I. Legal framework of OSH in Indonesia

Indonesia has comprehensive occupational safety and health laws and regulations designed to protect worker safety. The main law concerning occupational safety and health is *Government Act No. 1 (1970) on Work Safety (Keselamatan dan Kesehatan Kerja, K3)* and covers all workplaces. (See K3, Chapter II, paragraph 1). Worker safety and health protection programs therefore are mandated by law. (See K3, Act 13 of 2003, Chapter X, Part 1, Article 86). This law also explicitly states that workers have the right to occupational health and safety protection.

1.1 Work Safety Act and other programs

*Government Act No. 1 (1970) on Work Safety* (hereafter the *Work Safety Act*) requires safe and healthful workplaces, plant health and safety committees. It requires employers to report to the various and appropriate government agencies and details regulations regarding government inspections of workplaces. The act was amended with Government Act No 25 (1975) which updated the requirements for Act No1 (1970).

The other act which regulates the compensation system in Indonesia is Act No. 3 (1992) on the conduct of *Jaminan Sosial Tenaga Kerja (Jamsostek)*. Jamsostek is the social security system for workers in Indonesia. This act describes and explains the compensation system in Indonesia, which is run by the incorporated PT. Jamsostek.

Government Act No.13, also called the *Indonesian Labour Law or the Manpower Act*, has several articles laying out the framework for OSH. For example, Articles 86-87 of this act state that every worker has a right to receive OSH. Every enterprise is under an obligation to apply ‘an occupational safety and health management system that shall be integrated into the enterprise’s management system.’ It further adds that rulings concerning the application of the occupational safety and health management system shall be determined and specified with government regulations. Among these are Goverment
Regulation No. 14 (1993) and Government Regulation No. 84 (2010), both describing and detailing the administration of the social security compensation system. There are also Government Regulation No. 50 (2012) and Sistem Manajemen K3 (SMK3) dealing with OSH systems management.¹

**Employees Social Security Network (Jamsostek)**

In addition to safe workplaces, Indonesian law (Act 3, 1992, Article 3) has mandated the creation of a social security network (Jamsostek) that provides for workers if they get injured:

“To provide protection to the workforce, a social security program must be implemented that can be managed via an insurance mechanism.”

As stated in Article 2 of Act 3 (1992), every worker has the right to social security. Jamsostek coverage is required for any employer of more than 10 employees (Government Regulation 14 of 1993, Jamsostek implementation, Article 2, Paragraph 3).

Furthermore, Chapter I, General Section of the act states that:

“The social security program provides protection for workers by supplying monetary compensation for lost or reduced income and employability when the worker experiences an accident, a hospital stay, a pregnancy, the birth of a baby, old age, or death”

Jamsostek includes accident insurance, life insurance (death benefit), old age pension and health insurance for workers (Chapter III, Article 6 of Act 3 1992). The legislation covers many types of workers and mandates coverage specifically for occupational accidents (Article 8, Paragraph 1). The law describes who is covered by the workplace accident insurance program (Art 8, Paragraph 2). Among others, it includes student interns working at a company (whether receiving wages or not) and company contractors, as well as prison inmates working in company internships prior to release. The law simply

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¹ According to the International Labour Organization (ILO), Indonesia is the only country in Asia that has mandated by the law the implementation of occupational safety and health management system (OSH-MS) at large enterprises.” See Pia Markkanen, *ILO Working Paper No. 9, Occupational Health and Safety in Indonesia* (April 2004).
states that all working people are entitled to work accident insurance, regardless of their job. The Jamsostek regulations (Article 9) guarantee work accident compensation, including the cost of travel, a medical examination, treatment and rehabilitation and/or maintenance (Article 8, Paragraph 1). The monetary compensation provides for payment of temporary disability, permanent partial disability, permanent complete physical or mental disability, and death from job-related activities.

Starting in 2015, all citizens of Indonesia will be able to become participants in a broader social security program named Sistem Jaminan Sosial Nasional (SJSN, National Social Security System), established under Act 40 of 2004. This social security program will not just cover workers. If any citizen registers with the government and pays the premiums, he or she can receive disability payments, a pension in old age, and life insurance benefits.

Indonesia has ratified all eight of the fundamental conventions of the International Labor Organization (ILO), which are international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In recent years the country has signed another 10 conventions, including most recently the Employment Service Convention, 1948 (C. 88, ratified in 2002) and the Labour Inspection Convention, 1947 (C.81, ratified in 2004).

However, of the 23 ILO conventions on occupational health and safety, Indonesia has ratified only one, the Hygiene (Commerce and Offices) Convention, 1964 (C.120, ratified in 1969).

