

## PRECAUTIONARY PRINCIPLE IN OCCUPATIONAL SAFETY AND HEALTH SUSTAINABILITY FROM INTERNATIONAL LEGAL PERSPECTIVES

***(PRINSIP BERJAGA-JAGA DALAM KELESTARIAN KESIHATAN DAN KESELAMATAN PEKERJAAN PERSPEKTIF UNDANG-UNDANG ANTARABANGSA)***

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### **Abstract**

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The precautionary principle plays an important role in occupational safety and health sustainability. The used of the precautionary principle to the area of occupational safety and health sustainability, largely in response to the necessity of each individual to protect their rights and interests in order to safeguard the environment in occupational safety and health area. Therefore, this paper will examine the used of the precautionary principle in relation to the occupational safety and health sustainability from the legal perspectives; identify actions, which deal with the protection for the occupational safety and health as a tool for the achievement in sustainability.

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Keywords: Precautionary Principle; Occupational Safety and Health; Sustainability

### **Abstrak**

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*Prinsip berjaga-jaga memainkan peranan penting dalam keselamatan keselamatan dan kesihatan pekerjaan. Penggunaan prinsip pencegahan terhadap bidang keselamatan keselamatan dan kesihatan pekerjaan, terutama sebagai tindak balas kepada keperluan setiap individu untuk melindungi hak dan kepentingan mereka untuk menjaga persekitaran di kawasan keselamatan dan kesihatan pekerjaan. Oleh itu, makalah ini mengkaji penggunaan prinsip berjaga-jaga dalam kaitannya dengan keselamatan keselamatan dan kesihatan pekerjaan dari perspektif undang-undang, mengenal pasti tindakan, yang berkaitan dengan perlindungan keselamatan dan kesihatan pekerjaan sebagai instrumen bagi mencapai kelestarian.*

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*Kata kunci: Prinsip Berjaga-Jaga; Kesihatan dan Keselamatan Pekerjaan; Kelestarian*

## **INTRODUCTION**

Occupational safety and health sustainability as described many researchers is a mixture of various features of life including culture, social, economic and environment of the occupational safety and health (Hadi et al. 2007). Hadi et al. (2007) further defined occupational safety and health sustainability as a capacity to sustain the quality of life we value or to which we aspire. In operational words, it is usually analyses as ornamental the environment, social, cultural and economic well-being of current and future inhabitants in the area of occupational safety and health (Hadi et al. 2007).

Occupational safety and health sustainability has been also submitted as related to the concept of sustainability.

## **SUSTAINABILITY**

The concept of sustainability has been defined by the World Commission on Environment and Development as 'development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs.' The above-said concept covers three essential scopes, i.e. environment, economic and social aspects (Emrizal & Razman 2010, Razman et al. 2010). This concept of sustainability has been highlighted in the 1992 United Nations Conference on Sustainable Development in Rio de Janeiro, as the results, Agenda 21 and Rio Declaration has been established (Razman & Azlan 2009, Razman 2014, Razman 2015). According to Sands (1995), Agenda 21 emphasises the following matters, which include sustainable human settlement, population, consumption pattern, poverty and human health. On the other hand, Mensah (1996) stated that the Rio Declaration addresses on mankind entitlements and rights, which include health and productive life.

Basically this concept of sustainability has been an element in the legal framework since early as 1893. According to the case of *United States of America v Great Britain* [1893] 1 Moore's Int. Arb. Awards 755, well known as *Pacific Fur Seals Arbitration*, where in this case the United States of America has stated that a right to make sure the appropriate and lawful use of seals and to protect them, for the benefit of human beings, from meaningless destruction (Razman et al. 2009c). Sands (1995, 2003) indicated that this concept of sustainability is perhaps the greatest contemporary expression of environmental policy, commanding support and presented as a fundamental at the Rio Summit, Rio Declaration on Environment and Development in year 1992 (Sulaiman & Razman 2010).

According to Article 33 of the Lome` Convention 1989 states that 'in the framework of this Convention, the protection and the enhancement of the environment and natural resources, the halting of deterioration of land and forests, the restoration of ecological balances, the preservation of natural resources and their rational exploitation are basic objectives that the African-Caribbean-Pacific (ACP) states concerned shall strive to achieve with Community support with a view to bring an immediate improvement in the living conditions of their populations and to safeguarding those of future generations (Razman et al. 2014, Razman et al. 2015). The above-mentioned Article 33 introduces into international legal framework the concept of sustainability with one of the approach under the precautionary principle (Razman et al. 2009a, Razman et al. 2009b). Basically, the precautionary principle gives direction and assistance in the decision making based on the concept of sustainability in order to avoid wrong doing as well as to avoid causing harm to area of occupational safety and health based on the international legal perspectives.

