

Penerapan Asas Vicarious Liability dalam Perbuatan Melawan Hukum pada Hubungan Kerja: Studi Kasus Menurut Hukum Indonesia dan Hukum Inggris = The Application of the Vicarious Liability Principle in Tort within Employment Relationships: Case Study under Indonesian Law and English Law

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Abstrak

Konsep pertanggungjawaban pengganti dari pemberi kerja atas perbuatan melawan hukum yang dilakukan pekerjanya telah lama dikenal dalam hukum sebagai vicarious liability. Berasal dari sistem common law Inggris, asas ini juga diterapkan dalam hukum perdata Indonesia melalui Pasal 1367 ayat (3) KUH Perdata yang tetap berlaku sejak masa kolonial. Penelitian ini menganalisis penerapan asas vicarious liability dalam hukum Indonesia dan Inggris melalui studi kasus di masing-masing negara. Metode yang digunakan adalah penelitian doktrinal dengan menganalisis Putusan Nomor 815/PK/Pdt/2024 di Indonesia serta putusan WM Morrison Supermarkets plc v Various Claimants [2020] UKSC 12 di Inggris. Kedua kasus melibatkan pekerja yang melakukan perbuatan melawan hukum dalam konteks pekerjaan resminya dari pemberi kerja. Penelitian bertujuan menelaah bagaimana asas ini diatur dan diterapkan di kedua negara untuk mengidentifikasi persamaan dan perbedaan pendekatannya. Hasil analisis menunjukkan bahwa unsur utama vicarious liability serupa, yakni adanya hubungan kerja serta perbuatan dilakukan dalam ruang lingkup pekerjaannya. Namun, perbedaan terletak dalam enam aspek, yaitu jenis hubungan kerja yang dianggap, interpretasi ruang lingkup pekerjaan, relevansi niat pribadi pelaku, peran pemberi kerja dalam mencegah perbuatan, perlindungan korban, dan pengaruh putusan pidana. Hasil analisis menunjukkan sebuah ironi: meskipun sistem hukum Indonesia secara doktrinal lebih kaku dibandingkan Inggris yang fleksibel, penerapan pada tingkat akhir justru tiba pada hasil yang sama, yakni tidak membebani pemberi kerja. Hal ini disebabkan Putusan PK di Indonesia lebih memprioritaskan kepastian hukum akibat adanya konflik putusan daripada menerapkan perlindungan korban sesuai amanat Pasal 1367 KUH Perdata. Penelitian ini menyarankan pembatasan cakupan pekerjaan dan pengaruh adanya hukuman pidana pelaku dalam vicarious liability di hukum Indonesia serta menekan risiko kerugian melalui peningkatan pengawasan pemberi kerja dan edukasi konsumen.

.....The concept of an employer's responsibility for unlawful acts committed by their employees is known as vicarious liability. Originating in English common law, this principle is also applied in Indonesian civil law through Article 1367 paragraph (3) of the Civil Code, which has remained in force since the colonial era. This research analyses the implementation of vicarious liability in Indonesian and English law through case studies. The method used is doctrinal legal research, examining Decision Number 815/PK/Pdt/2024 in Indonesia and WM Morrison Supermarkets plc v Various Claimants [2020] UKSC 12 in the United Kingdom. Both cases involve employees who committed torts during their official duties. This research assess how vicarious liability is defined and applied in both countries to identify key similarities and differences. The findings show that both jurisdictions recognize similar core elements, namely an employment relationship and the tort is carried out within the scope of the said employment. However, differences lie in six aspects, including the type of employment relationship, the interpretation of the scope

of employment, the relevance of the employee's personal intention, the employer's role in preventing the tort, victim protection, and the influence of criminal sentences. The analysis shows that although the Indonesian legal system is doctrinally more rigid than the flexible English system, the final application of the law led to the same outcome: the employer was not held liable. This was because the Judicial Review decision in Indonesia prioritized legal certainty arising from conflicting judgments over applying victim protection as mandated by Article 1367 of the Civil Code. This research recommends limiting the scope of employment and clarifying the influence of a perpetrator's criminal conviction within Indonesian vicarious liability law, as well as mitigating risk through increased employer oversight and consumer education.