

ROLE OF COLLECTIVE LABOR AGREEMENT FOR WORKERS WITH EMPLOYERS

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ABSTRACT

Employers, workers, and the government has always tried to create harmonious industrial relations in the company so that high productivity and welfare of workers is getting better. The Labor laws issued by the government is not enough to regulate of working relationship, terms of employment and labor norms, because the working conditions of each company is very different. If only rely on labor laws so much related to of working relationship, terms of employment and labor norms are not covered by the labor laws. Due to incomplete labor law, the labor law provides an opportunity for workers through of trade unions that exist in the company to hold a Collective Labor Agreement with entrepreneurs to set more clearly about of working relationship, working conditions, and work norm. In Article 116 of Law No. 3 of 2003 about employment is mentioned that a Collective Labor Agreement made by trade union / labor union or trade unions / labor unions that have been recorded on the responsible government agency in the field of employment with the employer or multiple employers. The Collective labor agreement contains rights and obligations of the employer; the rights and obligations of of trade unions / labor unions and worker / laborer; period and the effective date and the signature of the maker of the collective labor agreement.

Key words: CLA, workers, and employers

Introduction

The labor laws in Indonesia and in other countries does not complete regulate of working relationship, terms of employment, and labor norms because each company has different work conditions. It resulted in labor laws only regulate of working relationship, terms of employment , and labor norms in general while things are specifically authorized to employers and employees through the Company Regulations and with a Collective Labor Agreement for the set. The Collective Labor Agreement is one of facilities of industrial relations in Indonesia are regulated in Article 103 of Law No. 13 of 2003 on Labor.

In Article 1 point 16 of Law No. 13 of 2003 is mentioned "The Industrial Relations is a system of relationships formed between the perpetrators of the production process of goods and / or services (consisting of representatives from employers, workers / laborers, and government) are based on the values embodied in the principles of Pancasila and the Constitution of the Republic of Indonesia Year 1945.

In the implementation of the national identity is known with the family principle and mutual cooperation as well as the principle of deliberation. The manifestation of working relationship between workers and employers in the company is cooperation in a production process to enjoy the results and responsible for maintaining business continuity and development of the company which is also beneficial for improving the welfare of workers and their families.

The term a Collective Labor Agreement as it is now used, based on the provisions of Law No. 13 of 2003 on Labor. Previously, mention of the Collective Labor Agreement is known by various names, in the Civil Code referred to Collective Labour Agreement (Collective Arbeids Overeenkomst-CAO), in the Law No. 21 of 1954 called with the Labour Agreement. In the formulation of Pancasila Industrial Relations and some labor regulations, used the term Collective Labor Agreement (CLA). In English, a Collective Labor Agreement is usually known as the Collective Labour Agreement (CLA).

For the first time, the Collective Labor Agreement regulated in the Civil Code, called with collective bargaining, the regulations made by an employer or more, or an association of employers or more, which is a legal entity on the one hand, and a trade union or more which is a legal entity, on the other hand, about the terms of employment that must be ignored when making the Collective Labor Agreement.

The Law No. 21 of 1954, the Collective Labor Agreement is an agreement organized by the union or unions registered in the Ministry of Labour with businessmen, entrepreneurs, associations of employers who are legal entities, which in general or simply load requirements work that must be considered in the employment agreement.

While in Law 13 of 2003 on Labor, the Collective Labor Agreement is defined as an agreement that is the result of negotiations between of trade union or trade unions registered in the institution of employment with the employer, or some employers, or associations entrepreneurs that includes working conditions, rights and obligations of both parties. In the formula above, is not required, for employers' organizations, must be a legal entity.¹

International Labour Organization (ILO), through ILO Convention No. 98 (Convention concerning the Application of the Principles of the Right to Organise and Right to Collective Bargaining), defines collective bargaining as "voluntary negotiation between employers or employers' organizations and workers' organizations, with a goal to get the setting terms and conditions of employment by the mutual agreement". ILO Recommendation 91 (Recommendation on Joint Agreement) further defines collective bargaining in the following way: the term "collective agreements" means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations on the one sides, and one or more representative workers' organizations, or, if no such organizations, representatives of the workers who have been and are authorized according to law and regulations on the other hand.²

Currently, collective bargaining is widely recognized as one of the basic essentials of democracy in the industry as well as in civil society in general. In some countries, the system has greatly evolve to the point where bargaining is not only happening at the factory level but also at the industry level, or even at the level of inter-industry. The issues covered ranged from wages and fringe benefits, to the mechanisms of worker participation in running the company. In the countries where the majority of workers covered by collective bargaining and where the collective bargaining system clearly exceeded the industrial democracy.³

Collective bargaining is a democratic formula of "work rules" and "working conditions" about things that directly affect for the workers in the workplace. Collective bargaining between workers and employers to produce the Collective Labor Agreement at creating democracy in the workplace, because it took the workers through the union that establishes the rights and obligations of employers and the rights and obligations of workers in the company.

