

The Execution of the Collective Labour Agreement between the Labour Union and the Management of "X" Hospital

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Key words: Cooperative Agreement, Union Worker, Labour.

Abstract: The research was about the implementation of the collective labor agreement between the labour union and management "X" Hospital. The research was conducted in "X" Hospital in Surabaya. The research method used was the juridical empirical which observes the work of law in the society. The type of research used in this study is a type of research that is descriptive in nature, namely research which is a problem-solving procedure that is investigated by describing or describing the state of the subject or object at the present time based on the facts that appear. The data used is primary data, namely data obtained directly from the field, as well as secondary data in the form of data from books, literature, regulations and others. Data analysis used is qualitative analysis. The data used were primary, which collected directly by conducting interviews. The focus of this paper is how to implement work agreements at "X" Hospital in Surabaya and what factors hinder the implementation of the work agreement at "X" Hospital in Surabaya. The purpose of the study was to find out how to implement work agreements at "X" Hospital in Surabaya and to find out the factors that hinder the birth of the implementation of work agreements at "X" Hospital in Surabaya.

1 INTRODUCTION

In general, there are five major problems that comes from unsatisfied policies, they are: a) the waging; b) social guarantee; c) inappropriate job description; d) inappropriate job potency; e) personal problems. The problems above are divided into two categories which are right conflicts (*rechtsgeschillen*) and duty conflicts (*belangen-geschillen*). Right conflict is a clash which caused by one of parties could not fulfil the contract of PKB, labouring agreement, manager regulation or violation of law. As we know, the regulation used by labour association is law number 3 of 2014 about employment. From the law, we could mention the principles, purposes, and character of it. The principles are stated in article 3, it states that the principle of employment must follow Uniting principle through crossed coordination between centre and local government. The principle is already in line with national development principle especially for democracy, justice, and equity principle. The facultative character means that it is able to be an optional. In its implementation, law number 13 of 2013 could not be directly published. It still needs more detail of relation between labour and company. One of result

is the implementation of Collective Labour Agreement (PKB). It is an agreement that consist of details about the job description among company and labour association. The purposes of PKB is to control the working requirements, the duties, and rights of both parties. Moreover, PKB is the major agreement tend to be followed as fundamental policies in job description making. Because of the normative law, in its implementation, PT Affinity Health Indonesia decides to establish the agreement with labour association.

2 RESEARCH METHOD

This study is one of Law study, it is a study based on analysis of state law documents whether it is primary or secondary law materials. In one hand, the approach used in this study is statue approach and conceptual approach. The statue approach is to overcame the problem by analysing the law and regulations which connected to the issue of the study. Meanwhile, conceptual approach uses doctrine perspective of the development of law, the issue of this study is the collective about agreement

which is controlled by law of employment. At last, conceptual approach is used to evaluate law concept in accordance with employment regulation.

3 RESULT AND DISCUSSION

3.1 Definition, Principles, and Requirement of Legal Agreement

The agreement is stated in article 1313 of The Civil Law which states: “an agreement is an act of single person or more who are bounded towards another people”. This policy is not strong enough as there is detail need to be revised. The weaknesses are: first, it does concern on one sector, it is depicted in the word “Bounded themselves”, this verb phrase means single perspective from single sector and it does not come from both parties of agreement. It must be replaced by “bounded each other” as it represents consciousness of both sides. Second, the word “act” has no consciousness, from its definition, “act” also has meaning as organizers of interest (*zaakwaarneming*), or an act of breaking the law (*onrechmatige daad*). It must be replaced with its former meaning, an agreement.

Thirdly, the term agreement is too general, it could cover the wedding agreement in system of law. But, the agreement here has specific relation between debtor and creditor about their financial status. The agreement stated in book of III KUH *Perdata* limits its agreement on commodities only, it does not talk about personal character. Fourth, the law does not mention the purposes of agreement that makes people bounded by agreement do not have exact idea of their agreement.