1.2 Implementation of OSH laws, practices

The number and cost of occupational accidents in Indonesia have been increasing in recent years. (See table below.)

The rising number of accidents and costs reflect poor working conditions and the lack of safety programs in Indonesian workplaces. It is generally accepted that most Indonesian companies do not follow existing safety regulations. According to a recent statement by Afdiwar Anwar, head of the government-run social security program Jamsostek, “Only 2.1 percent of 15,000 large companies in Indonesia have implemented the K3 (safety) program. Many companies consider K3 a cost burden, which ultimately makes the working environments more dangerous”.

An additional factor is the lack of supervision by the government. In Indonesia, the government’s role tends more toward encouraging compliance with safety regulation, rather than enforcing it.
Accident statistics in Indonesia

<table>
<thead>
<tr>
<th>Year</th>
<th>Accidents#</th>
<th>Accident Insurance Claims (Rp blns)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>83,714</td>
<td>219.7</td>
</tr>
<tr>
<td>2008</td>
<td>94,736</td>
<td>297.9</td>
</tr>
<tr>
<td>2009</td>
<td>96,314</td>
<td>328.5</td>
</tr>
<tr>
<td>2010</td>
<td>98,711</td>
<td>401.2</td>
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<tr>
<td>2011</td>
<td>99,491</td>
<td>504.0</td>
</tr>
<tr>
<td>2012</td>
<td>103,000²</td>
<td>N.A.</td>
</tr>
</tbody>
</table>

Notes: Note: n.a. not available.
Source: 2011 Jamsostek Annual Report

1.3 List of occupational diseases and injuries

There are 31 occupational diseases, recognized by Indonesian law, as caused by work or working conditions and the work environment. These are:

1. Pneumoconiosis (pneumokoniosis) caused by mineral dust forming scar tissue (silicosis, antrakosilikosis, asbestosis) and silicotuberculosis (silikotuberkolosis) wherein silicosis (silikosis) was the main factor causing disability and death.
2. Lung and bronchial disease (bronkopulmoner) caused by hard metal dust.
3. Lung and bronchial disease (bronkopulmoner) caused by cotton dust, vlas, henep and sisal (bissinosis).
4. Asthma caused by work that caused by over exposure to substances at work.
5. Alveolitis allergika caused by external factors such the inhalation of organic dust.
6. Disease caused by beryllium (berilium) or its toxic compounds.
7. Disease caused by cadmium (kadmium) or its toxic compounds.
8. Disease caused by phosphorus (fosfor) or its toxic compounds.
9. Disease caused by chromium (krom) or its toxic compounds.

3 See Presidential Decree No. 22, 1993, which lists these 31 occupational diseases.
10. Disease caused by manganese (mangan) or its toxic compounds.
11. Disease caused by arsenic (arsen) or its toxic compounds.
12. Disease caused by mercury (raksad) or its toxic compounds.
13. Disease caused by lead (timbal) or its toxic compounds.
14. Disease caused by fluor or its toxic compounds.
15. Disease caused by carbon disulfide (karbon disulfide) toxic.
16. Disease caused by halogen derivatives (derivat halogen) from aliphatic hydrocarbons (hidrokarbon alifatik) or aromatics (aromatik) toxic compounds.
17. Disease caused by benzene (benzena) or homologous toxic substances.
18. Disease caused by derivatives of nitrogen (derivat nitro) and amina from benzene or homologous toxic compounds.
19. Disease caused by nitroglycerin (nitroglicerin) or nitric acid esters (ester nitrat acid).
20. Disease caused by alcohol, glycol or ketone (alkohol, glikol or keton).
21. Disease caused by gas or vapor causing asphyxia (asfiksia) or poisoning by carbon monoxide (karbon monoksida), hidrogensianida, hydrogen sulphide (hydrogen sulfida), or derivatives that are poisonous, such as zinc, brass and nickel ammonia (amoniak seng, braso and nikel).
22. Auditory abnormalities caused by noise.
23. Disease or injury caused by mechanical vibration (muscle disorder, gout, bone joints, blood vessels or the edge nervous).
24. Disease or injury caused by working in pressurized air.
25. Disease or injury caused by electro magnetic radiation and ionize radiation.
26. Skin disease (dermatosis) due to physical, chemical or biological causes.
27. Skin cancer epitelioma primer caused by ter, pic (chemical names), bitumen, mineral oil, antrasena or its compounds or its products or the residue of those substances.
28. Lung cancer or mesothelioma caused by asbestos (asbes).
29. Infection caused by virus, bacteria or parasites in working environments with special risks.
30. Diseases caused by high or low temperature or radiation or high air humidity.
31. Diseases caused by the other chemical substances include medicines.
II Analysis of the compensation system

