it, so it is necessary to carry out legal reforms in its settlement. One of them is pushing for alternative solutions through restorative tripartite models. It initiated by Braitwaite, as a mechanism for resolving work safety-specific crimes. Involve the perpetrators of the safety system, workers who are victims and law enforcement. The perpetrator is held responsible for his mistake by transforming in action eliminating the causes of safety crimes, recovering the consequences of his crime, both of which are intended to create reharmonization and a safer work environment so that workers in the future are protected from occupational harms.

**Keywords:** Safety Crimes, Tripartite, Restorative.

## 1. Introduction

Neither workers nor companies want work accidents to occur, especially if the causes and consequences qualify as work safety crimes. Efforts to criminalize and sanction criminals against perpetrators of criminal acts are also unable to reduce and prevent the occurrence of work accidents which are indicated as work safety crimes. Various arguments try to explain the causes of work safety crimes that are more rational than simply accepting it as bad luck or an occupational risk. When injury, disability or death occurs, the worker is willing to accept it and not sue the employer. In the development of work accident theories, responsibility has changed. Initially the causes of work accidents were based on unsafe work behavior and unsafe work conditions were caused by bad worker behavior.[1]

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In its development, unsafe work behavior and unsafe working conditions have become the responsibility of the corporation as the management of the work safety system, and are qualified as safety crimes when death occurs in a work accident, or known as "corporate manslaughter"[2], "safety with fatal results"[3], or "work-related death".[4] The emergence of theories on the causes of work accidents helps enforce occupational safety criminal law as a rational effort to find various scientific approaches to prevention and criminal liability for work accidents. According to the International Labor Organization (ILO), although employers around the world have been careful and planned their business strategies, many companies ignore workplace safety regulations and tools in their businesses. Funding for fulfilling occupational safety requirements is still considered expensive by most companies. Throughout the world, every year it is reported that there are at least more than 250 million work accidents and more than 160 million workers contracting work-related diseases, and around 1.2 million workers die as a result of work accidents in the workplace.[5]

In connection with legal evidence of work safety crimes, investigations into work safety requirements determine whether a work accident qualifies as a work safety crime or not. Considering that other criminal acts can also occur. Thus, criminal law requires causality arguments between violations of work safety requirements and criminal consequences. Apart from that, causality provides information for improvement, improvement and continuous action. Thus, criminalization is possible for work safety management, especially if the error results in injury, disability or death of workers as a form of criminal responsibility. The development of international regulations is moving towards stricter rules and criminalization of perpetrators of occupational safety crimes. Considering the gravity of the violation is the primary factor in determining penalties, and the size of the business, good faith and history of previous violations based on the type and degree of the violation, such as intentional, repeated, serious, non serious.[6]

In Indonesia, the number of deaths in work accidents per year is still relatively high. Based on the data from BPJS Ketenagakerjaan, data on work accident cases at the national level are obtained as follows:

*Table 1. Percentage of Work Accident Cases in Indonesia*

<b>Years</b>	<b>Percentage Increase in Cases</b>
2017	Up 21% from the previous year (123.040)
2018	Up 40, 94% from the previous year (173.415)
2019	Up 5.43% from the previous year (182.835)
2020	Up 21,28% from the previous year (221.740)
2021	Up 5,65% from the previous year (234.270)
2022	Up 13,26% from the previous year (265.334)

*Source: BPJS Ketenagakerjaan \*) until November 2022*

BPJS Ketenagakerjaan noted that around 34.43% of work accidents were caused by unsafe working conditions, and as many as 32.12% of workers were caused by unsafe work behavior. Around 51.3% of the causes of work accidents are due to collisions, while the most frequently injured body parts are the fingers and toes, while 32.25% of the sources of injuries resulting in injuries, disabilities and death are

caused by machines. The Ministry of Public Works announced that the manufacturing sector and the construction sector were still the informal sector which contributed the highest number of work accident victims, each at 32%, followed by the transportation sector at 9%, the forestry sector at 4%, and mining at 2%.[7]

Settlement through a criminal justice system that focuses on retributive sanctions against individual perpetrators, not against corporations or work safety management. As a result, the cause of the criminal act is not eliminated and the consequences of the criminal act are not remedied, other workers have the potential to become victims in the future. Based on the explanation above, it is interesting to encourage an alternative model for resolving work safety crimes which is able to concretize the ideals of better work safety criminal law. This article explains the urgency driven solution model through tripartite restorative.

