



## **Legal Consequences For Companies For Violations Of Collective Bargaining Agreements**

**Andiani Putri Rahmawati<sup>a</sup>, Anajeng Esri Edhi Mahanani<sup>b</sup>**

<sup>a</sup> Faculty of Law, University of Pembangunan Nasional “Veteran” Jawa Timur, Surabaya, Email: andianiputri.r@gmail.com

<sup>b</sup> Faculty of Law, University of Pembangunan Nasional “Veteran” Jawa Timur, Surabaya, Email: anajengmahanani.ih@upnjatim.ac.id

### **ABSTRAK**

Perjanjian Kerja Bersama (PKB) yang dibuat antara perusahaan dan serikat pekerja wajib mengacu pada Undang-Undang yang mengatur tentang Ketenagakerjaan di Indonesia agar menjamin hak-hak dasar pekerja, menjamin kesamaan dan kesempatan serta perlakuan tanpa diskriminasi untuk mensejahterakan pekerja. Apabila Perjanjian Kerja Bersama yang dibuat bertentangan dengan perundang-undangan yang berlaku maka dapat mengakibatkan Perjanjian Kerja Bersama tersebut dapat batal demi hukum. Dalam penelitian ini penulis ingin meneliti tentang Tinjauan Yuridis Terhadap Perjanjian Kerja Bersama antara PT x dengan Serikat Pekerja y. Jenis penelitian hukum dalam skripsi ini bersifat penelitian hukum normative dan menggunakan metode analisis data kualitatif. Dalam penerapan Perjanjian Kerja Bersama (PKB) yang dilakukan PT x dengan Serikat Pekerja y, ada beberapa ketidaksesuaian antara isi klausul yang terdapat dalam Perjanjian Kerja Bersama (PKB) dengan ketentuan yang ada dalam Undang-Undang yang mengatur tentang Ketenagakerjaan di Indonesia. Meskipun ada beberapa ketidaksesuaian dari isi klausul Perjanjian Kerja Bersama yang dilakukan antara PT x dengan y. Tetapi, substansi dan komponen lainnya yang ada di dalam Perjanjian Kerja Bersama (PKB) ini telah sesuai dengan Undang-Undang yang mengatur tentang ketenagakerjaan di Indonesia.

Kata kunci: *Perjanjian Kerja Bersama, pekerja, batal demi hukum*

### **ABSTRACT**

Collective Labor Agreements (PKB) made between companies and workers' unions must refer to the Law governing Manpower in Indonesia in order to guarantee workers' basic rights, guarantee equality and opportunity and treatment without discrimination for the welfare of workers. If the Collective Labor Agreement made is contrary to applicable laws, it can result in the Collective Labor Agreement being null and void by law. In this research, the writer wants to examine the Juridical Review of the Collective Labor Agreement between PT x and the Workers' Union y. The type of legal research in this thesis is normative legal research and uses qualitative data analysis methods. In the application of the Collective Labor Agreement (PKB) by PT x with the Labor Union y, there are several discrepancies between the contents of the clauses contained in the Collective Labor Agreement (PKB) and the provisions contained in the Law governing Manpower in Indonesia. Even though there are some discrepancies in the contents of the Collective Labor Agreement clause made between PT x and y. However, the substance and other components contained in the Collective Labor Agreement (PKB) are in accordance with the laws governing employment in Indonesia.

Keywords: *Collective Labor Agreement, workers, null and void*

## A. Introduction

The Collective Labor Agreement is an aspect of private law in Law Number 13 of 2003 concerning Manpower, so the Collective Labor Agreement (PKB) should be binding only on the parties that make it. This is in accordance with one of the principles in civil law, namely the privity of contract principle contained in article 1340 paragraph 1 BW namely "An agreement only applies between the parties who make it", it is clear here that parties who do not participate in making The Collective Labor Agreement (PKB) cannot be bound and does not give rise to the rights and obligations stipulated in the Collective Labor Agreement (PKB). The parties bound in the Collective Labor Agreement (PKB) are employers and workers or trade unions.

