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Employment Agreement in the Perspective of Business Civil Law

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Abstract

Civil law was created as an effort to create a law that should exist to assist business or trade processes and activities, through this law, of course, business activities will also not violate applicable laws. The reasons why this rule is needed by business people include making it clear which parties involved in a business will need something more official and no longer about promises or just good faith. The type of research used in this writing is library research. Library research means research that uses written documents as data, and the data sources used in this research include primary legal materials, secondary legal materials and tertiary materials. Primary legal materials are legal materials that bind or make people obey the law, including legal products that are the subject of study and legal products as a means of criticism. Secondary legal materials include explanations of primary legal materials in the form of expert doctrines found in books, journals, and on websites. According to Article 1601a of the Civil Code, what is meant by a work agreement is an agreement where one party, the worker, binds himself to work for another party, the employer, for a certain time, by receiving wages, based on Law No. 13 of 2003 concerning Employment is explained that, a work agreement is an agreement between a worker/labourer and an entrepreneur or employer that contains the terms of work, rights and obligations of the parties. Agreements in the management of a business have a very important role. In the business world, every agreement will be formally stated through an engagement, so that the agreement will have legal force and power that compels the parties to be obeyed and implemented.

Keywords*: *Employment Agreement, Civil Law, Business.

INTRODUCTION

The provisions of the agreement are generally regulated in Article 1313 Civil Code. The meaning in an agreement is that the parties who make it have the same degrees and conditions and have balanced rights and obligations. The existence of an agreement or currently commonly known as a contract, cannot be separated from the fulfillment of the conditions regarding the validity of an agreement/contract as stated in Article 1313 of Civil Code (Masitah Pohan dan Rahma yanti, 2020):

1. Agreed those who bind themselves
2. The ability to make an agreement
3. A certain thing.
4. A lawful reason.

Furthermore, in making a work agreement, it must contain an agreement between both parties regarding a matter which is emphasized in the principle of agreement which is implied in Article 1338 paragraph (1) of the Civil Code, namely the principle of freedom of contract. Work agreements, which in Dutch are commonly called Arbeidsovereenkoms, can be interpreted in various ways. The first definition is stated in the provisions of Article 1601a of the Civil Code which states that "*A work agreement is an agreement in which the first party, the laborer, binds him under the leadership of another party, the employer, for a certain time, by receiving wages*". Article 1 paragraph (14) of the Manpower Law provides the meaning of a work agreement. The elements of the work agreement according to the Act No. 13 of 2003, namely the element of work or work, the element of order, the existence of wages, and a certain time. The conditions for a valid work agreement are regulated in Article 52 of the Act No. 13 of 2003 in the form of formal requirements, while the formal requirements are based on the provisions of Article 54 paragraph (1) of the Act No. 13 of 2003.

Manpower is an inseparable part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Manpower has a very important role and position as actors and targets of national development. The rights of workers regulated in the Indonesian Manpower Regulations, which include the protection of workers, are things that must be fought for so that the dignity and humanity of the workforce are raised. Labor protection is intended to guarantee the basic rights of employees while taking into account the developments of the national and international business world. As stated in Article 28 D of the 1945 Constitution that everyone has the right to work and to receive fair and proper remuneration or treatment in an employment relationship.

An agreement can be interpreted as an act in which one or more people bind themselves to one or more other people. This means that in an agreement an obligation is created that must be fulfilled by one person to another who is entitled to the fulfillment of these obligations. In other words, that in an agreement there will always be two parties, where one party is obliged to fulfill the obligations stated in the agreement and the other party is entitled to these obligations. An agreement is an event where both parties agree to do something (achievement). It can be said, that the two parties who agree with each other accept achievements and give each other contra-achievements.(Yuliana Yuli W, Sulastri, 2018)

One form of agreement that is often practiced in the community is a work agreement made between an employer/company and its employees. According to Law Number 13 of 2003, an Employment Agreement is an agreement between a Worker or Laborer and a Company or Employer that contains the terms of the rights and obligations of the parties. Work agreements are basically made to anticipate problems or prevent disputes/disputes that might occur between the parties involved in an employment relationship, namely the first party (the Company) and the second party called (Workers or Laborers). In making a work agreement text, it must contain the elements and conditions that have been determined in making a work agreement text, so that the text can have valid legal force between the parties,

including fulfilling the provisions regarding the recording of the work agreement with the government, the Department of Manpower. Local work.

