



JURIDICAL REVIEW OF THE LEGAL POSITION OF EMPLOYMENT RELATIONS WITHOUT A WRITTEN EMPLOYMENT AGREEMENTS

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ABSTRACT - Work agreements made in oral form do not conflict with the provisions of Law Number 13 of 2003 concerning Employment, i.e. contained in the provisions Article 51 paragraph 1, i.e. employment agreements are made in writing or verbally. The research aims are to examine the legal position of the worker in the employment relationship without a written employment agreement and the legal protection of workers and workers against the fulfillment of workers' rights in employment without a written employment agreement. The type of research used in this study is normative legal research. The source of legal material came from primary and secondary legal material source. The legal position of employment relations without a written employment agreement based on the perspective of labor law has a strong, legal position as long as it does not conflict with the legal conditions of the employment agreement, as provided for in Article 52 paragraph (1) of Law Number 13 of 2003 concerning Employment. As a result of the law of employment without a written employment agreement, if the type of employment agreement is a Specific Time Work Agreement made in oral form, then the status changes to an Unspecified Time Work Agreement and if the type of employment agreement is an Unspecified Time Work Agreement then the employer is obliged to issue a letter of appointment to the worker/labor concerned to become a permanent worker. Verbal work agreements have not been able to provide full legal protection to workers, potentially harming workers and workers to the fulfillment of their rights and obligations as workers.

Keyword: Employment, Legal position, Legal protection, Work agreement

I. INTRODUCTION

Employment development as an integral part of national development based on Pancasila and the Constitution of the Republic of Indonesia in 1945, implemented in the context of full Indonesian human development and the development of Indonesian society entirely to increase the harkat, dignity, and labor self-esteem and realizing a prosperous society, fair, prosperous, and evenly distributed both material and spiritual (Masriani, 2007). Employment development has many dimensions and linkages. This connection is not only with the interests of the workforce during, before and after the work period but also the relationship with the interests of employers, the government and the community. For this reason, a comprehensive and conclusive arrangement is needed, among others, covering the development of human resources, increasing the productivity and competitiveness of

Indonesian workers, as well as workers' rights. On that basis the government pays attention to the workforce in order to be able to develop themselves thoroughly and integratedly directed at increasing competence and independence.

To protect the rights of workers, the government makes various efforts namely by making and implementing policies (Resen & Tjukup, 2015), make and issue legislation in the field of employment so that citizens' rights are achieved in obtaining employment and fair treatment in employment relations, the issuance of Law Number 13 of 2003 on Employment. Law No. 13 of 2003 concerning Employment is expected to provide protection for labor in realizing welfare. Employment is everything related to labor before, during and after work.

Industrial relations are basically work relationships. Work relations are legal relations. A legal relationship is a relationship that is carried out between legal subjects regarding legal objects and carrying legal consequences (Wijayanti, 2014). Work agreements are the beginning of the birth of an employment relationship. A work agreement is an agreement whereby the worker-labor party binds to work on the part of the employer. Work agreements are made in written and oral form. Oral employment agreements do not conflict with the provisions of Law Number 13 of 2003 concerning Employment, which is regulated in Article 51 paragraph (1) ie employment agreements are made in writing or verbally. An oral work agreement is a work relationship that is made without the signing of a work agreement. Verbal work agreement done with a statement that is jointly agreed by both parties on the basis of trust. However, it cannot be denied that there are still many employers who are not or have not been able to make a written employment agreement, this is due to the inability of human resources or the courtesy of making an oral employment agreement.

Based on the background described, the author raised two Problems, namely How the legal position of the worker in the employment relationship without a written employment agreement? And what is the legal protection of workers and workers against the fulfillment of workers' rights in employment without a written employment agreement? Therefore, the research aims are to examine the legal position of the worker in the employment relationship without a written employment agreement and the legal protection of workers and workers against the fulfillment of workers' rights in employment without a written employment agreement.

II. METHOD

The type of research used in this study is normative legal research (normative law research), reviewing statutory regulations, where the insurance is a normality in Law Number 13 of 2003 concerning Employment, does not regulate workers' rights/labor with oral employment agreements. The source of legal material used in this study originated: The source of primary legal material, primary legal material is legal material consisting of legal principles and tongues in the form of legislation. Secondary legal material, the source of secondary legal material is a source of legal material that provides an explanation of primary legal material. Secondary legal material used is literature-literature relevant to the topic discussed, both legal literature (law books (textbooks) written by influential experts (de hersender leer), opinions of scholars, legal journals and non-legal literature, and articles obtained through the internet. In this normative law study the authors use techniques for collecting legal material obtained from libraries, the internet and e-journals.

