

**THE PRINCIPLE OF GOOD FAITH IN COLLECTIVE WORKING AGREEMENTS  
BETWEEN EMPLOYERS AND WORKER UNIONS REVIEWED FROM  
AGREEMENT LAW****Safrida<sup>1)</sup>, Tan Kamello<sup>2)</sup>, Hasim Purba<sup>3)</sup>, Rosnidar Sembiring<sup>4)</sup>****Program Studi Magister Ilmu Hukum, Fakultas Hukum, Universitas Sumatera Utara**\*Email : [safrida751@gmail.com](mailto:sufrida751@gmail.com)**ABSTRACT**

The principle of good faith is an important principle in contract law and is accepted in various legal systems, but until now the doctrine of good faith is still controversial. Good faith is known as 2 (two) phases, namely the pre-contract phase and the contract implementation phase. The pre-contract phase is called subjective good faith, which means good faith is more directed towards honesty, while good faith in the contract implementation phase is called objective good faith, which means good faith is interpreted as appropriateness and propriety or fairness. A work agreement is an agreement between a worker/laborer and an entrepreneur or employer which contains work conditions, rights and obligations for the parties. The definition of work conditions is the rights and obligations of employers and workers that have not been regulated in statutory regulations. The work agreement made must not conflict with existing labor agreements or Collective Work Agreements (KKB). This research uses a type of normative legal research sourced from secondary data related to the research topic, secondary data that has been compiled systematically and then analyzed qualitatively. From the research conducted, it was found that the position of the principle of good faith is very important not only at the contract creation (signing) stage and post-contract creation (implementation) stage, but also must exist at the pre-contract creation (drafting) stage because in contract law practice judges use their authority to interfere with the contents of the contract. The legal consequence of a collective work agreement that does not contain the principle of good faith is that if the subjective requirements relating to the subject of the PKB are incomplete, or in other words the conditions that must be fulfilled are not appropriate for those who want to make a PKB, then the PKB that has been made can be requested for cancellation by the trade union/labour union. If the cancellation is not requested by both parties concerned, then the CLA remains valid for the parties. The first legal effort was carried out by PT. United Rope with workers/labor unions is by deliberation to reach a consensus first, although in resolving disputes if there is no good faith in the collective work agreement, it is through 2 (two) systems, namely first, non-litigation/outside the industrial relations court, namely resolution by means of bipartite, mediation, conciliation and arbitration, while the second solution is litigation.

**Keywords: Principle of Good Faith, Collective Labor Agreement and Employers with Labour Union.****A. Introduction**

The increasingly advanced development of science and technology means that we are required to have quality in whatever way we face increasingly advanced changes. These changes also occur in the industrial world which requires a high-quality workforce. Workers who have high quality are expected to be able to produce productivity and be able to compete in the industrial world. Labor has a very important role in the industrial world in order to

produce a product within a company, therefore labor needs protection so that they can support their families. Protection of workers here means guaranteeing the basic rights of a worker/laborer and getting equal treatment between workers/laborers without any discrimination between each other in the employment relationship.

According to Imam Soepomo, an employment relationship is an agreement where the unitary party, the worker, binds himself to work by receiving wages from another party, the employer, who binds himself to employ the worker by paying wages to the other party".<sup>1</sup>

A legal relationship arises because of rights and obligations, in that case an employment relationship is a civil relationship based on an agreement between the worker and the employer, with rights and obligations that must be carried out by each party. The rights and obligations of each party are then outlined in the employment agreement.

A work agreement is an agreement between a worker/laborer and an entrepreneur or employer which contains work conditions, rights and obligations for the parties. The definition of work conditions is the rights and obligations of employers and workers that have not been regulated in statutory regulations.<sup>2</sup> The work agreement made must not conflict with the existing labor agreement or Collective Work Agreement (KKB). Likewise with company regulations, they must not conflict with the KKB/PKB. In discussing employment relations, both company regulations and the Collective Labor Agreement (KKB) will be discussed in an integrated manner because they are an inseparable unit as a component of industrial relations.<sup>3</sup>