Furthermore, the agreement when viewed in terms of its form is divided into two types, namely written and oral. A written agreement is an agreement made by the parties in written form, while an oral agreement is an agreement made by the parties in oral form (enough agreement of the parties). More specifically to oral agreements, usually oral agreements are widely used in business activities. Oral agreements are generally applied only by using an utterance by the parties. The use of oral agreements is also usually carried out without realizing it by business people, for example in the apple trade between sellers and buyers that occurs in traditional markets where after going through a bargaining process, an agreement is created regarding the price of apples along with the delivery of apples by the seller to the buyer and payment of a certain amount. money by the buyer to the seller. In the apple trading process, there is no written agreement. The agreed price is not stated in a written agreement but is sufficient with words, and the implementation of the delivery and payment of apples does not use a written agreement as the legal basis.

Agreements in the form of unwritten or oral agreements in general tend to be considered as weak agreements considering that oral agreements are more difficult to prove because they are easy to be denied by the promised party when compared to written agreements whose clauses are written clearly and accompanied by the signatures of the parties as a sign of the occurrence an agreement, despite the fact that a written agreement can also be denied by the parties, such as one party not admitting or denying having signed an agreement or one of the parties feels that he was forced or made a mistake in signing the agreement..

This study aims to get answers about how work agreements are in the view of business civil law, because if you do business without knowing the basis of civil law, there will be obstacles that cannot be predicted and are difficult to resolve in the future. Civil law was created as an effort to create a law that should exist to assist business or trade processes and activities, through this law, of course, business activities will also not violate applicable laws. The reasons why this rule is needed by business people include making it clear which parties involved in a business will need something more official and no longer about promises or just good faith. Law in trade has a good function to create a safe, orderly and orderly life in society. In addition, the function that can be obtained through the existence of this trade civil law creates a source of useful information for all business people. In fact, this Law will also provide a broader explanation of the rights and obligations in business activities, as well as realizing trading activities accompanied by the attitudes and behavior of all business people. In this way, this law does not only regulate the interests of individuals but also all parties. You could say that it is natural for all business actors to implement a business that is in line with the applicable regulations. This is done for the common good and will make one's business safer and more profitable. it's better if you become a businessman, it's not just dwelling on things that smell like capital, loans, and others. But also about the insight into running a business with legal guidance in doing business as well. Awareness in a healthy and obedient business is very much needed in the world of commerce (Adminuniv, 2021).

Based on the description above, it can be drawn two formulations of the problem to be discussed, namely how is the legal arrangement of work agreements based on Indonesian positive law, and how about a work agreement based on a business civil law perspective.

RESEARCH METHOD

The type of research used in this writing is library research. This legal research is research that is used with the type of normative juridical research, namely research that is focused on examining the rules or norms in positive law. Normative juridical research is research that is used to examine the application of legal rules or norms (Koto & Lubis, 2020). Library research means research that uses written documents as data, and the data sources used in this research include primary legal materials, secondary legal materials and tertiary materials. Primary legal materials are legal materials that bind or make people obey the law, including legal products that are the subject of study and legal products as a means of criticism. Secondary legal materials include explanations of primary legal materials in the form of expert doctrines found in books, journals, and on websites. Tertiary legal materials, namely "*legal materials that provide information on primary and secondary legal materials, such as bibliographies and cumulative indexes*" (Subagiyo, 2011).

DISCUSS AND ANALYSIS

Employment Agreement Regulations Based on Indonesian Positive Law

The agreement is regulated in Book III of the Civil Code which are open in nature. The word engagement has a broader meaning than the word agreement. Because the word engagement does not only contain the notion of a legal relationship that does not originate in an agreement at all, that is, an engagement that arises from law. To give a definition of something is not easy, but many experts give their opinions about different definitions of engagement. Agreements in the Civil Code are regulated in Article 1313 of Civil Code, namely "*An agreement is an act by which one or more people bind themselves to one or more other people*".

