



Legal Protection of Workers under Civil Code and Job Creation Law

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Abstract. Employment relations often place workers in a weaker bargaining position, increasing the risk of violations of their rights by employers. The enactment of the Job Creation Law (UU Cipta Kerja) has introduced greater labor flexibility while raising concerns about worker protection. This study analyzes the relevance of unlawful acts under Article 1365 of the Indonesian Civil Code in employment relations following the enactment of the Job Creation Law, identifies forms of unlawful acts committed by employers, and examines legal remedies available to workers. This research employs a normative legal method using statutory and conceptual approaches, supported by legislation, legal doctrines, and scholarly literature. The findings indicate that Article 1365 of the Civil Code remains an important complementary mechanism when labor law remedies are inadequate. Employers may be held liable for violations of normative rights, misuse of fixed-term employment agreements and outsourcing, unlawful termination, workplace harassment, occupational safety breaches, and privacy violations. Workers may seek material and immaterial compensation through civil litigation. The study emphasizes stronger harmonization between labor and civil law to ensure more effective and comprehensive protection of workers' rights.

Keywords: Civil Liability, Employment Relations, Job Creation Law, Legal Protection of Workers, Unlawful Acts.

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Abstrak. Hubungan kerja seringkali menempatkan pekerja pada posisi tawar yang lebih lemah, sehingga meningkatkan risiko pelanggaran hak-hak mereka oleh pengusaha. Pemberlakuan UU Cipta Kerja telah memperkenalkan fleksibilitas kerja yang lebih besar sekaligus menimbulkan kekhawatiran tentang perlindungan pekerja. Studi ini menganalisis relevansi tindakan melawan hukum berdasarkan Pasal 1365 KUHP Indonesia dalam hubungan kerja setelah pemberlakuan UU Cipta Kerja, mengidentifikasi bentuk-bentuk tindakan melawan hukum yang dilakukan oleh pengusaha, dan meneliti upaya hukum yang tersedia bagi pekerja. Penelitian ini menggunakan metode hukum normatif dengan pendekatan hukum dan konseptual, yang didukung oleh undang-undang, doktrin hukum, dan literatur ilmiah. Temuan menunjukkan bahwa Pasal 1365 KUHP tetap menjadi mekanisme pelengkap yang penting ketika upaya hukum ketenagakerjaan tidak memadai. Pengusaha dapat dimintai pertanggungjawaban atas pelanggaran hak-hak normatif, penyalahgunaan perjanjian kerja jangka tetap dan outsourcing, pemutusan hubungan kerja yang tidak sah, pelecehan di tempat kerja, pelanggaran keselamatan kerja, dan pelanggaran privasi. Pekerja dapat mencari kompensasi materiil dan non-materiil melalui litigasi perdata. Studi ini menekankan perlunya harmonisasi yang lebih kuat antara hukum ketenagakerjaan dan hukum perdata untuk memastikan perlindungan hak-hak pekerja yang lebih efektif dan komprehensif.

Kata kunci: Tanggung Jawab Perdata, Hubungan Kerja, Hukum Penciptaan Lapangan Kerja, Perlindungan Hukum bagi Pekerja, Tindakan Melawan Hukum.

1. Introduction

Employment relations constitute a legal relationship between workers and employers based on an employment agreement containing the elements of work, wages, and authority.¹ In practice, however, this relationship is often characterized by an imbalance of power. Employers generally possess stronger economic resources, managerial authority, and bargaining positions, while workers tend to occupy a more vulnerable position.² Such inequality creates the potential for various violations of workers' rights, including wage-related disputes, unlawful termination of employment, discrimination, workplace harassment, and the denial of statutory employment benefits.

The protection of workers' rights has therefore become one of the central concerns of labor law. In Indonesia, labor protection is primarily regulated under Law Number 13 of 2003 concerning Manpower and its amendments under Law Number 11 of 2020 concerning Job Creation (Job Creation Law/*UU Cipta Kerja*). Despite these regulations, labor disputes remain a persistent issue.³ According to the Ministry of Manpower of the Republic of Indonesia, as of August 2024 the government had handled 3,156 industrial relations dispute cases, of which 2,143 cases (approximately 70 percent) were related to termination of employment.⁴ Most disputes concerned severance pay and the fulfilment of workers' rights following dismissal. These figures indicate that conflicts between workers and employers remain prevalent and demonstrate the continuing vulnerability of workers within employment relationships.

¹ Bambang Utoyo et al., "The Working Relationship Between Employers and Workers Is Based on a Work Agreement, Elements of Wages and Elements of Orders Reviewed from Business Legal Protection," *European Journal of Research Development and Sustainability* 3, no. 9: 112.

² Walter Korpi, "Power resources and employer-centered approaches in explanations of welfare states and varieties of capitalism: Protagonists, consenters, and antagonists," *World politics* 58, no. 2 (2006): 185. See also, Davide Però, and John Downey, "Advancing workers' rights in the gig economy through discursive power: The communicative strategies of indie unions," *Work, Employment and Society* 38, no. 1 (2024): 150.

³ Adnan Hamid, "Criticizing the Meaning of Government Regulation In Lieu Of Law Number 2 Of 2022 Concerning Job Creation (Perppu No. 2/2022) For Workers and Entrepreneurs: Perspectives on Labor Law in Indonesia," *Russian Law Journal* 11, no. 4 (2023): 561. See also, Surya Tjandra, and Marina Christina, "Study on the impact of employment cluster regulation in the job creation law on workers with fixed-term employment contracts in the garment sector," *International Labour Organization* 2, no. 17 (2025): 4.

⁴ Antara, "Kemnaker Tangani 3.156 Kasus Perselisihan, Mayoritas Terkait PHK," *Antara*, August 23, 2024. Retrieved on June 25, 2026 from <https://www.antaranews.com/berita/4282503/kemnaker-tangani-3156-kasus-perselisihan-mayoritas-terkait-phk>

The enactment of the Job Creation Law further intensified debates regarding worker protection. Through the omnibus law approach, the legislation introduced significant amendments to labor regulations, including provisions concerning fixed-term employment agreements (*Perjanjian Kerja Waktu Tertentu/PKWT*), outsourcing, wages, and termination procedures.⁵ While these reforms were intended to improve the investment climate and expand employment opportunities, critics argue that they may reduce certain forms of worker protection. Consequently, concerns have emerged regarding the adequacy of legal safeguards available when employers misuse the flexibility provided by the new regulatory framework.

