THE WORKING AGREEMENT FOR CERTAIN TIME IN INDONESIA, IT'S FAIR..?

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Abstract

The main problem of this paper is whether the fixed term employment agreement fulfills justice?

Does the Worker Have the Right to Bargain after the termination of the Working Agreement agreed by the two parties in relation to the principle of balance before the law. ?

The discussion of the above problems aims to: reveal that the prevalence of Certain-Time Working Agreements in the world of work which in its application often gives a sense of injustice to the workforce, which is only based on an agreement in making an agreement by the employer. And the workers have a right to bargain regarding the principle of balance before the law

The author uses qualitative normative juridical research methods, research findings reveal that

First, that the employment agreement for a specified period of time applied by the entrepreneur to the workforce has 3 things that need to be paid attention to regarding the period of time, regarding the type of work and regarding the probation period, which can be interpreted as creating injustices that have occurred for the workforce.

Second, that all disputes that arise regarding the labor party with the entrepreneur regarding the principle of balance before the law, give the adaya workers the right to negotiate in obtaining the best solution in settling disputes between the two parties.

Keywords:

Specified Time Agreement, Bargaining Rights.

Introduction

Someone after taking their education to completion, of course, wants to do a job search. There are times when a person, can also create their own job opportunities and / or look for job vacancies in government agencies or private companies. Of course, the existence of a doubt for someone about a status is a natural thing. However, the author here is meant by the status of a person who is currently working.

Sometimes someone carries out a job that is "without status / without a contract" so that it is possible to raise various questions in his mind. Of course, the existence of a work relationship, namely the relationship between the worker and the employer, will occur after an agreement is made by the worker and the entrepreneur. It appears in the agreement that the worker states his ability to work for the employer by receiving wages and the employer states his ability to employ workers by paying wages.

The existence of such an agreement is called a work agreement. The meaning of this definition is very clear that an employment relationship is a form of legal relationship born or created after a work agreement between the employee and the employer is established. At the very least, the definition of a work relationship is the activities of regularly mobilizing one's personnel / services for the benefit of other people who govern them (employers) in accordance with the agreed work agreement.

Article 1 point 15 of the Law of the Republic of Indonesia Number 13 of 2003 on Manpower states that an employment relationship is a relationship between an entrepreneur and a worker / laborer based on a work agreement, which has elements of work, wages and orders. Or in other words, a person who works without a contract then the status of the work relationship is a permanent employee. Provided that the criteria fulfill the elements of a work relationship, namely: There is work being done, there is a wage or reward given and there is an order to carry out the work.

Of course, the development of the business world or industry today has an impact on the need for clear work agreements so that they can serve as legal protection, both for workers and for companies.

Among workers themselves, there is often an understanding that a worker is divided into two, namely contract workers and permanent workers (permanent).

The existence of a work agreement, in the form of The Certain Time Working Agreement or an Indefinite Time Work Agreement, the workers and the company based *on article 52 paragraph (2) Number 13 of the Law of the Republic of Indonesia Number 13 of 2003 On Manpower* states that the work agreement made is obligatory at least based on:

1. an agreement of both parties;
2. ability or ability to take legal actions;
3. the work that was promised; and
4. the agreed work does not conflict with public order, morality, and the prevailing laws and regulations. If a work agreement is not based on the aforementioned provisions, the work agreement may be canceled.

Often, socially and economically, the position of workers is not free. As a party who has no provision for life other than that, he is forced to work for other people. It is this entrepreneur who basically determines the terms of employment **(Joseph. E. Stiglitz, 2007: P.6**)

Starting from the matters mentioned above, several problems arise which can be formulated as follows:

A. Fixed term employment agreement, does it fulfill justice?
B. Does the Worker Have the Right to Bargain after the termination of the Work Agreement agreed by the two parties in relation to the principle of balance before the law. ?

Discussion

A. Fixed term employment agreement, does it fulfill a sense of justice ?

The time work agreement has several criteria if a worker enters into a work agreement for a specified period of time with the employer. That is, the worker has the status of the termination of the working relationship with the employer. Apart from this, there are several other criteria, namely

Regarding Duration:

Whereas work that is done once completed or is temporary in nature whose completion period is not too long or is no longer than 3 (three) years. *(Article 8 paragraph (2) Decree Minister Of Manpower and Transmigration The Repubic Of Indonesia Number 100 of 2004 On The Implementation Provision Of a Certain-Time Working Agreement)*. That of course, a work agreement for a certain period of time cannot be made for work that is permanent in nature. So that the work carried out can be predicted when the work will end, at least before the 3 year period. If we pay close attention, it is clear that a work agreement made only once completed cannot be more than 3 (three) years and must be stated at once.

