

# The Juridical Analysis between Collective Labor Agreements between Employers and Trade Labor Unions in the Company

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## Abstract

*Both Employers and Trade Unions / Labor unions and laborers always want high productivity and the welfare of laborers and their families. This desire can be achieved if employers and trade unions/labor unions as well as laborers are fostered a harmonious working relationship at the company. To create a harmonious working relationship between employers and trade unions/labor unions and with laborers, one of them needs to set working requirements in the company. The Manpower laws does not regulate the working requirements in the company and only regulates work norms in general. The Manpower laws gives employers and trade unions the freedom to enter into an agreement or consensus known as the Collective Labor Agreement, which contains not only the working requirements but it also includes the work norms, and should not conflict with statutory regulations. The Collective Labor Agreement which involves employers and trade unions/labor unions whose contents govern the working requirements and work norms is to explain the rights and obligations of employers and trade unions/labor unions and laborers which constitute the Acts for employers and trade unions/labor unions and laborers and their implementation is overseen by the Office which is responsible for manpower affairs.*

## Keywords

employer; trade unions /  
labor unions; collective  
labor agreement



## I. Introduction

Employers and laborers always try to make the relationship between employers and laborers always harmonious in the company so that high productivity and laborers become prosperous. Employers always aspire that their company is always lucky, and fortunately a company must achieve high productivity in the company. Laborers also have a desire for higher wages so that laborers and their families prosper, in fact the ideals of employers and laborers are no different because employers want the progress of the company and laborers and also their families want to prosper.

It is impossible for workers with higher wages if the company is not progressing or lucky and if the wage increase is not accompanied by the company's progress, the company will close. The position of employers and laborers in the eyes of the law is the same, that is the same has the rights and obligations, but in terms of psychology the position of employers and workers/ laborers is not the same because the employers is rich because of his capital, while the worker/laborer is not rich, his capital is only his energy and thought. Between employers and laborers are bound by a work relationship based on a work agreement that is the existence of workers to be worked on by laborers and employers provide wages to laborers, employers give orders to laborers what will be done and how to work in the company.

To regulate the working relationship between employers and laborers, the Indonesia Government has issued several Manpower Laws along with its regulations, but the Manpower Laws and regulations are not yet complete to regulate all that occurs in employment relations between employers and laborers such as working conditions. The working conditions in this case are the rights and obligations of employers and laborers that have not been fully regulated in the Manpower Laws. In general, there are no stipulations on the working conditions by Manpower Laws because the conditions of companies are not the same as those of working in the morning, working in the evening and at night and the types of companies varying so heterogeneous. The incompleteness of the Manpower Laws and its regulation which UU Law No. 13 of 2003 concerning manpower in article 108 requires employers to employ laborers now less than 10 (ten) people are required to make company regulations which come into force after being ratified by the Minister or Officer designated. This company regulation is prepared by employers by taking into account the advice and consideration of laborers representatives in the company, and if a company has formed a trade union, the laborers' representative is the Management of Trade Unions and the obligation to make bussiness regulations is not applies to companies that already have a Collective Labor Agreement. Then Indonesia Republic Law number 13 of 2003 concerning manpower in article 116 states that Joint Work Agreements with Trade Unions/Labor Unions or several Trade Unions/ Trade Unions that have been registered with the agency responsible for manpower affairs with employers or several employers and the establishment of Work Agreements Jointly carried out by Deliberation.

Seeing the content of Article 116 of Republic of Indonesia Law No. 13 of 2003 concerning Manpower that the establishment of a Collective Labor Agreement between Employers and Trade Unions / Laborers with employers or several employers, means there is an agreement or consensus between Trade Unions / Labor Unions with employers or several employers.

## **II. Research Method**

The research method used in this study was the normative juridical research method, normative juridical research was conducted on the principles of law, legal norms contained in Manpower Laws. Normative juridical research uses secondary data obtained from the literature, while secondary data consists of primary material, secondary material and tertiary material. This research was descriptive analysis that describes it with what happened to the problem and limits the research theory to the juridical analysis of the Collective Labor Agreement between Employers and Trade Unions / labor unions within the company and guided by RI Law No. 13 of 2003 concerning Manpower. The primary legal material used in this study was the basic norms or rules, namely the laws and regulations relating to the Collective Labor Agreement specifically examined from RI Law. No. 13 of 2003 on Manpower along with other regulations. The data collected analyzed by qualitatively, namely the selection of the most important articles relating to the juridical analysis of the Collective Labor Agreement between Employers and Trade Unions in the company, then the data presented in the form of a systematic description to explain the relationship between the data which finally can describe and explain the legal basis and can provide an explanation of the problem.

