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COLLECTIVE WORKING AGREEMENTS (CLA) IN A JURIDICAL AND PRACTICAL

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ABSTRACT

The emergence of a work relationship between the employer and the employee is based on the existence of an employment agreement. The employment agreement is one of the derivatives of the agreement in general, where each agreement has special characteristics that distinguish it from other agreements. In the implementation of work agreements between employers and workers, it often causes basic problems, where the basic problem is that it is not accommodated related to the fulfillment of rights and obligations between workers and employers. an effective, transparent and accountable work agreement in accordance with the laws and regulations, one of which is a Collective Labor Agreement (PKB). The employment relationship occurs after the employment agreement, and the employment agreement is a legal event, so that the consequences of an employment relationship cause legal consequences in the form of rights and obligations for the parties

Keywords: employment agreement, employment relationship, collective labor agreement

A. Introduction

The development of human life for the necessities of life is increasing day by day, especially in meeting the needs of a decent life, which humans always try in various ways to meet these needs. Fulfillment of the needs of a decent life one of them through work, by working it will get an income that can be used to meet the needs of his life.

Indonesia is a country that adheres to a welfare state system, where one of the evidences of the Indonesian welfare state system is that the state guarantees every citizen has the right to work and get a decent life for humanity, this is as stated in the provisions of Article 27 paragraph (2) of the Law. The 1945 Constitution which reads "every Indonesian citizen has the right to get a job and a decent living", apart from the guarantee to get a job, this article can also be interpreted as a guarantee of job protection for every citizen.

In doing work, a person can do his own business or cooperate with other parties and can work for other parties. With someone working for another

person, it will lead to a link in the fulfillment of their respective rights and obligations. For this reason, it is necessary to have a regulation that can bridge the needs of all parties.

The emergence of a work relationship between the employer and the worker is based on the existence of a work agreement, this is contained in the provisions of Article 1 number 14 of Law Number 13 of 2003 concerning Manpower which reads, "a work agreement is an agreement between a worker/labourer and an entrepreneur or employer which contains working conditions, rights and obligations of the parties".[1]

The employment agreement is one of the derivatives of the agreement in general, where each agreement has special characteristics that make it different from other agreements. However, all types of agreements have general and universal provisions that are owned by all types of agreements, namely regarding legal principles, the validity of an agreement, the subject and object of the agreement. The terms and conditions of the agreement made by the parties contain the rights and obligations of each party that must be fulfilled. This includes the principle of freedom of contract (idea of freedom of contract), namely how far the parties can enter into an agreement, what relationships occur between them in the agreement and how far the law regulates the relationship between the parties. The definition of a work agreement other than regulated in Law no. 13 of 2003 concerning Employment, it is also regulated in the Civil Code Chapter IV concerning agreements to carry out work, where in the provisions of Article 1601a of the Civil Code, what is meant by a work agreement is an agreement in which one party, the worker, binds himself to work for another party. another, the employer, for a certain period of time, by receiving wages.

In the implementation of work agreements between employers and workers, it often causes basic problems, where the basic problems include the non-accommodation of the interests of the parties in this case between workers and employers, so that this often creates disputes between workers and employers which result in Termination of Employment (PHK).

Based on this, a rule should be made between the employer and the worker through an effective,

transparent and accountable work agreement in accordance with the laws and regulations so that later there will be no overlapping of the rights and obligations of the parties in carrying out an industrial relationship. This is as mandated in the provisions of Article 1 number 14 of the Manpower Law Number. 13 of 2003 that "A work agreement is an agreement between a worker/labourer and an entrepreneur or employer that contains the terms of employment, the rights and obligations of both parties." Based on the above provisions, it is necessary to have an elaboration to regulate the relationship between workers and employers. One of these elaborations is through a Collective Labor Agreement (PKB). PKB is the result of an agreement that regulates the rights, obligations and conditions of work carried out by the employer and the trade union. Thus the PKB is made with the aim of ensuring the interests of employers and workers so that it is hoped that harmonious and just industrial relations can be created. Apart from that, the CLA functions as a master agreement that must be considered and used as a reference in making a work agreement. Based on this, in accordance with the provisions of the legislation, if the requirements have been met, the company should make a Collective Labor Agreement (PKB) in order to better guarantee the interests and rights of each party.