According to Subekti, an agreement is an event where one person promises another person or where two people promise each other to do something. From this event, a relationship arises between the two people which is called an engagement. The agreement issues an agreement between the two people who make it. In its form, the agreement is in the form of a series of

words containing promises or commitments spoken or written.<sup>1</sup>

Article 1 point 21 Law Number 13 of 2003 concerning Manpower in conjunction with Article 1 paragraph 2 Decree of the Minister of Manpower and Transmigration Number: KEP-48/MEN/IV/2004 dated 8 April 2004 concerning Procedures for Making and Ratifying Company Regulations and Making and Registration of the Collective Labor Agreement provides a definition of the Collective Labor Agreement as an agreement which is the result of negotiations between the union and the employer which contains the terms of work, rights and obligations of both parties. From this definition it can be explained that the Collective Labor Agreement (PKB) has three core clauses that can provide views on the Collective Labor Agreement, namely the source of the engagement, the subject matter and the contents of the Collective Labor Agreement itself.

Law Number 13 of 2003 concerning Manpower in its operations cannot be carried out directly, there needs to be an elaboration to regulate the relationship between workers and

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<sup>1</sup> Subekti, *Law of Agreement print 20*, Intermasa, Jakarta, 2002, p. 1.

employers. One of these descriptions is the Collective Labor Agreement (PKB). The Collective Labor Agreement (PKB) is the result of an agreement to carry out the work carried out by the employer and the labor union. The Collective Labor Agreement (PKB) was made, namely to regulate the terms of work and regulate the rights and obligations of both parties.

## B. Methods

The research method used by the author in this writing is normative juridical research. Normative juridical research is also known as doctrinal legal research, library research, or documentary studies.<sup>2</sup> In the normative juridical type of research, the approach used is the legal approach applicable in Indonesia (positive law) which usually uses or relies on data sources in the form of written laws and regulations, court decisions, official documents from the government, theories -theories and legal concepts and views of leading legal scholars.<sup>3</sup>

## C. Discussion

### 1. Forms of Violation of the Collective Bargaining Agreement by the Company

In essence, the Collective Labor Agreement is an agreement that results in an agreement between the parties who make it. If in the Collective Labor Agreement the parties agree according to the initial provisions but in practice they do not implement them, then this can be declared as a default. Default is the implementation of an agreement that is not timely or done improperly or not implemented at all. In the event of the said default, one of the parties has violated the agreement as stated in the Collective Labor Agreement. Violations were committed by both companies and workers and trade unions. Forms of violations by companies relating to the fulfillment of employee rights as stated in Article 8 of the Collective Labor Agreement that:

1. Every employee has the right to get a task and job in accordance with the position determined based on the Decree of the Board of Directors.
2. Every employee is entitled to compensation in the form of salary, benefits, and other income which is determined

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<sup>2</sup> Aris Prio Agus Santoso, et al, "*Introduction to Legal Research Methodology*", Yogyakarta: Pustaka Baru Press, 2022, p.38.

<sup>3</sup> Dillah Philips Suratman, "*Legal Research Methods*", Print I, Bandung: Alfabeta, 2013, p.11.

according to his work and responsibilities.

3. Every employee has the right to time and days off from work and leave.
4. Every employee has the right to be reimbursed for care and treatment for the disease he suffers in accordance with applicable regulations.
5. Every employee is enrolled in the Social Security Program (BPJS TK and BPJS Health) in accordance with the current Law of the Republic of Indonesia.
6. Every employee who is threatened and or is subject to legal action by the authorities in order to carry out the tasks assigned by the Company, has the right to obtain legal defense from the company at the company's expense.