## **III. Discussion**

### **3.1 The Need for a Collective Labor Agreement between the Employer or a Number of Employers and Trade Unions/ Labor Unions or several Trade Unions / Labor Unions in the Company**

#### **a. The History of Collective Labor Agreement in Indonesia**

During the Dutch colonial era in Indonesia the Collective Labor Agreement was known as the Labor Agreement, this can be seen from the content of Article 1601 n Civil Code, namely:

A labor agreement is a regulation made by one or several associations of legal entities and a legal union or labor union regarding the terms of work that must be heeded in making the Work Agreement. This Labor Agreement during the Dutch colonial era in Indonesia was known as the *Collective Arbeids Overeenkomst* (CAO) and in English it was known as Collective Labor Agreement (CLA).

In Law No. 21 of 1954 concerning Labor Agreements between Trade Unions and Employers still mention labor agreements as referred to in article 1 paragraph 2 reads: Labor Agreement is an Agreement entered into by or a Trade Union registered with the Ministry of Labor with employers, employers, incorporated employer associations law, which generally or solely contains terms of work that must be considered in a work agreement. The term Trade Unions began to diminish in Indonesia after Law No. 14 of 1969 concerning the basic provisions concerning labor, however, due to the validity of Law no. 21 of 1954 concerning Labor Agreements between Trade Unions and Employers and this Law came into force after RI Law No. 13 of 2003 concerning existing Manpower regulates About Collective Labor Agreements starting from article 116 to article 135 which is then followed by RI Minister of Manpower and Transmigration Regulation No. PER-08 / MEN / III / 2006 regarding Amendment to Decree of the Minister of Manpower and Transmigration Number KEP 48 / MEN / IV / 2004 concerning the procedures for Making and Ratifying Company Regulations and the Making and Registration of Collective Labor Agreements

#### **b. Procedures for Establishment of Collective Labor Agreements between Employers and Trade Unions / Labor Unions in the company.**

The procedure for establishment of collective labor agreement between Employers and Trade Unions / labor unions is regulated in RI Law No. 13 of 2003 on Manpower starting from Article 116 to Article 135, namely:

##### **1. Discussion**

Employers and trade unions / labor unions hold deliberations with trade unions / labor unions registered with the agency responsible for manpower, which if there is only 1 union in the company with 50% (five percent) members of the total number of workers / laborers in the company. Verification of trade union membership is based on evidence of membership cards and if there is more than one membership card, the valid membership card is the last membership card.

In accordance with the Laws of Trade Unions / Labor Unions if there is a problem regarding the membership of Trade Unions / Labor Unions, then the concerned laborers are entitled to vote in writing to one of the Workers' Unions of their choice and the results of Verification are stated in the minutes marked handle by the committee and the witnesses whose results are binding on the Trade Union / Labor Union in the company.

To determine the negotiating team for the employers' trade unions / labor unions each of them sets its negotiating team according to their needs. The negotiating team to form a Collective Labor Agreement must agree on the rules of negotiations to at least contain: The

purpose of the order, the composition of the negotiating team, the length of the negotiation period, the negotiation site, the negotiation procedure, the procedure for settlement in the event of a deadlock, negotiations and legal fees.

If in the company there is only one Trade Unions / Labor Unions but does not have a membership of more than 50% (fifty percent) of the total number of workers / laborers, the Trade Union can represent workers / laborers in negotiations with employers if the Trade Unions / Labor Unions concerned have received support of more than 50% (five percent) of the total number of workers / laborers in the company through voting, and if this is not achieved, the Trade Union can re-submit a request to negotiate a Collective Labor Agreement with businessman past 6 (six) months from the date of voting. If in the company there are more than 1 (one) Trade Unions / Labor Unions, then the right to represent workers / laborers to enter into negotiations with employers must have more than 50% (fifty percent) of members. If less than the Trade Unions / Labor Unions can make a coalition so that it reaches more than 50% (fifty percent) of the total number of workers / laborers of the company, if it turns out that more than 50% (fifty percent) is not achieved then the Trade Unions / Labor Unions form negotiating teams whose membership is determined professionally based on the number of members of each Trade Unions / Labor Unions and membership of the Trade Unions must be proven by the membership card as a Trade Unions / Labor Unions and this vote is held by a committee consisting of representatives - workers / laborers' representatives and the management of the Trade Unions / Labor Unions witnessed by the responsible official, if the deliberation does not reach an agreement, the settlement will be through the Industrial Relations Dispute Settlement procedure.

## 2. The Form, Validity Period and Contents of the Collective Labor Agreement

The form of the Collective Labor Agreement between the company with Trade Unions / Labor Unions must be made in writing in Latin letters and in Indonesian, and if it does not use Indonesian, a translation must be made in Indonesian by sworn translators and the translation is in accordance with its contents.