The legal position of the CLA becomes very strategic because it is an Autonomous and Special Legal Rule made between the Employer and the Labor Union in the company, so that the rules contained in the PKB can override the provisions in the general labor law, as long as the things regulated in the PKB are of better value than the statutory regulations. This can be seen in the provisions of Article 124 of Law No. 13 of 2003, the provisions in the collective work agreement may not conflict with the applicable laws and regulations. In the explanation of the article, it is stated that what is meant by not being in conflict with the applicable laws and regulations is that the quality and quantity of the contents of the collective work agreement cannot be lower than the statutory regulations.

The understanding of the making and implementation of Collective Bargaining Agreements between companies and trade unions/labor unions so far has not been

comprehensive or complete. This incomplete understanding raises very basic problems regarding the rights and obligations of both parties (employers and workers). The material content stipulated in the collective labor agreement is to accommodate matters that have not been regulated in laws and regulations in general, so that it is expected to fill the legal vacuum in exercising rights and obligations in an industrial relationship. The provisions in Article 116 of Law No. 13 of 2003 concerning manpower and its explanation of its substance have stipulated that, "collective work agreements are drawn up or drawn up by deliberation to reach consensus based on good faith, honesty, openness and voluntarily from the parties.

Based on the explanation above, which is the basis for the author to be interested in analyzing the " **Implementation of Collective Labor Agreements (PKB) from the Judicial Perspective and Practice**".

B. Method of Implementation

The form of descriptive analytical research, with a normative juridical approach, is legal research using a theoretical approach method, in this case the theory of employment law. analytical methods included in the discipline of dogmatic law. The research is focused on examining the rules or norms in positive law according to a literature study. The data generated or obtained from literature studies and field studies were analyzed using qualitative juridical methods, namely analyzing the data without using mathematical or statistical calculation formulas, the analysis was carried out to reveal the existing reality. The research results obtained are presented in the form of descriptions and explanations of the problems discussed.

C. Result and Discussion

Collective Labor Agreement as the basis for the rules of labor law that apply at the company work unit level., which is known in English as the Collective Labor Agreement (CLA), or in Dutch as the Collective Arbeids Overenkomst (CAO), has been recognized in Indonesian legal literature based on the provisions of the Civil Code (KUHPerdata). .[2] In Article 1601n of the Civil Code it is stated that, "Labor agreements are regulations made by one or several

employers' associations that are legal entities, and or several labor unions with legal entities, regarding work conditions that must be heeded when making work agreements.[3]

Law Number 13 of 2003 concerning Manpower Article 1 number 16 states that industrial relations are a system of relations formed between actors in the process of producing goods and/or services consisting of elements of entrepreneurs, workers/laborers, and the government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. This means that in industrial relations there are 3 (three) elements that have their respective functions and duties. The government's function in industrial relations has been clearly regulated in Article 102 paragraph (1) of Law Number 13 of 2003 concerning Manpower.

Collective Labor Agreements in the world of Indonesian manpower have also been regulated and confirmed their position as a means to build industrial relations, as stated in Law Number 13 of 2003 concerning Manpower, Article 103 which states that industrial relations are carried out through the following means:

1. Trade unions/labor unions;
2. Employers' organizations;
3. Bipartite cooperation institutions;
4. tripartite cooperation institutions;
5. Company regulations;
6. Collective labor agreement;
7. Labor laws and regulations; and
8. Industrial relations dispute settlement agency.

Based on the provisions as described above, it can be understood that industrial relations are built on the basis of a set of systematic rules governing the rights and obligations between employers and workers, where in one of the provisions in Law no. 13 of 2003 concerning Manpower Article 1 number 21 states that "A collective work agreement is an agreement that is the result of negotiations between a trade union/labor union or several trade unions/labor unions registered at the agency responsible for manpower affairs with an entrepreneur or several entrepreneurs or associations. entrepreneur which contains the working conditions, rights and obligations of both parties."