## **2. Problems**

Responding to these conditions, this paper offers an alternative idea of solving safety crimes through a restorative tripartite model. What is the restorative tripartite model offered as an alternative to solving safety crimes?

## **3. Method**

This article is one of the results of the author's dissertation research. This is a qualitative research, using content analysis on regulations related to criminal law on work safety law in Indonesia, and restorative justice as a form of criminal law reform. In addition to content analysis, data collection was also used through interviews with related parties.

## **4. Discussion**

### **4.1 Safety Crimes**

In general, an accident is defined as an unexpected, unintentional, unavoidable event that causes loss of something of value, injury and creates liability. Occupational safety crimes originate from two events, namely work accidents and work-related illnesses, which are the culmination events or the end result of an accumulation of a number of errors originating from unsafe work behavior or unsafe working conditions which should have been prevented earlier, anticipated by the company as the organizer of the work safety system. Russel DeReamer argues that using the definition of an accident in general as the equivalent of a safety crimes is inappropriate. Occupational safety crime originates from something that should be realized from the start, but is still carried out, the action is desired, but the consequences are not expected, unexpected or beyond their calculations, so that the momentum of safety crimes is only waiting for the place and time to occur.[8]

According to Feinberg, safety crimes are a form of crime that poses a wide danger at the time it occurs and leaves it in the future. Other workers in the future will experience a similar event because the "something" that poses a threat of danger has not been removed. Actions that pose a threat of harm to other people or the public are the direct objects of criminal law. A dangerous condition for one person may not be a dangerous condition for another person, however, there is a general tendency to cause further harm if the condition or behavior is allowed to continue.[9] The development of modern work safety criminal law that has the most influence is when investigators of safety crimes found the fact that in safety crimes there was a contribution by the organizers of work safety requirements which determined whether or not a safety crimes occurred.[10] In its development, this gave rise to the term "corporate manslaughter/corporate killing" which refers to the company's criminal responsibility for safety crimes that result in the death of its employees. In subsequent developments, there were changes related to criminal liability for safety crimes based on strict liability. This principle distinguishes between violence committed by corporate organizations and violence by individual companies. Violence that is among the three types of criminal acts that can be prosecuted:[11]

- a. as breaches of health and safety law;
- b. under health and safety legislation; regulatory offences; and
- c. offences that are prosecuted as common law crimes of violence.

Occupational safety crimes must absolutely look at the causal sequence between the error in the act and the consequences of the action, so that the incident of a work accident can be qualified as a safety crimes. In the crime of work injury, there can be two types of offenses, namely violations and causing consequences, or violations occurring but no consequences. Violations are related to elements of negligence, or neglect of work safety requirements, while crimes are related to consequences arising from violations, such as death, disability, injury, damage. In order to protect a legal interest from a historical point of view, the oldest form of criminal law is the offense of hurting or causing harm (*krenking delicten*), while the offense that causes harm (*gevaarzetting delicten*) appears later. Criminal law can be said to carry out preventive efforts in the sense that it does not wait for the consequences of actions (losses) to appear, but can work as soon as a threat to the public interest that is to be protected appears.[12]

When it is related to the division of the types of offenses above, then in the context of safety crimes there are two offenses, namely offenses that cause danger (*gevaarzetting delicten*) and offenses that are harmful/harmful (*krenking delicten*). Deciding on the existence of an offense that creates a threat or a state of danger, so that someone else is hurt/harmed at this time and in the future is a fundamental principle that must exist in the resolution of criminal acts of negligence that result in death at work accidents. Thus it can be concluded that safety crimes are specific crimes with the following qualifications:[13]

- a. only occurs in industrial relations related to the recipient and giver of work orders.

- b. there is a causal relationship between violations (work safety requirements) and the consequences of criminal acts that arise (death, disability, injury, damage).
- c. there was an offense that caused a dangerous condition and a hurtful offense.
- d. the occurrence of unsafe work behavior practices and unsafe working conditions is a source of fault for the work safety system administrators.

#### **4.2 The Context of Legal Protection for Victims of Occupational Safety Crimes**

Legal protection in the context of occupational safety crimes is aimed at workers who are victims of occupational safety crimes. Victims are not only defined as mere individuals, but also other workers in the work environment who are also at risk of becoming the next if the cause of safety crimes is not eliminated. When referring to the definition of the victim in the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power,[14] then victims are defined as people who individually or collectively have suffered losses, including physical and mental injuries, emotional suffering, economic losses or substantial losses to their basic rights resulting from acts of negligence that violate criminal law in force in member countries including laws governing the abuse of power.

