LEGAL CONSEQUENCES FOR PARTIES BOUND BY EMPLOYMENT AGREEMENTS THAT ARE NOT IN ACCORDANCE WITH COMPANY REGULATIONS AT PT BANYUASIN NUSANTARA SEJAHTERA

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Abstract

Work agreements in a company must comply with company regulations but company regulations come into effect after being ratified by the Minister of Manpower or an appointed official. The formulation of the problem in this study is 1) What are the legal consequences for parties bound in a work agreement that are not in accordance with Company Regulations at PT Banyuasin Nusantara Sejahtera?; and 2) What is the legal settlement if a dispute arises due to a work agreement that is not in accordance with Company Regulations at PT Banyuasin Nusantara Sejahtera? The research method used is normative juridical research method. The data used in this research is secondary data. Based on the results of the study, it shows that 1) The legal consequences for parties bound by a work agreement that are not in accordance with Company Regulations at PT Banyuasin Nusantara Sejahtera are null and void by law and apply according to the provisions stipulated by. Legislation because the contents of the work agreement must not conflict with applicable company regulations and if there are conflicting provisions; and 2) Legal settlement if a dispute occurs due to a work agreement that is not in accordance with Company Regulations at PT Banyuasin Nusantara Sejahtera, namely Mediation, Conciliation and Arbitration.

Keywords*: legal consequences, work agreements, Company Regulations*

I. INTRODUCTION

The concept of Indonesian constitutionalism cannot be separated from the rule of law (rechtsstaat) by establishing the basis of the rule of law, establishing the position of wetgever as positive law, providing guarantees of legal protection for vital communities. In countries that adhere to the European civil law tradition, such as Indonesia, the existence of constitutional principles is an implementation of the principles of constitutional law. The existence of legal regulations is necessary for the social and economic protection of society. [1]

Social protection is essentially the protection of workers, which aims to respect

[1]A. Rosyid Al Atok, 2019, *Konsep Pembentukan Peraturan Perundang-Undangan*(Malang: Setara Pers, hlm 1.

the dignity of workers as human beings and ensure that their status in law is protected not only as factors of production (external factors), but as human beings with all their dignity and worth. feasible (in or constitutive factors).[2]

Economic protection is protection for workers, which means that workers/employees must be able to earn a decent wage to meet the basic living needs of themselves and their families. Technical protection is protection that refers to efforts to protect workers from the dangers of accidents involving tools or materials used for work. This labor protection aims to ensure the creation of a harmonious work relations system without pressure from strong parties on weak parties and without pressure or separation from contract workers or permanent workers.[3]

The agreement is regulated in Article 1313 of the Civil Code which regulates settlement. According to Article 1313 of the Civil Code, an agreement is an agreement between two or more people regarding property, one of whom has the right to something and the other has an obligation to something. Before entering into an agreement, of course the parties know and understand exactly what their rights are. Negotiations must be conducted in good faith, and good intentions can make dialogue more effective. Many agreements which are not always related to Article 1313 of the Civil Code do not contain the sentence "These agreements must be made in writing."[4] An agreement in Dutch law, namely the Bugerlijk Wetbook (BW), is called overeenkomst, which when translated into Indonesian means agreement. This agreement is a legal act, where one person promises another person or two people promise each other to do or not do something. Contract definitions are given, each depending on which parts of the contract are considered essential and those parts are highlighted in the definition.[5]

Legal protection for parties making an agreement is regulated in Article 1266 of the Civil Code, which explains that if one party does not fulfill it, it is null and void, but must be submitted to a judge. An application to the Judge to cancel the agreement must also be made if the agreement also states the conditions for cancellation regarding non-fulfillment of obligations. Article 1267 of the Civil Code also explains that for parties whose achievements are not fulfilled, if this can still be done then they can force the other party to fulfill the agreement, accompanied by compensation for losses and interest.

A partnership is an agreement formed between people to run a business for profit.

[2]Lalu Husni, 2018, *Pengantar Hukum Ketenagakerjaan Indonesia*, Jakarta : PT RajaGrafindo Persada, hlm. 35.

[3] Agusmidah, dkk, 2017, *Bab-Bab Tentang Hukum Perburuhan Indonesia* Dalam Jurnal USU Law Journal, Vol.5.No.1 (Januari 2017)

[4] Subekti, 2019, *Hukum Perjanjian*, Jakarta : PT. Intermasa, hlm. 13.

