

Legal Protection and Civil Dispute Resolution Efforts Related to Occupational Safety and Health Violations after Law Number 6 of 2023 on Job Creation

RR Sasmaya Hati, Siti Nurhayati, Fitri Rafianti

Abstract

Occupational health and safety (OHS) is a fundamental right of workers that attaches to the employment contract and is mandatory in nature. The enactment of Law Number 6 of 2023 on Job Creation, which extends the duration of fixed-term contracts (PKWT) and relaxes outsourcing, has enlarged the population of non-permanent workers vulnerable to OHS violations, while creating uncertainty over the responsible party and the dispute-resolution forum. This study aims to analyse the legal protection and the avenues for resolving private-law disputes arising from OHS violations. It employs normative legal research with statutory and conceptual approaches. The results show that legal protection is realised preventively through the OHS Management System, the establishment of the OHS Committee, labour inspection, and the inclusion of explicit OHS clauses; and repressively through two channels, namely industrial-relations dispute settlement under Law Number 2 of 2004 for claims arising from the employment relationship, and an unlawful-act claim under Article 1365 of the Civil Code before the District Court to reach the user company in outsourcing arrangements. Clarity over forum choice and an affirmation of liability are needed to ensure legal certainty and access to justice for fixed-term and outsourced workers.

Keywords: *Legal Protection; Dispute Resolution; Occupational Health And Safety; Unlawful Act; Outsourced Workers.*

RR Sasmaya Hati¹

¹Magister of Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: rrsasmayahati@gmail.com¹

Siti Nurhayati², Fitri Rafianti³

^{2,3}Magister of Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: sitinurhayati@dosen.pancabudi.ac.id²; fitirafianti@dosen.pancabudi.ac.id³

3rd International Conference Epicentrum of Economic Global Framework (ICEEGLOF)

Theme: Cross-Sector and Cross-Disciplinary Strategies for Achieving the SDGS

<https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF>

Introduction

The employment relationship essentially originates from the employment contract as part of civil law, thereby giving rise to a reciprocal obligation that places rights and duties on the parties. One of the employer's principal obligations is to guarantee the occupational safety and health (OSH) of its workers. OSH is a fundamental right of workers guaranteed by Articles 86 and 87 of Law Number 13 of 2003 on Manpower, reinforced by Law Number 1 of 1970 on Work Safety and Government Regulation Number 50 of 2012 on the Implementation of the Occupational Safety and Health Management System.

As part of the performance owed under the employment contract, the OSH obligation attaches to the contract through Articles 1339 and 1347 of the Civil Code, and is simultaneously mandatory in nature (*dwingend recht*) because it contains a public interest in protecting workers' lives. Consequently, when the OSH obligation is not fulfilled and causes loss, the worker may claim civil liability, either on the basis of breach of contract (*wanprestasi*) or unlawful act (*perbuatan melawan hukum*).

The issue has become increasingly relevant following the enactment of Law Number 6 of 2023 on Job Creation. This law allows fixed-term employment contracts (PKWT) with a duration of up to five years and restructures the use of outsourced labor, thereby enlarging the population of non-permanent workers. In the tripartite outsourcing scheme involving the outsourcing company, the user company, and the worker the party responsible for meeting OSH standards frequently becomes blurred, even though occupational accidents and work-related illnesses make no distinction based on employment status.

When the right to OSH is violated, a fundamental question arises as to the form of legal protection available to workers and the forum with authority to resolve the dispute. Positive law provides more than one avenue for resolution industrial relations dispute settlement and ordinary civil litigation which has the potential to create a duality of forums and uncertainty of jurisdiction that could ultimately harm the worker. A study is therefore needed to map the legal protection and the civil dispute resolution efforts available for OSH violations, particularly for fixed-term and outsourced workers.

Based on the foregoing, the issue examined in this paper is: how legal protection and civil dispute resolution efforts relate to OSH violations within the employment relationship, particularly for fixed-term and outsourced workers, following the enactment of Law Number 6 of 2023 on Job Creation.

Research Methodology

This study is a normative legal (*yuridis normatif*) study, namely a study that examines positive legal norms, legal principles, and doctrine in order to answer the legal issue under research. The approaches employed are the statute approach toward the Civil Code, Law Number 13 of 2003, Law Number 2 of 2004 on Industrial Relations Dispute Settlement, and Law Number 6 of 2023, as well as the conceptual approach toward the principles and doctrines of legal protection and civil liability. Primary legal materials in the form of statutory regulations and court decisions, secondary legal materials in the form of books and scholarly journals, and tertiary legal materials were collected through library research and analyzed qualitatively using a descriptive-analytical method.

