

Legal Protection Towards Workers Under Collective Labor Agreement

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Abstrak

The Collective Labor Agreement is one of working agreements negotiated by workers joining the trade union organizations together with employers as employment providers. In the making of the agreement, it must first be negotiated by both parties. In particular, in order for the trade union to attend the negotiation, it must meet the requirement stipulated in the provisions of law and regulation stipulated in Laws Number 13 Year 2003 on Labor and Ministerial Regulation Number 28 Year 2014. The two regulations have non-interrelated arrangements or in other words it can be said as conflict of norms, hence this present study is conducted to examine the validity of enactment of collective labor agreement in a company and the legal protection for the trade union under the collective labor agreement. The study makes use of normative research method, i.e. by reviewing the documents of legislations and the literatures with legislation and conceptual approach. The result of the study shows that the validity of enactment of collective labor agreement refers to its relation with legal validity of a norm in the principle of legislation *lex superior derogate lex impriori*, so that the labor laws is enacted, but not apart from the role of labor ministerial regulations. The validity of the legitimate terms of an agreement is also needed to underlie a collective agreement. The legal protection that can be applied for trade union is in the form of supervision as well as legal protection both preventive and repressive outlined in the collective labor agreement content.

Keywords: Collective Labor Agreement; Legal Protection; Trade Union

1. INTRODUCTION

The economic mechanisms behind the importance of transfers and capital income taxation in resolving the discrepancy are straightforward. A key reason why the standard version of the incomplete markets model predicts a strongly negative rank correlation between wealth and employment is that most of the wealth poor households counterfactually choose to work despite their low productivity (Yum, 2018). The rapid globalization process in the 1990s, which continues today, has led to changes in the crucial transformation of the structure of employment both in the developed countries and the developing economies (Gozgor, 2018). Considering employee

performance management as a system implies a cycle in which the different performance management stages are aligned (Van Thielen, Bauwens, Audenaert, Van Waeyenberg, & Decramer, 2018).

Employee engagement is a key component affecting employee performance and organizational financial success (Kang & Busser, 2018). Employee performance means the task related actions expected from an employee and how those actions are accomplished (Iqbal & Asrar-ul-Haq, 2018). Employees' expected contributions can be incongruent with those of their leader (Audenaert et al., 2018). Indirect employment effects are expenditures of the upstream and

downstream industries related to the whole production cycle in a supply chain (Wang, Zhang, Cai, & Xie, 2013).

In addition to individuals' capacity to be creative for their work, perceived support at an organizational level is another critical factor in encouraging employees to engage in communicative action (Lee, Mazzei, & Kim, 2018). Training and development is a crucial activity in hospitality organizations because of the high costs associated with employee turnover (Jaworski, Ravichandran, Karpinski, & Singh, 2018).

Considerant refers to Law No. 13 Year 2003 on Labor which states that the workforce holds a very important role and position as a perpetrator of development as well as development goals (Khakim, 2014). Therefore, there is a need for employment development to improve the quality of the workforce and its participation in development, as well as to increase the protection of labor and family in accordance with the value and human dignity (Khakim, 2014). This is because the workforce or worker/labor who works expects a decent life provided by the government through business owners or employers within a company. Hence, to be able to mutually agree in the company, to support a good working system and avoid working problems, the working relationship needs to be reinforced and convinced by an individual working agreement, since the employment agreement only binds the employer and the worker as an individual to individual.

An agreement may be termed as an employment agreement if the treaty regulates workers, wages and orders. In article 1338 of the Civil Code it is stated that all legally-made agreements act as governing laws for those who make them (Subekti, R. & Tjitrosudibio, 2014). That the agreement cannot be made on the basis of the parties' agreement but must fulfill the parties' ability to perform legal actions, the terms of the contracted work, and not contrary to public order, morals, and applicable legislations (Subekti, R. &

Tjitrosudibio, 2014).