III. RESULTS AND DISCUSSION

The Law of Workers in Work Relations Without Written Work Agreements

Based on division according to legal content, law can be divided into public law and private law. There is division law public and law private sector is subject to the contents of legal arrangements depending on the nature of the relationship it regulates, can regulate relations related to the public interest or can regulate relations related to private interests (Van Apeldoorn, 2001).

According to [Wijayanti & Tarmizi \(2017\)](#), labor law can be private and can also be public. Private because it regulates the relationship between individuals (employers with workers / labor) in making work agreements and is public because the government intervenes in labor matters as well as criminal sanctions in labor law regulations. The relationship between public law to private law is the relationship between special law or exceptions to general law. As discussed, labor law which was originally a law that was private long-standing mejadi a public law. State interference cannot be avoided in labor law. Civil law was looking for new forms through state interference ([Hernoko, 2008](#)). Countries have recently tended to multiply compelling legal regulations (*dwingend recht*) in the public interest to protect weak interests. It also affects the legal tongue it regulates.

People submit to the law because there is a power that forces them to obey unconditionally. [Djumiadji \(2005\)](#) said that employers and workers have a civil position. Labor law based on its legal nature can be qualified as a law of a public nature or public law but the provisions contained therein still contain private matters. This public nature is under the guarding of the provisions contained in labor law which have been largely regulated through statutory regulations. Some laws and regulations in the field of employment, for example:

- a. Law Number 21 of 2000 Concerning Trade Unions
- b. Law Number 13 of 2003 concerning Employment
- c. Law Number 2 of 2004 Concerning Settlement of Industrial Relations Disputes
- d. Law Number 39 of 2004 Concerning the Placement and Protection of Indonesian Workers Abroad
- e. Law Number 11 of 2020 About Work Copyright

The relationship between the employer / entrepreneur and the worker / labor as the recipient of the work is based on an employment relationship ([Sugiarti, Wijayanti, Rahayu, & Indradewi, 2020](#)). Work relations are the relationship between workers and workers and employers who occur after an employment agreement. Article 1 of Law Number 13 of 2003 concerning Employment states that employment is the relationship between employers and workers based on employment agreements that have elements of employment, wages and orders. Definition of employment relations according to Law Number 13 of 2003 concerning Employment, is based on an employment agreement which is a form of agreement to do work. Article 50 of Law Number 13 of 2003 concerning Employment states that employment relations occur because of an employment agreement between employers and workers/workers. Thus, employment relations as a form of legal relationship are born or created after an employment agreement between workers and workers and employers ([Husni, 2020](#)). Work relationships cannot be separated from work promises.

A work agreement is a compelling agreement (*dwang contract*) because the parties cannot determine their own desires in the agreement. Verbal work agreements are work relationships made without the signing of a work agreement, verbal employment agreements are sufficient with statements that are jointly agreed by both parties and vice versa witnessed by at least 2 (two) witnesses.

Freedom of contract as appropriate in the engagement law, the difference in position of the parties entering into an employment agreement causes the parties not to determine their own wishes in the agreement, especially the workers / workers, however the parties to the employment relationship are subject to the provisions of labor law. The elements of the employment agreement are in accordance with the provisions of Law Number 13 of 2003 concerning Employment, the existence of employment, the existence of wages, and the existence of orders.

The form of employment agreement is in accordance with the provisions of Article 51 paragraph (1) of Law Number 13 of 2003 concerning Employment, the form of employment agreement is made in writing or verbally. The legal terms of the employment agreement are

regulated in Article 52 paragraph (1) of Law Number 13 of 2003 concerning Employment as follows:

- a. The agreement of both parties
- b. Ability or ability to do legal action
- c. Promised work, and
- d. Promised work does not conflict with public order, decency, and applicable laws and regulations employment agreements that contradict the provisions of Article 52 paragraph (1) of Law Number 13 of 2003 concerning Employment mentioned above, may be canceled or null and void.

According to (Soeroso, 2015), the consequences of the law are a result of the actions taken, to obtain an expected effect by the lawbreaker. The intended effect is the result governed by law, while the action taken is a legal action that is an action in accordance with applicable law.

Whereas according to (Ali, 2015), the consequences of the law are a result caused by the law, for an act carried out by a legal subject. Do it an law is any human act done by giving up rights and obligations. Acts are acts of legal subjects which, as a result of the law, are desired by the perpetrators. Due to the law arising from the existence of legal actions, namely employment relations carried out based on oral employment agreements.