Protection for victims in this context departs from balancing the two interests of workers, namely the collective protection of workers and the protection of individual workers. Punishment has two functions, namely punishing perpetrators and preventing criminal acts, both of which have the main objective of maximizing social defence.[15] Social defence is interpreted as protecting the community from criminal acts in a repressive way while simultaneously preventing criminal acts and coaching for perpetrators.[16] The function of prevention in punishment must also be interpreted to protect the community and control of crime.[17] Thus, if the concept of social protection is linked to legal protection for workers and the working community, then prevention and improvement of mistakes (originating from actions and consequences of actions) of the organizers of the work safety system. The inclusion of the concept of criminal law protection in the aspect of work safety is closely related to a paradigm shift regarding work risks. In the beginning, work risk was a consequence of work that workers had to accept in private relations, now it has turned into a risk of business continuity and public order.[18]

#### **4.3 Underlying Values of the Restorative Tripartite Model**

The industrial revolution was seen as the starting point for the birth of work safety laws which directly resulted in a more severe risk of occupational safety for workers. In simple terms, the industrial revolution is understood as a massive transition related to the method of producing goods in the industrial, manufacturing, transportation and communication sectors which were previously done by human labor, changing to using production machines, related to work safety originating from unsafe work behavior and unsafe working conditions.[19] The emergence of waves of protests in various regions in Europe on a large scale at that time. The presence of production machines is considered as an enemy by workers because it endangers the safety and

health of workers, thus triggering increased acts of vandalism by workers. This condition also increases criminal acts related to the destruction of production machine.[20]

There has been a simple recording of the history of work accident cases, starting from the time, location, cause, type of damage, number of victims, perpetrators, as well as the total losses suffered by the company during the incident. It is also believed that the existence of records and reports of work safety cases is the beginning of criminal liability and criminal sanctions against employers or companies that use industrial machines.[21] This momentum is believed to be the start of the legal reform for industrial safety.[20] In the context of criminal liability that occurs, resulting in injury, disability and death to workers originating from work orders, developments occur. Initially based on the principle of "*volenti non fit injuria*" then changed to the principle of "the master-servant liability", then became vicarious liability. So when something happens to a worker. Through the Personal Injuries Act 1948[22], injuries (wounds, disabilities and/or death) received by workers as a result of carrying out work orders qualify as a safety crimes.

#### **4.4 Restorative Justice as a Restorative Tripartite Model**

Resolving criminal cases through restorative justice means a process in which all stakeholders in an alleged injustice have the opportunity to discuss the consequences and what good things might be done to correct the wrongs. The parties sit together to discuss who has been injured, what they need, then the victim is able to describe in his own words the pain and suffering he is experiencing, how the victim deals with this pain, and the parties look for ways to improve the pain and the suffering of the victim and at the same time preventing others from becoming victims in the future. [23] In particular, Braitwaite questioned the perspective of restorative justice for solving work safety cases. The parties involved in the restorative process are the state, individual workers-community workers, and companies, one another motivating all to sit together voluntarily in a circle. Restorative justice sees safety crimes seen as a threat to public harm. In the restorative process, each party has the opportunity to sit together to discuss the impact or consequences of actions and decide what actions can be taken to correct past mistakes by offering remedial actions, preventing the spread of impacts, improvements to make things better in the future. This process he called Tripartite Restorative and responsive justice.[23]

Based on the value of restorative justice, a restorative tripartite process involves the participation of three main stakeholders, namely the perpetrators of the work safety system administrator, victims of occupational safety crimes, which consist of the individual and collective interests of workers who become victims and workers who have the potential to become victims in an environment. work if the causes of safety crimes are not corrected, as well as legal officials. The perpetrators are held responsible by transforming their mistakes into three things that can be recovered, namely eliminating the causes of safety crimes, correcting the criminal consequences they cause, and preventing safety crimes from happening again. These three things are meant for workers to work safely, and the organizers of the work safety system do business comfortably.