2.1 Jamsostek insurance program

The main law providing workers with work-related injury insurance is the Jamsostek program. Under the regulations (Government Regulations No 14 of 1993, Article 2 Paragraph 3) on the implementation of the Jamsostek insurance program a company must registered its workers in the Jamsostek Program, if they employ more than 10 people. In addition, whereas in previous years, the worker needed to rely on the employer to register him or her, a revision to the program allows the workers to register themselves. The employer or the worker himself or herself can register directly at the nearest Jamsostek office. Registrants may receive assistance from Jamsostek staff in filling out of the forms and other procedures.

Employers may also register members of their workforce with other compensation or insurance programs.

2.2 Rates of compensation

If a work accident happens, workers who are registered with the Jamsostek Program will receive some compensation. In general the following rates will apply.

For transportation to take the worker from the place of the accident place to hospital, the following rates apply

- Across the land/ river / lake: Rp. 750,000
- Across the sea: Rp. 1,000,000
- By airplane: Rp. 2,000,000

Workers registered with Jamsostek who suffer a work-related injury at work will be hospitalised until they are well or cured and will receive compensation while unable to work. The following compensation rates are currently in force:

- For the first four months of disability, full month’s wages.
- For the following four (4) months, 75 percent of his or her month’s wages.
- After eight months, 50 percent of his or her month’s wages.

For medical care or treatment, the program provides a maximum Rp. 20,000,000 for each case. Additionally, dentures are replaced with a maximum payment of for Rp. 2,000,000. The following compensation rates for disability are in force:
• Partial permanent disability: Based on the degree of disability (\%) x 80 months’ wages
• Total permanent disability:
  a. In all 70 percent of wages x 80 months wages; and
  b. thereafter, payment of Rp 200,000/ month for 24 months
• Lacking function: Based on the degree (\%) of loss of function x 80 months’ wages.\(^4\)

If the worker dies in a work-related accident, the surviving family members will received a death allowance, calculated as follows:
• A lump sum equal to 60 percent x 80 months’ wages; and.
• Payment of Rp. 200,000/ month for the following 24 months.
• Funeral expenses of Rp 2,000,000.

Jamsostek also will pay for a prothesis (limb replacement) and orthosis (devices or equipment such as a wheelchair). Compensation for an occupational disease will be the same as that received for an occupational accident.\(^5\)

2.3 Complaint systems, judicial system reform

While employers and employees generally seek to avoid any dispute or termination of the employment, including dismissals, if the situation cannot be avoided, those who feel their rights have been infringed can, according to Act 2 of 2004, seek a settlement outside the court (non-litigation) or through a court (litigation).

The Industrial Relations Disputes Settlement Law under Act 2 introduced five labour dispute settlement mechanisms, namely bipartite settlement, mediation, conciliation, arbitration and settlement by an Industrial Relations Court (IRC). The new IRC, along with other dispute resolution mechanisms, came into operation in early 2006, replacing a system of district and regional industrial disputes settlement committees (P4D/P), which unions and employers had often criticized as being costly, exceedingly time-consuming and prone to corruption.\(^6\)

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\(^4\) For more on compensation rates, see Government Regulations No. 84, 2010, on the implementation of social security program for labour.

\(^5\) <http://www.jamsostek.co.id/content/i.php?mid=3&id=17>

[This labour court replaces the function of Regional Labor Dispute Settlement Committee (Panitia Penyelesaian Perselisihan Perburuhan Daerah - P4D) and Central Labor Dispute Settlement Committee (Panitia Penyelesaian Perselisihan Perburuhan Pusat – P4P.)

One of the major changes to the industrial dispute settlement system is that Law No. 2 of 2004 shifts the jurisdiction over industrial relations disputes from the Ministry Manpower and Transmigration to the Supreme Court. The shift had caused a major challenge and concern: the level of competency and professionalism of IRC. The main actors in industrial relations, such as the Indonesian Employers’ Association (Apindo) and unions, have also shared similar concerns, including the weak capacity of ad hoc judges in understanding and applying substantive law, legal logic and court procedures.7

Under Act 2 which sought to reform previous methods of dispute resolution, the parties involved may choose the method of settlement. In both spirit and concept, Act 2 aimed to create a positive, hopeful environment and reduce the pessimism of the parties involved. Paragraph (1) of the Article 1 of Law Number 2 of 2004 mentions that this court has jurisdiction over disputes between the employer and labour or labour union concerning rights dispute, conflict of interest, conflict arising from the termination of the employment relationship and disputes between different labour unions in one company.