The employment agreements made by such parties are sometimes more favorable to one party (business owner) and more restricts the interests of the workers themselves. Thus, with the presence of a Collective Labor Agreement which is one of the means of industrial relations resulting from collective industrialization and is of the utmost importance in the process of industrial relations. The collective labor agreement may provide safer protection and job security for both parties, the workers and the employers. The existence of collective labor agreements has been secured through the Employment Laws, particularly if within a company there is a union which requires the establishment of a collective labor agreement. By understanding the essential value of the existence of the Collective Labor Agreement in the company, it is expected that both workers and employers take the initiative to realize and maintain the sustainability of the implementation of the collective labor agreements.

The purposes of holding a Collective Labor Agreement are to; determine working conditions and working requirements; regulate relationships between employers and workers; regulate the relationship between employers or employers' organizations with workers'/labours' organizations. To be able to carry out the collective agreement negotiations, trade unions need to meet the requirements set forth in the provisions of legislation.

These provisions include Article 119 and Article 120 of the Labor Law. It is briefly stated that those eligible to represent the negotiations are companies with one union having a membership of more than 50% of the total number of members in the company, and if not fulfilled there will be voting, and if it could not be not, it shall be conducted within next 6 months later. Companies that have more than one trade union must meet the same requirements and if not fulfilled, then the coalition shall be implemented and this can also form a

negotiation team that the number of members is determined proportionally. Whereas the provisions of Article 18 and Article 19 of the Ministerial Regulation No. 28 Year 2014 stipulate differently from the Labor Law that in case a company has one union, it must have a member of more than 50% by having received support held by a committee composed of trade union officials and representatives of workers, not the union members. While, companies with more than one trade union can negotiate maximum 3 unions with each member at least 10%.

If the union either one or more does not meet the requirements, in other words is not supported well by voting, and can not meet the requirements in question, then it will harm the workers themselves. In addition, the Labor Law regulates the presence of a coalition if non-fulfillment of labor/worker in a company while Ministerial Regulation No. 28 of 2014 does not regulate it as well as no further explanation can provide legal certainty and protection for trade unions. Basically the Ministerial Regulation No. 28 of 2014 is the implementation of Article 133 in the Labor Law. However, in the contents of these two acts can be seen the uncertainty or conflict of norms in regulating the implementation of the Collective Labor Agreement which leads to disharmony to the union in realizing the objectives of the Collective Labor Agreement itself.

The non-synchronization and/or conflict of norms will be very harmful to the parties concerned, because the condition of which law should apply in every different conditions in each company with each labor union. Thus, this study tries to understand the conflict of norms in order to provide legislation and legal protection for unions.

Several questions supporting the study are: (1) What is the applicable validity of Collective Labor Agreement in a company and (2) What is the legal protection towards labor unions within Collective Labor Agreement? This study is a normative legal study, meaning that it is a

study whose objects are legislation and bibliography documents, or in other word is it reviews the applicable law or applied regulations to a certain legal problem (Soerjono dan Abdurahman, 2003).

In this paper, the researcher reviews both Labor Law and Ministerial Regulation which are interrelated in terms of trade union provisions in the making the collective labor agreements but there is a non-synchronization between the two rules. It is necessary to review and hopefully find which provisions can provide equal legal protection for trade unions' and employers' rights.

2. DISCUSSION

The Validity Of Collective Labor Agreement In A Company

Validity means a force of law, authority, and the quality of a thing which makes it a support to the law and more related to a law. Therefore, the rules of law or regulations that live in the society must meet the elements proposed by Soekanto as follows (Tobing, 2012): The law applies juridically, sociologically and philosophically. Connecting with a collective labor agreement, there is a need of the adoption of a legislation or a written legal norm created to govern the life of the community. A legislation that is created must meet certain requirements of openness in the making, and giving the rights to community members to propose various proposals, so that a legal product produced by responding to the wishes of the community referred to as responsive legal products (MD, 1999), i.e. the law must be competent and fair,; it should be able to recognize the public will and be committed to the achievement of substantive justice (Nonet, Philippe, & Selznick, 2003). Legislation is effective, hence substantially it must consider several principles, namely (Husni, 2000); The law should not be retroactive; *lex superior derogate lex impriori*; *lex specialis derogate lex generali*; and *lex posteriori derogate lex priori*.