[5] Munir Fuady, 2018, *Arbitrase Nasional; Alternatif Penyelesaian Sengketa Bisnis*, PT Citra Aditya Bakti, Bandung,, hlm.13

This relationship arises in a contract stated directly or indirectly by the parties. Partnerships can only exist at the discretion of the parties forming the.[6] Forms of partnership give rise to rights and obligations for the parties which are stated in the partnership agreement or determined by law.[7]

One example is a work agreement made by individual employees and entrepreneurs or company leaders. A work agreement is an event that occurs when an employee makes a promise to a company representative who promises each other to carry out a work activity. An important objective in an employment agreement is that the work conditions provided by the employer must be obeyed and implemented properly by the employee or worker, and the employee has the right to demand his rights from the employer, while the employer also has the right to demand his rights from the employee and the employer must implement them. obligations to employees and vice versa. At PT Banyuasin Nusantara Sejahtera regarding the arrangement of work agreements that use articles of the old labor law where there are several articles that have been abolished in the new law.

The employment contract at the company must be in accordance with the company deed, however the old company deed needs to be revised or adapted to new regulations, so it needs to be revised and submitted for approval, but if the company does not submit its approval, it is invalid or has no legal force. This is because company regulations come into effect after being ratified by the Minister of Manpower or an appointed official, as regulated in Article 108 paragraph (1) of the Manpower Law and Government Regulation Number 35 of 2021. There are changes to the provisions. regarding the preparation of the structure and salary scale for workers. In Article 92 of the Manpower Law, employers must consider class, position, seniority, education and expertise in creating salary structures and scales. Furthermore, in paragraph (2), employers carry out salary revisions periodically by considering the company's capabilities and productivity.

The current phenomenon is that in company structures, sometimes company regulations have not been updated, and most companies still apply old regulations. In fact, a company is obliged to arrange the structure and scale of wages in the company only taking into account the company's capabilities and productivity. Based on the background above, the author tries to write with the title "Legal Consequences for Parties Bound in Employment Agreements that are Not in

[6] Johannes Ibrahim.2017, *Hukum Organisasi Perusahaan Pola Kemitraan dan Badan Hukum*, Refika Aditama, Bandung, hlm. 26-27.

[7] *Ibid.*, hlm. 26.

Accordance with Company Regulations at PT Banyuasin Nusantara Sejahtera".

II. RESEARCH METHODOLOGY

The type of research used is normative research. This type of research is normative legal research, namely legal research carried out by examining library materials or secondary data, also called doctrinal research, where law is often conceptualized as what is written in statutory regulations (law in books) or conceptualized as rules or Norms are standards for human behavior that are considered appropriate.

According to Peter Mahmud Marzuki, normative legal research is the process of discovering legal rules, legal principles and legal doctrine to answer the legal questions faced. This approach is carried out by reviewing theoretical approaches, concepts, reviewing legal regulations related to this research or legal approaches. This normative research is systematic legal research, namely research whose main aim is to find out the meanings or foundations in law.

Legal science research uses secondary types of data. Data collection techniques are carried out by means of library research, namely conducting a study of secondary data in the form of primary legal materials (legislation), secondary legal materials (literature, research reports, papers, scientific works published in scientific magazines) , and tertiary legal materials (Indonesian dictionary, English dictionary, Dutch dictionary, legal dictionary, encyclopedia, statistical data) that are relevant to the problems of this research.

III. DISCUSSION AND RESULTS

3.1 Legal consequences for parties bound by employment agreements that do not comply with company regulations at PT Banyuasin Nusantara Sejahtera

Company regulations According to Article 1 point 20 of Law Number 13 of 2003 concerning Employment ("Employment Law") are regulations made in writing by employers which contain work conditions and company regulations. Entrepreneurs who employ at least 10 workers/laborers are required to make company regulations which come into effect after being ratified by the Minister of Manpower or an appointed official. However, this obligation does not apply to companies that already have a collective work agreement. These company regulations are prepared by and are the responsibility of the entrepreneur concerned. The provisions therein must not conflict with applicable laws and regulations, by at least containing:

a) rights and obligations of entrepreneurs;
b) rights and obligations of workers/laborers;
c) work conditions;
d) company regulations; And
e) the period of validity of company regulations.