The rules regarding the validity of an agreement are regulated in Article 1320 of Civil Code which reads "*For the validity of an agreement, four conditions are required*":

1. Agreed those who bind themselves, In this first condition, which is agreed, they show that they (people) who enter into the agreement as legal subjects have an agreement (freedom) that is free in making the contents of the agreement. In other words, that the two parties who entered into the agreement must agree or agree on the matters that are the subject of the agreement made / held. What is desired by one party, is also desired by the other party.
2. The ability to make an engagement means that the parties who make the agreement are people who have fulfilled the requirements as parties deemed capable by or according to law. People who are outside the provisions of Article 1330 of Civil Code are considered capable of carrying out legal actions. Article 1330 of Civil Code states that being incapable of making an agreement is:
   a. Immature people;
   b. Those who are put under mercy;
   c. Women, in matters provided for by law, and in general all persons with whom the law has prohibited making certain agreements.
3. A Certain Matter What is meant by "a certain thing" in the three requirements for the validity of an agreement is the object of the agreement itself. According to the provisions of Article 1333 of Civil Code "*An agreement must have as its principal an item of at least a specified type*". It is not an obstacle that the number of goods is uncertain, as long as the

amount can be determined or calculated later. An agreement whose object does not meet the provisions of Article 1333 of the Civil Code is void. in a certain way, is:

a. As specified in Article 1332 of the Civil Code, which reads "*Only goods that can be traded can be the subject of an agreement*".
b. Based on article 1334 paragraph (1) of the Civil Code, which reads "*Goods that will only exist at a later date can become the subject of the agreement*". Unless expressly prohibited by law. For example, selling next year's crop for a certain price.

4. A lawful cause. The meaning of a lawful cause is that the contents of the agreement must not conflict with the law, religious norms, decency, and public order.

For example, in the case of making a binding sale and purchase agreement, it is an agreement between the parties who agree based on the principle of freedom of contract as long as the agreement made does not conflict with the applicable laws and regulations. With the freedom to contract, every person or legal entity can make agreements that are not named or not listed in the BW, as long as they still comply with the rules in the legislation.(Rahmat Ramadhani, 2022) Making agreements based on regulations that apply to buying and selling land as in the example above is something that is done with the aim of providing protection for land rights held because land is an important thing in human life. Indonesia is an agrarian country where land ownership has an important role in the lives of citizens, especially for production factors. Land has such an important role for Indonesian citizens that land determines the welfare of citizens, the more land you have, the more prosperous your life will be.(Ramadhani, 2022) Work agreements are specifically regulated in Chapter VII of the Civil Code concerning agreements to do work. According to Article 1601a of the Civil Code, what is meant by a work agreement is an agreement in which one party, the worker, binds himself to work for the other party, the employer, for a certain period of time, by receiving wages. In making a work agreement, no specific form is determined, so it can be done verbally with a letter of appointment by the employer and is subject to the provisions in Article 1320 of the Civil Code, and can be done in writing, namely in the form of an agreement letter signed by both parties and carried out in accordance with the provisions of Article 1320 of the Civil Code. with the applicable laws and regulations.

Based on the Act No. 13 of 2003, it is explained that a work agreement is an agreement between a worker/labourer and an entrepreneur or employer that contains the terms of work, rights and obligations of the parties. If you want to make an agreement, of course there will be procedures or conditions that must be met to make an agreement valid. In Article 52 paragraph (1) of the Act No. 13 of 2003, here are four conditions for making a work agreement:

1. There is an agreement between the two parties
2. The existence of the ability or ability of the parties to carry out legal actions
3. There is a job that was promised
4. The agreed work does not conflict with the public interest, decency, and applicable laws and regulations.