This means that it is determined that the 3 (three) years cannot be broken into pieces or in installments. This is where it often happens that employers sometimes do not provide jobs at once, for example a work agreement is made 6 months beforehand then extended and so on for a period of 3 (three) years. There are times when employers argue that the arrangement for granting the validity period of the work agreement is something that can be regulated independently by each part

If referring to *Decree Minister Of Manpower and Transmigration The Repubic Of Indonesia Number 100 of 2004 On The Implementation Provision Of a Certain-Time Working Agreement article 3 paragraph (5) and paragraph(6)*, only regulates the leniency of the employer to renew the old work agreement *(paragraph 5*), while *paragraph 6* concerns the interval or time lag between the old and new work agreement. Therefore, there is no provision that states that a certain time work agreement can be paid in installments for work that is temporary or once completed. Because here there is an obligation for employers to be able to predict before hiring workers with a system of working agreements for a certain time.

Furthermore, the provision of the grace period *(article 59 paragraph (6) of the Law of the Republic of Indonesia Number 13 of 2003 on Manpower)* is a separate issue in work relations. Of course, employers have no objection to the provisions of the tense period. However, it is precisely those who will feel, because during the grace period, the worker will remain at home without income for 1 (one) month. Meanwhile, if the work relationship is continued without following the grace period of 30 days, it will result in changing the status of a worker for a certain time to an employee for an indefinite period. This will be burdensome for the entrepreneur. The agreement that has been established between the workers and the employer is considered null and void because the provisions of the law already require a grace period.

However, there are times when during the grace period, both parties get around with a statement letter as if there is a desire on the part of the worker to be able to work during the grace period so as not to lose his income, even though this is not really justified.

Regarding the Type of Work:

If a job applicant at a company in a certain position, such as accounting staff, is accepted with the status of a contract employee or a work agreement for a certain period of time for 6 months. Furthermore, after the end of the 6 month period the contract is extended for 1 year. Then extended again for 4 months.

Furthermore, due to the good performance, it was extended again for 1 year, with a grace period of 30 days.

There are other related things, such as the example that if we pay close attention to the position as accounting staff, it is not a temporary job, because the position must already exist in the company's organizational structure. Or in other words, an accounting staff position is a permanent job and not temporary. Therefore, such a position should not be used as a worker for a certain time.

Regarding the Probation Period:

Often it happens in practice that the conditions of a certain time work agreement applied in the company are still preceded by using a trial period system to see the performance of the workforce. Even though the application of the probation period only applies to an indefinite work agreement. So that the probation period is something that should be avoided or should not be applied to a certain time agreement for workers.

However, the trial period that is applied is still related to the existence of new products, new activities or additional products, which are still in the trial or exploration stage, it is still possible to grant workers status with a system of working agreements for a certain time which is of course temporary or once completed.

From the above points, for companies that violate them, sometimes the company argues that the work agreement for a certain period of time is an agreement based on consensualism or the principle of mutual agreement. Or in other words, if the worker agrees to accept irregularities, the work agreement is valid and binding. So that there are also many injustices that appear in the application of a certain time work agreement by the employer to the labor party.

In the opinion of the author, that the working agreement for a certain time is not only based on the principle of consensualism alone, but also needs to pay attention to other principles. Basically, an agreement must not conflict with the principle of good faith, must not conflict with the principle of propriety and may not violate the law. So in the agreement that is made it is necessary to pay attention to the four principles in a comprehensive manner, not only one or two principles should be applied.

Furthermore, all forms of irregularities related to the work agreement made will in turn lead to labor industrial relations disputes. Of course, the disputes that arise hope to be resolved through the Bi-partij (both parties) and Tri-partij (both parties with the addition of one party from the manpower agency). Even through the Industrial Relations Court. So with the aim of the above explanation, if there are still businessmen who apply things that still violate the provisions stipulated by the prevailing laws and regulations, then it is still not fair. Even though he has put forward the principle of consesualism or agreement.

In the context of not being reflected in labor law in juridical studies, the author needs to convey that the nature of justice referred to in equal position between workers and employers is an assessment of a treatment or action by examining a norm. Therefore, the government is the party that regulates freedom through legal instruments. On the other hand, workers and employers are parties whose freedom is regulated by legal provisions.

B. Workers have the right to bargain after the closure of the work agreement agreed by both parties in relation to the principle of proportionality before the law.

Bargaining is a process to reach an agreement. The right to bargain exercised by workers or trade unions with employers is basically expected to achieve mutual welfare. **(Asri Wijayanti, 2013: P.30)**. From this purpose, it is hoped that the parties conducting the negotiations must have the same position.

However, if we pay attention to the position of the parties before the law are the same, but socially and economically different. The workers have a low work motivation tendency, but demand excessive things and are not in accordance with compensation or work results.

Meanwhile, employers have the tendency to apply economic principles by positioning workers' wages as part of production costs that must be suppressed in order to obtain profits. There are times when the entrepreneur often acts arbitrarily.

Therefore, in the opinion of the author, it is only natural that workers' rights also need attention. As stated by **Aloysius Uwiyono**, workers who are in a weak position need to be guaranteed equal freedom with employers. Or in other words, according to the principle of inequality, the weaker party should get a higher chance **(Aloysius Uwiyono, 2001: P.18**).