Violations committed by employers are not only labor law issues but may also constitute unlawful acts (*onrechtmatige daad*) under civil law.⁶ The Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPerdata*) provides an important legal basis through Article 1365, which stipulates that any person who commits an unlawful act causing harm to another is obliged to compensate for the resulting damage.⁷ This provision enables workers to seek legal remedies beyond those specifically provided under labor legislation. Through civil liability claims, workers may pursue compensation for both material and immaterial losses arising from employers' unlawful conduct.

The relevance of civil law protection has become increasingly important following the enactment of the Job Creation Law. While labor law serves as *lex specialis* in regulating employment relations, civil law remains applicable as a complementary mechanism when workers suffer losses that are not adequately addressed through industrial relations dispute settlement procedures.⁸ Accordingly, the interaction between labor law and civil liability principles raises important legal questions regarding the scope of worker protection in the post–Job Creation Law era.⁹ At the same time, another body of literature discusses the relationship between labor law and civil law by emphasizing that labor law functions as a specialized branch of civil law in which the Civil Code continues to operate subsidiarily when labor legislation provides insufficient remedies. These studies

⁵ Arya Bagiastra et al., “The Evolution of Labour Protection Legislation Following the Enactment of the Labour Creation Act,” *LITERACY: International Scientific Journals of Social, Education, Humanities* 3, no. 2 (2024): 160.

⁶ Sabrena Sukma, “Employers’ Civil Liability for Violation of Workers’ Rights,” *Vonis* 1, no. 2 (2025): 117.

⁷ Ahmad Dasuki, and Rizki Maulana Ahzar, “Penerapan Pasal 1365 KUHPerdata dalam Sengketa Perlindungan Konsumen,” *Jurnal Hukum Perdata dan Bisnis* 1, no. 2 (2026): 55. See also, B. F. Sihombing, and Farhan Hamid, “Land Law Evolution and Investment Dynamics: Historical Perspective and Contemporary Development Nexus,” *Lex Publica* 10, no. 1 (2023): 71.

⁸ Leiyang Sun, “Labor law and human resource management: Legal disputes and management strategies in labor relations,” *Cadernos de Dereito Actual* 29, no. 1 (2025): 113.

⁹ Dasuki, and Ahzar, “Penerapan Pasal 1365 KUHPerdata,” 55.

argue that civil liability doctrines should be more closely integrated into labor law to provide adequate compensation for employer misconduct and unlawful acts affecting workers.¹⁰ Comparative scholarship further demonstrates that civil law principles have increasingly been incorporated into labor dispute adjudication to strengthen legal certainty and judicial protection.¹¹ Nevertheless, these discussions remain largely theoretical and comparative, without specifically examining the implications of Indonesia's Job Creation Law or the practical operation of Article 1365 of the Indonesian Civil Code within post-reform employment relations.

A further limitation concerns the absence of an integrated legal analysis connecting Article 1365 of the Civil Code with the regulatory transformation introduced by the Job Creation Law. Existing studies addressing labor reform primarily focus on deregulation, labor flexibility, outsourcing, fixed-term employment agreements (PKWT), wage policies, termination of employment, severance pay, and the broader legal politics of the Job Creation Law.¹² Meanwhile, studies examining civil law largely discuss the subsidiary application of the Civil Code to labor relations, including contractual freedom, written employment agreements, preliminary employment contracts, collective labor agreement

¹⁰ Elena Zabramnaya, "No-fault liability in Labor Law: theoretical aspect," *Gosudarstvo i pravo* 7, no. 1 (2022): 76. See also, H. Barancova, "Labour Law and Drafting of the New Civil Code," (*Pravny Obzor* 1106,2023), 457; Wang Qilin, "An Empirical Analysis of the Impact of the Contract Book of the Civil Code on Labor Dispute Trial Practices: A Study of Four Hundred Judgments," *Contemporary Social Sciences* 8, no. 4 (2023): 28.

¹¹ Qilin, "An Empirical Analysis of the Impact," 28.

¹² Nur Putri Hidayah et al., "The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights," *Bestuur* 9, no. 1 (2021): 70. See also, Nabiyla Risfa Izzati, "Deregulation in job creation law: The future of Indonesian labor law," *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 4, No. 1 (2022): 10; I. Made Sarjana et al., "Omnibuslaw Employment Cluster: Is Ita Form of Labor Exploitation in the Indonesian Context?," *UUM Journal of Legal Studies* 14, no. 1 (2023): 62; Any Suryani Hamzah, "Strengthening The Relationality of Heteronomous and Autonomous Legal Rules in Workers' Decent Wage Law Policies (An Attempt to Create a Dignified Tripatrid Ecosystem)," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 2 (2023): 51; Khairani, and Sri Arnetti, "Protecting the rights of laid-off workers during the COVID-19 pandemic after the enactment of Law No. 11/2020 on Job Creation," *Cogent Social Sciences* 9, no. 2 (2023): 2260161; Siti Kunarti et al., "The Legal Politics of Outsourcing and Its Implication for the Protection of Workers in Indonesia," *Srivijaya Law Review* 8, no. 2 (2024): 18; Arinto Nugroho et al., "The impact of labor law reform on Indonesian workers: A comparative study after the Job Creation Law," *Lex Scientia Law Review* 8, no. 1 (2024): 85; Muhammad Bagus Adi Wicaksono, and Enis Tristiana, "Legal politics of law number 11 Of 2020 concerning job creation in the labor legal aspects," *Multidisciplinary Science Journal* 7, no. 8 (2025): 2025406; M. Syahrul Borman et al., "The Complexity and Consequences of The Policy Implementation Omnibus Law Creation on Welfare of Contract Workers In Indonesia," *LAW REFORM* 22, no. 1 (2026): 220; I. Dharma Ginonggara, and Marwati Riza, "Assessing Outsourced Workers' Normative Rights Protection in the Electricity Sector Following Labor Policy Reform," *Media Iuris* 9, no. 1 (2026): 46.

interpretation, and general civil liability doctrines, rather than their application within the contemporary Indonesian labor regime.¹³ Consequently, little attention has been devoted to explaining how Article 1365 of the Civil Code may complement labor law protections when workers suffer losses that cannot be adequately remedied through the industrial relations dispute settlement mechanism, particularly following the expansion of employer flexibility under the Job Creation Law.