When the parties bring the case to the Industrial Court, they have signaled that they are determined to finalize the dispute and solve it without appeal to a higher body and within a fixed timeframe. This ensures a sense of justice for both the parties in the contention and the dispute settlement is done through negotiations to find consensus outside the civil and criminal court system.

In the early stages of these courts, which are located in the jurisdictions of each District Court, they were not efficient.8 Efforts are ongoing to improve their efficiency, in particular the knowledge of labour law of the judges handling the cases.

If a protest by workers erupts and turns violent (in particular over a case of compensation), where a workers’ strike has been violently put down by those hired by the company, the workers through the attorney or union can report this incident to the state court or the Industrial

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7 Ibid
Court. However, most cases of dispute over compensation are solved through negotiations between the workers and the company, because the court system, despite the reforms, still requires a lengthy period of time and much more energy than negotiations.

In 2011, the government enacted the *National Legal Aid Law*. The law endorsed state support for community paralegals, providing legal support to the poorest members of society and opened up the process of setting legal aid procedures and regulations. This policy action is aimed at ensuring that citizens are able to claim their rights across various areas, such as healthcare, education and labour.

### III Challenges and barriers in claiming compensation

Despite the high cost of the work-related accidents and illnesses, individual worker protection is lacking in many organizations and compensation is far from commensurate with the harm done. Some companies cover up accidents to protect their reputation, and the accidents are not reported to the government worker insurance program *Jamsostek*. The company may resolve the issue of accident compensation directly with the worker or his or her family and often the worker does not receive decent or fair compensation. Another problem is that the amount of compensation given to workers who experience an occupational injury or illness will depend on the monthly salary paid to the worker, so the amount of compensation given to a low wage worker may not be enough to live on.

Occupational disease is not well monitored in Indonesia. Data from government sources usually only relates to accidents in the workplace. The Indonesian government has never issued official data about occupational illnesses, which leaves an entire population of workers and their health issues unaccounted for.9

The main problem encountered with occupational disease compensation, however, is getting a doctor’s diagnosis to verify work-related diseases, which is required for *Jamsostek* compensation. In cases handled by the Local Initiative OSH Network (LION), there were often difficulties, especially in obtaining an accurate diagnosis when workers were treated at a *Jamsostek* referral hospital. It seemed the doctors did not want to make trouble for companies and did not want to be bothered with the paperwork required to submit the claims. Often when a diagnosis was given, it focused on the worker’s home

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9 It is believed that not only does *Jamsostek* not release the data, it does not collect it.
environment rather than the work environment. Typically, workers could get better treatment and higher quality care at an independent hospital rather than the Jamsostek hospital. But even an independent hospital is not a guarantee that a worker will get a clear diagnosis and discover the cause of their condition. Doctors often only address the symptoms of disease and do not provide a direct statement about the type of occupational illness suffered by workers. Doctors in Indonesia are reluctant to deal with the legal issues of occupational illness. LION has yet to meet an Indonesian doctor who is willing to participate in a court case related to worker’s rights or legal compensation due to occupational disease.

So workers continue to experience difficulties obtaining compensation for their work-related injuries and illnesses. Highlighting these problems and advocating for workers’ compensation is part of LION’s advocacy for OSH rights in Indonesia. Below are case studies of victims of occupational injuries and diseases, who have experienced difficulties with compensation and care. From their challenges, lessons can be learned and best practices can be developed that can be used in the struggle for the enforcement of OSH rights in Indonesia.

3.1 Case Studies

3.1.1 Case studies involving workplace accidents and injuries

In addition to poor OSH management systems present at many manufacturing sites that cause accidents, many work-related accidents in Indonesia are made worsen because of management’s attitude and lack of responsibility for their workers. Many companies do not register their workers with PT Jamsostek, despite its existence for more than two decades. Based on LION’s findings in 2012, there were several workplace accidents where companies’ OSH management systems failed and workers were not compensated appropriately and in accordance with the law. These cases are listed below.

Case study 1. Widaryanto’s accident and eye injury

Widaryanto is a 35-year-old male worker born in the village of Pasanggrahan, near Plumbon in the regency of Cirebon on 2 April 1976. He was employed as a machinist at the textile firm PT Embee Plumbon Textile, Cirebon. While at work, he suffered an accident at his workstation, Spinning 1, on Tuesday, 20 December 2011. The accident occurred while he was fixing the bearing of Drawing
Machine 12. The bearing broke while he was punching it with a hammer and a flake of the iron bearing flew into his right eye. The size of the iron fragment that was lodged in his eye was 10 mm long, 5 mm wide, and 3 mm thick. The iron piece was imbedded in the eye socket for approximately 70 days, before it was detected by a physician at the Eye Hospital in Bandung and surgically removed.

