

Analysis of the Negotiation Period of the XXI Collective Working Agreement of PT Freeport Indonesia on the Rights of Workers

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Abstract

Disputes are a reality that cannot be separated from human life, not least in the Collective Labor Agreement (PKB) negotiation forum. The existence of negotiations is one of the determining processes in the decline, stagnation, or increase in workers' rights, of course, followed by the rights and obligations of each in a balanced manner. The results of this study indicate that the disputes that occurred in the PT Freeport Indonesia Collective Labor Agreement negotiations were a form of realistic disputes in the form of interests with the demands, benefits, strengths, resources, and values to be achieved by both parties through the proposals of the parties. which is fought for acceptance becomes a provision in the collective labor agreement. The workers are trying to improve the fulfillment of workers' rights, while the employers are of the opinion that the obligations and rights of each party have been fulfilled in a balanced way. However, the absence of restrictions on collective bargaining agreements will have implications for the period of implementation of the fulfillment of the rights of workers stipulated in the new collective labor agreement and will have an impact on the collective work agreement of the company or contractor who is a joint partner of PT Freeport Indonesia.

Keywords

workers' rights;
collective labor
agreement;
negotiations



I. Introduction

Collective Labor Agreement (PKB) is basically an agreement made by 2 (two) parties, namely a trade union with one or more employers which is valid in 1 (one) company. Its existence is important because it is a means to bring together different interests, views, values, and goals to be later adapted into 1 (one) common forum. The CLA also regulates basic matters in the form of working conditions and work requirements related to various important aspects of the lives of workers and entrepreneurs inside and outside the company as well as the survival of the company itself, such as working hours, leave and work holidays, and wages which are part of the company's work. the main carrying capacity of work quality. Moreover, it is also able to improve worker-employer relations, prevent employee-employer deviations, and to some extent resolve disputes between worker-employers.

Guidelines for Collective Labor Agreements In addition to these arguments, the Law of the Republic of Indonesia no. 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Act) implicitly contains normative reasons for the importance of the existence of PKB in companies (epistemology), in which PKB:

1. Underlies the worker-employer working relationship which has elements of work, wages, and orders (Article 1 number 15);
2. Contains working conditions, rights and obligations of both parties (article 1 point 21);
3. To seat and affirm an equal position between workers and employers because it is the result of negotiations (article 1 point 21) and deliberation (article 116) of the two parties;
4. Is a means of carrying out industrial relations (article 103 letter f);
5. It is the basis and obligation for trade unions, workers and employers to implement it (article 126);
6. It is a guideline for making a work agreement (article 127). By understanding the essential value of the presence of PKB in the company, it is hoped that both parties, both workers and employers, will take the initiative to realize and maintain the sustainability of the implementation of PKB. In addition to a number of arguments for the urgency of the presence of PKB, Budiarti (2012) outlines the objectives (axiology) of holding PKB:
 1. Determining working conditions and working conditions;
 2. Regulating the relationship between employers and workers;
 3. Regulating the relationship between employers or employers' organizations and workers' organizations/labor unions

Noting that the PKB is so important, then in the case that was appointed, PT. Freeport Indonesia and its Labor Union also took part in the formation of the PKB PT. Freeport Indonesia, which was originally going to be extended again because the previous CLA had been in effect for 2017-2019, so that as of 2019 consultations had begun on the new PKB.

However, the deliberation and negotiation of the 21st PKB PTFI requires a very long process which starts from:

1. 1-9 December 2019: the beginning of the negotiations
2. 3-25 February 2020: renegotiation,
3. 2-6 March 2020 deadlock: renegotiation,
4. Mediation deadlock at the Ministry Manpower
5. Industrial Relations Court Decision 2021

As well as demands by the trade unions are as follows:

1. Increase in wages
2. Increase in Productivity Bonus
3. Living Cost Assistance by 5 percent
4. Contribution Increase in old age by Rp250,000
5. Transportation assistance for Jakarta and Surabaya employees
6. Maternity leave, from 1.5 months to 2 months.
7. The increase in the retirement age

of PT Freeport Indonesia's 21st PKB negotiations which took a long time from 2019-2021, which should have been in effect since 2020, certainly has implications for workers' rights as one of the big things in the substance of the CLA. The increase or decrease in the fulfillment of workers' rights in the CLA is influenced by the period of its validity based on the time of the PKB negotiation itself. In addition, that the duration of the PKB negotiations is determined based on the agreement of the parties and is stated in the negotiation rules², then of course this has implications for the rights of workers as regulated in the PKB.