Accordingly, this study addresses three interrelated research gaps. First, the literature has extensively documented the weakening of worker protection following the Job Creation Law but has not adequately explored the availability of complementary civil law remedies. Second, previous scholarship has examined civil liability and labor law as separate legal domains, leaving unresolved the doctrinal interaction between Article 1365 of the Civil Code and Indonesia's contemporary labor regulatory framework. Third, despite comparative studies advocating greater integration between civil liability and labor protection,¹⁴ no comprehensive normative legal analysis has evaluated how Article 1365 may function as an alternative legal basis for protecting workers against unlawful employer conduct under the post-Job Creation Law regime. This unresolved intersection between labor law and civil law constitutes the principal research gap addressed by this study.

The urgency of this study is reinforced by the continuing prevalence of labor disputes and the evolving legal landscape following the implementation of the Job Creation Law. As employment relations become increasingly flexible, the potential for legal uncertainty and abuse may also increase.¹⁵ Based on the foregoing discussion, the research questions are as follows: (1) How is the concept of unlawful acts under the Civil Code relevant to employment relations following the enactment of the Job Creation Law. (2) What forms of unlawful acts may

¹³ Zabramnaya, "No-fault liability in Labor Law: theoretical aspect," 76. See also, H. Barancova, "Labour Law and Drafting of the New Civil Code," 457; M. Šmíd, "The requirement of written form in labour law after 1st January 2014 in the context of contractual freedom," *Scientific Papers of the University of Pardubice, Series D: Faculty of Economics and Administration* 1, no. 1 (2014): 132; Jagoda Jaskulska, "Umowa przedwstępna o pracę—rozważania na tle posilkowego stosowania przepisów Kodeksu cywilnego na podstawie art. 300 kp," *Studia Iuridica Toruniensia* 27, no. 4 (2020): 103; Roberto Cerón Reyes, "Una aproximación a la escrituración e interpretación del contrato colectivo de trabajo," *Revista Jurídica Digital UANDES* 5, no. 1 (2021): 71; Barancova, "Labour Law and Drafting of the New Civil Code," 457; Qilin, "An Empirical Analysis of the Impact," 28.

¹⁴ Barancova, "Labour Law and Drafting of the New Civil Code," 457. See also, Zabramnaya, "No-fault liability in Labor Law: theoretical aspect," 76; Qilin, "An Empirical Analysis of the Impact," 28.

¹⁵ Patricia Leighton, and Tui McKeown, "Work in challenging and uncertain times: The changing employment relationship," (Routledge, 2020), 21. See also, Judy Fudge, "The future of the standard employment relationship: Labour law, new institutional economics and old power resource theory," *Journal of Industrial Relations* 59, no. 3 (2017): 384.

employers commit against workers, particularly those arising from changes introduced by the Job Creation Law. (3) What mechanisms exist for legal protection and compensation for workers under the Civil Code in relation to the Job Creation Law. The novelty of this study therefore lies not merely in discussing Article 1365 or the Job Creation Law independently, but in developing an integrated normative legal framework that explains the interaction between labor law and civil liability in protecting workers.

2. Research Methods

This study employs a normative legal research method, which focuses on examining legal norms, principles, and doctrines governing the protection of workers against unlawful acts committed by employers.¹⁶ This method is appropriate because the research aims to analyze the legal framework regulating employment relations and civil liability, particularly following the enactment of the Job Creation Law. The study applies to both a statutory approach and a conceptual approach. The statutory approach is used to examine relevant legislation, while the conceptual approach is employed to analyze legal doctrines and scholarly perspectives concerning worker protection and unlawful acts.¹⁷

The primary legal materials consist of legislation and regulations relevant to the research topic, including Article 1365 of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*), Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation, Law Number 6 of 2023 concerning Job Creation, and Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment. Secondary legal materials include legal textbooks, scientific journal articles, research reports, and court decisions discussing labor law and civil liability. Tertiary legal materials comprise legal dictionaries, encyclopedias, and other reference materials that support the understanding of legal concepts and terminology.

Legal materials were collected through a literature study by identifying, selecting, and reviewing legislation, judicial decisions, and academic publications

¹⁶ Putri Wulandari, "Normative Legal Research Methodology from the Experts' Perspective: A Comparative Analysis of Concepts and Approaches," *Archipel: Journal of Indonesian Interdisciplinary Studies* 1, no. 6 (2026): 19. See also, Tunggul Ansari Setia Negara, "Normative legal research in Indonesia: Its origins and approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 6.

¹⁷ Jodn M. Kernochan, "Statutory interpretation: An outline of method," *Dalhousie Law Journal* 3, no. 2 (1976): 1. See also, Meritxell Fernández-Barrera, and Giovanni Sartor, "The legal theory perspective: doctrinal conceptual systems vs. computational ontologies," In *Approaches to Legal Ontologies: Theories, Domains, Methodologies*, (Dordrecht: Springer Netherlands, 2010), 31.

based on their relevance and authority.¹⁸ The collected materials were analyzed qualitatively through legal interpretation and doctrinal analysis.¹⁹ The statutory approach was used to identify the rights and obligations of workers and employers as well as the legal consequences of unlawful acts, while the conceptual approach was applied to evaluate the role of Article 1365 of the Civil Code as a complementary mechanism for worker protection within the post–Job Creation Law framework. The findings were then synthesized to formulate legal arguments regarding employer liability and available remedies for workers.

3. Results and Discussion

3.1. Relevance of the Concept of Unlawful Acts under the Civil Code in Employment Relations Following the Job Creation Law

Legal protection is provided to legal subjects through instruments that are both preventive and repressive, whether written or unwritten. Legal protection for the public includes two aspects: preventive legal protection and repressive legal protection.²⁰ Preventive legal protection aims to prevent disputes from arising, while repressive legal protection seeks to resolve existing disputes. Legal protection serves to safeguard human rights from violations by others and ensures that individuals can enjoy the rights granted to them by law.²¹ Legal protection reflects the function of law itself, embodying justice, order, certainty, utility, and peace.