After the accident occurred, the injury was reported to the Human Resources Department (HRD) of the PT Embee Plumbon, but no action was taken. It was also reported to the union. At that point neither the union nor the HRD knew about Jamsostek regulations and claims process.

Widaryanto and his family had to fund his treatment, surgery and recovery at their own expense and from loans obtained from neighbourhood friends. This caused Widaryanto and his family great stress because they did not have the money for the operation and treatment. The company did not take responsibility for his accident or give any direction regarding what actions should be taken by the victim and his family. The family had to figure out on its own how to treat his wound. The company allowed Widaryanto’s family to fund the cost of his eye surgery, but afterward the company did reimburse him for the costs of hospitalization after he presented them with the hospital receipt. Widaryanto and his union became more knowledgeable about workplace injury/disease, Jamsostek and OSH in general after training from LION. At present Widaryanto is still out on leave. It is also unclear to him whether the money the company gave him was truly a reimbursement of his medical expenses or if the payment was a loan and he will be required to repay it upon his return to work.
Jamsostek compensation for Widaryanto’s treatment and permanent blindness disability has not been provided by the company, even though his company should have been enrolled in Jamsostek. Unfortunately, Indonesian workers are often ignorant about the safety regulations that govern companies and Jamsostek social security payments due to them. It is clear that the company and the government have not educated workers on the mechanisms of Jamsostek. The family regrets that during the treatment and eye surgery at the hospital (RS Cicendo, Bandung), no management representative of PT Embee accompanied them, not even to help the family with transportation difficulties. Widaryanto and his family feel the PT Embee Plumbon company management are very hands-off about work accidents that befall its workers.

Case study 2. Sayeni, a newlywed killed in a spinning machine accident

Sayeni, a young woman who had been married just two weeks earlier, suffered a tragic accident at the PT Embee factory where she worked. Sayeni was born on 7 March 1988, and died on Wednesday, 28 December 2011, at 17:30 at the age of 23. She died because her hijab hood became entangled in a wheel at the front of Spinning Machine 12, Spindle 300, in Embee’s 4th Building.

Although Sayeni was immediately taken to Mitra Plumbon Hospital, her life could not be saved. Her body was then sent to the funeral home in Pesanggrahan Village, Blok Karang Anyar, in Plumbon in the regency of Cirebon at 20:30 that evening. The funeral was held at 9:30 am the following day and she was buried in the Pesanggrahan tombs.

The family received compensation of about 52 million rupiah (US$5,200) from Jamsostek, and the factory gave the family 3 million rupiah (US$300) in compensation. The family, especially the husband, did not accept this as adequate compensation for their loss and filed a suit against PT Embee.

In Sayeni’s case, it can be seen that a work accident is not only a problem for workers themselves, but also for the family that is left behind. When a worker suffers a disability due to work, that person’s family will feel loss of income and in the case of death, the loss of companionship of their loved one.
Case study 3. Lia Rosmalia and her work-related traffic accident

Lia worked at Miwon Products, a producer of monosodium glutamate and other flavorings, from 24 June 2006 until 15 July 2008. On March 10, 2008 while riding her motorbike to make product deliveries in Cicalengka, a subdistrict of Bandung, she had a traffic accident. She was brought to the Cicalengka Hospital for treatment.

Lia's family were informed of the accident immediately by the company operator who called and told them. After two or three days, a company representative, a supervisor named Mr. Mul, visited the Rosmalia home. Mr. Mul promised that her medical expenses would be reimbursed by the company and he requested the bills. But in fact, the company's 'reimbursement' only covered the cost of the lost Miwon products paid for by the stores and which had been damaged and lost in the accident: In all the company paid Rp.700,000 for the loss in deliveries to the Ancol market and Rp.200,000 for loss in deliveries to the Cicaheum market. Two weeks after the accident, Mr Mul came back and gave Rosmalia an insurance card from Prevensia Car insurance and said to use it to pay for her treatment. When she tried it, she found she could not be reimbursed for the medical expenses of Rp.9,000,000 (US$ 900) that she had already paid.

Lia Rosmalia was not a participant in the Jamsostek program, so she could not request payment from that organisation. Lia was also not employed again after recovering from the accident because her contract had ended.