Results

The OSH Obligation as the Foundation of Civil Legal Protection

Before discussing the forms of protection and dispute resolution, it is necessary to affirm the civil-law foundation underlying workers' claims. The OSH obligation holds the position of a *naturalia* element attached to the employment contract through Articles 1339 and 1347 of the Civil Code, thereby forming part of the performance binding the employer even where it is not expressly

agreed. Because it contains a public interest, the OSH norm is mandatory in nature, such that a clause negating it may be deemed contrary to statute and public order, and void by operation of law under Article 1337 of the Civil Code.

On that basis, a violation of the OSH obligation may give rise to two forms of civil liability. First, breach of contract (*wanprestasi*), namely the employer's failure to perform its contractual obligations, which opens the way for a claim for damages in the form of costs, losses, and interest under Articles 1243 through 1246 of the Civil Code. Second, unlawful act (*perbuatan melawan hukum*, PMH) under Article 1365 of the Civil Code, where negligence in meeting safety standards causes loss, reinforced by the employer's vicarious liability for persons under its supervision pursuant to Article 1367 paragraph (3) of the Civil Code. These two grounds are the gateway to the repressive legal protection discussed below.

Preventive Legal Protection

Philipus M. Hadjon distinguishes legal protection into preventive protection and repressive protection. Preventive protection aims to prevent disputes from arising, while repressive protection aims to resolve disputes that have already occurred. In the context of OSH, preventive protection occupies the primary position, because preventing workplace accidents is far better than remedying losses after they occur.

Preventive protection is realized through several instruments. First, the implementation of the Occupational Safety and Health Management System (SMK3) as regulated in Government Regulation Number 50 of 2012. Second, the establishment of the Occupational Safety and Health Committee (P2K3) as a forum for cooperation between employers and workers. Third, labor inspection by supervisory officers. Fourth, the inclusion of explicit OSH clauses in both the employment contract and the outsourcing service agreement, including the allocation of responsibility between the outsourcing company and the user company. Including an explicit clause is important for producing legal certainty that is, a norm that is clear, consistent, and enforceable. Such clarity simultaneously narrows the scope for future disputes, particularly in outsourced employment relationships, which are prone to blurred lines of responsibility.

Repressive Legal Protection and the Dispute Resolution Forum

At the repressive level, the character of the dispute determines the forum for its resolution. An OSH violation may give rise to a claim originating from the employment relationship as well as a claim originating from an unlawful act, and the two are not resolved through the same forum. This differentiation is the core issue of repressive protection for workers.

Resolution through industrial relations dispute settlement.

If the claim is based on a violation of a normative right or a breach of contract arising from the employment relationship, the dispute is classified as an industrial relations dispute subject to Law Number 2 of 2004 on Industrial Relations Dispute Settlement. The mechanism begins with bipartite negotiation, continues with mediation, conciliation, or arbitration, and, where no agreement is reached, may be brought before the Industrial Relations Court (PHI). This avenue is relevant for suing the employer, including the outsourcing company as the worker's formal employer.

Unlawful-act claim before the District Court. Conversely, if the claim is based on an unlawful act for example, a claim for damages arising from a workplace accident the claim may be filed as an ordinary civil suit before the District Court under Article 1365 of the Civil Code. The fundamental advantage of an unlawful-act claim is its reach, which does not require a direct contractual relationship. This is important in the outsourcing scheme: a user company that negligently fails to provide a safe working environment, even though it is not a party to the employment contract, may still be held liable under Articles 1365 and 1367 of the Civil Code.

Indeed, where the loss arises from the fault of both companies, the possibility opens for joint and several liability (*tanggung renteng*), in line with the principle of joint obligations under Article 1278 et seq. of the Civil Code, so that the worker does not lose a party against whom a claim may be brought.

The Position of Workplace Accident Insurance. The existence of the Workplace Accident Insurance (JKK) program through BPJS Ketenagakerjaan does not eliminate the employer's civil liability. JKK is a social security scheme that provides benefits without the need to prove fault, but its benefits do not always cover the entire loss, particularly non-material (immaterial) loss. Therefore, a worker may still claim the shortfall in damages or immaterial compensation through a civil suit if an element of fault or negligence on the employer's part is proven.

Non-Litigation Dispute Resolution

Outside the litigation track, non-litigation resolution through bipartite deliberation and mediation remains a recommended option because it is faster, cheaper, and preserves the continuity of the employment relationship. This approach is consistent with the principle of good faith in the performance of agreements under Article 1338 paragraph (3) of the Civil Code and can serve as a means of restoring a worker's OSH rights without having to undergo a lengthy judicial process. For fixed-term and outsourced workers, whose position is often weak, a fairly facilitated non-litigation avenue can be an effective means of protection, so long as it is not used to diminish the worker's normative rights.