The Labor agreements are agreements held by one or several trade unions and registered with the Ministry of Labour with one or several employers, one or more associations of employers who are legal entities, which in general or merely contains the terms of labor that must be considered in the employment agreement. From the formulation of labor is clearly that the agreement was actually held to assign the rights and obligations of workers and employers through discussion between the two parties, trade unions and employers. Labor agreement is not a collective agreement or a collective labor agreement, first because it is not an agreement concern about the work, and the second is not a collective agreement or by all the workers collectively.

Therefore, the labor agreement is the result of negotiations between the parties concerned, then it generally has approached the desire of workers and employers. In contrast to the employer regulations and labor agreements, employers cannot enter anything he wants to suppress or harm workers. Because of that, the labor agreements in western countries play a very important role. Almost every rule that governs of working relationship in various companies is the result of consultation between employers and trade unions concerned.

The Collective Labor Agreement is different from the Company's Regulations in the case process of making. Where the collective labor agreement is an agreement which is the result of negotiations between the trade union / trade unions or labor union / labor unions that recorded in the responsible government agency and in the field of employment with the employer or several employers or associations entrepreneurs that includes working conditions, rights or obligations both sides. While the Company Regulations applicable since getting approval from the responsible government agency labor affairs.

The setting in creating the Collective Labor Agreement regulated in Article 116-135 of the Employment Act No. 13 of 2003 and Ministerial Decree No. 48 in 2004. The law has been set up in detail about the trade union / labor union that can negotiate with employers Collective Labor Agreement. However, in practice, especially concerning trade unions / labor unions are entitled to negotiate with employers Collective Labour Agreement. However, that provision can not resolve the problem if between the of trade unions / labor unions intends to remain involved in talks to create a the Collective Labor Agreement with the employer. However, significantly of trade unions / labor unions are not the majority in the company. According to the trade unions / labor unions that are not majority pointed to Law 21 of 2000 concerning of trade unions / labor unions, that one of the functions of trade unions / labor unions is to create a the Collective Labor

Agreement with the employer. While the company is allowed only one the Collective Labor Agreement which applies to all workers in the company.

Research design

The procedure for the manufacture of making Labor Agreements are governed by Article 116-133 of Law No. 13 of 2003 on Labour and the Ministry of Manpower and Transmigration No. 48 / MEN / 2004 on procedures for the conclusion and ratification Company Regulations and Development and Registration of the Collective Labor Agreement, are:

A. The parties that are directly related in the the Collective Labour Agreement negotiations are:

- a. Trade unions / labor unions that have been recorded on the responsible government agency for manpower affairs
- b. Entrepreneur or several entrepreneurs

B. Procedure the manufacture of making Labor Agreements

- a. Making the Labor Agreements is the result of negotiations between the union / of trade unions with employers who implemented deliberation
- b. The Collective Labor Agreement made by trade unions / labor union or joint of trade unions / labor unions that has been recorded on the responsible government agency in the field of employment with employers or several employers
- c. If in a company there is only one of trade unions / labor union, then the union / labor unions can represent workers / laborers in the negotiating the manufacture of the Collective Labor Agreement with the employer if it has a total membership of more than 50% of the total number of workers / laborers in the relevant company
- d. If in a the company there is only one of trade unions / labor unions as contained in the letter c, but do not have a total membership of more than 50% of the total number of workers / laborers in the the company then the trade union / labor unions can represent workers / laborers in negotiations with employers if the of trade unions / labor unions has received the support of more than 50% of the total number of workers / laborers in the company through voting
- e. If the support does not reach 50%, the of trade unions / labor unions can resubmit the request to negotiate a the collective labor agreement with employers after exceed a period of six months starting from the voting done by following the procedure outlined in the letter c
- f. If in a company there are more than one trade union / labor unions that represents the workers / laborers to negotiate with employers that membership numbers more than 50% of the total number of workers / laborers in the company
- g. If the provisions contained in the letter f is not fulfilled, then the union / labor unions can form a coalition in order to reach the amount of more than 50% of the total number of workers / laborers in the company to represent the negotiations with employers
- h. If it is written in letters e and f is not reached then the of trade unions / labor unions formed a negotiating team whose membership is determined proportionally based on the number of members of each of trade unions / labor
- i. Negotiating team has been formed must accept talks material submitted by the worker / laborer who is not a member of trade unions / labor unions

C. Verification of trade union membership

To obtain validation data membership of trade unions / labor unions that can be accepted as the parties, according with Article 18 Kep.48 / Men / IV / 2004, needs to be verified. In determining the membership of trade unions / labor unions in one company there are one or more of trade unions / labor unions, then that can be represent workers / laborers to negotiate with employers is the of trade unions / labor unions has a membership of more than 50% of the total number of workers / workers in the company.