Lia Rosmalia, after meeting with a legal assistance from LION, came to understand her legal rights to work-related compensation and shortly after the accident, she called the company. After a second call, the company through its new Human Resources Department (HRD) met with her. The new HRD officer explained that at the time of the accident, the company was in the process of changing its HRD. The new HRD did not know that it needed to collect data and confirmation from the previous HRD. They explained that they were trying to fix their data and register their workers in Jamsostek. After the meeting, a long time passed without any communication or confirmation from the company. Lia Rosmalia decided to discontinue the reimbursement process, because she was afraid that she would have problems getting work with another company.
Case study 4. Ateng’s death from infection after an accident at work

Ateng had been a mechanic working for PT Haji Kohar Sekeluarga (HKS) in Majalaya for 28 years, earning Rp1,060,500 (US$106) per month. In November 2010, he was hit by an iron beam when he was repairing a broken machine. He and his co-workers were trying to raise the beam, but it fell suddenly and hit Ateng’s left leg. Immediately afterward, the company took him to Magung Hospital in Ciparay (near Bandung) for treatment. After treatment Ateng returned to work again as usual.

However, on 19 December 2010, Ateng was taken to the local General Hospital Majalaya, because despite surviving the injuries from the accident, he had contracted an infection. He was referred to Hasan Sadikin Hospital Bandung and went there the same day. With the approval of his family, the hospital amputated Ateng’s infected leg. On Wednesday, 22 December 2010, three days after his leg had been amputated, Ateng died. The day after the funeral, the company gave his family Rp. 2.5 million (US$250).

Important facts in this case are firstly, Ateng was not registered with Jamsostek, even though the company employed more than 100 people, and it was required by law to register its employees. Second, Ateng at the time of his treatment used his own money to pay his hospital bills. And third, Ateng’s family only received compensation from the company for his funeral expenses. The reason given by the company was that it was a family business, and they routinely just gave settlement money in these situations. PT HKS is owned by a local person from Majalaya, unlike most other businesses in the area which are owned by foreigners.

In the early stages of this case, union representatives from another factory assisted Ateng’s family with this case, because Ateng’s company was not represented by a union. LION also got involved and informed the company of its legal obligations which were:

1. Severance money must be provided because of the employee’s death based on Act 13 of 2003.
2. Compensation to Mr. Ateng’s survivors should be provided for this work-related accident as stated in Act No. 2 of 1992:
   a) Immediate compensation at the time of death is 60 percent x 80 months’ wages.
   b) Periodic compensation of Rp. 200,000 (US$ 20) each month for 24 (twenty-four) months.
c) Funeral expenses of Rp. 2 million (US$ 200).

In Ateng’s case, his monthly wage was Rp.1,060,500 and 60 percent of 80 months’ salary would equal Rp.51.12 million, which is the immediate compensation due to his family.

Unfortunately, the company was unwilling to provide compensation to Ateng’s family, so the issue of payment of death severance compensation went to mediation with the Ministry of Manpower and Transmigration Department in the Bandung Regency.

The Industrial Relations Court ruled that the family must get their settlement in accordance with Law 13 of 2003, but the company was still unwilling to pay. LION plans to follow-up on the compensation processes with the following action:

1. Send a letter to the Department of Manpower and Transmigration in the capital (Jakarta).
2. Report to the Supervision Office of Manpower and Transmigration Bandung Regency.
3. If not followed up by these two government agencies, file a report with the police in West Java.

Case study 5. Costly routing changes for Truck driver Yuyu

Yuyu worked as a truck driver delivering bags of cement for PT Tulu Atas. Problems began when Yuyu and co-workers were informed that their delivery routes were being changed. They usually worked in the Padalarang area in the regency of Bandung. They were re-routed to Bogor and they objected because the cost of living would be higher and essentially their wages would be reduced. In Padalarang, they could usually make four deliveries per trip, while in Bogor, they would only be able to make two deliveries per trip, because the distance between each delivery would be much greater.

When LION explored this issue, it found that the company was not registered in the Jamsostek program. Also in an industry with a very high rate of vehicle accidents, accident insurance for the trucks was not provided. If an accident occurred that caused damage to the vehicles, the costs of vehicle repair and employee injury treatment would be borne by the workers and implemented by cutting their wages.

Response by LION:
1. An invitation to meet was sent to the company, seeking discussion of the problem and resolution through deliberation.
2. The company responded directly and agreed to meet.
3. At the first meeting, the company attorneys came and clarified issues.
4. At the next meeting the company invited LION to meet at their Bogor worksite with the Board of Directors. The Board of Directors explained their positions and then the company agreed to register their workers in the Jamsostek program, gradually according to their ability to afford it. They also explained that the re-routing was temporary (2-3 months/year), and workers would rotate through the re-routing responsibilities, so it would be the same for all the workers. The company has an expert to determine if vehicle accidents are related to human error or not. If the accidents are due to human error, the drivers will be expected to pay for vehicle damages.
5. At the third meeting, LION and Company Manager signed a draft agreement that the two sides agreed to.