Forum Dualism and Its Implications for Legal Certainty

The availability of two resolution avenues, on one hand, broadens access to justice, but on the other hand has the potential to create jurisdictional uncertainty that could harm the worker. For outsourced workers, the unlawful-act route before the District Court is often more suitable for reaching the user company, while the industrial relations route is relevant for suing the outsourcing company as the formal employer. Lack of clarity in choosing the forum can result in a claim being declared outside the court's authority (absolute competence), thereby delaying the restoration of the worker's rights.

To maintain legal certainty, clarity is needed regarding the choice of forum and ease of access for workers, whether through affirmation in the employment contract and service provision agreement or through policy reform. Affirming the user company's responsibility for the OSH of outsourced workers including the joint-and-several-liability principle together with the inclusion of a clear forum-selection clause, will strengthen legal protection for fixed-term and outsourced workers following Law Number 6 of 2023.

Conclusion

Legal protection related to OSH violations is realized in two forms. Preventively, protection is upheld through the implementation of the OSH Management System, the establishment of the OSH Committee, labor inspection, and the inclusion of explicit OSH clauses, including the allocation of responsibility within outsourced employment relationships. Repressively, protection is pursued through two avenues: industrial relations dispute settlement under Law Number 2 of 2004 (bipartite negotiation, mediation/conciliation/arbitration, up to the Industrial Relations Court) for claims arising from the employment relationship, and an unlawful-act claim under Article 1365 of the Civil Code before the District Court to reach the user company in outsourcing arrangements, with the possibility of joint and several liability. The existence of the BPJS Ketenagakerjaan workplace accident insurance (JKK) does not eliminate the worker's right to claim civil damages. Given the existence of forum dualism, clarity in forum selection and an affirmation of the parties' responsibilities are needed to guarantee legal certainty and access to justice, particularly for fixed-term and outsourced workers.

References

- [1] Agustina, Rosa. *Perbuatan Melawan Hukum*. Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, 2003.
- [2] Asyhadie, Zaeni. *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja*. Jakarta: Rajawali Pers, 2007.
- [3] Hadjon, Philipus M. *Perlindungan Hukum bagi Rakyat di Indonesia*. Surabaya: Bina Ilmu, 1987.
- [4] Husni, Lalu. *Pengantar Hukum Ketenagakerjaan*. Jakarta: Rajawali Pers, 2014.
- [5] Khakim, Abdul. *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*. Bandung: Citra Aditya Bakti, 2014.
- [6] Marzuki, Peter Mahmud. *Penelitian Hukum*. Revised ed. Jakarta: Kencana Prenada Media, 2017.
- [7] Mertokusumo, Sudikno. *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: Liberty, 1999.
- [8] Ramli, Soehatman. *Sistem Manajemen Keselamatan dan Kesehatan Kerja: OHSAS 18001*. Jakarta: Dian Rakyat, 2009.
- [9] Soepomo, Imam. *Pengantar Hukum Perburuhan*. Jakarta: Djambatan, 2003.
- [10] Ariadi, Agus. "Tanggung Jawab Perusahaan dalam Memastikan Keselamatan dan Kesehatan Kerja (K3) Menurut Hukum Perdata." *RIGGS: Journal of Artificial Intelligence and Digital Business* 4, no. 4 (2025).
- [11] Tanaya, Velliana. "Kelalaian Pengusaha dalam Menjamin Keselamatan dan Kesehatan Kerja: Kajian Perbandingan Prinsip Negligence dalam Hukum Perdata Indonesia dan Korea Selatan." *Jurnal Ilmu Hukum, Humaniora dan Politik* 5, no. 6 (2025).
- [12] Widiastuti, Rika, Syalsa Nabila Anisa, Muhammad Syahdan Daniyal, dan Dikha Anugrah. "Perikatan dalam Kontrak: Perlindungan Hukum bagi Pekerja dan Pengusaha." *Letterlijk: Jurnal Hukum Perdata* 1, no. 2 (2024).
- [13] *Civil Code (Kitab Undang-Undang Hukum Perdata / Burgerlijk Wetboek)*.
- [14] *Law Number 1 of 1970 on Work Safety*.
- [15] *Law Number 13 of 2003 on Manpower*.
- [16] *Law Number 2 of 2004 on Industrial Relations Dispute Settlement*.
- [17] *Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law*.
- [18] *Government Regulation Number 50 of 2012 on the Implementation of the Occupational Safety and Health Management System*.
- [19] *Government Regulation Number 35 of 2021 on Fixed-Term Employment Contracts, Outsourcing, Working Hours and Rest Periods, and Termination of Employment*.
- [20] *Minister of Manpower Regulation Number 5 of 2018 on Occupational Safety and Health of the Work Environment*.