Article 54 paragraph (1) of the Act No. 13 of 2003 regulates work agreements made in writing as follows:

1. Name, company address, and type of business
2. Name, gender, age, and address of the worker/labourer

3. Position or type of work
4. Place of work
5. The number of wages and the method of payment
6. Working conditions that contain the rights and obligations of employers and workers/labor
7. Start and period of validity of the work agreement
8. Place and date the work agreement was made
9. Signatures of the parties in the employment agreement

The Manpower Act recognizes a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT):

1. Fixed Time Employment Agreement

Regarding the PKWT period, it is regulated in Article 59 paragraph (3) of the Act No. 13 of 2003. In making a work agreement or a certain work agreement, the maximum time limit agreed is 2 (two) years and may only be extended or renewed for one time only due to one particular thing. The extension can only be carried out within the same period provided that the total amount of time in a particular work agreement may not exceed 3 (three) years. The renewal of the PKWT can only be made after the 30 (thirty) day grace period ends. If it is seen from the Civil Code, a work agreement is made for a certain time on the basis of a period of time, if the time has expired, it can be extended if there is no objection. This is regulated in Article 1603 f paragraph (1). PKWT, apart from being an agreement based on a period of time, is also based on a certain job whose implementation is completed within a certain period of time based on the type of work. The type of work within a certain time based on Article 59 paragraph (1) of the Act No. 13 of 2003, namely as follows:

a. Jobs that are completed once or are temporary in nature;
b. Work which is estimated to be completed in a not too long time and a maximum of 3 (three) years;
c. Seasonal work;
d. Work related to new products, new activities, or additional products that are still being tested and explored.

An employment agreement can be held for a certain time or for an indefinite period of time. PKWT can be held for a maximum of two years and may only be extended once for a maximum period of one year (Article 59 paragraph (4) of Law No. 13 of 2003). PKWT ends when the time has expired. PKWT which has expired can be extended. If the entrepreneur wishes to extend the work agreement, then at the latest 7 (seven) days before the end of the PKWT, he has notified his intention in writing to the worker/labourer concerned. The maximum period of work in the PKWT is (5) years, namely the work that is being renewed. Renewal is regulated in Article 59 paragraph (6) of the Act No. 13 of 2003. The expiration of a work agreement for a certain time, namely the termination of the working relationship between the worker and the entrepreneur. The end of the working relationship between the worker and the entrepreneur results in the end of the rights and obligations of each party. The expiration of the work agreement for a certain time in the provisions of Article 61 paragraph (1) of the Act No.13 of 2003. Termination of employment relationship is theoretically divided into 4 (four) types, namely termination by law, termination of employment relationship by

workers, termination of employment relationship by entrepreneur, termination due to court decisions (Apri Amalia, 2017).

2. Indefinite Time Employment Agreement

The definition of an Indefinite Work Agreement, hereinafter abbreviated as PKWTT, is a work agreement between a Worker/Labourer and an Employer to enter into a permanent working relationship. This matter is not specifically regulated in the legislation. Article 3 of PP 35/2021 only emphasizes that PKWTT is carried out in accordance with the provisions of the legislation. In practice, workers with PKWTT status will enter into a work contract agreement with the company by imposing a probationary period. The probationary period that may be imposed is a maximum of 3 months. If the company decides to designate a worker on probation as a permanent employee, then the company is obliged to renew the worker's employment contract to become a permanent employee. However, it should be noted that such a probationary period is not a mandatory requirement. In the laws and regulations it is called "may require" meaning that the company can immediately make PKWTT with its workers without going through the probationary period. An employment agreement for a certain time cannot require a probationary period. In the event that a probationary period is required in a certain time work agreement/PKWT (contract), then the required probationary period is null and void and the working period is still counted as PKWT (Article 58 of the Act No. 3 of 2003 and Article 12 Government Regulation No. 35 of 2021). Article 60 paragraph (1) of Law the Act No.13 of 2003 stipulates that a PKWTT may require a probationary period of a maximum of 3 (three) months. Indefinite Time Employment Agreement (PKWTT)," n.d.).