3.1.2 Occupational disease cases

The amount of compensation received by workers who suffer from occupational diseases depends on the worker's monthly salary. The regulations and reimbursement schedule for this have been in place for twenty years without review, so often the reimbursement schedule is not commensurate with today's living expenses and is insufficient to live on.

Workers that suffer occupational diseases have often spent a long time in the workplace, often decades, doing the same routine work every day. This is especially true in the industrial sector, where exposure to hazards is common. Presidential Decree No. 22 of 1993 recognises and lists 31 occupational diseases. These diseases include those caused by mineral dusts, such as asbestosis and silicon. Many others result from excess exposure to dangerous chemicals or from exposure to radiation and physical agents. If an Indonesian worker is diagnosed with one of the 31 listed diseases, then the person is eligible for employment accident benefits (Jaminan Kecelakaan Kerja), either while still employed or after the employment relationship ends. The time

10 Government Regulation of the Republic of Indonesia Number 76 Year 2007 on Upper Fifth Amendment Regulation Number 14 Year 1993 on the Implementation of Social Security Program
limit for making claims for a work-related disease is three years after employment ends, as long as the claim is accompanied by a diagnosis from the attending doctor.

Article 1, paragraph 6 of Law No. 3 of 1992 defines the term “work accident”

“The accident that occurs in association with a working relationship, including diseases arising from employment and accidents that occur in the course of departing from home to work and going home from work by the usual or normal route.”

Thus, under Indonesia law, an occupational disease is included in the definition of a work accident.

It can be interpreted from existing regulations that diseases caused by work must be compensated in the same manner as work accidents. This was confirmed in point C in the Ministry of Labor and Transmigration regulation Per.01/Men/198.1. It states that an occupational disease must be reported as a work-related accident and that the employer is required to report such a disease to both the ministry and Jamsostek, so the worker may receive appropriate compensation (Article 1, Paragraph A). The list of occupational diseases that must be reported is contained in the annex of this regulation.

Every year Jamsostek handles more than 90,000 cases of occupational accidents for compensation; most are for workplace deaths or disability. It is unknown how many of these are related to workplace illnesses, because Jamsostek does not give a breakdown of the data.

LION inquired about the number of occupational diseases in West Java at the West Java Regional Jamsostek office. Because West Java has many industrial zones, Jamsostek was expected to focus more on occupational safety and health issues than in less industrialised areas. However, Jamsostek did not have data on work-related disease compensations claims in West Java. Since there is no data, people may assume West Java is free from occupational disease. However, this is not the case. The reality is that many workers are experiencing occupational diseases, but they are ignored. Additionally, they cannot lodge a claim for compensation with Jamsostek, because they cannot be correctly diagnosed by medical providers.
Case study 6. Asbestosis in Cibinong

LION is in the process of organising a group of the victims of occupational diseases in Cibinong, the capital of the regency of Bogor in West Java. The victims are workers at the PT Trigraha asbestos processing plant. This factory processes asbestos raw materials into semi-finished materials and asbestos yarns, which later will be processed into other goods, such as gaskets. Generally, permanent workers in the factory have been there for more than 15 years. LION facilitated medical check-ups for five PT Trigraha employees, ranging from x-rays to high resolution computer tomography scans in Cipto Mangukusumo Hospital (RSCM) in Jakarta.

After all the tests were completed, the doctors made no diagnosis of asbestos-induced lung disease (asbestosis). Instead the workers were diagnosed as suffering from ‘infections in the lungs’, and no further explanations were given. Since this assessment appeared incomplete, LION, in collaboration with Drs. Dom Young Paek and Ye Yong from K-Ban, sent the results of the five workers’ tests to South Korea for review by doctors there.

The assessment from South Korea was very surprising. According to the analysis of the South Korean doctors, three of the five workers from PT Trigraha who had been examined, were found to be suffering from early-stage asbestosis. These results were brought back to Indonesia. LION submitted the Korean doctors’ assessments and claims and discussed them with Jamsostek authorities. However, the claims have not been accepted, because Jamsostek requires a work-related asbestosis diagnosis from an Indonesian doctor. Doctors in Indonesia are unfamiliar with asbestos lung disease, and LION has been unable to find a doctor that could provide the same diagnosis as the Korean doctors.