Legal protection of workers refers to the safeguards provided by law regarding their fundamental rights in employment relations. Law Number 13 of 2003 on Manpower, as amended by Law Number 11 of 2020 on Job Creation, regulates multiple dimensions of worker protection, including safeguards related to occupational safety and health, wages, welfare, social security, as well as protection from discrimination and harassment.²² Workers can access legal protection through two channels: public law (labor law) and private law (civil law). In civil law, worker

¹⁸ Achmad Irwan Hamzani et al., “Legal research method: Theoretical and implementative review,” *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3615.

¹⁹ Pradeep MD., “Legal research-descriptive analysis on doctrinal methodology,” *International Journal of Management, Technology and Social Sciences (IJMTS)* 4, no. 2 (2019): 100.

²⁰ M. Hadjon Philipus, “Perlindungan hukum bagi rakyat Indonesia,” *Bina Ilmu, Surabaya* 25 (1987): h2.

²¹ Frank B. Cross, “The relevance of law in human rights protection,” *International Review of Law and Economics* 19, no. 1 (1999): 92. See also, Walter Kälin, and Jörg Künzli, *The law of international human rights protection*. (Britania Raya: Oxford university press, 2019), 4.

²² Surya Perdana, “Comparison of government efforts in improving the welfare of Indonesian workers based on Law Number 13 of 2003 concerning manpower and Draft Law Number 11 of 2020 concerning job creation,” *International Journal Reglement & Society (IJRS)* 2, no. 1 (2021): 40.

protection can be pursued through civil lawsuits based on the Civil Code, either through breach of contract claims or claims of unlawful acts.²³

Unlawful acts (*onrechtmatige daad*) are regulated under Article 1365 of the Indonesian Civil Code, which provides that any person who commits an unlawful act causing harm to another is obligated to compensate for the resulting damage.²⁴ Article 1366 further establishes liability for losses caused by negligence or carelessness. The concept has evolved significantly since the Dutch Hoge Raad decision in *Lindenbaum v. Cohen* (1919), which expanded the meaning of unlawful acts beyond statutory violations to include infringements of subjective rights, legal obligations, morality, and standards of reasonableness in society.²⁵

According to legal doctrine and jurisprudence, an unlawful act consists of four cumulative elements. First, there must be an unlawful act, which may involve violations of legislation, subjective rights, legal obligations, morality, or principles of prudence and reasonableness. Second, there must be faults, either in the form of intent (*dolus*) or negligence (*culpa*). Third, there must be harm, which may be material, such as financial losses, or immaterial, such as mental suffering or damage to reputation. Fourth, there must be a causal relationship between the act and the harm suffered.²⁶ The Civil Code recognizes both direct and indirect liability for unlawful acts. Article 1365 governs liability for one's own conduct, while Article 1367 extends liability to the acts of others, including employers, who may be held responsible for unlawful acts committed by employees in the course of their duties.²⁷

Law Number 11 of 2020 on Job Creation, later amended through Government Regulation in Lieu of Law Number 2 of 2022 and enacted as Law Number 6 of 2023, adopts the approach of omnibus law to simplify regulations and improve the investment climate.²⁸ In the labor sector, it amended several provisions of Law Number 13 of 2003 concerning Manpower that directly affect workers' rights and

²³ David Lewis et al., "The key to protection: Civil and employment law remedies," In *International handbook on whistleblowing research*, (Cheltenham: Edward Elgar Publishing, 2014), 365.

²⁴ Muhammad Hafizhan Armansyah, and Adlin Budhiawan, "Element of Loss in Qualifying an Act as an Unlawful Act," *Journal Equity of Law and Governance* 4, no. 2 (2024): 247.

²⁵ Emanuel Van Dongen, and Irene Visser, "Balancing Interests: Exploring the Tensions between General Interest and Individual Rights in the Context of Abuse of Rights in the Netherlands and Belgium," *European Review of Private Law* 33, no. 4 (2025): 6.

²⁶ Zainudin Hasan, and Rohizad Olivia Watuna, "Unlawful Acts Viewed Based on Perspective of Civil and Criminal Law," *Jurnal Terekam Jejak* 2, no. 1 (2024): 6.

²⁷ Jeffrey Agustono Ariska et al., "Civil Liability of Banks for Customer Losses Caused by Unlawful Acts Committed by Bank Employees: A Case Study of Supreme Court Decision Number 2442 K/PDT/2017," *Sibatik Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 4, no. 6 (2025): 746.

²⁸ Rafel Putra Mulia, "Legal Politics of Job Creation Law Number 6 Of 2023 Concerning Workers' Rights to Wages," *PALAR (Pakuan Law review)* 11, no. 1 (2025): 197.

protections. The Constitutional Court, through Decision Number 91/PUU-XVIII/2020, declared the Job Creation Law conditionally unconstitutional due to procedural deficiencies but allowed its provisions to remain in force pending legislative correction.²⁹ The government subsequently addressed these issues through *Perppu* Number 2 of 2022, later enacted as law.

Several labor-related changes introduced by the Job Creation Law are relevant to potential unlawful acts by employers. First, Government Regulation Number 35 of 2021 extended the maximum duration of fixed-term employment agreements (PKWT) to five years, increasing the risk of prolonged employment uncertainty.³⁰ Second, changes to the wage system and the removal of district/city sectoral minimum wages may create opportunities for wage-related violations. Third, severance pay obligations were reduced, although employers remain liable for unlawful termination causing harm to workers. Fourth, broader outsourcing arrangements may increase the risk of abuse and deprivation of workers' rights. Although the Job Creation Law functions as *lex specialis* in labor matters, Article 1365 of the Civil Code remains applicable as a complementary legal remedy when workers suffer losses resulting from employers' unlawful conduct.³¹

Historically, employment relations were governed by civil law as a "labor contract" defined in Article 1601 of the Civil Code. Industrial development and demands for justice led to the emergence of labor law as a special law (*lex specialis*) that provides greater protection to the economically weaker party, namely workers.³² The enactment of the UU Cipta Kerja introduces a new layer of regulation affecting the relationship between the Civil Code and labor law.