Arrangement of individual working conditions between workers and employers can be done by making a Work Agreement, while regulation of collective working conditions can be done by trade unions and employers by making a PKB.<sup>4</sup>

The position of the PKB in making collective work agreements using the principle of good faith is very important because with the existence of a collective work agreement, every worker/laborer gets proper rights and obligations in accordance with the agreed agreement. Article 1 number 21 of the Manpower Law explains that a company's PKB is an agreement resulting from negotiations between a trade union/labor union or several trade unions/labor unions registered with the responsible agency, or several employers or employers' associations which contain the following terms and conditions. work conditions, rights and obligations of both parties. The PKB is made by the entrepreneur and the registered trade/labor union and

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<sup>1</sup>Agusmidah, *Hukum Ketenagakerjaan Indonesia*, (Bogor, Ghalia Indonesia, 2010), h. 43

<sup>2</sup>Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, (Jakarta, Sinar Grafika, 2010), h. 9

<sup>3</sup>Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia*, (Jakarta, Raja Grafindo Persada, 2009), h. 64

<sup>4</sup>Asri Wijayanti, *Op.Cit*, h. 12

implemented by deliberation or can only be negotiated and drawn up by the trade/labor union and supported by all workers in the company.

Based on the results of the interview with Mr. Syaiful Amri, he stated that companies that have collective work agreements definitely have prosperous workers compared to entrepreneurs who do not have collective work agreements, because a collective work agreement above the law, if it is the same as the law, is not a collective work agreement because in this agreement there are special rules that are made outside of statutory regulations.<sup>5</sup>

The provisions regarding good faith are contained in the provisions of Article 1338 Paragraph (3) of the Civil Code which states that agreements must be implemented in good faith, even though good faith is an important principle in contract law and is accepted in various legal systems, but until now the doctrine of good faith is still something that is controversial.<sup>6</sup> Good faith is known as 2 (two) phases, namely the pre-contract phase and the contract implementation phase. The pre-contract phase is called subjective good faith, which means good faith is more directed towards honesty, while good faith in the contract implementation phase is called objective good faith, which means good faith is interpreted as appropriateness and propriety or justice.

Good faith in contract implementation refers to objective good faith. Objective standards of good faith refer to an objective norm. The behavior of the parties to the contract must be tested on the basis of objective, unwritten norms that develop in society.<sup>7</sup> Good faith exists not only in the implementation phase of the agreement, but also must exist in the pre-contract phase or at the time of preparing the PKB, that is, there is an agreement between the employer and the labor union which is stated in the contents of the PKB which contains good faith, but in reality the contents of the PKB are often not balanced because entrepreneurs have stronger power and considering that the number of job seekers and available jobs is not balanced, this situation is often misused by entrepreneurs in making CLAs.

Abuse of this situation often occurs when an agreement is influenced by something that prevents him from making an independent judgment from the other party, so that he cannot make an independent decision. This emphasis can be carried out because one party has a special

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<sup>5</sup>Wawancara Langsung Dengan Syaiful Amri, Ketua Badan Pimpinan Cabang Serikat Buruh Merdeka Indonesia Kota Medan, Tanggal 5 Februari 2020

<sup>6</sup>*Ibid*, h. 6

<sup>7</sup>Ridwan Khairandy, *Kebebasan Berkontrak dan Pacta Sunt Servanda Versus Itikad Baik: Sikap yang Harus Diambil Pengadilan (2)*, (Yogyakarta: Badan Penerbit Universitas Islam Indonesia, 2015), h. 57

position (for example, a dominant position). The party who has a special position takes inappropriate advantage of other parties who are weaker.<sup>8</sup>

Abuse of circumstances (*misbruik van omstandigheden*) is what constitutes the employer's bad faith in the pre-contract phase of making the PKB, because the entrepreneur determines his will unilaterally in determining the contents of the PKB, the contents of the agreement itself have been prepared in a PKB, so that for workers sometimes there is only the option of accepting or refuse. Such an agreement results in an agreement that is inappropriate or detrimental to the worker.<sup>9</sup>

The explanation above explains that basically the principle of good faith is very important in forming the contents of the CLA, because this principle is one of the important elements that must be present in the contents of the agreement, so that the contents of the CLA can contain propriety.