Based on the understanding of the collective work agreement, the

elements in the collective work agreement can be divided into several elements, which include:

1. The principle in the collective work agreement must be embedded in the agreement
2. The legal subject of a collective work agreement consists of a trade union/labor union and an entrepreneur; another possibility is a union of workers/labor unions and several or associations of entrepreneurs; What I want to emphasize is that individual workers/labourers cannot appear as legal subjects in the Collective Bargaining Agreement;
3. Contains the working conditions, rights and obligations of the parties, namely entrepreneurs, workers/ laborers and trade unions/ labor unions; What I want to emphasize here is that the Collective Labor Agreement intends to provide guidelines, the form of the agreement, for entrepreneurs, workers/labor and trade/labor unions; thus creating legal certainty.[4]

In making a Collective Labor Agreement, basically using the principle of freedom in contracting, but that does not mean that in determining the clause of the agreement, you can arbitrarily include articles that are not necessarily appropriate for the parties. 1320 of the Civil Code which states, among others:

1. Agree with those who bind themselves.
2. The ability to make an agreement.
3. A certain thing.
4. A lawful reason.

The employment relationship occurs after the employment agreement, and the employment agreement is a legal event, so that the consequences of an employment relationship have legal consequences in the form of rights and obligations for the parties, namely the employer and the worker/labor. Important things that must be included in the collective work agreement are as regulated in Article 124 paragraph (1), which at least contains the rights and obligations of the entrepreneur; rights and obligations of trade unions/labor unions and workers/laborers; the period and date of entry into force of the collective work agreement as well as the signatures of the parties making the cooperation agreement. Signatures of the parties making the collective labor

agreement. These things must be determined, so that a collective work agreement can be considered valid and its consequences are considered as law for those who make it.[5]

Collective labor agreement as regulated in the legislation in this case Law no. 13 of 2003 concerning Manpower is a form of guarantee of rights and obligations between employers and workers, it is intended so that the implementation of industrial relations built between employers and workers can be maintained, which is expected to reduce disputes between the parties.

Collective labor agreement is the result of negotiation between a trade union/labor union or several trade unions/labor unions registered with the agency responsible for manpower affairs and an entrepreneur, or several entrepreneurs or an association of entrepreneurs that contains the working conditions, rights and obligations of both parties. parties[6] as for the basic principles of the existence of a collective work agreement according to the laws and regulations, among others:

1. The making of a Collective Labor Agreement must be based on good faith, which means that there must be honesty and openness of the parties as well as volunteerism/awareness, which means that there is no pressure from one party to another (Explanation of Article 116 paragraph (2) UUK).
2. Good faith, does not conflict with the law, morality and public order (Article 1337 of the Civil Code).
3. PKB is negotiated by a trade union/labor union or several trade unions/labor unions that have been registered with the agency that carries out affairs in the manpower sector with the entrepreneur or several entrepreneurs (Article 14 paragraph (1) of the Minister of Manpower Regulation No. 28/2014).

After the birth of Law no. 11 of 2020 concerning job creation, has given a new color in the world of employment, where in the Employment Creation Act, especially the Labor Cluster, many provisions previously regulated in Law Number 13 of 2003 concerning Manpower, have changed, this of course creates dynamics in the law. In the case of employment, the dynamics referred to in this case are a paradigm shift where previously the

employment regulation only referred to the Manpower Law, currently it also refers to Law No. 11 of 2020 concerning Job Creation. There are several main problems in the employment cluster of the Job Creation Law, starting from the PKWT mechanism, wages, termination of employment (PHK), severance pay, and outsourcing.[7]

Of these several problems, all of them lead to a collective work agreement that is enforced in a company, in which a collective labor agreement should be a solution in solving problems in industrial relations.