The principle of *lex specialis derogat legi generalis* holds that specific laws take precedence over more general ones. Accordingly, the hierarchy of norms governing employment relations after the enactment of the UU Cipta Kerja places the UU Cipta Kerja and its implementing regulations as the primary *lex specialis*, followed by Law Number 13 of 2003 on Manpower to the extent that its provisions remain unamended, and lastly the Civil Code, which functions as a supplementary

²⁹ Meri Yarni, and Khofifah Rizki Amanda, "Legal Force of Conditional Unconstitutional Verdicts by the Constitutional Court in Decision Number 91/PUU-XVII/2020 Regarding the Omnibus Law on Job Creation," In *International Conference on Social and Politics (ICSP 2023)*, (Paris: Atlantis Press, 2024), 190.

³⁰ Henlia Peristiwa Rejeki et al., "Legal Protection for Workers with Fixed-Term Employment Agreements (PKWT) Based on a Review of the Job Creation Regulation," *Sinergi International Journal of Law* 3, no. 3 (2025): 147.

³¹ Muhammad Zubi et al., "Tinjauan Yuridis Perlindungan Hak-Hak Normatif Tenaga Kerja Setelah Berlakunya Undang-Undang Cipta Kerja (Omnibus Law)," *Jurnal Ilmiah Metadata* 3, no. 3 (2021): 1183. See also, Ariska et al., "Civil Liability of Banks," 746.

³² Idris, and Muhammad Dhobit Azhary Lubis, "Legal Protection of Workers' Rights in Employment Relationships in Indonesia: A Normative Analysis and Implementation," *Islamic Circle* 7, no. 1 (2026): 54.

source of general law. If an employer commits an unlawful act causing harm to a worker, the worker may seek compensation under the Civil Code if the industrial relations dispute resolution mechanism is deemed inadequate or irrelevant. This is particularly important when violations by employers are not explicitly categorized as industrial relations disputes under Law Number 2 Year 2004 on Industrial Relations Dispute Settlement (*Penyelesaian Perselisihan Hubungan Industrial/PPHI*).³³

3.2. Forms of Unlawful Acts Committed by Employers in the Post–Job Creation Law Era

A common form of unlawful acts committed by employers is the violation of workers' normative rights guaranteed under labor legislation. Normative rights are minimum rights provided by law to every worker and cannot be reduced through employment agreements.³⁴ Therefore, any employer conduct that deprives workers of these rights may constitute an unlawful act because it violates statutory obligations and causes losses to workers.

Such violations include the payment of wages below the applicable minimum wage, failure to provide religious holiday allowances (*Tunjangan Hari Raya/THR*), failure to register workers in *BPJS Ketenagakerjaan* and *BPJS Kesehatan* programs, and failure to provide statutory leave entitlements. Employers may also violate workers' rights by refusing to pay severance pay, service appreciation pay, or compensation required by law, including end-of-contract compensation for fixed-term employees under Government Regulation Number 35 of 2021.³⁵ These actions not only breach labor regulations but may also satisfy the elements of unlawful acts under Article 1365 of the Civil Code.

Another form of unlawful conduct relates to the misuse of fixed-term employment agreements (*Perjanjian Kerja Waktu Tertentu/PKWT*). The Job Creation Law and its implementing regulations provide employers with greater flexibility in employing workers under fixed-term contracts.³⁶ While this policy aims to increase labor market flexibility, it also creates opportunities for abuse. Employers may repeatedly renew contracts or continuously employ workers under temporary

³³ Otom Mustomi et al., "Settlement of Difference in Industrial Relationship in Court Based on Law No. 2 Year 2004," *JournalNX* 6, no. 06: 403. See also, Ananta Prayoga Hutama Syam, "Effectiveness of Sela's Decision in Article 96 Law Number 2 of 2004 on the Resolution of Industrial Relations Disputes," *KnE Social Sciences* (2022): 491.

³⁴ Dongen, and Visser, "Balancing Interests: Exploring the Tensions," 6.

³⁵ Amelia Putri Permata Sari, and Engrina Fauzi, "Perlindungan Hukum Terhadap Pekerja Pada Perjanjian Kerja Waktu Tertentu (PKWT) Dalam Hal Pemberian Uang Kompensasi Setelah Berakhirnya Kontrak," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 1, no. 4 (2025): 433. See also, Fuad Hasan, and Suwarno Abadi, "Perlindungan Hukum Terhadap Hak Pekerja Kontrak dalam Pemutusan Hubungan Kerja," *Legal Standing: Jurnal Ilmu Hukum* 9, no. 1 (2025): 71.

³⁶ Sari, and Fauzi, "Perlindungan Hukum Terhadap Pekerja," 433.

arrangements to avoid appointing them as permanent employees.³⁷ Such practices undermine workers' rights to job security and may be regarded as unlawful acts because they conflict with principles of fairness, legal certainty, and the legitimate interests of workers.

The expansion of outsourcing arrangements under the Job Creation Law similarly creates the potential for unlawful acts. The removal of restrictions on the types of work that may be outsourced has broadened employers' discretion in utilizing outsourced labor.³⁸ However, outsourcing may become problematic when it is used primarily to avoid legal obligations relating to wages, social security, employment benefits, or job security. Workers in outsourcing arrangements often face uncertainty regarding responsibility for the fulfillment of their rights. Where outsourcing mechanisms are deliberately used to deprive workers of legal protections or cause economic loss, employers may be held liable under Article 1365 of the Civil Code.

Unilateral termination of employment (*Pemutusan Hubungan Kerja/PHK*) without compliance with legal procedures constitutes another significant form of unlawful conduct. Under the Job Creation Law, employers are required to follow prescribed procedures and provide notification before terminating employment. Failure to comply with these requirements not only violates labor law but also infringes upon workers' rights to employment security and fair treatment.³⁹

Unlawful termination may occur where employers dismiss workers without valid grounds or terminate employment on prohibited discriminatory grounds, such as religion, pregnancy, marriage, illness within the legally protected period, or trade union membership.⁴⁰ Although the Job Creation Law modified the structure of severance payments, it does not eliminate workers' rights to seek compensation for losses resulting from unlawful dismissals.