II. Review of Literature

2.1 Legal Certainty Theory Legal

Certainty will guarantee everyone to take actions in accordance with applicable legal provisions, and vice versa without legal certainty, a person will not have a reference in determining his behavior. Gustav Radbruch revealed that there are four references related to the meaning of legal certainty. Among them, the law is based on existing facts, not a formulation based on the judge's judgment, the fact must be formulated clearly to avoid ambiguity or confusion in the meaning of the law, the law is positive in the form of legislation, the positive law is not easily changed. Justice and legal certainty are permanent parts of the law. He argues that justice and legal certainty must be considered, legal certainty must be maintained for the security and order of a country.⁶

2.2 Theory of Legal Protection

According to Satjipto Rahardjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the public so that they can enjoy all the rights granted by law. Furthermore, according to Phillipus M. Hadjon, that protection law for the people is a preventive and responsive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion and Responsive protection aims to prevent disputes, including its handling in the judiciary.

III. Research Method

Research method is a research method that emphasizes in-depth understanding of a problem rather than looking at problems for generalization research, which uses in-depth analysis techniques, namely examining problems on a case-by-case basis, because the methodology Qualitative researchers believe that the nature of one problem will be different from the nature of other problems.

Study research is research that examines phenomena or events as a whole and comprehensively in actual conditions, using various forms of qualitative data. This explanation shows that the characteristics of case study research are generally the same as the characteristics of qualitative research in general. The characteristics of qualitative research are based on its main objective, namely to explore the basic substance behind the facts that occurred.

Primary legal materials used in this study include statutory regulations, judge decisions, and minutes of the trial for making laws, including:

1. Law Number 13 of 2003 concerning Manpower
2. Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes,
3. Regulation of the Minister of Manpower Number 28 of 2014 concerning Procedures for Making and Legalizing Company Regulations and Making and Registering Collective Labor Agreements
4. Decision Court Relations Industrial Number W10.U1.PHI.326/IV.2021.04

Secondary: Ingredient Secondary law is legal material obtained from textbooks, journals, and doctrines from legal experts who discuss the transition of a contract of work into a special mining business license. Where the secondary legal materials are used in order to help analyze and understand the existing primary legal materials.

IV. Results and Discussion

4.1 The effect of PT Freeport Indonesia's CLA on PT Freeport Indonesia's PKB Contracting Company

Basically, the CLA is not a document that must be owned by all companies, but a means to include a new agreement if this is required by both parties (companies and workers). Although not mandatory, Haiyani Rumondang as Director General of Industrial Relations and Labor Social Security (PHI and Jamsos) said that ideally every company has a PKB. It is with this PKB that harmonious and just industrial relations can be realized. For this reason, it is highly recommended to make CLAs to provide several benefits for workers and entrepreneurs themselves.

1. Workers and employers will have a better understanding of their respective rights and obligations;
2. Reduce the incidence of industrial relations disputes or labor relations so as to maintain the smooth production process and increase business;
3. Employers can budget for labor costs (labor costs) that need to be reserved or adjusted to the validity period of the CLA.⁹

According to Robert L. Hulbroner, what is meant by multinational companies are companies that have branches and subsidiaries located in various countries. Thus J. Panglaykim, stated that a transnational company is a type of company consisting of various groups of companies that work and are established in various countries, but all of them are supervised by a single central company. Rugman stated that multinational companies are companies that operate across national borders, producing abroad other than domestically. These multinational companies produce at least in foreign countries. While According to Michael and Shaked, companies are classified as multinational based on two conditions. First, the company must have a foreign sales account of at least 20% of the revenue. Second, direct capital investment is found in at least six countries outside the country. According to Sumantoro, transnational companies basically refer to the nature of transcending national boundaries, both in ownership and in their business activities.¹⁰

In terms of the contents of the PHI Decision Number W10.U1.PHI.326/IV.2021.04 which also explains that PTFI is a multinational company and has many contractors working together in it, so these contracting companies tend to follow the PKB owned by PTFI considering The standards used by PTFI are also high so that they can be used as a reference for PTFI contractors.