The principle of law according to Klanderman contained in the book written by Mertokusumo serves to legalize and has a normative influence and binding the parties (Mertokusumo, 1996). A collective labor agreement as it is understood is a part of the treaty which concerns one or more parties with other parties to establish a rights and obligation that can provide legal certainty. Collective Labor Agreement is one of the alternative means under the auspices of the government against a company to be able to provide more welfariness for workers within the company. Thus, this is to be declared as a binding agreement and have a legal basis, the establishment of a written norm on the process of making the collective labor agreements.

In the provisions of the Labor Law, the normative reasons for the importance of the existence of collective labor agreements in a company are: to underpin employment of workers-employers who have elements of work, wages and orders; they contain the terms of employment, rights and obligations of both parties; they occupy and affirm an equal position between workers and employers because it is the result of both parties' negotiations and deliberations; they are a means of implementing industrial relations; they are the basis and obligation of trade unions, workers and employers to implement them; they are guidelines for making employment agreements. In relation to the laws and regulations in the scope of labor, both those that are contrary to the law and vice versa, it is necessary to browse the contents of each legislation, whether there's possibility between the laws and regulations which do not have one understanding of the thing in question. In the negotiations, the execution, the formation of the contents or clauses of a collective labor agreement carried out by the union together with the employer, and the union do not necessarily freely or without rules carry out the agreement, instead the union must meet certain conditions to be able to negotiate the

agreement.

The terms of the negotiations are set out in the provisions of legislation, both Article 119 and Article 120 of the Labor Law Number 13 Year 2003 as well as Article 18 and Article 19 of Ministerial Regulation No.28 Year 2014. In the practice of establishing a Collective Labor Agreement in a company, the number of trade/labor union members is not proportional to the total number of workers, therefore, to meet such a number of members is sufficiently impossible to impose due to restrictions. Not all workers are willing to be part of trade/union membership, although there are many alternatives or other ways to meet the number of members but still there's no guarantee a union can still carry out the negotiations.

Between the two laws and regulations above, there is a difference in the same intention of the requirements. As a trade/labor union in that case, which legislation can be used as a basis in the formation of collective labor agreements is declared because it is related to one of the principles of legislation relating to these two provisions namely *lex superior derogate lex impriori* i.e. a higher rule of overriding the law. This is a dilemma for trade/labor unions or workers themselves, since in seeking for prosperity giving rise to various problems in law to go through. If it refers to Article 119 and Article 120 of the Labor Law and Article 18 and Article 19 of the Ministerial Regulation on Labor No.28 Year 2014, the restriction on the number of members assigned shall be difficult for a union to enter into collective agreement negotiations.

Of course, the validity of the collective labor agreement has a positive impact on workers who are known through functions, objectives and benefits from the collective labor agreement. Below are some functions of the existence of a collective labor agreement in an company (Santoso, 2012):

As a manifestation of recognition on the

participation of workers in policy-making in the company in the field of labor; as a means to facilitate employers, trade unions, and workers to know their respective rights and obligations; as one of the legal bases in the making of employment agreement; as a means to prevent or reduce the occurrence of industrial relations disputes, so that the calmness and smoothness will be more secured, including business owners' calmness in preparing the company's development plans; and as a means to facilitate the process of resolving industrial disputes at company level.

Furthermore, collective labor agreement aims to (Anonim, 2003):

Reinforce and clarify workers' rights and obligations toward trade unions and employers; create harmonious industrial relations within the company; collectively stipulate working requirements as well as working conditions and/or any development of work conditions that have not been regulated, both in legislation or in the increased values of the conditions set forth in the legislation; and create employment calmness for workers and business certainty for entrepreneurs since there is a clear arrangement of rights and obligations for both parties.