Employers may also commit unlawful acts through workplace violence, harassment, and discrimination. Employers have a legal obligation to maintain a safe and respectful working environment. Consequently, acts of physical violence,

³⁷ Katherine VW Stone, "Legal protections for atypical employees: Employment law for workers without workplaces and employees without employers," *Berkeley Journal of Employment and Labor Law* 27, no. 2 (2006): 272.

³⁸ Siti Syarifah Wafiqah Wardah, "Protection of Outsourced Labor in the Industrial Relations System: A Juridical Analysis of the Job Creation Law," *Jurnal Office: Jurnal Pemikiran Ilmiah dan Pendidikan Administrasi Perkantoran* 4, no.2 (2024): 203. See also, Maulana Arrosyid et al., "Legal Protection of Workers in Labor Criminal Offenses: A Case Study on Outsourcing Companies," *International Journal of Service Science, Management, Engineering, and Technology* 6, no. 1 (2024): 30.

³⁹ Zaeni Asyhadie, "Hukum kerja: hukum ketenagakerjaan bidang hubungan kerja," (Jakarta: RajaGrafindo Persada, 2007), 223.

⁴⁰ Alexander S. Madinda, "Unfair Termination of Employment at Workplaces," *International Journal of Emerging Trends in Science and Technology* 1, no. 05 (2014): 3.

intimidation, threats, psychological pressure, or sexual harassment may give rise to civil liability.⁴¹ In addition, discriminatory treatment based on race, religion, gender, disability, or social status is inconsistent with the principles of equality recognized in labor law. Such conduct may cause not only economic losses but also immaterial harm, including emotional distress, reputational damage, and psychological suffering. In certain circumstances, employers may also be held responsible for unlawful acts committed by supervisors or employees acting within the scope of their duties pursuant to Article 1367 of the Civil Code.⁴²

Another important category of unlawful acts concerns violations of occupational safety and health obligations. Employers are legally required to provide a safe and healthy workplace under Law Number 1 of 1970 concerning Occupational Safety and related regulations.⁴³ The Job Creation Law reinforces the importance of occupational safety and health as part of the broader regulatory framework governing business activities. Employer negligence in implementing safety standards, providing adequate protective equipment, or ensuring safe working conditions may result in workplace accidents or occupational diseases.⁴⁴ Such negligence falls within the scope of Article 1366 of the Civil Code and may give rise to civil liability when workers suffer losses due to the employer's failure to exercise reasonable care.

Finally, unlawful acts may also arise from violations of workers' privacy and reputation. In modern employment relations, employers frequently possess and process significant amounts of personal information relating to workers.⁴⁵ The unauthorized disclosure of personal data, dissemination of inaccurate employment information, defamatory statements, or misuse of workers' personal information may cause substantial material and immaterial harm. These risks have become increasingly relevant in the digital era, particularly following the enactment of Law

⁴¹ E. Loya, "Low-wage workers and bullying in the workplace: How current workplace harassment law makes the most vulnerable invisible," *UC Law SF International Law Review* 40, no. 2 (2017): 231. See also, S. Wardhani, and A. Prabawati, "Peranan Serikat Pekerja dalam Perlindungan Hukum terhadap Pencegahan Pelecehan Seksual untuk Pekerja Perempuan di Tempat Kerja," *Lex Jurnalica* 18, no. 1 (2020) 25.

⁴² Ahmad Rosyad Ilyasa, and Ridha Wahyuni, "Pertanggungjawaban Majikan atas Perbuatan Melawan Hukum Bawahan dalam Perspektif Vicarious Liability," *Jurnal Usm Law Review* 8, no. 3 (2025): 2553.

⁴³ Hasudungan Simatupang, "Pelaksanaan Undang-Undang Nomor 1 Tahun 1970 Tentang Keselamatan Kerja: Studi Pada Kota Tanjungpinang," *Journal of Law and Policy Transformation* 1, no. 2 (2016): 215. See also, Mark A. Friend, and James P. Kohn, "Fundamentals of occupational safety and health," Bloomsbury Publishing USA, 2023.

⁴⁴ Maxwell Asumeng et al., "Occupational safety and health issues in Ghana: strategies for improving employee safety and health at workplace," *International Journal of Business and Management Review* 3, no. 9 (2015): 70.

⁴⁵ Mawar Kumala Dewi et al., "Kompensasi dan Hubungan Kerja: Kajian Strategis dalam Konteks Organisasi Modern," *Jurnal Ilmiah Manajemen dan Bisnis (JIMBI)* 6, no. 1 (2025): 167.

Number 27 of 2022 concerning Personal Data Protection.⁴⁶ Employers who fail to respect workers' privacy rights or who misuse personal data may therefore be held liable under Article 1365 of the Civil Code for the damages suffered by workers.

Overall, the expansion of labor flexibility under the Job Creation Law has increased the diversity of employer conduct that may potentially constitute unlawful acts beyond conventional labor law violations. The broader use of outsourcing, fixed-term employment agreements (PKWT), and simplified termination procedures has created new legal risks by weakening workers' bargaining power and reducing the effectiveness of normative labor protections.⁴⁷ In this context, Article 1365 of the Civil Code assumes greater significance as a complementary legal mechanism, enabling workers to seek accountability for employer misconduct that results in material or immaterial harm not adequately remedied through labor law alone.⁴⁸

3.3. Legal Protection and Compensation Mechanisms for Workers under the Civil Code

Workers harmed by unlawful acts of employers may file a civil lawsuit based on Article 1365 of the Civil Code. Such lawsuits are filed at the District Court where the defendant (employer) is domiciled or where the unlawful act occurred. In these lawsuits, the plaintiff (worker) must prove all four elements of an unlawful act cumulatively.⁴⁹

The burden of proof in an unlawful act lawsuit generally rests with the plaintiff (*actori incumbit probatio*). However, in certain cases, the judge may reverse the burden of proof (*omkering van de bewijslast*) if there is a strong presumption of the defendant's fault or if the plaintiff faces significant difficulty in obtaining evidence that is in the defendant's possession. Compensation that may be claimed in an unlawful act lawsuit under Article 1365 of the Civil Code includes material and immaterial compensation.⁵⁰ Material compensation covers actual losses suffered

⁴⁶ Moody Rizqy Syailendra et al., "Personal data protection law in Indonesia: Challenges and opportunities," *Indonesia Law Review* 14, no. 2 (2024): 4. See also, Andi Darti, and M. Marnija, "The urgency of protecting sensitive data is reflected in Article 4 (2) of Law No. 27/2022 on personal data protection," *Journal Equity of Law and Governance* 7, no. 1 (2025): 16.