Even according to **John Rawls**, in his book *A Theorie of Justice*, that the concept of equality must be understood as equality of position and not rights in the sense of equal results that can be obtained by all workers **(John Rawls, 1971: P.302)**

In the author's opinion, at least it can be concretized as follows:
a. In the context of realizing social justice, this is done by establishing various coercive regulations.
b. Workers and employers can make agreements freely, but the contents of the agreement must not contradict the coercive laws established by the government which aim to protect workers as weak parties.
c. Avoiding actions that could be categorized as exploitation of workers.
d. Obtaining the right to health, while working by providing occupational safety and health tools, such as Personal Protective Equipment (PPE).

Furthermore, in accordance with the role and position of the workforce, it is necessary to develop manpower in order to improve the quality of the workforce. In addition, participation in development and enhancement of protection of workers and their families requires at least respect for human dignity.

Therefore, it is very necessary to have protection for workers intended to ensure equal opportunity and treatment without discrimination on any basis in terms of realizing welfare for workers and their families while still paying attention to the progress of the business world.

In the discussion of point B, which is related to the right to bargain, the author emphasizes the principle of Proposionality, although there are other principles such as *the Representative Principle, namely the Principle of Representation*, namely the principle which means to elect representatives with complete freedom, as well as the right to get legal entity status (for trade unions) and the right to be protected.

The next principle is the Good Faith Principle, which is a principle that is obligatory in every legal relationship and also applies to industrial relations. This is of course, that good faith becomes the basis for the formation of a trust (trust) between the parties in the agreement made.

Discussing *the principle of Proposionality*, the authors convey more comments that work agreements that have been closed or agreed upon by the workers and employers, of course, are more meaningful that there is an element of sharing the burden of obligations which should be fair. In fact, according **to Ian Mac Leod**, the Principle of Proposionality emphasizes balance in the distribution of obligations, not in the bargaining position. **(Ian Mac Leod, 1996: P. 212**)

Therefore, the authors are of the view that the principle of proportionality is more emphasized on the process and mechanism of the exchange of rights and obligations that takes place fairly. As for the meaning of the word "Fair" here is a relationship of equality, impartiality and fairness.

As expressed by **Peter Mahmud Marzuki** that "the principle of proportionality as an equitability which gives an understanding of a contractual relationship that takes place proportionally and fairly" **(Peter Mahmud Marzuki, 2003: P.205)**

Even though juridically, the position of workers and employers is equal, so they must receive the same treatment before the law. However, in a more sociological study, this is not easy. This is because in addition to employers, they are parties who have money, but also the percentage of the number of workers who need work is never balanced. This is what makes the workers' bargaining position in a work relationship practice weak.

Furthermore, according to the author, the application of the principle of proportionality has not fully provided a fair distribution of expenses. Workers are more required to always increase productivity. Meanwhile, on the other hand, the employer is not fully required to provide benefits to workers, as a form of improvement in working conditions.

The author argues that the opportunity for the right to bargain for the workers, at least can provide an opportunity to solve the problems faced by both parties. This is very reasonable, if the problem that never ends will trigger, there will be solidarity from fellow colleagues which in turn will lead to an attempt to strike for workers. And of course, the existence of a strike will continue to affect operations in increasing work productivity in obtaining profits.

And given the lower position of workers than employers, it is necessary for government intervention to provide legal protection. Legal protection is meant by the objective of ensuring justice and protection of human rights in work relations, apart from that it is also the goal of legal protection itself.

Conclusion

In the business world, the application of a work agreement between the employer and the employee is there, it is possible for a work agreement based on a certain time to terminate the working relationship. In a work agreement for a certain period of time, even though it has been based on the mandatory conditions in making the agreement, it is possible that problems will arise after the agreement is agreed and takes effect. Factors that can influence the problem, such as time period factors, factors of type of work and factors of probation. Of course, it will give losses to the workers in practice. This is an injustice in the application of an indefinite time work agreement.

It should be that any work agreement established by both parties should not conflict with the principle of good faith, must not conflict with the principle of propriety and must not violate the law. The helplessness of the position of the workers needs to be addressed by the application of the principle of proportionality, as a means of fulfilling the elements of balance and equal position for the parties making the agreement. And the principle of proportionality provides an opportunity for the workers to get the right to negotiate in the event of a dispute between the two parties. The right to bargain, at least means an effort to find solutions in the settlement of industrial relations. However, it is still hoped that there will be participation from the government as the party that makes efforts to develop and supervise so that all disputes concerning industrial relations can be avoided or resolved.

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LEGISLATION:

1. *Republic of Indonesia Law Number 13 of 2003* On Manpower
2. *Decree Minister Of Manpower and Transmigration The Repubic Of Indonesia Number 100 of 2004 On The Implementation Provision Of a Certain-Time Working Agreement*