In one company only one Collective Labor Agreement can be made that applies to all workers / laborers in that company. The validity period of the Collective Labor Agreement is a maximum of two years and can be extended for a maximum period of one year based on a written agreement between the employer and the Trade Union / Labor Union and the negotiation of the making of the next Collective Labor Agreement can be started as soon as three months before the end of the current Collective Labor Agreement. If the negotiation fails to make a new Collective Labor Agreement, then the Collective Labor Agreement that is still in effect remains valid for a maximum of one year. Collective Labor Agreement contain at least the rights and obligations of employers, the rights and obligations of trade unions / labor unions and workers / laborers, the period and date of entry into force of the collective labor agreement and the signatures of the parties making the collective work agreement. This Collective Labor Agreement must not conflict with applicable laws, the intention here is that the quality and quantity of the contents of the Collective Labor Agreement must not be lower than the legislation. In article 79 paragraph (2C) of RI Law No. 13 of 2003 concerning Manpower, it is called vacation annual at least twelve working days after the relevant worker / laborer works for 12 twelve months continuously, apparently in the Collective Labor Agreement, vacation is only given ten working days. Then in Collective Labor Agreement regulating working hours of sixty hours per week without pay overtime salary while in Article 77 of RI Law No. 13 of 2003 concerning Manpower only fourth hours per week. If

found in the Collective Labor Agreement, such as vacation of ten working days and sixty hours per week without pay overtime salary, So that the Collective Labor Agreement is canceled for the sake of law and the applicable is the regulation per Manpower Laws. Usually the Collective Labor Agreement is higher in value than the legislation, the Collective Labor Agreement is called quality such as vacation to be fourteen working days, there is a bonus if the company is profitable in addition to the rights that have not been regulated in legislation such as hours come to work, hours go home, there is a loss to be arranged so that workers / labor transport is given.

### 3. The Obligations of Employers and Trade Unions/Labor Unions in implementing Collective Labor Agreements

If there is a Work Agreement between the employer and the workers / laborers in the company, it turns out that there is no regulation contained in the Work Agreement, then the applicable rules are those in the Collective Labor Agreement. Employers are prohibited from replacing Collective Labor Agreement with Company regulations, as long as there is a Trade Unions / Labor Unions in the company and if there is no union in the company then the employer can replace the Collective Labor Agreement with company regulations but the contents are not lower than the Collective Labor Agreement.

### 4. Registration is regulated in the Republic of Indonesia Minister of Manpower and Transmigration Regulation No. PER.08 / MEN / III / 2006 concerning Amendment to the Decree of the Minister of Manpower and Transmigration Number KEP-48 / MEN / IV / 2004 Concerning the Establishment and Ratification of Company Regulations and Establishment and Registration of Collective Labor Agreement

Ratification of the Collective Labor Agreement must be carried out by the employers to the agency responsible for the district / city manpower for companies that are only in one district / city, to those responsible for manpower in the province if the company has more than one regencies / cities in one province and to the Director General of Industrial Relations Development for companies in more than one province. The function of the collective labor registration is examined by the Employment Agency Officer no later than seven working days from the receipt of the request for registration.

If all the requirements have been fulfilled and there are no more conflicts with manpowers laws and regulations, then no later than seven working days after the completion of the study, a Collective Labor Agreement registration shall be issued by the Officer in charge in the field of Manpower.

### 5. Benefits of Collective Labor Agreements in Company

A harmonious working relationship between employers and workers / laborers is needed to achieve high productivity and survival of the company, and to achieve high productivity and survival of the company, one of which is needed to create a harmonious industrial relationship between employers and workers, for this it is necessary to regulate work norms and terms of employment. Work norms in general have already been regulated in manpower legislation whereas working conditions have not been regulated and manpower laws and regulations have been handed over to employers and workers / laborers through their representatives Trade Unions / Labor Unions can make a Collective Labor Agreement.

In establishing the Collective Work Agreements between employers and trade unions / labor unions through collective bargaining, the contents of the Collective Labor Agreement

not only regulate the terms of work but also regulate the work norms whose values are much higher as stipulated in the labor legislation, of course will increase the welfare of workers / laborers and their families. For example, the period of vacation is only 12 working days given by labor legislation if workers work 12 months in a row, in the Collective Labor Agreement may be determined 14 working days or more, meaning that it has exceeded 2 working days, work clothes can be arranged in Collective Labor Agreement, the type and color, and the time of rest provided by the employer, day care for female workers / laborers whose children are still infants, salary and family / husband and child salary, salary increase, promotion, bonus, work transportation money and others.