The benefits of collective labor agreements, among others are (Anonim, 2003):

There is a certainty of rights and obligations in all matters relating to industrial relations and the implementation of applicable laws and regulations; creating working spirit by avoiding the possibility of arbitrariness and harming actions of one party against the other and various unclearness in the working relations; and encouraging the increase of work productivity.

Based on the above description, the researcher argues that the validity of the Collaborative Labor Agreement has

benefits as a juridical foundation for employers and unions; hence the juridical foundation will solve the operational problems within the company. The existence of legislation on the terms of collective labor agreement, which is one of the supporting means to improve the productivity and welfare of workers, is inseparable from the role of employers and workers in the process of industrial relations and based on the principle of cooperation, among others (Sumanto, 2014):

Partner in Production, Partner in Provit, and Partner in Responsibility: Connecting to the theory of legislation, the rules of the collective labor agreement must meet several elements and must be well received by the public in relation to the theory of natural law that is pure legal theory (Bruggink in legal theory in the broad sense). The legislation has not given justice to the union in the implementation of Collective Labor Agreement, because the basic law is not yet fulfilled, namely the constitution of the rule of law on the logic of jurisprudence between laws and regulations which one to another still consists a non-synchronization of norms.

In its formation, collective labor agreements have a similar level to those of the general agreement that must meet subjective and objective requirements, which a legal requirement of an agreement and regulated under Article 1320 of the Civil Code, namely (Khakim, 2014):

Agreement from those who commit themselves; in the formation of a collective labor agreement, the parties, both the workers and the employers, are required to have an agreement that is to agree on the rules of the negotiations. This is because every collective labor agreement negotiation, that the making of the rules of negotiation, is a strategic and a very important thing. The determining factor of whether or not a collective labor

agreement in one company is influenced by how well and carefully the guidelines of the negotiating rules made by the parties (Khakim, 2014). It is not by coercion but jointly agreement in establishing a collective agreement which creates the rights and obligations of each party. And, without agreement there will be no contract or agreement.

Proficient to make an agreement; In the provisions of article 52 paragraph (b) of the Labor Law requires the parties, namely company as employers, to have the ability or the capability to perform legal acts. Therefore, the worker present or united in the union must be competent to engage in legal action and if there is child labor, the signing of the agreement is the parent or guardian.

A certain matter; in relation to collective labor agreements, the object of the agreement is the determination of the same rights and obligations to provide reciprocity between workers and employers in a company with the provisions that can determine matters outside the law as long as it does not violate the existing legislation.

A lawful cause; of course, in a collective labor agreement, the matters that are regulated are the matters related to employment, which among others are more or less wages, holidays, working hours, permits, security, pensions and others that are equally beneficial to each parties and does not conflict with morality, public order, and applicable legislation.

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Taking into account the legal theory of

contracts and agreements in general, a collective labor agreement must meet the principles of contractual law. The principles of the agreement, which among others are: the principle of freedom of contract (Ibrahim, Johanes., & Sewu, 2007); the principle of *pacta sunt servanda* (Kaligis, 2013); the principle of good intention; and the principle of consensualism (Subekti, 1992).

Collective labor agreements are not a duplication of legislation, but discuss matters contained in the normative provisions, and descriptive behaviors which are in the form of orders and restrictions (Khakim, 2013). Thus, collective labor agreements have a vital position as a result of an agreement between unions and employers who want high productivity and competitiveness on the one hand and the well-being of workers and their families on the other hand (Sridadi, 2016).

The validity of a collaborative labor agreement can be realized if it meets the legal elements of the agreement, as well as the basic principles of collective agreements so that the established labor agreement does not result in legal conflicts or industrial relations disputes that may interfere with the performance and productivity of a company but can improve welfare goals and functions of a collective labor agreement. Hence, to ensure the existence of collective labor agreements may provide legitimacy that breeds the protection and security of work to be stronger legally, it is necessary to apply legislation related to manpower especially in relation to collective labor agreements.