Employment Agreements Based on the Perspective of Business Civil Law

Civil law can be said to be a provision that regulates the rights and interests of each individual in society. So, if it is related to trading activities, it can be said to be a legal instrument made to regulate the procedures and implementation of an affair or for trade, financial or industrial activities that have an impact on the exchange of goods and services. You can also give the meaning that this civil law may be related to trading activities. The background behind the existence of civil law in the business or trade world is because: an understanding of a healthy economy where this healthy economy can be seen from various business or trade activities in other forms. So, in fact, it is only natural that entrepreneurs also understand the meaning of civil law in terms of its relation to trade or industry (Novianto, 2022).

As for the reason why this civil law rule is needed by business people:

1. Any party involved in a business, will need something more official and no longer about promises or just goodwill.;
2. Efforts to create a law that should exist to assist business or trade processes and activities.
3. With this law, of course, business activities will not violate applicable laws.

Based on the explanation above, it can be concluded that the existence of civil law in the trade sector is certainly good in purpose because it is to protect the perpetrators of trade. The nature of the law that is forced or enforced by the presence of sanctions can also be a positive thing so that business actors always look at the applicable rules when conducting business or trading activities. In this way, everyone will benefit from it. Civil law in trade will certainly make the community, especially business actors and others involved in trade, more

orderly and organized. This will have a positive impact on balance and order. It is also certain that this law will divide the duties between rights and obligations for everyone involved in trading activities. The existence of the authority to regulate, and solve certain problems so that business people can carry out their business more calmly. This is where the importance of civil law in trade comes from. There are many benefits of applying this law. You can also imagine that if there were no laws governing this trade, it is certain that business development would not run as fast as it is today. Therefore, understand more about this business (Novianto, 2022).

In addition to the PKWT and PKWTT work agreements that have been described in the previous discussion, there is also a collective work agreement (PKB). Collective Bargaining Agreement as the basis for the rules of labor law that apply at the level of the company's work unit. The Collective Labor Agreement, which is known in English as the Collective Labor Agreement (CLA), or in Dutch as the Collective Arbeids Overenkomst (CAO), has been recognized in Indonesian legal literature based on the provisions of the Civil Code (KUHPerdata). Article 1601n of the Civil Code states that, "*Labor agreements are regulations made by one or several employers' associations that are legal entities, and or several labor unions with legal entities, regarding work conditions that must be heeded when making work agreements*". Collective Labor Agreements in the world of Indonesian manpower have also been regulated and affirmed their position as a means to build industrial relations, as stated in the Act No. 13 of 2003, Article 103 which states that industrial relations are carried out through: (Ardison Asri, 2016)

1. Trade unions/labor unions;
2. Employer's organization;
3. Bipartite cooperation institutions;
4. Tripartite cooperation institute;
5. Company regulations;
6. Collective labor agreement;
7. Labor laws and regulations; and
8. Industrial relations dispute settlement agency.

The foregoing explains that to build industrial relations, it must be based on a set of systematic rules regarding the rights and obligations of each party. One of the rules recognized by our laws and regulations is the Collective Labor Agreement. Furthermore, in Law Number 13 of 2003 concerning Manpower, Article 1 number 21 states that, "A collective labor agreement is an agreement that is the result of negotiations between a trade union/labor union or several trade unions/labor unions registered with the responsible agency. in the field of manpower with entrepreneurs or several entrepreneurs or associations of entrepreneurs that contain working conditions, rights and obligations of both parties. Based on the understanding of the Collective Labor Agreement above, the formulation of this Collective Labor Agreement can be divided into several elements, namely as follows:

1. Collective labor agreement is an agreement; Therefore, the principle of agreement law must be attached to the Collective Labor Agreement;
2. The legal subjects of the collective bargaining agreement consist of trade/labor unions and employers; another possibility is a union of workers/labor and several or associations of

entrepreneurs; What I want to emphasize is that individual workers/ laborers cannot appear as legal subjects in the Collective Labor Agreement;

3. Contains the working conditions, rights and obligations of the parties, namely the entrepreneur and the worker/labourer; What I want to emphasize here is that the Collective Bargaining Agreement intends to provide guidelines, the form of a / labor agreement; thereby creating legal certainty.