As the cornerstone of the restorative tripartite model, restorative justice is part of the development of the sentencing paradigm, responding to protection for victims of crimes that have so far been ignored by retributive justice adopted by the criminal justice system. In terms of historical and sociological aspects, in general, society responds to injustice in two ways, namely responding to it from a consensus perspective or responding to it from a conflict perspective. This choice depends on how the law is to be functioned (functions of law), law as social control, law as dispute settlement or law as social change.[24] If mistakes are understood as "reproachable", then punishment is a "manifestation of reproach". Defending the existence of the criminal law always stems from efforts to determine justification for sentencing.[25]

Presence of the philosophy of restorative justice in terms of punishment is also the influence of the utilitarian school which rejects the existence of excessive suffering and suffering as a reason for sentencing someone. In the utilitarian school, the ways of imposing retaliation cannot be used as a justification for inflicting misery on the perpetrators of crimes, unless there is utility in that misery. The utilitarian flow actually believes that the imposition of punishment must have benefits for many people now and in the future.[25] The emergence of the philosophy of sentencing restorative justice cannot be separated from the philosophy of relative punishment which originates from the utilitarian school which prioritizes the purpose of the expediency of law. A change in the paradigm of sentencing philosophy is a necessity in the development of science.

The restorative justice philosophy of punishment then emerged as a response to the philosophy of punishment that had existed before. Punishment through restorative justice has two functions, namely to punish the offender in a way that benefits the victim. By encouraging communication between perpetrators, victims and the community to jointly find solutions together how the perpetrators can pay for their mistakes to victims and society for their crimes (can repay crimes committed by victims and society).

The perpetrator made repairs as a result of his mistake, and promised not to repeat it, so as to restoration seek to reestablish peaceful.[15] In contrast to the retributive philosophy that dominates the work of the criminal justice system which defines justice purely procedurally, the victim's participation is not involved in the process and decision-making related to himself, so that court decisions are far from protecting the interests of victims of criminal acts.[26] Restorative justice offers space for each party involved in a crime to dialogue about three basic things, namely what can be done to improve the situation for the damage caused (repair), to determine the best way of how the repair is carried out based on the results of the decision. together with the parties (encounter), the improvements made have an impact on fundamental changes that are better for the relationship between these parties (transformation).[27]

Resolving cases of occupational safety crimes through a restorative tripartite means a process in which all stakeholders in an alleged injustice have the opportunity to discuss the consequences and what good things might be done to correct the mistakes. The parties sit together to discuss who has been injured, what they need, then the victim is able to describe in his own words the pain and suffering he is

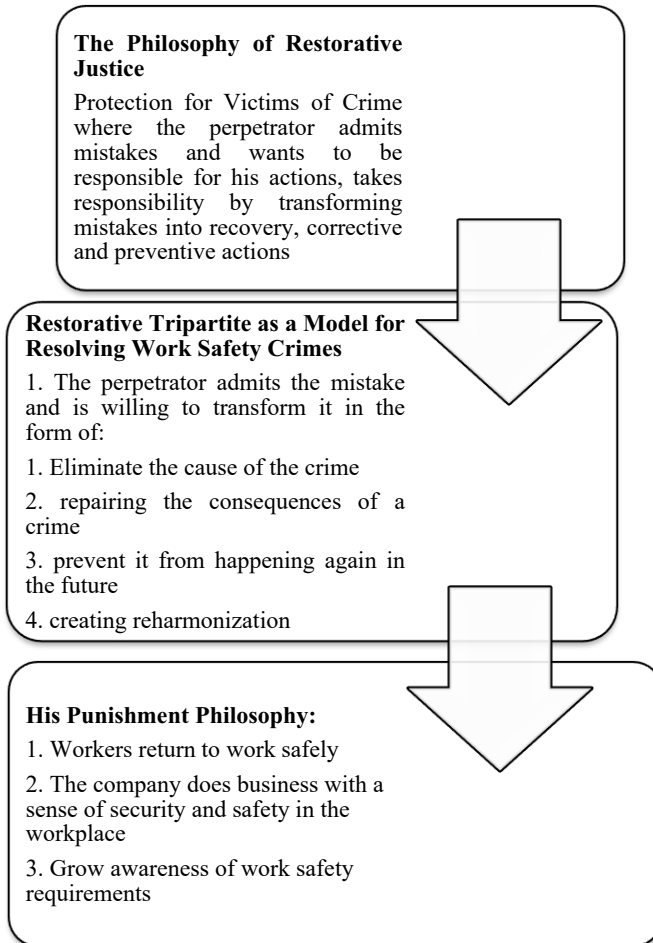
experiencing, how the victim deals with this pain, and the parties look for ways to improve the pain and suffering. the suffering of the victim and at the same time preventing others from becoming victims in the future.[23] The parties involved in the restorative process are the state, individual workers-community workers, and companies, one another motivating all to sit together voluntarily in a circle. Restorative justice sees safety crimes seen as a threat to public welfare (public welfare offenses). In the restorative process, each party has the opportunity to sit together to discuss the impact or consequences of actions and decide what actions can be taken to correct past mistakes by offering remedial actions, preventing the spread of impacts, improvements to make things better in the future.[23]