This is because PTFI is a large-scale company and has a number of contractors in it so that companies as PTFI contractors have a tendency to follow PTFI's policies in terms of industrial relations with the government. In addition, often union and management knowledge of labor law is low and negotiation skills are also low so that the negotiation process becomes a deadlock eventually culminate in a dispute process until the relationship court industrial.¹¹ So as to avoid a long time being used for negotiations, the contractor companies tend to follow the CLA belonging to another company.

4.2 Implications of too long a period of CLA negotiations on workers' rights (PTFI's 21st PKB Negotiation Case) 13 of 2003 concerning Manpower (“UUK”):

1. The validity period of the collective labor agreement is a maximum of 2 (two) years.
2. The collective work agreement as referred to in paragraph (1) may be extended for a maximum of 1 (one) year based on a written agreement between the entrepreneur and the trade/labor union.

3. Negotiations for making the next collective work agreement can be started no later than 3 (three) months before the end of the current collective work agreement.
4. In the event that the negotiations as referred to in paragraph (3) do not reach an agreement, the collective work agreement that is currently in force will remain valid for a maximum of 1 (one) year.

In accordance with the above provisions, the validity period of the CLA is a maximum of two years, and when the validity period is about to expire, the employer and the worker can negotiate a new draft CLA to be enforced in the next period or enter into an agreement to extend the validity of the previous CLA.

In the event that the negotiations have not reached an agreement even though it has been running for 7 (seven) months, the PKB that is currently in effect will remain valid for a maximum period of 1 (one) year (Article 123 paragraph (4) of the UUK). So, based on Article 123 paragraph (4) of the UUK, if after the expiration of the old PKB, but the new PKB has not been agreed upon, then the PKB whose validity period has expired will remain valid for a maximum period of 1 (one) following year.¹²

If it is related to PTFI's 21st CLA for the 2019-2021 Period, which in the negotiations itself took almost 2 years, it certainly has implications or influences on workers' rights given the importance of the CLA itself regulates the rights and obligations of each party, namely the worker and the employer. If in the 21st PKB there is stagnation in the fulfillment of workers' rights as in the previous PKB, then workers' rights will not be eroded due to the cuts in the implementation of the CLA due to too long negotiations. Likewise, if there is an increase in the fulfillment of workers' rights compared to the previous CLA, the implementation is not in accordance with the PKB period as it should be due to the lengthy negotiation period being cut short. So that legal protection for workers' rights has been neglected due to the lengthy period of the CLA negotiation itself.

In addition, based on Article 14 paragraph (4) of the Minister of Manpower Regulation Number 28 of 2014 concerning Procedures for Making and Ratifying Company Regulations as well as the Making and Registration of Collective Labor Agreements which stipulate that the length of the PKB negotiations is determined based on the agreement of the parties and is set forth in the negotiation procedures which result in the PKB negotiations being able to be negotiated. running without a certain time limit resulted in legal uncertainty due to the legal vacuum regulating the time limit for the PKB negotiations.

V. Conclusion

There is a tendency for companies to avoid the time and cost of large CLA negotiations, as well as the lack of ability to make CLAs, which causes a tendency to follow PTFI's PKB, where if PTFI's PKB is good, other companies will fulfill their rights and obligations well and vice versa.

The lack of legal protection for workers' rights and legal uncertainty that occurred in the making of PT Freeport Indonesia's 21st CLA due to the absence of a specific time limit for negotiations and cutting off the implementation of the new CLA due to the lengthy negotiation period.

Suggestions

Make rigid regulations as a strong basis for limiting the period of PKB negotiations so that there is no derogation from the fulfillment of workers' rights.

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