Good faith in the agreement implementation phase means that employers and workers must carry out the agreement in accordance with the principle of good faith. Carrying out an agreement according to the principle of good faith means carrying out the agreement in accordance with propriety and justice. Employers must carry out negotiations proposed by the labor union regarding incentive wages because workers/laborers also really need incentive wages, one of which is food and transport costs. The negotiation process is quite long, resulting in workers/laborers receiving incentive wages that are not in line with their needs because they are still implementing the contents of the old PKB, even though needs are increasing.

The problem of workers/laborers regarding wages that are paid below incentive wages such as meal allowances at a company in the city of Medan. There is no legal regulation that allows employers to cut the incentive wages of one worker to pay support wages for other workers.

Labor law sources have stated that in terms of employment, autonomous rules (work agreements, company regulations and collective work agreements) must not conflict with heteronomous rules (legislation). Therefore, the role of the Medan City Employment Service Government in determining supervision over the implementation of laws and regulations will have a significant influence on the employment system. One thing that will be discussed in this thesis is related to the welfare of workers/laborers by paying attention to and considering wages, transportation costs and food costs for workers by looking at the rate of increase in the

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<sup>8</sup>Ridwan Khairandy (1), *Op. Cit*, h. 20

<sup>9</sup>R. Darmawan, *Itikad Baik Dalam Perjanjian Kerja Bersama*, *Op. Cit*, h. 12

economy because employers do not negotiate collective work agreements. Based on the results of research conducted directly (in the field and on the internet) the contents of the PKB in companies in North Sumatra, especially in the city of Medan, have complied with the provisions of the applicable laws and regulations, however there is one thing that is a problem, namely the existence of A PKB whose validity period has expired but is still in use for 8 (eight) years will certainly cause losses for workers/laborers and reflects the lack of good faith on the part of the company to negotiate the needs and welfare of the workers. The company that still uses the PKB is the company PT. United Rope. The PKB, which has taken a long time to make the PKB, namely since 2012 until now, has not reached an agreement because in the negotiations the employers did not agree on the Incentive Wage because the employers had already issued a Minimum Wage for workers/laborers, this made the employers not negotiate the PKB and that is what made the PKB takes a very long time to agree and complete.

In the pre-contract phase or when drafting the PKB, the principle of good faith must already exist in the contents of the PKB so that the drafting or negotiation process can proceed in accordance with the provisions of the applicable regulations, namely 3 (three) months before the validity period of the collective work agreement expires. In the pre-contract phase, the entrepreneur, namely PT. United Rope did not use the principle of good faith, which made the preparation or negotiation process take a very long time, namely 8 (eight) years. In fact, in the pre-contract phase, the position of the principle of faith is very important in forming the PKB because the PKB has the highest position and must be based on agreement or good negotiation from the PT. United Rope and the workers/labor unions negotiate what each wants to negotiate.

The preparation and negotiation process carried out by PT. United Rope took a long time, up to 8 (eight) years, resulting in losses to workers. According to Article 123 of the Manpower Law, the PKB is valid for 2 (two) years and can be extended for 1 (one) year, so that if the PKB is negotiated long enough, it is the workers who can suffer losses because the workers use the old regulations. According to Article 123 paragraph 4, in the event that negotiations on the creation of a PKB do not reach an agreement, the collective work agreement that is currently in effect remains in effect for a maximum of 1 (one) year. During the PKB negotiation process carried out by employers, it takes quite a long time, up to 8 (eight) years, so before the PKB reaches an agreement, the workers/labor unions use the previous collective work agreement so that this can be detrimental to the workers. Negotiations took quite a long time because entrepreneurs did not use the principle of good faith in the negotiation process.