In addition, the violations committed by the Company are related to its large authority to terminate employment (PHK). Companies often terminate employment relations that are not in accordance with the procedures of the Collective Labor Agreement or even do not fulfill the normative rights of workers and unions, such as granting leave

permits and minimum wages in accordance with regional regulations. On this matter, workers and trade unions have the right to apply for termination of employment if the employer commits an act such as:

- a. Abusing, abusing or threatening employees;
- b. Persuading and/or ordering employees to take actions that are contrary to norms and laws and regulations;
- c. Failure to pay salary at the specified time for 3 (three) consecutive months or more;
- d. Not performing obligations that have been promised to employees;
- e. Order employees to carry out work other than what was agreed upon, or provide work that endangers the life, safety, health and morals of employees while the work is not included in the work agreement.

Collective labor agreements (PKB) are drawn up by registered employers and trade unions and implemented by deliberation to reach consensus. The parties or subjects that make a collective labor agreement (PKB) are from the workers/workers represented by a trade/labor union or several trade unions/workers in the

company and the entrepreneur or association of entrepreneurs. Collective Labor Agreements (PKB) can only be negotiated and drawn up by trade unions that are supported by the majority of workers in the company concerned.<sup>4</sup>

Trade unions/labor unions that can represent in the negotiations for making collective labor agreements according to Law Number 13 of 2003 concerning Manpower are stated:

1. In the event that in one company there is only one trade/labor union, the said trade/labor union has the right to represent the workers/laborers in negotiations for the drafting of a collective labor agreement with employers if it has more than 50% (fifty percent) of the total number of workers./worker in the company concerned (Article 119 paragraph (1)).
2. In the event that in one company there is only one trade/labour union but it does not have more than 50% (fifty

percent) of the total number of workers/labor in the company, the trade/labour union can represent the workers/labourers if it has received more support 50% (fifty percent) of the total number of workers/laborers through voting (Article 119 paragraph (2)).

3. If this support is not achieved, the trade/labor union may re-submit a request to negotiate a collective work agreement with the entrepreneur after the 6 (six) month period has passed from the voting by following the original procedure (Article 119 paragraph (3)).
4. If there is more than one trade/labor union in the company, those who have the right to represent the workers/laborers carry out negotiations with employers, namely those whose total membership is more than 50% (fifty percent) of the total number of workers/laborers in

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<sup>4</sup> Djumadi, *History of the Existence of Labor Organizations in Indonesia*, RajaGrafindo Persada, Jakarta, 2005, Pg. 67

the company (Article 120 paragraph (1)).

5. If these are not met, then the trade/labor unions can form a coalition so that the total is more than 50% (fifty percent) of the total number of workers/labor (Article 120 paragraph (2)).
6. The trade unions/labor unions form a negotiating team whose membership is determined proportionally based on the number of members of each trade union/labor union (Article 120 paragraph (3) amended by MK RI Decision No. 115/PUU-VII/2009).

Based on the provisions of Article 51 paragraphs (1) and (2) of Law Number 13 of 2003 concerning Manpower, work agreements are made in writing or orally. Work agreements that are required in writing are carried out in accordance with applicable laws and regulations. The terms of the work agreement are divided into 2 (two), namely material conditions and formal conditions. The material requirements for work agreements according to Article 52 of Law Number 13

of 2003 concerning Manpower, are formed on the basis of:

1. Agreement of both parties;
2. Competence or ability to carry out legal acts;
3. There is an agreed job;
4. The agreed work does not conflict with general waivers, decency, and applicable laws and regulations.

Based on the formal requirements contained in Article 54 of Law Number 13 of 2003 concerning Manpower, namely:

1. A written work agreement contains:
  - a. Name, company address and type of business;
  - b. Name, gender, age and address of the worker or laborer;
  - c. Position or type of work;
  - d. place of work;
  - e. The amount of wages and the method of payment;
  - f. Working conditions that contain rights and obligations of employers and jobs or workers;
  - g. Start and period of validity of the work agreement;
  - h. Place and date of birth of the working company;
  - i. Signature of the parties in

the work agreement;

2. The provisions in the work agreement as referred to in paragraph (1) letters c and f, may not conflict with company regulations, collective labor agreements, and applicable laws and regulations.
3. The work agreement referred to in paragraph (1) is made in at least 2 (two) copies, which have the same legal provisions and the worker or craftsman and the entrepreneur each receive 1 (one) work agreement.

