

DISPUTE RESOLUTION MECHANISMS FOR HEALTH, SAFETY & ENVIRONMENT CLAUSES BETWEEN COMMON LAW & CIVIL LAW JURISDICTIONS

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Abstract

This paper discusses dispute resolution mechanisms related to health, safety and environment (HSE) clauses by highlighting the stark differences between common law and civil law jurisdictions. In the common law system, dispute resolution is generally done through litigation, where courts play an important role in interpreting contracts and legal precedents. In contrast, in civil law systems, dispute resolution favors non-litigation methods such as mediation and arbitration, which are designed to produce faster and more efficient solutions. This research also explores how each legal system handles HSE clauses in contracts, as well as their impact on protecting the rights of individuals and society. By analyzing the practices in different countries, this paper aims to provide a deeper insight into the challenges and opportunities in HSE dispute resolution in both jurisdictions. The results show that while there are significant differences in dispute resolution approaches, both have advantages and disadvantages that need to be considered in the current context of legal globalization.

Keywords: *HSE, common law, civil law, dispute, jurisdiction*

Abstrak

Makalah ini membahas mekanisme penyelesaian sengketa yang terkait dengan klausul kesehatan, keselamatan dan lingkungan (HSE) dengan menyoroti perbedaan mencolok antara yurisdiksi common law dan civil law. Dalam sistem common law, penyelesaian sengketa umumnya dilakukan melalui proses pengadilan, di mana pengadilan memainkan peran penting dalam menafsirkan kontrak dan preseden hukum. Sebaliknya, dalam sistem civil law, penyelesaian sengketa lebih mengutamakan metode non-litigasi seperti mediasi dan arbitrase, yang dirancang untuk menghasilkan solusi yang lebih cepat dan lebih efisien. Penelitian ini juga mengeksplorasi bagaimana setiap sistem hukum menangani klausul K3LL dalam kontrak, serta dampaknya terhadap perlindungan hak-hak individu dan masyarakat. Dengan menganalisis praktik-praktik di berbagai negara, makalah ini bertujuan untuk memberikan wawasan yang lebih mendalam tentang tantangan dan peluang dalam penyelesaian sengketa K3LL di kedua yurisdiksi. Hasil penelitian menunjukkan bahwa meskipun terdapat perbedaan yang signifikan dalam pendekatan penyelesaian sengketa, keduanya memiliki kelebihan dan kekurangan yang perlu dipertimbangkan dalam konteks globalisasi hukum saat ini.

Kata Kunci: *K3LL, hukum umum, hukum perdata, sengketa, yurisdiksi*

INTRODUCTION

Dispute resolution in the context of health, safety and environment (HSE) is an increasingly important issue in the modern era, where concern for public health and environmental protection is growing. HSE clauses are often included in business contracts and agreements to ensure that the parties involved adhere to set standards to

protect the public and the environment. However, when violations or disputes occur, the means of resolution used can differ greatly depending on the applicable legal system.

The two main legal systems that are often compared are common law and civil law. Common law, which developed in countries such as the United States and the United Kingdom, relies more on legal precedents and formal litigation processes. On the other hand, civil law, which is practiced in many European and Asian countries, tends to emphasize more on written legal codes and non-litigation settlement methods.

The fundamental differences between these two systems affect not only the way disputes are resolved but also the impact on the parties involved. In the context of HSE, an understanding of dispute resolution mechanisms is essential to protect the rights of individuals as well as the public interest. Therefore, this paper aims to analyze the differences in dispute resolution mechanisms for HSE clauses between common law and civil law jurisdictions and the implications for legal practice in different countries.

METHODOLOGY

This research uses a qualitative approach with literature studies from various legal sources, academic journals, and research reports related to the settlement of HSE disputes in the two legal systems. The analysis is conducted by comparing key aspects of dispute resolution mechanisms in the context of the prevailing legal reality.

By understanding these differences, it is hoped that readers can better appreciate the complexity of HSE dispute resolution and consider the implications of the choice of mechanism in the context of legal globalization today.

RESULTS AND DISCUSSION

1. Dispute Resolution Mechanisms in Common Law Jurisdictions

In the common law system, dispute resolution related to health, safety and environment (HSE) clauses is often done through litigation. This process involves courts deciding based on existing legal precedents. Some of the key characteristics of this mechanism include:

Legal Precedent: Courts rely on previous decisions to determine the outcome of a new case, which can create uncertainty for the parties involved if there is no clear precedent.

Litigation Process: This process can be lengthy and expensive, often taking years before reaching a final decision. This can hinder access to justice, especially for parties with limited resources.

Alternative Dispute Resolution (ADR): While litigation is the primary method, ADR such as arbitration and mediation are also used. In this case, parties may choose to resolve disputes out of court with the help of a neutral mediator or arbitrator. However, the outcome of this process is only binding if both parties agree beforehand.

2. Dispute Settlement Mechanism in Civil Law Jurisdiction

Meanwhile, in the civil law system, the approach to HSE dispute resolution favors non-litigation methods. Some important aspects of this system include:

Non-Litigation Settlement: In most cases, dispute resolution is done through mediation or arbitration before taking the matter to court. This creates a faster and more cost-effective process than litigation.

Dispute Resolution Bodies: In some countries, such as Indonesia, there are institutions such as the Consumer Dispute Resolution Agency (BPSK) that serve to resolve disputes without having to go to court. This process is designed to protect the public interest and provide more efficient solutions.

Legal Certainty: On the other hand, the common law system can provide legal certainty through clear precedents, although this can also be a double-edged sword if those precedents are not relevant to the context of the current case. **Adherence to Legal Standards:** Civil law systems tend to have stricter regulations regarding compliance with health and environmental standards. Parties that violate HSE clauses may be subject to administrative or legal sanctions without having to go through lengthy litigation.

3. Comparison and Implications

A comparison between the two systems shows that common law dispute resolution mechanisms tend to be more formal and dependent on litigation, while civil law offers a more flexible and efficient approach through non-litigation resolution. Some of the implications of this difference are:

Access to Justice: The civil law system may provide better access for parties with limited resources to efficiently resolve HSE disputes.

Speed of Process: With the use of ADR and dispute resolution institutions, civil law can resolve disputes faster than common law litigation.

CONCLUSION

The difference between dispute resolution mechanisms in common law and civil law jurisdictions lies in the approach to litigation and the use of alternative dispute resolution. While common law relies more on formal litigation processes, civil law places emphasis on non-litigation resolution through institutions such as BPSK. This shows that each legal system has a unique way of dealing with health, safety and environmental issues that can affect the outcome for the parties involved in the dispute. Simpulan merupakan ringkasan atas temuan penelitian dan implikasinya. Saran diberikan untuk pengembangan dan penelitian lanjutan.

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