The principles of agreement support the state as pillars of the policies and laws to create harmony, balance, and to prevent the complex norms to dominate over another. The law principles also become a measure point to guarantee the law empowerment among societies. Theoretically, there are five principles agreement law based on civil law. The principles are freedom of contract, *consensualism*, *pacta sunt servanda*, good faith, and personality principles.

As for the sake of the validity of the agreement, even though the law of the treaty embraces an open system, people are free to enter into an agreement. They are not to be bound by existing provisions, but the conditions of validity of treaties required by law must be fulfilled in order to enter into impeccable agreement. Regarding the validity of an agreement is generally regulated in Article 1320 Civil Code,

namely: First, agree those who commit themselves. Second, the ability to take an engagement. Third, a certain thing. Fourth, a lawful cause.

3.2 Aspects and Requirement of Legal Agreement

In collective agreement, there are some aspects that need to be completed. First, there must be work aspect. In collective agreement, work aspect should be mentioned as major object of the agreement, the job should be done by its own workers, the duties could not be replaced with other person without permission from company. This is supported by civil KUH article 30a, it states “labour must finish their own job, they could ask help from third parties within permission of company”. Secondly, it is the instruction aspect, the job manifestation is depicted in the instruction given by the companies to the labours, they must obey to the instruction as their job description. This aspect differs one job to another such as doctors and their patient, lawyer and their client.

Meanwhile, concerning with requirement for legal agreement, there are several requirements that must be fulfilled for them as states in article 1320 civil KUH. This policy is also stated in article 52 act 1 law number 13 of 2003 which states that the agreement is established within four principles as follow:

- Agreement from both sides
- The ability to commence act of law
- Job description
- The job must not against norms, decency, and others that stated in current laws.

3.3 Collective Labour Agreement

The agreement is mentioned in law number 13 of 2003 as *Perjanjian Kerja Bersama* (PKB), it is known as collective labour agreement in English (CLA) and *Collective Arbeids Overenskomst* in Netherlands (CLO). In Indonesia, this agreement is known as part of civil KUH. Meanwhile, according to Lotmar, *Tarifvertrage*, it is an agreement between an individual or a group entrepreneur and group of labour which concern in minimum wage for future job that will be part of their agreement.

According to article 1 number 12 law number 13 of 2003 jo article 1 number 2 decision of ministry of employment and transmigration number KEP-48/MEN/IV/2004, PKB is an agreement is result of conference between worker association/labour association which is registered in state record in

department of employment and transmigration, or a group of companies who commence requirement of job, duty, and right of both sides.

From the definitions above, there are similarities that either the labour agreement or the Collective Labour Agreement is intended to regulate the relationship between the two parties in conducting labour relations between workers / employers and employers / entrepreneurs. Similarly, it is also intended as a basic reference or as a parent in making employment agreements. However, it can be seen that the understanding of PKB in Law No. 13 of 2003 has a broader understanding.

3.4 The Role and Function of Labour Within Collective Labour Agreement

In accordance with the role of labour association in "X" Hospital, the role is controlled in law number 13 of 2003 article 116 act 2. From the law, we could conclude that the role of law association in "X" Hospital is to establish, form, and sign the collective labour agreement with management team of "X" Hospital. The agreement must be established by conference within mutual cooperation of both sides.

The labour association in "X" Hospital, started in 2008, had commenced five collective labour agreement, the first PKB is signed on June 2016. The first agreement was not used in long time. there was a revision and addition of its materials. Thus, the new agreement was established and it survived until June 2018.

The establishment of labour association is to provide protection, right and duties empowerment, and improve the prosperous life of the labours and their families. Within the purposes, the role and function of labour association will be as follow:

- the side who commit in collective labour agreement and problem between labour and company
- as representation of labours in state employment council or any similar state institution.
- as mediator to create industrial relation which is harmony, dynamic, and equitable based on current regulation of state
- as aspiration mediator of its members
- as the one who plan, execute, and responsible for mass employee strike based on current laws.