With regard to the verbal employment agreement, Muhammad Shaifudin stated that a will that had been stated and expressed in the form of a promise, aimed at both creating an attachment and due to the law, the promise did not appear because it had been stated, but because it was desired. It is true that promises are expressions of will that can be stated verbally, which include the authority to realize these promises. The binding power of a promise is not found in the consequences it causes, but in the meaning contained in the promise itself (Syaifuddin, 2012).

Based on this opinion, it can be understood that the implementation of an agreement verbally, in relation to the work agreement verbally is not only concerned with the issue of the validity of the agreement, but also concerns the issue of the authority in carrying out the contents of the agreement. Verbal work agreements are normatively considered valid by law. Law Number 13 of 2003 concerning Employment determines that employment agreements made in oral form are legal and legal in force as a law for the parties who make them, as confirmed in Article 1338 of the Civil Code (KUHPer) i.e. all agreements made legally apply as law to those who make them.

Due to the law of oral employment agreements, if the employment agreement is a Certain Time Work Agreement (PKWT) made in oral form, then a Specific Time Work Agreement (PKWT) the status changes to an Unspecified Time Work Agreement (PKWTT) and if the employment agreement is an Unspecified Time Work Agreement (PKWTT) made in oral form, the employer is obliged to issue a letter of appointment to the worker / labor concerned to become a permanent worker.

Legal Protection of Workers against Fulfillment of Workers' Rights in Work Relationships without Written Work Agreements.

Legal protection is any power of conscious effort by everyone and government, private institutions aimed at seeking security, mastery and fulfillment of life welfare in accordance with existing human rights. Indonesia as one of the countries based on law (rechstaat) and rule of law, where people desperately need legal protection to obtain legal certainty, and justice so that people feel prosperity and prosperity. Legal certainty is a guarantee that the law must be carried out properly or definitely (Indradewi & Arifiani, 2021). In principle, legal protection does not distinguish between men and women.

According to Maria Theresia Geme legal protection is related to the actions of the state to do something by enacting the law of the state in an exclusive manner if with the aim of providing guarantees of the rights of a person or group of others. protection of certain

interests can be done by limiting various human rights and interests so that the law has the highest authority to determine human interests that need to be regulated and protected.

Judicial law enforcement and protection of Human Rights are two important aspects of realizing *the rule of law* and is a basic herb in building nations and becoming a basic need for civilized nations upfront the earth. In general there are some workers' rights that are considered fundamental and must be guaranteed, although in their application they can be largely determined by economic and socio-cultural developments, and the society or country in which a company operates, including:

- a. Right to work. The right to work is a human right. Because of this the importance of Indonesia clearly includes, and guarantees fully, the right to work. This is in accordance with Article 27 paragraph (2) of the Constitution of the Republic of Indonesia of 1945 which reads "the pillars of citizens entitled to work and a proper livelihood for humanity.
- b. The right to a fair wage. Real wages are the embodiment or compensation of the work. Everyone has the right to obtain a fair wage, that is, a wage that is proportional to the power that has been donated.
- c. The right to association and assembly. To be able to fight for its interests, especially the right to a fair wage, workers must be recognized and guaranteed the right to associate and gather. They must be guaranteed the right to form trade unions with the aim of united to fight for the rights and interests of all their members. By association and assembly, their position becomes strong and therefore their reasonable demands can be given more attention, which in turn means their rights will be more guaranteed.
- d. The right to protection and health. The basis and right to protection of safety, safety and occupational health is the right to life. This guarantee is absolutely necessary from the start as an integral part of the company's discretion and operations. The risk must be known from the start, it is necessary to prevent disputes from being gated day if something undesirable happens.
- e. The right to be processed legally. This right is especially true when a worker is accused and threatened with certain penalties for allegedly committing certain violations or mistakes. He must be given the opportunity to prove whether he made a mistake as alleged or not.
- f. The right to be treated equally. This means that there should be no discrimination in the company whether based on skin color, gender, ethnicity, religion, etc., both in attitude and treatment, salary and opportunities for further office, training or education.
- g. Right to personal secrets. Control the company has certain rights to know the curriculum vitae and certain personal data of each worker, the worker has the right to keep his personal data confidential. Even companies must accept that there are certain things that cannot be known by the company and want to be kept secret by workers
- h. The right to freedom of conscience. Workers must not be forced to take certain actions which they deem to be unkind such as corruption, embezzling company money, lowering certain product standards or ingredients to increase profits, covering up fraud company or boss.

The purpose of labor law is to achieve or implement social justice in the field of employment. To protect workers against unlimited power from employers, for example by making agreements or creating regulations that are compelling so that employers do not act arbitrarily against labor as a weak party. Imam Soepomo divides 3 (three) kinds of protection against workers / labor, namely:

- a. Economic protection, i.e. protection of labor in the form of sufficient income if the workforce is unable to work against its will.
- b. Social protection, namely labor protection in the form of occupational health insurance, freedom of association, and protection of the right to organize.