The negotiation process is first carried out by means of negotiations by both parties to reach an agreement, but the collective work agreement has been negotiated by the

workers/labor union but the employer has not agreed to the negotiations carried out by the workers/labor union. Negotiations that have not been approved by the entrepreneur make the negotiation process very long. In fact, good faith is also required in the negotiation and contract preparation process. In fact, good faith must exist from the negotiation process and contract preparation to the implementation of the contract.<sup>10</sup>

In the PKB negotiation process there should be negotiations carried out by both parties. Negotiations in negotiations must be carried out with the principle of good faith and there must be no bad faith in the PKB negotiation process between the labor union and PT United Rope. This is a common part for both parties in the pre-contract. In the negotiation process of the trade unions/labor unions from PT. United Rope thus provides workers with PT. United Rope delivers what employers want workers to do. Negotiations provided by trade unions should be approved by employers so that the preparation or negotiation process can proceed quickly, but in reality in this research, PT. United Rope is not negotiating at all regarding changes to the PKB.

Good faith in the agreement implementation phase means that employers and workers must carry out the agreement in accordance with the principle of good faith. Carrying out an agreement according to the principle of good faith means carrying out the agreement in accordance with propriety and justice. Employers must carry out negotiations proposed by the labor union regarding incentive wages because workers/laborers also really need incentive wages, one of which is food and transport costs. The negotiation process is quite long, resulting in workers/laborers receiving incentive wages that are not in line with their needs because they are still implementing the contents of the old PKB while needs are increasing.

The most important thing is that the Manpower Service pays attention to entrepreneurs who have initially registered the collective work agreement with the Manpower Service and it is due to re-register the collective work agreement but the entrepreneur has not yet registered the collective work agreement with the Manpower Service. PT. United Rope has not re-registered the PKB with the Manpower Service for 8 years because it has not reached an agreement between PT. United Rope with workers/labor unions.

The sanctions provisions in Article 190 of Law Number 13 of 2003 concerning Manpower also seem to emphasize the presence of the Manpower Service in protecting workers. The trade union/labor union has not made a report/complaint to PT. United Rope went to the Manpower Service because it was still in the negotiation process and had not yet received

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<sup>10</sup>Ridwan Khairandy (1), *Op.Cit*, h. 13

results from the PKB negotiations. If PT. If United Rope has not completed negotiations on the PKB, it will be given administrative sanctions as stated in Article 190 of Law Number 13 of 2003. One of the authorities of the Manpower Service is to carry out supervision in the PKB to ensure law enforcement is highly expected because of the regulations issued by the government which Initially, it was hoped that it would be able to provide guarantees of protection for the basic rights of workers/laborers, but in fact it has not been able to protect workers/laborers, because not all workers/laborers receive legal protection in the form of fulfilling their rights and avoiding disputes between employers and trade/labor unions.

Stigmatization/image of worker/labor practices in the companies that the author researched, apart from having an impact on low commitment, motivation and loyalty of workers/labor towards the company and decreasing levels of work productivity, also gives rise to levels of industrial relations disputes which often lead to labor strikes.

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According to Article 136 paragraph (1) of Law Number 13 of 2003 concerning Manpower, industrial relations dispute resolution must be carried out by employers and workers/laborers or trade/labor unions through deliberation or consensus. Legal efforts in

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<sup>11</sup>Wawancara Langsung Dengan Mymoonah R.M Sitanggang, Mediator Dinas Ketenagakerjaan Kota Medan, tanggal 18 November 2019

resolving disputes contained in the PKB between PT. United Rope and the workers/labor unions are held by deliberation first. If a solution is not found, the trade union/labour union can report it to the Manpower Service for follow-up.

Article 77 Paragraph (2) of Law Number 13 of 2003 concerning Manpower, states that the minimum working hours that must be fulfilled by workers are 7 (seven) hours a day and 40 hours 1 (one) week for 6 (six) working days, so that workers are employed beyond normal working hours and do not receive overtime pay. PT CLA Clause. From an objective perspective, United Rope can be said to have bad intentions. The two applicable working hour systems provide a working hour limit of 40 (forty) hours in 1 (one) week. If working hours in the company exceed these provisions, then the working time that exceeds the provisions is considered overtime, so the worker is entitled to overtime pay.

## **B. Research Methods**

A study cannot be said to be research if it does not have a research method.<sup>12</sup> Research methods are one of the factors of a problem that will be discussed.<sup>13</sup> The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific writing.