## **PRECAUTIONARY PRINCIPLE**

According to Article 38(1) of the Statute of the International Court of Justice, sources of the international law are:

- (a) International conventions;
- (b) International custom, as an evidence of a general practice accepted as law;
- (c) The general principles of law recognised by civilised nations; and
- (d) Judicial decisions of the International Court or Tribunal

It is clearly that the general principles of law are being considered as the sources of the international law. Basically, there are seven general principles of law that concern which are: (1) Precautionary Principle; (2) Preventive Principle; (3) Polluter-Pays Principle; (4) Good

Neighbourliness & International Co-operation Principle; (5) Common But Different Responsibility Principle; (6) Principle 21 of the Stockholm Declaration and (7) Principle 2 of the Rio Principle (Sands 1995, 2003).

Therefore, this paper will concentrate and discuss one of the above-said general principles of law, which is the precautionary principle and this paper will look into the role of the principle in the environmental of occupational safety and health sustainability based on the international legal perspectives.

The precautionary principle gives direction and assistance in the development and appliance of the environmental occupational safety and health where there is scientific doubt (Jahi 2001, Ali et al. 2017). This principle derived from the traditional approach in dealing with the environmental of occupational safety and health. According to the traditional approach, where all parties concerned have been called and these parties created their institutions in order to adopt and apply decisions that are found upon “scientific evidences” or knowledge and information accessible at that particular occasion (Harris 1991, Sands 1995, Khairil et al. 2017)

Basically this traditional approach put forward that act shall only be taken where there is scientific findings that noteworthy environmental harm to the occupational safety and health is taking place and on other hand, in the absence of the scientific evidence, therefore, no action may be necessary. However, in middle 1980s, where a change of the traditional approach has taken in place. New approach known as the precautionary principle had replaced the traditional approach (Sulaiman & Razman 2010, Sands 1995, 2003). Based on the concept of sustainability, the precautionary principle allows taking action and making decision without the scientific evidence of damaging effects since the damage of the environment, economic as well as social aspects cannot be remedial or irreversible for a short period (Sulaiman & Razman 2010, Sands 1995, 2003).

According to paragraph 7 of the Bergen Ministerial Declaration on Sustainable Development, 1990 states that:-

*“In order to achieve sustainable development, policies must be based on precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are treats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”*

Moreover, the Earth Summit at Rio de Janeiro in the year 1992 has adopted the precautionary principle. It is clearly that shown and highlighted in the Principle 15 of the Rio Declaration. The principle 15 of Rio Declaration states that:-

*“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as reason for postponing cost-effective measures to prevent environmental degradation.”*

Based on the above discussion, according to paragraph 7 of the Bergen Ministerial Declaration on Sustainable Development, 1990 states that inter alia, “where there are treats of serious or irreversible damage, lack of full scientific certainty **should not be** used as a reason for postponing measures to prevent harm.” it is clearly that the above-said provision tries to emphasize to adopt precautionary principle by using the words of “should not be”. On the other hand, the principle 15 of the Rio Declaration provides that inter alia “where there are threats of serious or irreversible damage, lack of full scientific certainty **shall not be** used as reason for postponing cost-effective measures to prevent harm.” This provision of the Rio Declaration has highlighted that the application of the precautionary principle as mandatory based on the words of “shall not be”.

Referring to all of the discussions above, on the precautionary principle based on the concept of sustainability highlighted answers for handling the occupational safety and health activities to avoid environmental damages for achieving the environmental sustainability. The precautionary

principle promotes direction and assistance in the decision making, even though, without the scientific evidence of damaging effects, since the damage of the environment, economic as well as social aspects cannot be remedial or irreversible for a short period (Sulaiman & Razman 2010, Sands 1995, 2003).

### **THE ROLE OF THE PRECAUTIONARY PRINCIPLE IN ORDER TO ACHIEVE SUSTAINABILITY IN OCCUPATIONAL SAFETY AND HEALTH AREA**

The occupational safety and health activities to avoid environmental damages for achieving the environmental sustainability is a phenomena in developing countries. Thus, in this situation, the precautionary principle may provide means to handle the occupational safety and health activities to avoid environmental damages for achieving the environmental sustainability.

The precautionary principle promotes direction and assistance in the decision making, even though, without the scientific evidence of damaging effects, since the damage of the environment, economic as well as social aspects cannot be remedial or irreversible for a short period (Sulaiman & Razman 2010, Sands 1995, 2003).

Therefore in this manner, the precautionary principle may provide means to handle the occupational safety and health activities to avoid environmental damages for achieving the environmental sustainability.

### **CONCLUSION**

The occupational safety and health activities to avoid environmental damages for achieving the environmental sustainability is a phenomena in developing countries. Hence, the precautionary principle gives direction and assistance in the decision making based on the concept of sustainability in order to avoid wrong doing as well as causing damages in nature. The precautionary principle promotes direction and assistance in the decision making, even though, without the scientific evidence of damaging effects, since the damage of the environment, economic as well as social aspects cannot be remedial or irreversible for a short period (Sulaiman & Razman 2010, Sands 1995, 2003). Finally, in conclusion, in order to handle the occupational safety and health activities to avoid environmental damages for achieving the environmental sustainability, the precautionary principle may provide answers to avoid damages in the social and ecological environment as well as promoting peaceful and inclusive societies for sustainable development.

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