Working conditions at PT. Trigraha Cibinong
From this case LION has observed that doctors avoid dealing with patients with controversial industrial diseases, and this also holds true for the government’s Ministry of Manpower, company managements, and *Jamsostek* officials. The doctors that we met were unwilling to deal with cases of occupational disease cases like this one, despite that fact that this case had the potential to be the first case of occupational asbestosis in Indonesia. Ironically, asbestosis is number one on the government’s list of 31 occupational diseases.

3.3 Analysis and recommendations

From the case studies it is clear that companies routinely fail to uphold Indonesian law, in particular Act 3 of 1992 concerning labour social security. Several frequently violated regulations are:

1) Workers are not registered in Jamsostek as provided in Article 4, paragraph 1:
   "Social employment guarantee program referred to in Article 3 must be implemented for the workforce by any company who establishes a working relationship in accordance with the provisions of this Act"

2) The companies do not file reports as required in Article 10:
   a) Report accidents to the Labor Department and *Jamsostek* within 48 hours.
   b) Submit doctor’s declaration of cure, deformity or death to the Labor Department and *Jamsostek* within no more than 48 hours after the accident or diagnosis.
   c) Meet its obligation to care for injured or ill workers and provide them with information about their rights under the labour laws.

3) The company does not file paperwork and keep records as required under Article 18:
   a) A company must have a list of workers, worker’s family members, payroll, wage adjustments, and a list of accidents that have occurred in the company.
   b) A company must deliver employment and company data that is associated with the social security program to the Ministry of Manpower.
   c) If a company fails to deliver the required data, its workers will not be registered in the social security program; the company must provide for the workers’ rights in accordance with the provisions of this Act.
d) If company supplies incorrect data and it results in inadequate insurance payment, then the company is obliged to correct the errors and ensure adequate employee payments.
e) If company supplies incorrect data and it results in overpayment of insurance by Jamsostek, the company is obliged to return the excess to Jamsostek.

4) The company does not compensate the worker for his or her costs involved in a work-related accident and does not make disability payments as required under Government Regulation No. 14 of 1993, Article 12, paragraphs 1 and 2:

   a) “The accident-stricken worker has the right to reimbursement of work accident costs, including the cost of transportation to the hospital and or home, first aid, examination, treatment, hospital stays, outpatient care, rehabilitation, and tools (orthotics) and/or replacements (prosthesis) for missing or malfunctioning limbs.”
   b) “Workers disabled by a workplace accident are to be given monetary compensation for temporary disability, permanent disability, permanent physical or mental defects, and/or death. The amount of employment accident benefit is as stipulated in Annex II.”

5) There are criminal sanctions for non-compliance with worker compensation laws as outlined in Law 3 (1992), but implementation has been very difficult because the government has not enforced these provisions.
   a) Article 29 states that non-compliance may be punishable by confinement for six months or fines as high as Rp50 million (about US$5,000).
   b) For a second violation, the perpetrator can be imprisoned for up to eight months.
   c) Article 30 also states that administrative sanctions, punitive damages or fines can be levied against employers, labour organizations and agencies that do not meet the provisions of this law and implement its regulations.

Another problem that Indonesia faces with occupational safety and health law enforcement is the lack of competent inspectors from the Ministry of Manpower Department. In addition, inspectors focus on the formal sector (licensed businesses) only and the informal sector (home businesses, household workers, contractors) is not addressed.
For a company that violates the occupational safety and health provisions of Act 3 (1992), the sanctions are very mild, so supervision by the government is not seen as important. Most health and occupational safety violations are solved by negotiation. The regulations state very clearly that workplace safety and health is a worker’s right which must be protected by the state, but the legislation does not impose a heavy penalty and is considered only as a slight or minor infringement of the law by most company owners.

**Recommendations**

After witnessing many cases, it is LION’s impression that Indonesia’s OSH laws, including *Jamsostek*, have been set up to conform with and meet international standards, but in actuality there is little implementation. LION recommends the following steps be taken to improve the implementation of occupational safety and health of Indonesian workers and to ensure that their work-related injuries and illnesses are appropriately compensated:

- Encourage legislators to enact laws that impose heavier criminal sanctions when companies do not include workers in the social security (*Jamsostek*) program.
- Encourage the government to increase the number of inspectors in the Ministry of Manpower and Transmigration. This will increase supervision of companies and make it more effective; they can immediately respond when there are reports from unprotected workers who are concerned about their safety and health.
- Increase public awareness about the importance of occupational safety and health protection.
- Initiate a campaign to educate workers, government and public that violation of OSH laws is a crime and should be punished.