One example that is currently happening is the problem related to termination of employment as a result of the outbreak of the disease caused by the Covid-19 Virus that attacks all countries in the world, including Indonesia. The impact of the outbreak is that many economic actors, such as companies that employ a lot of workers, make efficient use of one of them through termination of employment (PHK). The problem of layoffs will of course be a very serious problem, where in the event of layoffs the party who suffers a lot is the worker/labourer. The issue of layoffs is one of the causes of industrial relations disputes between workers and companies, not to mention the lack of clarity in the laws and regulations governing manpower because as we know that the birth of Law No. 11 of 2020 concerning Job Creation has changed Law No. 13 of 2003 concerning manpower, which has been used as a reference in the world of manpower in Indonesia, the lack of clarity over the law's applicability has finally resulted in the absence of legal certainty for both workers and employers.

Law is a binding and coercive norm in which it regulates human behavior and is formed by the authorized institution in this case is the legislature. The laws that apply in a country or region must be obeyed by the citizens of the country or the people of the region and if violated will be subject to sanctions. The law contains norms for protecting the interests of the people such as justice, freedom of choice, fair treatment, humane treatment, the right to obtain welfare and decent work, including containing elements of law enforcement.

In essence, the laws and regulations of a country are enforced based on a system. This means that a country must have laws and regulations that are not only singular but plural, these laws and regulations are as a system where each is interconnected as a unit.[8] Law as a system of norms that applies to the people of Indonesia, is always faced with dynamic social changes in line with changes in people's lives, in individual, social and political life of the state. The law must be sensitive to the development of society and must be adjusted or adapted to changing conditions [9]

Based on this, in the opinion of the author, when a legal event occurs, to ensure legal certainty and justice in the application of laws and regulations used in solving a problem (Industrial Relations dispute issues such as in the case of layoffs), then in its application it must be based on the principle of proportionality. the principle of proportionality must be interpreted as the distribution of rights and obligations according to proportions covering all contractual aspects as a whole[10], as an illustration in the application of the principle of proportionality are as follows:

1. For workers who have an employment relationship before the issuance of the Job Creation Law or the omnibus Law, then the dispute resolution should still use the rules prior to the issuance of the Job Creation Act, but for workers who have an employment relationship after the issuance of the Job Creation Act, in resolving disputes must be submissive and obedient to the rules contained in the Copyright Act, so that it will create a sense of justice in industrial relations, because these rules are not applied retroactively.
2. Likewise, it should be regulated in the CLA, for workers who have worked before the Copyright Act, employment relations and compensation at the time of layoffs use the rules before the Copyright Law, but for workers who worked after the Copyright Act was issued, then the PKB regulates the rights and obligations referring to the Copyright Act.

The application of the principle of proportionality must be interpreted as the distribution of rights and obligations according to proportions covering all contractual and conceptual

aspects as a whole. The principle of proportionality as the principle used in making an agreement is the principle that forms a system that provides checks and balances, to encourage the creation of legal relations in a proportional agreement. The principle of proportionality is not only important to produce a fair and mutually beneficial agreement (substantial justice), but with the principle of proportionality it is also important to emphasize the existence of fairness (fairness in procedures), so that for this role the principle of proportionality should always be used in every process of forming an agreement. in order to fulfill and in accordance with the interests of each party.

D. Conclusion

Based on the discussion above, it can be concluded that the juridical position of the Collective Labor Agreement (PKB) is very strategic because it is an Autonomous and Special Legal Rule made between Employers and Trade Unions in the company, which in its implementation can override labor provisions that are general in nature, but in fact the norms and provisions in the making and implementation of PKB are frequently violated by parties who do not understand the existence of PKB in an industrial relationship. The employment relationship occurs after the employment agreement, and the employment agreement is a legal event, so that the consequences of an employment relationship have legal consequences in the form of rights and obligations for the parties, namely the employer and the worker/labor

Collective labor agreements are the result of negotiations between a trade union/labor union or several trade unions/labor unions registered with the agency responsible for manpower affairs and an entrepreneur or a combination of several entrepreneurs. The matters regulated in the CLA should also pay attention to developments that occur in the community, in addition to making and implementing the provisions contained in the CLA, it should adhere to the principle of proportionality in order to create a sense of justice and legal certainty for the parties in an employment relationship.

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