## **C. Analysis And Discussion**

### **1. The Position of the Principle of Bad Faith in Collective Labor Agreements between Employers and Trade Unions**

The principle of good faith is an important principle in contract law, however, this principle of good faith has become a polemic on a number of issues. This problem is caused by different understandings of good faith from various perspectives starting from time, place and person. As has been explained, the actual meaning of good faith in contracts has not yet been discovered. Until now, there is still debate regarding the true meaning of good faith itself. Where opinions regarding good faith are accepted, then from there a debate on opinions regarding good faith occurs.

The development of good faith in contract law cannot be separated from the evolution of contract law itself. Initially, contract law only recognized *iudicia stricti iuris*, namely a contract that was born from actions according to law (*negotium*) which strictly and formally

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<sup>12</sup> Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

<sup>13</sup> Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.



referred to *ius civile*. If a judge faces a contract case like that, the judge must decide according to the law. Judges are bound to what is expressly stated in the contract (express terms).<sup>14</sup>

Good faith in contract law refers to three forms of behavior of the parties to a contract. First, the parties must adhere to their promises or words. Second, the parties must not take advantage by misleading actions against one of the parties. Third, the parties comply with their obligations and behave as honorable and honest people, even though these obligations are not expressly agreed upon.<sup>15</sup>

This principle emphasizes that when making an agreement the parties must be based on good faith and propriety, which means that making an agreement between the parties must be based on honesty to achieve common goals. The implementation of the agreement must also refer to what is appropriate and should be followed in social interactions. This principle is a principle that must be present in every agreement, and cannot be eliminated even if the parties agree to it.<sup>16</sup>

In the pre-contract phase, it can be seen that there is supply and demand, where the parties carry out negotiations to determine the forms of agreement in the contents of the agreement. This agreement is an important point for creating a legal relationship in addition to the conditions for entering into an agreement as outlined in Article 1320 of the Civil Code, namely: agreement, capacity, certain things and halal clauses.<sup>17</sup>

The principle of good faith must exist in the pre-contract phase, namely when both parties have found an agreement to make a collective work agreement. In this pre-contract stage, both parties bind themselves to a contract which is generally carried out in a bargaining process. One party makes an offer while the other party accepts or agrees to what that party has offered. An offer offered by the party offering has the right to accept the offer or not, if the offer is accepted by the other party it will give rise to a contract.

The position of the principle of good faith does not only exist at the contract creation (signing) and post-contract creation (implementation) stages, but must also exist at the pre-contract creation (drafting) stage because in contract law practice judges do use their authority to interfere with the contents of the contract. Regarding the application of the principle of good faith at the pre-contract making stage, it can be explained that if the implementation of a

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<sup>14</sup>Ridwan Khairandy (1), *Op. Cit.* h. 128

<sup>15</sup>*Ibid*, h. 130

<sup>16</sup>*Ibid*, h. 18

<sup>17</sup>Aris Setyo Nugroho, *Penerapan Asas Itikad Baik Pada Fase Pra Kontrak Dalam Hukum Civil Law dan Common Law*, Mahasiswa Program Pascasarjana Ilmu Hukum Konsentrasi Hukum Bisnis FH UNS

contract creates an imbalance or violates feelings of justice, then the judge can make adjustments to the rights and obligations stated in the contract.<sup>18</sup>

Good faith testing must be carried out for each stage of the contract, both the pre-contract creation (drafting) stage, the contract creation (signing) stage and the post-contract creation (implementation) stage. Subjectively, a state of ignorance will result in one party not carrying out the contract. Furthermore, it is important to understand that objective testing of good faith and propriety must be careful and in-depth, because propriety always changes in accordance with developments in the values held by members of society.<sup>19</sup>

"According to Mr. Syaiful Amri, companies that have a collective work agreement will certainly have more prosperous workers compared to entrepreneurs who do not have a collective work agreement, because the collective work agreement is above the law, if it is the same as the law, it is not a collective work agreement because in the agreement There are special rules that are made that are not in the law."<sup>20</sup>

"It was also explained by Mrs. Mymoonah R.M Sitanggang as Mediator at the Medan City Manpower Service that if the collective work agreement has been registered and signed by the local Manpower Service officer then the collective work agreement is already in the form of a law which must be obeyed. If violated, a criminal offense can be committed or employment termination can be carried out."<sup>21</sup>

From the explanation above, the position of the principle of good faith in a collective work agreement is very important because in the process of making a collective work agreement, the principle of good faith must be used, which is the main element so that the collective work agreement does not harm both parties. The process of making a collective work agreement must look at the principle of good faith in making an agreement that is made before both parties before agreeing to the agreed contents so that the agreement can run smoothly.