⁴⁷ Izzati, "Deregulation in job creation law," 10. See also, Kunarti et al., "The Legal Politics of Outsourcing," 18; Nugroho et al., "The impact of labor law reform," 85.

⁴⁸ Barancova, "Labour Law and Drafting of the New Civil Code," 457. See also, Zabramnaya, "No-fault liability in Labor Law: theoretical aspect," 76.

⁴⁹ Rasha Nazifa Muhtar, "Penerapan asas vicarious liability dalam perbuatan melawan hukum pada hubungan kerja: Studi kasus menurut hukum Indonesia dan hukum Inggris," *Lex Patrimonium* 4, no. 3 (2025): 12.

⁵⁰ Rai Mantili, "Ganti kerugian immateriil terhadap perbuatan melawan hukum dalam praktik: Perbandingan Indonesia dan Belanda," *Jurnal Ilmiah Hukum DEJURE: Kajian Ilmiah Hukum* 4, no. 2 (2019): 215.

(*damnum emergens*) and profits that could have been obtained but were not due to the unlawful act (*lucrum cessans*).⁵¹

Immaterial compensation in unlawful act lawsuits is recognized in Indonesian jurisprudence, even though the Civil Code does not explicitly mention it. The Supreme Court has acknowledged the right to immaterial compensation for physical and psychological suffering, loss of honor and reputation, and disturbances to the enjoyment of life arising from unlawful acts.⁵² In the context of the UU Cipta Kerja, the amount of compensation claimed through a civil lawsuit based on the Civil Code is not limited by the compensation specified in the UU Cipta Kerja.⁵³ Therefore, if a worker suffers losses exceeding the normative compensation under the UU Cipta Kerja, they may claim the difference through an unlawful act lawsuit.

In Indonesia, the settlement of labor disputes is governed by a specific mechanism under Law Number 2 of 2004 on Industrial Relations Dispute Settlement (PPHI).⁵⁴ This framework requires disputes to be resolved progressively through bipartite negotiations, followed by mediation, conciliation, or arbitration, and, if necessary, adjudication before the Industrial Relations Court (*Pengadilan Hubungan Industrial/PHI*).⁵⁵ It applies to various types of disputes, including disputes over rights, interests, termination of employment, and conflicts between labor unions. If an employer's unlawful act does not qualify as an industrial relations dispute, the worker may file a civil lawsuit directly at the District Court based on the Civil Code. However, if the unlawful act is related to an industrial relations dispute, the worker must first complete the PPHI procedure before pursuing a civil lawsuit. Thus, the Civil Code route and the PPHI/PHI route complement each other in providing legal protection to workers.⁵⁶

⁵¹ Titin Apriani, "Konsep ganti rugi dalam perbuatan melawan hukum dan wanprestasi serta sistem pengaturannya dalam KUH Perdata," *Ganec Swara* 15, no. 1 (2021): 929.

⁵² Munawwir Fuady Hasibuan, "Tinjauan Yuridis Terhadap Ganti Rugi dalam Perkara Perbuatan Melawan Hukum yang Menimbulkan Kerugian Immaterial," (PhD diss., Fakultas Kedokteran, Universitas Islam Sumatera Utara, 2026), 66.

⁵³ Adnan Hamid, "Criticizing the Meaning of Government Regulation," 561. See also, Gladis Novadilla, and Mhd Yadi Harahap, "Ganti Rugi Terhadap Pelanggaran Hak Cipta Sinematografi Prespektif Undang-Undang No. 28 Tahun 2014," *Jurnal Tana Mana* 6, no. 2 (2025): 122.

⁵⁴ Muhammad Rasyiq Fadlan, and Rini Irianti Sundary, "Penyelesaian Perselisihan Hubungan Industrial karena Pemutusan Hubungan Kerja (PHK) Dihubungkan dengan UU No. 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial," In *Bandung Conference Series: Law Studies*, (2022): 1144.

⁵⁵ Shinta Azzahra Sudrajat et al., "Legal Protection in Labor Dispute Settlement Through Industrial Relations Mechanism," *Khazanah Hukum* 4, no. 1 (2022): 6.

⁵⁶ Agus Pramono, "Settlement of Industrial Relations Disputes and Termination of Work Relations according to the Applicable Legislation," *Walisono Law Review (Walrev)* 2, no. 2 (2020): 184.

The civil legal protection mechanism through unlawful act lawsuits has several strengths in the context of worker protection following the UU Cipta Kerja. First, its broad scope allows workers to seek accountability for various violations that may not be explicitly covered by labor law, including new violations arising from the UU Cipta Kerja regime.⁵⁷ Second, the compensation that may be claimed includes immaterial losses often not addressed in the industrial relations dispute resolution mechanism. Third, civil lawsuits can be combined with criminal and administrative demands to create a greater deterrent effect on employers.

In addition to its strengths, the civil legal mechanism also faces several weaknesses and challenges in the context of worker protection. First, the burden of proof on the plaintiff poses a significant obstacle, as workers often lack access to the necessary evidence. Second, the lengthy litigation process and high costs render the civil law route impractical for most workers, especially those with low incomes. Third, uncertainty regarding litigation outcomes arises from the absence of clear standards for calculating immaterial compensation in employment disputes.