Company Regulations are regulations made in writing by employers which contain

work conditions and company regulations in accordance with the provisions of Article 1 point 20 of Law Number 13 of 2003 concerning Employment. Provisions regarding company regulations are further regulated in Articles 108 to Article 115 of Law Number 13 of 2003 concerning Employment ("Law No.13 of 2003") and Regulation of the Minister of Manpower and Transmigration Number PER.16/MEN/XI/ 2011 concerning Procedures for Making and Ratifying Company Regulations and Making and Registration of Collective Work Agreements ("Permenaker 16/2011"). plaintiff.

Basically, the employment relationship is the relationship between workers. Legal certainty is a guarantee regarding the law containing justice. Norms that promote justice must truly function as rules that are obeyed. According to Gustav Radbruch, justice and legal certainty are permanent parts of the law. He believes that justice and legal certainty must be taken into account, legal certainty must be maintained for the sake of security and order in a country. Finally, positive law must always be obeyed. Based on the theory of legal certainty and the values to be achieved, namely the values of justice and happiness.

If we relate the theory of legal certainty in an agreement in accordance with Article 1313 of the Civil Code and the rights and obligations in a rental agreement, it emphasizes clear interpretation and sanctions so that an agreement/contract can provide equal standing between the legal subjects involved (the parties entering into the rental agreement).). Certainty provides clarity in carrying out legal actions when implementing a rental agreement/contract, in the form of performance, even if the agreement is in default or one of the parties is harmed, the sanctions in the agreement/contract must be carried out according to the agreement of the parties, both the lessee and the other party. who rents.

Where the contents of the employment agreement must not conflict with applicable company regulations and if there are conflicting provisions then the legal consequences for the parties bound by the employment agreement which are not in accordance with the Company Regulations at PT Banyuasin Nusantara Sejahtera are null and void and apply in accordance with the provisions which has been arranged by. Legislation. Thus, it can be said that in implementing the agreement there are still violations of the provisions regulated by law and of course this has an impact on the rights of employees so that the protection provided is not implemented because it is not in accordance with company regulations.

3.2 Legal Settlement If a Dispute Occurs Due to an Employment Agreement Letter That Does Not Comply with Company Regulations at PT Banyuasin Nusantara Sejahtera

Make work contracts both written and verbal. Contracts contain rights and obligations, in their implementation problems often arise which, if there is no mutual understanding, and if they cannot be resolved, can ultimately lead to disputes between the parties. In English, the term used to define a dispute or dispute is conflict or discord. Of course, companies and workers have different interests, so that sometimes there are disputes regarding rights and interests or termination of employment due to violations of substantive labor law norms, so parties with formal legal entities may not take precautionary measures (eigenrichting).) which has nuances of arbitrariness, but must be followed by applying or implementing formal legal norms which are also called procedural law, as regulated in Law no. 2 of 2004 concerning Settlement of Employment Relations Disputes between Companies and Workers/Labourers.

The employment relationship should be stated in the employment contract between the company and the worker. The employment contract should be made in writing, but it can also be unwritten or often called verbal. The contract is made in writing (in writing) which is concluded by signing between the parties. while the middle part. Oral work or often called unwritten work requires the absence of signatures between parties who are usually tasked with arranging work conditions and regulating the rights and obligations between interested parties. Meanwhile, both verbal and unwritten employment relations must be without signature between the parties. it is only by breach of one of the contracts that the relationship between the parties becomes null and void and can be deemed to exist. Because employment contracts are not made in writing, they must refer to applicable employment regulations.

Legal resolution if a dispute occurs due to a work agreement letter that is not in accordance with Company Regulations at PT Banyuasin Nusantara Sejahtera, namely:

First, Mediation. In the event that the dispute is carried out through mediation, after 7 days since the parties submitted their case, the mediator must conduct research regarding the situation of the case and immediately hold a mediation hearing. The mediator appointed by the government must fulfill the requirements contained in article 9 of Law no. 2 of 2004. The appointment and accommodation of mediators is determined by the Minister of Manpower. When the dispute has been resolved, a joint agreement is drawn up which is signed by the parties and the mediator. Then the collective agreement is registered with the Industrial Relations Court at the local District Court.