Legal Protection towards the Workers under Collaborative Labor Agreement

Legal Protection is an act or attempt to protect the public community from arbitrary deeds by a ruler who is inconsistent with the rule of law, to realize order and peace so as to enable people to enjoy their dignity as human beings (Setiono, 2004). The objects of legal protection of labor under Labor law,

includes; protection of rights in employment; protection of workers' basic rights to negotiate with employers and strikes; protection of occupational safety and health; special protection for women/child labor, and persons with disabilities; protection of wages, welfare, labor social security; and protection of rights on employment termination.

All provisions of labor protection have been regulated and are based on the strength of legislation. However it does not rule out that most workers have not felt the form of legal protection applied by the legislation. One of the safeguards that workers should have in an organization that is regulated in legislation is that workers to formed in the trade/labor unions. Most of the workers, who are in a weak position, require workers to accept any regulations that have been formed by the wrought-up company where they work, without negotiating first. The government, through the law (as a positive law), has arranged and required every company that already has a union (already registered), the companies must enter into a collective agreement, and the company shall not refuse to enter into collective labor agreements.

Taking into account the Law on Labor and Ministerial Regulation, which is one of the forms of legal protection for trade unions in Indonesia, according to the researcher it is also a constraint since in the relation to the terms of collective labor agreement in terms of the number of members that have been regulated by laws and regulations namely Law on Labor and Ministerial Regulation. Where the elements of the conditions contained in articles 119 and 120 of the Monpower Law and Articles 18 and 19 of the Ministerial Regulation on Labor No.28/2014 can not be fulfilled by the union. Workers shall comply with company regulations. Company regulations made without advice and consideration from workers' representatives, even if there is, only formalities. So, in this case the workers are in a very weak position. The state or

position of the worker is in a very weak state. This occurs within a workers' organization because unions cannot meet the terms of the negotiations. Under the provisions of Indonesian law on Labor, according to the researcher, in relation to legal protection for trade unions can be in the forms of:

Ongoing supervisory/control measures by the government on the progress of implementation of collective labor agreements; the formulation of sanctions contained in labor laws and regulations relating to companies that employ unions if they refuse to enter into collective labor agreements.

In a company, according to the Labor Law, it only allows for one collective labor agreement made by a union that has been registered in the company that responsible in the sector of manpower with employers or a few employers. And the provisions of other agreements in such company shall not be contradictory to collective labor agreements, if they are contradictory, they shall be deemed null and void. By examining the concept of Philipus M. Hadjon, there are at least two parties, where the protection of the law is focused on one party, by its actions, dealing with the people who are subjected to such acts of government. All means, including legislation, which facilitate the submission of objections by the people before the government's decision to obtain a definitive form, is a preventive legal protection. Handling of legal protection for the people by the courts is a repressive legal protection (Budiartha, 2016).

The preventive law protection in question is to provide legal certainty and protection of the rights that workers should obtain through trade union organizations in terms of negotiating workers' rights in the clauses of collective agreements while repressive legal protection is related to industrial relation disputes concerning cases between workers/unions and employers/companies. Furthermore, it also refers to the protection of the law both externally and

internally greatly affect the parties in collective agreement negotiations. Internally the legal protection relates to rights and obligations that are agreed upon in collective labor agreements, so that through this collective labor agreement the parties protect themselves. Meanwhile, external legal protection is the role of government which through legislation related to collective labor agreement becomes the legal basis for the parties in determining the legal protection through collaborative labor agreement.

3. CONCLUSION

Based on the above description, conclusions are as follows:

The validity of the collective labor agreement in a company as a supporting means to improve the productivity and welfare of workers referring to the role of employers and trade unions is an important means of collective labor agreements. Legal protection towards trade unions in collective labor agreements can be found through Labor Law No. 13 Year 2003 and Ministerial Regulation on Labor No. 28 Year 2014 and most importantly is the protection of the law through collective labor agreements, including continuous supervisory/control by related stakeholders and the formulation of sanctions and concepts of legal protection both internal and external.

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