## **2. Legal consequences of a collective work agreement between an employer and a worker union that does not contain the principle of good faith at PT. UNITED ROPES**

Based on the results of research conducted directly, researchers took several PKBs whose contents used the principle of good faith, but there was one company that did not use the principle of good faith, namely the company PT. United Rope. The contents of the PKB

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<sup>18</sup>Muhammad Syaifuddin, *Hukum Kontrak, Memahami Kontrak dalam Perspektif Filsafat, teori, Dokmatik, dan Praktek Hukum*, (Bandung, Mandar Maju, 2012), h. 130

<sup>19</sup>*Ibid*

<sup>20</sup>Wawancara Langsung Dengan Syaiful Amri, Ketua Badan Pimpinan Cabang Serikat Buruh Merdeka Indonesia Kota Medan, Tanggal 5 Februari 2020

<sup>21</sup>Wawancara Langsung Dengan Mymoonah R.M Sitanggang, Mediator Dinas Ketenagakerjaan Kota Medan, tanggal 18 November 2019

explain that the next PKB negotiations will be 90 days before the validity period expires, but until now the company does not want to carry out negotiations. The PKB used by PT. United Rope is a PKB that came into effect in 2012, therefore the entrepreneur uses an old PKB, namely for 8 (eight) years, this causes losses for workers/workers and reflects a lack of good faith. from the company to negotiate the needs and welfare of workers.

The PKB at PT. United Rope in its clause indicates that there is a principle of bad faith carried out by the entrepreneur, namely in relation to the validity period of the PKB and the cost of employee meal allowances. This can be seen in the following table:

**Tabel 1.**

**Verifikasi PKB PT. UNITED ROPE**

| No | Bab/Pasal         | Tertulis                                                                                                                                                                                                                    | Seharusnya                                                                                                                                                   |
|----|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | Bab VI, Ps 22 (4) | Tunjangan uang makan sebesar Rp. 6.500 setiap hari kerja                                                                                                                                                                    | Setiap pekerja/buruh berhak memperoleh penghasilan yang memenuhi kehidupan yang layak bagi kemanusiaan. Hal ini disesuaikan dengan keadaan ekonomi saat ini. |
| 2  | Bab IV, Ps 14     | Jam kerja di perusahaan adalah 7 jam sehari dengan jumlah maksimum 40 jam seminggu. Kesepakatan tersendiri dan yang berlaku jam kerja minimal yang harus dipenuhi oleh pekerja adalah 8 jam kerja sehari untuk 5 hari kerja | Jam kerja minimal yang harus dipenuhi oleh pekerja adalah 7 jam kerja sehari untuk 6 hari kerja.                                                             |

|   |                 |                                                                                                                                                                                                                      |                                                                                                                                                                                                                     |
|---|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | Bab XIII, Ps 38 | Perundingan kembali 90 hari sebelum masa berlakunya perjanjian kerja bersama ini berakhir. Kenyataan sampai saat ini pihak pengusaha belum melakukan perundingan hanya melakukan kesepakatan di luar perundingan PKB | Jangka waktu PKB berlaku paling lama 2 (dua) tahun dan dapat diperpanjang 1 (satu) tahun dan dapat diperpanjang 1 (satu) tahun lagi apabila kedua belah pihak tidak / belum mencapai kesepakatan dalam perundingan. |
|---|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Sumber : Data PKB di PT. UNITED ROPE Kota Medan

It is admitted that understanding good faith is not an easy thing. In reality, good faith always overlaps with what is called decency and fairness that must be applied by companies to employees. Which in the sense of propriety contains good faith. And in the sense of good faith there is propriety. So that in an objective test, one party cannot defend himself by saying that he has acted honestly when he has not acted appropriately. Meanwhile, in the subjective test, the obligation of good faith is related to circumstances due to ignorance. Just as in this research, one of the companies found indications of the principle of bad faith in the PKB towards employees at PT Company. United Rope, among others, namely;