If no agreement is reached, according to Article 13 of Law no. 2 of 2004, the mediator issues written recommendations no later than ten days after the first hearing. The parties are required to provide a written response to the mediator within a period of no later than ten working days after receiving the written recommendation. A party who does not provide an opinion is considered to have

rejected the written recommendation. If the parties agree with the mediator's recommendations, within three days a Collective Agreement must be drawn up which is then registered at the Industrial Relations Court to obtain a certificate of registration.

Second, Conciliation. A conciliator is a conciliation official who is appointed and dismissed by the Minister of Manpower based on advice from a trade union organization or labor union. The requirements for becoming a conciliation officer are contained in article 19 of Law no. 2 of 2004. Dispute resolution through conciliation can only be carried out after the parties submit a written request for settlement to a conciliator appointed and agreed upon by the parties and has been legitimized in their work area which includes the worker/laborer's place. The list of names of conciliators can be seen at the local government agency responsible for employment.

Within seven working days of receipt of the written settlement request, the conciliator must begin investigating the case, and on the eighth day must hold a settlement hearing. In the event that an agreement is reached to resolve an industrial relations dispute through conciliation, a joint agreement is drawn up, signed by the parties, witnessed by a conciliator, and then registered with the industrial relations court at the district court in the jurisdiction. the parties enter into a mutual agreement to obtain a certificate of implementation. If no agreement is reached as referred to above, the conciliator issues a written recommendation which must be submitted to the parties no later than ten working days after the first conciliation hearing. Within ten working days of receipt of the written recommendation, the parties are obliged to provide a response to the conciliator whether to reject the recommendation or accept it. If the parties or one of the parties does not provide an opinion, it is deemed to reject the conciliator's recommendation. If the parties agree to the conciliator's written recommendation, then within three working days after the written recommendation is approved, the conciliator must make a collective agreement which will then be registered with the industrial relations court at the district court in the jurisdiction of the party entering into the agreement. into a mutual agreement. In the event that one of the parties or parties does not accept the conciliator's written recommendation, then the parties or one of the parties can continue the settlement through the Industrial Relations Court.

Third, Arbitration. The parties to the dispute can choose which is determined by the Minister of Manpower. The appointment of the arbitrator is based on the decision of the Minister of Manpower. Disputes that can be resolved through arbitration are disputes of interest, disputes between worker/labor unions in one company, arbitration decisions are final and cannot go through industrial relations courts.

In the event that the arbitrator's decision raises doubts, a claim for denial can be filed at the local district court by providing authentic reasons. The district court in Article 38 of Law no. 2 of 2004 in making reasons for refusing where no further resistance can be submitted. According to article 44 of Law no. 2 of 2004, if peace is reached, the arbitrator must make a deed of peace signed by the parties witnessed by an arbitrator or panel of arbitrators.

The determination of the peace deed is registered before the court and can also be executed by the court or the decision. The arbitrator's decision is made in triplicate and given to each party in one copy and registered with the industrial relations court before the decision which has become legally binding cannot be further advanced. Even though the arbitration award is actually final, if the parties are not satisfied with the decision, the parties can request an annulment of the arbitration award to the Supreme Court.

IV. CONCLUSION

Based on the research results and discussion above, it can be concluded that:

1. The legal consequences for parties bound by a work agreement that do not comply with the Company Regulations at PT Banyuasin Nusantara Sejahtera are null and void and apply in accordance with the provisions regulated by. Legislative regulations because the contents of the employment agreement must not conflict with applicable company regulations and if there are conflicting provisions
2. Legal resolution if a dispute occurs due to a work agreement letter that is not in accordance with Company Regulations at PT Banyuasin Nusantara Sejahtera, namely Mediation, Conciliation and Arbitration.

V. SUGGESTION

Based on the research conclusions above, suggestions can be given:

1. For the relevant Manpower Department, if the employment agreement is not in accordance with Company Regulations then the legal protection provided by the Law will not be implemented so that there must be strict law enforcement so that irregularities that occur can be reduced so that employers and employees can operate smoothly. together as their respective functions.
2. The government must provide guarantees for the rights and obligations of the relevant parties so that harmonious working relationships can be implemented

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