Then if there are differences of opinion or disputes between employers and workers / laborers, the settlement mechanism in Collective Labor Agreement is regulated. In addition, with the Collective Labor Agreement in the Company, the workers / laborers feel comfortable working because all the rights and obligations are fully regulated in the Collective Labor Agreement so that the sense of belonging for the workers / laborers of the company has grown even though the workers / laborers are not the owners so that the working relationship becomes harmonious between workers / with employers in the company.

### **3.2 Collective Labor Agreement between the Employer and Trade Unions / Labor Unions in the Company and Supervision of Implementation**

#### **a. Consensus Theory**

That the Collective Labor Agreement between the Employer and Trade Union / Labor Union is the result of agreement or consensus of the twelve parties, there is an agreement (consensus) between the Employers and Trade Unions / Trade Union, the agreement raises and binds both parties as the Law for those who make it as stated in Article 1338 of the Civil Code and must be guided by Article 1320 of the Civil Code and Article 124 of RI Law No. 13 of 2003 concerning manpower.

Hugo de Groot (Grotius), a Dutch scholar (1580-1645) sought the basis of the Consensus on *pacta sunt servanda* that is the promise was binding and then he stated "*Promissorum Implemendorum Obligatio*" meaning we must fulfill our promises, meaning that every promise must be kept or fulfilled and fulfilled and The Malay proverb says that the buffalo is held by the rope, the human is kept by the promise. So each Agreement must be kept and implemented so that there will be no broken promises. Therefore the Collective Labor Agreement between Employers and Trade Unions / Labor Unions and workers / laborers is a law for them and must be implemented in accordance with its contents.

Because the Collective Labor Agreement is already a law in the company, it is necessary to oversee it, so the agency responsible for manpower conducts supervision to the company whether labor regulations have been implemented in the company including the Collective Labor Agreement in the company.

There is an assumption that employers are on the strong side and workers / laborers are on the weak side, so the Government needs to provide guidance and supervision to companies and laborers so that a harmonious working relationship is always fostered in the company. Supervision must implement Manpower Regulations and Collective Labor Agreements in companies that are regulated in Law No. 3 of 1951 concerning the entry into force of the Labor Inspection Act of 1948 No. 23 From the Republic of Indonesia for all of Indonesia, and RI Law No. 13 of 2003 concerning Manpower. It is clearly stated that Labor Inspection is held to supervise the implementation of Manpower laws and regulations in particular, and labor inspection is carried out by labor inspector employees who have the

potential and independence to ensure the implementation of Manpower laws based on two laws, then the implementation of the Collective Labor Agreement is supervised by the Supervisory employee who is responsible for Manpower.

## **b. The Settlement of Disputes concerning the Establishment and Implementation of Collective Labor Agreements**

### **1. Non Litigation**

If the negotiations for the establishment of a Collective Labor Agreement fail due to differences of opinion both in terms of content and negotiation procedures, including the Disputes of interest, then both parties, namely employers and trade unions / labor unions must settle them in a bipartite manner and if they fail then through mediation, namely to the Manpower Office and if it fails both either party or one of the parties can submit to the Industrial Relations court. Likewise, if the employer does not want to implement the contents of the Collective Labor Agreement, including disputes over rights, the employer and the worker / laborer must resolve it in a Bipartite manner and if it fails then through Mediation, namely to the Manpower Office and if it fails again then to the Industrial Relations Court.

### **2. Litigation**

If the dispute is between the employer and the trade union / labor union regarding the establishment of a collective labor agreement, both parties resolve it in a bipartite manner if it fails in bipartite, both parties or one of the parties can submit to the Manpower Office for mediation by the mediator and if one fails parties or both parties may submit an Industrial Relations court and the decision of the Industrial Relations Court is binding (no further remedies)

Specifically for disputes over the implementation of the contents of the Collective Labor Agreement, this Dispute is a dispute of rights and if both parties fail in a Bipartite manner, either party or both parties can proceed to the Industrial Relations Court and if the decision of the Industrial Relations Court is not acceptable to both parties or one of the parties, then can submit an appeal to the Supreme Court and the implementation of the Industrial Relations Court's decision can be carried out through Execute such as the implementation of a civil decision.

## **IV. Conclusion**

- a. Collective Labor Agreements are needed in companies to regulate the rights and obligations of employers and workers in the company.
- b. The position of the Collective Labor Agreement in the Company is a statutory regulation for employers and workers / laborers who can create high productivity and harmonious working relationships for the welfare of workers / laborers and their families and the survival of the company.
- c. The settlement of disputes for the establishment of Collective Labor Agreement and the implementation of Collective Labor Agreement can be settled through Non Litigation and Litigation.

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