Following the UU Cipta Kerja, additional challenges emerge from the reduction in normative termination compensation and increased flexibility in the use of PKWT and outsourcing arrangements, which potentially weakens workers' bargaining power in asserting their rights.⁵⁸ Workers with PKWT or outsourcing status have more limited access to legal protection, making the Civil Code a crucial yet increasingly difficult protection instrument to access.⁵⁹

To overcome these weaknesses, several strengthening efforts are needed. First, a more accessible legal aid mechanism for workers must be developed through state legal aid institutions and labor unions. Second, consideration should be given to applying the reversal of burden of proof in cases where the employer has a significantly stronger position in controlling evidence. Third, harmonization among the Civil Code, the Manpower Act, the UU Cipta Kerja, and the PPHI Act must improve to eliminate legal gaps harmful to workers.⁶⁰ Specifically, regarding the UU Cipta Kerja, clearer regulations are needed on the limits of PKWT and outsourcing to prevent abuse of worker protection obligations.⁶¹ Such regulations

⁵⁷ S. H. Khairani *Kepastian Hukum Hak Pekerja Outsourcing Ditinjau dari Konsep Hubungan Kerja antara Pekerja dengan Pemberi Kerja (Disesuaikan dengan Undang-Undang No. 11 Tahun 2021 tentang Cipta Kerja-Rajawali Pers.* (Depok: PT. RajaGrafindo Persada, 2023), 5.

⁵⁸ Liana and Yahman, "Legal Protection of Workers with A Specific Time Work Agreement (PKWT) in The Transfer of Outsourcing Companies Following the Enactment of Law No. 6/2023," *YURIS: Journal of Court and Justice* 3, no. 2 (2024): 115.

⁵⁹ Sarbini et al., "The Concept of Legal Protection of Outsourced Workers to Realize Worker Welfare," *Jurnal Hukum Bisnis Bonum Commune* 9, no. 1 (2026): 311.

⁶⁰ Khairani, *Kepastian Hukum Hak Pekerja*, 5.

⁶¹ Munir Fuady, "Perbuatan Melawan Hukum (Pendekatan Kontemporer)," (Bandung: PT. Citra Aditya Bakti, 2005), 210. See also, Dahris Siregar, "Legal Protection in Fixed-Term

should include effective enforcement mechanisms, including easier access for workers to civil lawsuits under the Civil Code as an alternative or complement to PHI resolution.

Beyond these doctrinal reforms, strengthening worker protection requires a more coherent integration between labor law and the general principles of civil liability. Comparative scholarship recognizes that labor law, although operating as *lex specialis*, does not completely exclude the subsidiary application of civil law where labor legislation fails to provide adequate remedies.⁶² This complementary relationship becomes increasingly important following the enactment of the Job Creation Law, as expanded labor flexibility through outsourcing, fixed-term employment agreements (PKWT), and simplified termination procedures has generated greater legal uncertainty regarding workers' substantive rights.⁶³ Studies further indicate that these reforms have weakened workers' bargaining position and reduced the effectiveness of traditional labor law protections, particularly regarding wages, severance pay, and employment security.⁶⁴ Consequently, Article 1365 of the Civil Code should not merely be viewed as an alternative avenue for claiming damages but also as a complementary legal instrument capable of filling normative gaps where labor legislation provides insufficient protection. This perspective is consistent with comparative developments advocating closer harmonization between labor law and civil liability to ensure employer accountability and more comprehensive compensation for workers harmed by unlawful conduct.⁶⁵ Accordingly, the effectiveness of worker protection in the post-Job Creation Law era depends not only on labor regulations themselves but also on the practical integration of civil liability principles within the broader employment law framework.

Employment Contracts: Striking a Balance Between Workers' Rights and Obligations," *Istinbath: Jurnal Hukum* 22, no. 01 (2025): 92.

⁶² Barancova, "Labour Law and Drafting," 457. See also, Šmíd, "The requirement of written form in labour law," 132; Jaskulska, "Umowa przedwstępna o pracę–rozważania," 103.

⁶³ Izzati, "Deregulation in job creation law," 10. See also, Nugroho et al., "The impact of labor law reform," 85; Wicaksono, and Tristiana, "Legal politics of law number 11 Of 2020," 2025406.

⁶⁴ Hidayah et al., "The Implementation of Labor Development," 70. See also, Khairani, and Arnetti, "Protecting the rights of laid-off workers," 2260161; Kunarti et al., "The Legal Politics of Outsourcing," 18; Borman et al., "The Complexity and Consequences of The Policy," 220; Ginonggara, and Riza, "Assessing Outsourced Workers' Normative," 46.

⁶⁵ Zabramnaya, "No-fault liability in Labor Law: theoretical aspect," 76. See also, Barancova, "Labour Law and Drafting," 457; Qilin, "An Empirical Analysis of the Impact," 28.

4. Conclusion

The concept of unlawful acts under Article 1365 of the Civil Code remains highly relevant in employment relations, particularly following the enactment of the Job Creation Law (UU Cipta Kerja). Employers' actions that violate workers' rights or contradict legal obligations, morality, and reasonableness may be qualified as unlawful acts, giving rise to liability for compensation. The UU Cipta Kerja introduces significant changes that enhance labor flexibility but also create new risks of unlawful conduct, especially through the misuse of fixed-term employment agreements (PKWT) and outsourcing arrangements. In this context, the Civil Code serves as an important complementary legal instrument to ensure adequate protection for workers.

Forms of unlawful acts by employers are increasingly diverse, including violations of normative rights, unlawful termination, workplace harassment, breaches of occupational safety, and infringements of privacy and reputation. Civil legal remedies provide workers with the opportunity to claim both material and immaterial damages beyond statutory labor compensation. However, the effectiveness of such protection is limited by evidentiary burdens, litigation costs, and the absence of clear standards for immaterial compensation.

Therefore, stronger harmonization between the Civil Code, labor legislation, and the UU Cipta Kerja is necessary to ensure more comprehensive and effective legal protection for workers. In addition, legal reform should prioritize clearer limits on PKWT and outsourcing practices, establish standardized guidelines for calculating immaterial compensation, and strengthen enforcement mechanisms through accessible legal aid, reversal of burden of proof in cases of employer dominance, and more effective monitoring by labor inspectors. These measures would not only enhance workers' access to justice but also create a stronger deterrent effect against unlawful acts by employers, thereby ensuring that labor flexibility does not come at the expense of fundamental worker protection.

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