1. That the company does not want to negotiate the issue of increasing employee wages after the PKB expires. Meanwhile, according to Article 88 paragraph (1) of the Manpower Law, every worker/laborer has the right to earn an income that fulfills a decent living for humanity. Therefore, the government asks companies to provide compensation in the form of minimum wages, wages for overtime work, wages for not coming to work due to being absent, wages for not coming to work for carrying out other activities outside of work, wages for exercising the right to work rest, forms and methods of payment of wages , fines and deductions from wages, things that can be taken into account with wages, proportional structure and scale of wages;

2. Unilateral normative rights of workers without first negotiating with the labor union regarding what employee rights are.
3. Companies often take advantage of employees' conditions due to their weak economic position.
4. That the company deliberately does not negotiate changes to the contents of the PKB because if the company uses the old PKB then the entrepreneur will benefit the most.
5. The entrepreneur claims to the workers/labor union that the company's sales results are always decreasing.

Besides PT. United Rope does not use the principle of good faith, but the employers still want to carry out negotiations, even if only outside the PKB negotiations. The negotiations carried out by the employers and the labor unions are to increase transport wages and the absence of layoffs for workers, but to no avail, the workers are still experiencing loss.

Legal consequences are consequences resulting from the existence of a legal relationship. A legal relationship gives rise to rights and obligations, likewise, a work relationship that is based on an agreement between both parties gives rise to rights and obligations that must be carried out by each party. These rights and obligations are then outlined in the Employment Agreement.<sup>22</sup>

Basically, an agreement is considered valid if it meets the requirements for a valid agreement in accordance with Article 1320 of the Civil Code which reads:

1. There is an agreement,
2. Having skills,
3. The existence of a certain thing, and
4. There is a lawful cause.

The conditions above include subjective requirements and objective requirements. If the agreement does not comply with the subjective requirements in numbers 1 and 2, then the agreement can be canceled and if the agreement does not comply with the objective requirements in numbers 3 and 4, then the agreement is null and void and either party can file for cancellation in court.

The meaning of cancellation (*vernietigbaar*) is that either party can request cancellation. The agreement itself remains binding on both parties, as long as it is not canceled (by a judge) at the request of the party who has the right to request cancellation (the incompetent party or

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<sup>22</sup>Libertus Jehani, *Hak-Hak Pekerja Bila di PHK*, (Jakarta : Visimedia, 2007), h. 3.

the party who agreed not freely). Meanwhile, the definition of null and void means that the initial agreement has been canceled, or has never existed, if the objective conditions are not met. The work agreement is null and void, because from the beginning there was never an agreement and/or there was never an agreement.

### **3. Legal Remedies in Dispute Resolution if there is no principle of good faith in the Collective Work Agreement between PT. UNITED ROPE with the Workers' Union**

The research was conducted at the Medan City Manpower Department, as previously mentioned, from the existing population, the researchers only selected a few companies as samples in this research. In the case mentioned previously, the validity period, the PKB extension period, and who was involved in creating the contents of the PKB have been explained.

Based on the results of the author's research by means of a direct interview with the Chairman of the Branch Leadership Body of the Indonesian Free Trade Union, Medan City, Mr. Syaiful Amri, and a direct interview with the Mediator of the Medan City Employment Service, Mrs. Mymoonah R.M Sitanggang.

According to Mr Syaiful Amri, so far no problems have occurred in the contents of the collective work agreement between PT. United Rope, if there is any legal remedy, is the first through consensus deliberation between the union and the employer, so that both parties find a solution to the problem by negotiating the problem. If there is no solution, the worker/employer union will use the process contained in Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.”<sup>23</sup>

Trade unions/labor unions have not been able to report to PT. United Rope regarding the PKB because there are still workers/labor unions who have not agreed to report the case to the Manpower Service to ask for a resolution between PT. United Rope with workers/labor unions regarding the process of creating a new PKB.