There is a slight different about minimum wage stated i PKB and concept of Law about employment. Law number 13 of 2013 in chapter X second section, the concept of law is using the term

Wage while PKB uses the term of Salary. It will result in different interpretation, the labours will be known as subject if the term used was salary. Whether the labour is already permanent or on training, the agreement that they made with "X" Hospital is still affected and the same to all labours. The character of PKB is general for employment department, there is specific points which company give instructions for the decision made by management team of "X" Hospital before the agreement is reached from both parties.

Conference and discussion in bipartite forum will be applied if there is any clash or conflict occurred in their environment. If the bipartite forum could not finish the clash between both parties, the case will be handles into employment and transmigration state council.

Moreover, if the result they got from council does not meet their expectation of both sides, the case will follow current laws. The procedures above are also applicable for different interpretation case between PKB and current regulation. In the other hand, "X" Hospital will be the one who responsible for employee requirement which requires high skills, specific criteria, the recruitment process and policies. The PKB agreement only concern in waging policies, Occupational Health Safety, and social guarantee for labours.

3.5 Subduing Collective Labour Agreement Obstacles

The efforts to handle with PKB obstacles have been established by company and labour association as follow:

- a. The representation of the role commenced by the Labour Association in accordance with problems arising of the existence of management decisions that affect the employee's welfare within coordination and clarification. From the results of coordination, the result gives positive steps taken by the Union in performing its functions and roles. Then, the Union of Workers and Management sit together to coordinate and conduct joint talks to correct the decisions or policies that have been issued by management. For policies or decisions that have been issued by management of "X" Hospital has never been cancelled. However, correction is made by way of revision relating to the substance of the decision or policy that harms the employee. If according to the consideration of the policy is in accordance with the circumstances of the company, then Unions are not too imposing the

will. The circumstances of the company that can be considered such as the increase prices or the ability of the company that does not allow the company to meet the demands of the Union Workers. Then in the bipartite meeting was made by Minute of Meeting or Minutes that will be attached in the decision of the board of directors.

- b The labour association contributes in sanctions given to their members as follow:
 1. Clarifying the sanction to corresponding labour, the association ask the position of labour when the case was occurring. The association measures the mistakes of their member and the sanction given by company, the association will ask for labour perspective whether he/she accept the sanction or not.
 2. If the result is an objection. The association will accompany the labour to send legal letter of objection to HRD department of company for advance advocacy. Because, some of labour are not willing to have meeting with HRD team because of prestige factors. In other words, it is the labour decision to have an objection and get help from association or the labour simply just take and accept the sanction from their mistakes.

From collective labour agreement effectiveness perspective between company and association, the one who is very affecting in PKB effectiveness is labour association, the employee, and management. From regulation perspective, PKB has already in line with current regulations, it could be a model for good agreement between company and its employee. Moreover, the agreement meets all requirements to be a legal document in the eye of state. Unfortunately, the behaviours of actors in PKB agreement has violated that makes the agreement ineffective. The internal problems of the obstacles are caused by self-demand that result in regulation violation within company. Externally, the problems come from economic condition and government policies which result in relation between company and its employee.

4 CONCLUSION

There is some conclusion taken from collective labour agreement case. First, the collective labour agreement between “X” Hospital and Labour association, from the first agreement established in 2016 into current agreement, there is no much problem in quantity perspective. But, such little

mistakes will also affect the agreement which result in relation between both parties. Second, the problem arose when there is no coordination between both “X” Hospital and its employee. The policies decision without coordination of both parties will result in the welfare of labours and violation to the regulation. Thus, the sanction to the employee becomes an option for the employee to deliver and show their aspiration. Thirdly, bipartite forum is enough to handle out most cases happened during the agreement. Whereas, the labour association becomes protector of its members in the conference. But, most problems are affected from external factors such as economic condition and government policies which affects policies by company.

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