Agreements in the management of a business have a very important role. In the business world, every agreement will be formally stated through an engagement, so that the agreement will have legal force and force that compels the parties to be obeyed and implemented. The form of cooperation in business is not new, from ancient times there have been many collaborations in business, especially those that are simple with their respective goals. Currently there are many forms of cooperation in business activities as outlined in a legal deed such as: Mergers, Consolidations, Joint Ventures and Franchising which are growing rapidly, according to the economic development of a region. Because of his consideration, in carrying out a business activity, sometimes a business entity is not able to run it alone, so it is necessary to enter into cooperation with other business entities. Carrying out a business activity, sometimes a business entity is less able to run it alone without collaborating with other business entities, some forms of cooperation:(Kathleen C. Pontoh, 2017)

1. Merger, Merger or fusion is an amalgamation of one or several business entities so that from an economic point of view they form a single entity, without merging the merging business entities.
2. Consolidation, Merger between two or more business entities that merge to merge into one and form a new business entity (consolidation). This is intended to "healthy" the business entity concerned or commonly called restructuring. Restructuring a business entity does not only concern business aspects, but involves business, organization, management, finance and legal aspects. Thus, the definition of business entity restructuring is a collaboration between two or more business entities that is carried out in a planned manner, by changing the pattern of business entities in carrying out their activities in order to achieve their goals properly.
3. The implementation of the merger for a business entity in the form of a limited liability company (PT), can only be carried out if it has obtained the approval of the General Meeting of Shareholders (GMS) of each business entity involved.
4. Joint Venture, generally defined as an agreement between two or more parties, to cooperate in an activity. The agreement in question is an agreement based on an agreement as stipulated in the Articles of the Civil Code.
5. Franchise/franchise, an engagement in which one party is granted the right to utilize and/or use intellectual property rights or inventions, or business characteristics owned by another party in exchange for terms and/or sales of goods and services.

Basically, the difference between a work agreement and a collective labor agreement lies in the parties that make up the agreement itself. The work agreement is made and enforced by the company or employer, while the collective labor agreement is made based on the agreement of the two parties who bind themselves to one another. The employment agreement is a commitment between the employer or company and the employee, while the

cooperation agreement usually binds a company with other companies or with other legal entities in the form of PT, CV and others.

CLOSURE

Conclusion

Work agreements are specifically regulated in Chapter VII of the Civil Code concerning agreements to do work. According to Article 1601a of the Civil Code, what is meant by a work agreement is an agreement in which one party, the worker, binds himself to work for the other party, the employer, for a certain period of time, by receiving wages. In making a work agreement, no specific form is determined, so it can be done verbally with a letter of appointment by the employer and is subject to the provisions in Article 1320 of the Civil Code, and can be done in writing, namely in the form of an agreement letter signed by both parties and carried out in accordance with the provisions of Article 1320 of the Civil Code. with the applicable laws and regulations. Based on the Act No. 13 of 2003, it is explained that, a work agreement is an agreement between a worker/laborer and an entrepreneur or employer that contains the working conditions, rights and obligations of the parties.

Suggestion

Agreements in the management of a business have a very important role. In the business world, every agreement will be formally stated through an engagement, so that the agreement will have legal force and force that compels the parties to be obeyed and implemented. The form of cooperation in business is not new, from ancient times there have been many collaborations in business, especially those that are simple with their respective goals. Currently there are many forms of cooperation in business activities as outlined in a legal deed such as: Mergers, Consolidations, Joint Ventures and Franchising which are growing rapidly, according to the economic development of a region. Basically, the difference between a work agreement and a collective labor agreement lies in the parties that make up the agreement itself. The work agreement is made and enforced by the company or employer, while the collective labor agreement is made based on the agreement of the two parties who bind themselves to one another. An employment agreement is a commitment between an employer or company and an employee, while a cooperation agreement usually binds a company with other companies.

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