Based on the value of restorative justice, the restorative Tripartite responds to safety crimes by transforming mistakes into restorative actions that are beneficial for individual workers and many workers, namely the perpetrator realizes and admits that he has made a mistake, the perpetrator transforms his mistake by correcting the consequences of the criminal act that it caused, correcting the causes of criminal acts, so that re-harmonization is realized and safety crimes do not occur in the future. Restorative action here can be interpreted as a process for assessing facts, consequences and the future, as well as a rational basis for determining whether and how much of the obligation to restore and repair is imposed on the perpetrator of a criminal act of negligence which resulted in death in a work accident.”[28]

The Restorative Tripartite Model reaffirms that the philosophy of punishment for safety crime cases is on three main issues, namely corrective, compensation and prevention. Thus it can be said that the restorative tripartite settlement model is derived from the philosophy of restorative justice. Systematically, the set of philosophies has the same perspective in responding to this crime, namely forward looking corrective action. As illustrated in the picture below:



*Picture 1. Philosophy of Criminal Justice through a Restorative Tripartite*



*Source: Author's Dissertation Research Results*

In a restorative tripartite process, there is a process of transforming mistakes. The aim of the resolution is raised from logical thinking or rationality, which ideally

is obtained by workers who are victims of occupational safety crimes. With this measure of rationality, the imposition of criminal sanctions is not carried out haphazardly. The equating of a type of criminal sanction to the majority of criminal acts does not reflect the rational nature of criminal sanctions. So that various expressions of ideas and debate emerged about how best to use alternative formats that are more capable of providing a deterrent effect, capable of changing behavior and ways of thinking. Alternatives are specifically aimed at perpetrators of white collar crimes so that crimes can be reduced and their actions monitored.[29] When examined from the perspective of the priority of interests being protected, criminal law prioritizes solutions based on protecting public legal interests rather than individual legal interests. Criminal law solutions must be able to accommodate these two interests proportionally. One of them is encouraging a tripartite restorative concept for resolving safety crimes in the future reform of work safety laws.

In this context, maximum benefits for workers who are victims of safety crimes now and in the future. Even though people believe that punishment is morally justified, the basic problem is not merely moral, but also whether the punishment is able to provide the solution needed. Thus, apart from having moral justification, the purpose of punishment must also be useful (the law is useful).[30] In this context, the public interest must be interpreted as an interest that has real benefits for many workers, both as a whole and individually, namely protection from danger. What is meant by "danger" in criminal law is an act that is concretely endangering the public interest, where the dangerous act will become a reality if it is not prevented. Danger can also be defined as an act that endangers the public interest in an abstract way, where the element of "dangerous" is not meant as a reality, but is simply considered effective (avoiding all things that could be dangerous or avoiding certain behavioral practices that are usually dangerous.[31]

## 5. Conclusion

Thus the authors conclude that ideally the settlement of occupational safety crimes is resolved using a restorative justice process through a restorative tripartite model as its special means. Restorative tripartite settlement is based on the principle that the final result of the settlement is a joint solution for all parties. All parties benefit from mutual law, workers work safely, companies do business comfortably, work safety requirements are complied with by all parties. Punishment in a restorative tripartite context is interpreted as a form of consequence for wrongdoing. By transforming mistakes into four legal obligations, namely eliminating the causes of criminal acts, correcting the consequences of criminal acts, reharmonizing post-crime industrial relations, and creating a safer work environment so that other workers are protected from workplace safety crimes in the future.

The restorative tripartite link between the objectives of criminal law, the philosophy of criminal justice for work safety, achieves its objectives which have so far been difficult to achieve through existing settlement mechanisms, namely corrective for the benefit of many workers. protected. The mediation-conciliation approach is an instrument that is available for use with restorative justice. The aim of

encouraging a settlement model through restorative justice in this context actually provides a better alternative settlement option than the current mechanism.

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