In determining the amount of the membership of trade unions / labor unions are valid need for verification of membership of trade unions / labor unions conducted by the committee of verification which consists of representatives of the board of trade unions / labor unions in the company, witnessed by a representative of the agency responsible for labor and employers.

The verification of membership of trade unions / labor unions is based on evidence of a membership card in accordance with article 121 of Law 13 of 2003. If there is more than one membership card then a valid membership card is a membership card of the latter.

Results of the verification set forth in the form of an official report signed by the committee and the witnesses that the results are binding for the union / labor unions in the company.

The verification carried out in places of work are arranged so that does not interfere with the production process within one day of the agreed work of trade unions / labor unions. Employers and of trade unions / labor unions are prohibited from taking action that affects the implementation of the verification.

D. The Stages of Bargaining the Collective Labor Agreement

1. Preparation

Things that are important in the preparation stage are as follows:

- a. Trade unions / labor unions and employers must be prepared physically and mentally for the manufacture of CLA negotiations. It means that trade unions / labor unions and employers have to understand the intent and purpose of making CLA as well as techniques of manufacture
- b. The trade unions / labor unions and employers have prepared the data and information in the negotiations and the manufacture of CLA
- c. The trade unions / labor unions and employers have prepared the negotiating team and the speaker respectively
- d. of trade unions / labor unions first exchange CLA concept to be negotiated

2. Negotiations states

In the negotiation stage let do things as follows:

- a. That need to be agreed in the negotiation phase is rules the negotiations that at least the following:
 - The purpose of making rule
 - The composition of the negotiating team
 - The long duration of negotiation
 - Material negotiations
 - The place of negotiations
 - Procedures for negotiations
 - How to completion if there are problems in the negotiation process
 - Terms validity negotiations
 - Cost negotiations
- b. Invest in subjects that have been agreed and clearly inventoried and initialed by representatives of trade unions / labor unions and employers
- c. In negotiating things that principle still maintain an atmosphere of openness and familiarity in order to avoid the problems that inhibit CLA negotiations
- d. In negotiating topics that have not been agreed should start from simple things to be discussed so that an agreement can be achieved. Any agreement reached initialed by both parties. If the article needs to be made an explanation of the article which is inseparable attachment with the collective labor agreement
- e. The results of the improvement team was brought in a plenary meeting of the negotiating team and if there is an agreement to approve the proposed concept, the concept of the CLA are ready to arranged into CLA

3. The preparation stage of the contents of CLA

- a. Topics that have been negotiated with complete and initialed by each party organized into CLA concept that has been intact in the format according to the the prevailing custom
- b. To complete CLA editorial material, should set up a small team whose membership represents the of trade unions / labor
- c. After the CLA is signed then each of the parties explain the content of CLA to their respective members so that the CLA really understood the substance and carried out the best possible way

4. The stage of signing

In order to CLA has the legal power and moral force, the signing of the CLA can be carried out in a an event attended by the workers.

E. The Procedures for the Registration of the Collective Labor Agreement

1. The registration procedure

- a. The Employers register CLA to the the responsible government agency for manpower affairs
- b. The CLA registration as set out in a letter intended:
 - As a means of monitoring and evaluation arrangements working conditions are implemented in the company
 - As the main reference in the case of a dispute implementation of the CLA
- c. The CLA registration submission referred to in letter a need to attach a script of CLA made in triplicate stamped and signed by employers and trade unions / labor unions
- d. The registration is conducted by the Collective Labor Agreement:
 - i. Heads of departments / the responsible government agency in the manpower field district / city to the company located in just one city district
 - ii. Heads of departments / the responsible government agency for manpower affairs in the province for the company located on more than one district / city in the the province

- iii. Director general of industrial relations for the the company guidance contained in more than one province
- e. CLA registration submission referred to in letter a is equipped with:
 1. Fill out the registration form which contains the following information:
 - Name and address of the company
 - Name of company leadership
 - Regional operating the company
 - Status of capital the company
 - Type or business
 - The number of workers / laborers by gender
 - The status of of working relationship
 - The highest and lowest wages
 - Name and address of trade unions / labor unions
 - Number of recording of trade unions / labor unions
 - The number of members of trade unions / labor unions
 - Duration of the collective labor agreement
 - Registration of the collective labor agreement for the next (in the case extension or renewal)
 2. To Create a a statement of the parties containing information on the existence of trade unions / labor unions in the company
 - The number of of trade unions / labor unions
 - The number of members
 - To determine whether the members of of trade unions / labor union of the majority
 3. Copy of a statement of of trade unions / labor unions to determine whether the of trade unions / labor unions has been registered according to the Kep. 16 / Men / 2001, article 11.
- f. The registration of Collective Labour Agreement referred to in letter a was registered by the officials as referred to in letter d within a period of seven working days from the date of receipt of the request.