- c. Technical protection, i.e. protection of labor in the form of job security and safety.

According to Imam Soepomo, as quoted by Asri Wijayanti, the granting of workers' protection covers 5 (five) areas of labor law, namely:

- a. Submission/ placement of work
- b. Work relationship
- c. Occupational health sector
- d. Job security field
- e. Labor social security field (Wijayanti, 2014)

Legal protection is always related to the role and function of the law as a regulator and protector of the interests of the community. Relating to the role of law as a tool to provide protection and legal functions to regulate association and solve problems that arise in society. In the context of protection for workers and employers it is necessary to intervene in the government in the field of employment (Rahayu, Babussalam, Sugiarti, Indradewi, & Firman, 2020), tapping on maintaining a balance for the parties through legislation, making labor law dual, namely private and public whistling.

To realize the protection of workers' rights can also be done through supervision. Labor inspection is an important element in the protection of labor, as well as as a comprehensive labor law enforcement effort. Labor inspectors are a system with effective and vital mechanisms in ensuring the effectiveness of labor law enforcement and the application of labor legislation in order to maintain a balance between rights and obligations for employers and workers, maintain business continuity and work peace, increase work productivity and protect workers.

Supervision of employment is also based on the points contained in ILO Convention Number 81 concerning Labor Supervision in Industry and Trade (*Convention Number 81 Concerning Labor Inspection in Industry and Commerce*) explanation section. In addition, it is very necessary to have law enforcement in the field of employment. Law enforcement is not only interpreted as the application of positive law, but also the creation of positive law. If a problem arises in the employment, the judge who handles does not issue a decision based solely on the basis of freedom of contract and consensualism, but must pay attention to the harmony of all the principles contained in the treaty law in order to realize protection and justice for the parties.

Oral employment agreements are valid according to Law Number 13 of 2003 concerning Employment. Thus workers employed by oral employment agreements are entitled to rights as provided for in Law Number 13 of 2003 concerning Employment.

According to Aristotle's justice theory in his work entitled *Ethics Nichomachea* explains his thoughts on justice. For Aristotle to understand justice in the sense of equality. In numerical similarity, every human being is equated in one unit, for example everyone is equal before the law. Workers who are employed without a written employment agreement are entitled to what is due, according to his abilities and achievements.

Kejury according to Thomas Hobbes is an act that can be said to be fair if it has been based on an agreed agreement. From this understanding above, workers without a written employment agreement are entitled to justice and legal protection of their rights as workers, such as wage protection, protection of labor social security, protection of guarantees of health and work safety (Rhiti, 2015).

Shifting employment arrangements that were initially only a private relationship between pengusaha and workers/laborers, over time they shift into a three-party relationship known as tripartite. This condition is inseparable from the need for legal protection for those considered to be the weakest positions in relations 2 (two) parties (businessmen and workers) ie the weakest workers. The current aspect of legal protection in employment has become a must. Preventively the government which acts as a legislator has made a set of rules to provide protection for both parties, both from aspects of social security, wages, leave, and so on.

On the repressive aspect of legal protection, the state represented by the government has also created institutions that can facilitate if there is a day of legal relations between employers and workers there is a dispute over industrial relations that is known as the agency for resolving industrial relations disputes. For example rights disputes, interest disputes, disputes over termination of employment (layoffs), and trade union / trade union disputes in only one company

IV. CONCLUSION

1. The legal position of workers in employment without a written employment agreement based on the perspective of labor law has a strong position, that is, legal, as long as it does not conflict with the legal conditions of the employment agreement as regulated in Article 52 paragraph (1) Law Number 13 of 2003 concerning Employment, namely the agreement of both parties, ability or ability to do legal action, the existence of promised work and the promised work does not conflict with public order, decency, and applicable laws and regulations. As a result of the law if the agreement is a Certain Time Work Agreement (PKWT), the status changes to an Unspecified Time Work Agreement (PKWTT), and if an Unspecified Time Work Agreement (PKWTT) is made in oral form, then the employer is obliged to issue a letter of appointment to the worker concerned to become a permanent worker.
2. Work relationships without written employment agreements have not been able to provide optimal legal protection for workers. Work relations without written employment agreements do not provide legal certainty to the rights of workers / workers normatively. And if in the implementation of the employment relationship it is default or industrial relations disputes, workers will have difficulty proving legal events / legal relations that occur between workers and workers and employers.

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