"According to Mrs. Mymoonah R.M Sitanggang as Mediator at the Medan City Manpower Service, no one has reported violations in the collective work agreement carried out by employers against workers, but workers' violations against employers are that workers carry sharp weapons even though it has been explained in the collective work agreement. may carry sharp weapons or illegal drugs in the company and this will be subject to sanctions by the company, including termination of employment, because if the employment agreement has

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<sup>23</sup>Wawancara Langsung Dengan Syaiful Amri, Ketua Badan Pimpinan Cabang Serikat Buruh Merdeka Indonesia Kota Medan, Tanggal 5 Februari 2020

been signed by the Manpower Service employee, the agreement will turn into a regulation that must be implemented, which if Violated will be subject to criminal sanctions.”<sup>24</sup>

For the implementation of a collective work agreement (PKB), the effectiveness of its implementation is greatly influenced by the implementation of all articles that are adhered to by all parties. This means that the implementation of a collective work agreement (PKB) that is not carried out properly can cause disputes in the work relationship.

A Collective Labor Agreement which in its clauses contains improprieties will certainly harm one of the parties, in this case the workers are disadvantaged because they have a very weak position, this will then give rise to disputes between employers and workers. If a dispute occurs, the resolution refers to Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.<sup>25</sup>

According to Law Number 2 of 2004, the resolution of industrial relations disputes is through 2 (two) systems, namely the first, non-litigation or outside the industrial relations court, namely bipartite settlement, mediation, conciliation and arbitration, while the second settlement is through litigation or in industrial relations court. The first process in any settlement must be at the bipartite level or at the company level in the context of peace efforts through deliberation and consensus, namely negotiation (Article 3 Paragraph (1) Law 2 of 2004).

#### **D. Conclusion**

The position of the principle of good faith is very important not only at the stage of making (signing) and the post-making (implementation) stage of the contract, but also must be present at the pre-making (drafting) stage of the contract because in contract law practice judges do use their authority to interfere with the contents of the contract. Regarding the application of the principle of good faith at the pre-contract making stage, it can be explained that if the implementation of a contract creates an imbalance or violates feelings of justice, then the judge can make adjustments to the rights and obligations stated in the contract. Therefore, the importance of the principle of good faith in the process of making a CLA and in accordance with regulations.

The legal consequence of a collective work agreement that does not contain the principle of good faith is that if the subjective requirements relating to the subject of the PKB are incomplete, or in other words the conditions that must be fulfilled are not appropriate for

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<sup>24</sup>Wawancara Langsung Dengan Mymoonah R.M Sitanggang, Mediator Dinas Ketenagakerjaan Kota Medan, tanggal 18 November 2019

<sup>25</sup>R. Darmawan, *Itikad Baik Dalam Perjanjian Kerja Bersama, Op. Cit*, h. 114

those who want to make a PKB, then the PKB that has been made can be requested for cancellation by the trade union/labour union. If the cancellation is not requested by both parties concerned, then the CLA remains valid for the parties. For example, a company that does not use the principle of good faith is the company PT. United Rope where they still use the old PKB, namely 2012. The reason they don't want to negotiate it is because of the decline in sales so they don't increase incentive wages such as food wages, but the workers/labor unions ask to increase transport wages and not eliminate termination work for workers. This is accepted by the company because the entrepreneur still makes a profit. In accordance with the existing provisions, in the agreement there must be no mutual loss to each other or it could have fatal legal consequences such as the trade union/labour union being able to cancel the cancellation of the old PKB in order to create a new PKB. So the work agreement has legal consequences until the cancellation is made.

The first legal effort was carried out by PT. United Rope with workers/labor unions is by deliberation to reach a consensus first, although in resolving disputes if there is no good faith in the collective work agreement, it is through 2 (two) systems, namely first, non-litigation/outside the industrial relations court, namely resolution by means of bipartite, mediation, conciliation and arbitration, while the second solution is litigation. Although in the contents of the PKB there is no explanation of what legal remedies will be used if a dispute occurs. If both parties or one of them cannot accept the recommendation for Conciliation or Mediation, they can request a resolution through the Industrial Relations Court.



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