2. In the case of officials / agencies accept applications for registration CLA shall perform:

- a. Research :
 - Completeness formal requirements referred to in letter e (2)
 - Materials the collective labor agreement text that conflict with labor laws and regulations
- b. If the conditions mentioned in letter e (2) have been fulfilled and there is no material that is contrary with regulations, then within a period of seven working days from the completion of the research as mentioned in point 1 shall issue the registration of the collective labor agreement.
- c. If the requirement in letter e (2) is not fulfilled or there is a material the collective labor agreement contrary to laws and regulations, the official the responsible government agency in the manpower field as referred to in letter e (2) gives an account in decision letter of registration

F. The Scope of Applicability and Validity Period the Collective Labor Agreement

1. The Collective Labor Agreement which is listed on the responsible government agency in the manpower field in district / city, only applies to companies that are in the district / city
2. The Collective Labor Agreement which was registered at the the responsible government agency in the manpower field in the province applies to companies located in the province
3. The Collective Labor Agreement which is registered in the Directorate General of Industrial Relations applies to companies that are more than one province
4. The period of validity of the Collective Labor Agreement is only two years later be extended again.

III. The Dispute Settlement of Collective Labour Agreement

The negotiations between employers and trade unions to create a the Collective Labor Agreement is not always successful, sometimes the terms of employment and labor norms runs into a deadlockare. In case of a deadlock between employers and of trade unions, the way to resolve through the Industrial Dispute Settlement set forth in Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement.

The disputes of Collective Labor Agreement between employers and workers, including the type of dispute. This dispute resolution can be up to the industrial relations court in the district court, but not up to the supreme court.

IV. The Purpose and Function of the Collective Labour Agreement For Employers and Workers and The monitoring

A. The purpose of the Collective Labor Agreement

The Collective Labor Agreement as one of the main facilities in carrying out industrial relations aims to:

1. Reinforce and clarify the rights and obligations of workers / laborers or trade unions / labor union in the company
2. Reinforce and create a harmonious industrial relations in the the company
3. establish the terms of employment or employment relationship that has not been regulated in the legislation together
4. Set up procedures for the settlement of complaints and disagreements between workers / laborers or trade unions / labor unions with the employers
5. Creating a working situation for workers / labor and certainty in business for employers because of the arrangement of rights and obligations are clear to both parties.

B. The function of the Collective Labor Agreement

The Collective Labor Agreement is an agreement between employers and trade unions / labor unions that regulates the rights and obligations in the of working relationship, of course, is a nuance that has into account the aspirations and interests of the workers / laborers and employers, has the function, among others:

1. As a guideline the master regulator of rights and obligations for workers / laborers and entrepreneurs, so as to avoid the existence of differences in the interpretation of the technical implementation of working relationship
2. As a means to promote unity, openness, calmness and continuity of work
3. The media of participation fpr workers / laborers in the formulation of company policy
4. Fill in the blanks law on setting the terms of employment or working conditions that not regulated in laws and regulations yet
5. Improving the welfare of workers / laborers periodically

C. Monitoring the Implementation of the Collective Labor Agreement

The Collective Labor Agreement, which is made by the employer with trade unions and have been registered with the responsible government agency in the field of labor and already to be the norm, so the monitoring of implementation was conducted by employee labor inspectors. that have been mentioned in article 134 of Law No. 13 of 2003 about manpower.

Conclusion

Employment Agreement together constitute one of the means for the implementation of harmonious industrial relations, safe, steady, and dynamic based on Pancasila, so as to have the following benefits:

- a. The certainty of rights and obligations
 - The Collective Labour Agreement will create legal certainty about the rights and obligations relating to the employment relationship between the workers / laborers and employers
 - The Collective Labour Agreement provide certainty implementation of the terms of employment in the company
- b. Create morale
 - The Collective Labour Agreement to avoid a variety of possible arbitrariness and adverse actions of one party against the other party in implementing the rights and obligations of workers / laborers and employers
 - The Collective Labour Agreement to create an atmosphere and spirit of harmonious, dynamic for the parties to the employment relationship
- c. Encourage the increased labor productivity
 - The Collective Labor Agreement can help increase labor productivity and reduce the incidence of disputes
 - The Collective Labor Agreement can create peace and tranquility work seeks a dynamic and competitive
 - The Collective Labor Agreement entrepreneurs can develop plans to establish the cost of production, announced in the company's development

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