Based on the description above, the terms of the work agreement are divided into 2 (two), namely material requirements and formal requirements, each of which has been regulated in Article 52 and Article 52 of Law Number 13 of 2003 concerning Manpower.

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<sup>5</sup> Astri Wijayanti, *Post-Reform Labor Law*, Sinar Grafia, Jakarta, 2009, Pg. 36.

## **2. Consequences for Violation of the Collective Labor Agreement by the Company**

Employment relationship is a legal relationship carried out by at least two legal subjects regarding a job.<sup>5</sup> According to Hartono Wisoso and Judiantoro, employment relations are activities that regularly deploy one's personnel/services for the benefit of another person who orders them (employer/employer) in accordance with an agreed work agreement.<sup>6</sup>

The definition of working relations according to Article 1 point 15 of Law Number 13 of 2003 concerning manpower states that employment relations are relations between employers and workers/laborers based on work agreements, which have elements of work, wages and orders.

The working relationship according to Imam Soepomo is a relationship between a worker and an

<sup>6</sup> Hartono Judiantoro, *Legal Aspects of Labor Dispute Settlement*, Rajawali Press, Jakarta, 1992, Pg. 10.

employer, where the working relationship occurs after the existence of a work agreement between the two parties. They are bound in an agreement, on the one hand the worker/laborer is willing to work and receives a wage and the employer employs the worker/laborer for a wage.<sup>7</sup>

Violation of the Collective Labor Agreement is closely related to default, so if the implementation of the Collective Labor Agreement is not timely, inappropriate or even not implemented at all, 4 (four) legal consequences generally occur:

- a. The agreement still exists, so that one party can still sue the other party to carry out the performance in the event that he is late in fulfilling the achievement. In addition, the other party has the right to demand compensation from other parties who violate it.
- b. The violating party pays compensation to the other party.
- c. The burden of risk shifts if the obstacle arises after the other party defaults unless there is intentional or major error. It also

makes it unjustifiable to hold on to coercion.

- d. If the engagement is born from a reciprocal agreement, the other party can free himself from his obligations through counter-performance by using article 1266 of the Civil Code.

However, it should be understood that these legal consequences arise if the Collective Labor Agreement is a valid agreement in accordance with Article 1320 of the Civil Code, namely that there is an agreement, the skills of the parties, regarding a certain matter and based on a lawful cause. The consequences of the Collective Labor Agreement legally regulated according to Article 1338 of the Civil Code are:

1. All agreements made legally apply to the parties who make them;
2. The agreement cannot be withdrawn unless the parties agree or for reasons stated by laws and regulations are sufficient;
3. An agreement must be executed in good faith.

As mentioned above, violations of Termination of Employment are generally

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<sup>7</sup> Imam Soepomo, *Labor Law Part One Work-Relations*, Bhayangkara, Jakarta, 1986, Pg. 19.



carried out by the company unilaterally which then creates legal consequences in the form of an obligation to pay the plaintiff's rights in the form of severance pay, gratuity pay, and compensation for other rights of 15% in accordance with the provisions of Article 164 paragraph (3) Law Number 13 of 2003 concerning Manpower that employers can terminate employment of workers/laborers because the company closes not because they have suffered losses for 2 (two) consecutive years or not because of force majeure but the company has efficiency, provided that workers/laborers are entitled to severance pay of 2 (two) times. Provisions in Article 156 paragraph (2), service reward money of 1 (one) time. The provisions of Article 156 paragraph (3) and compensation for rights according to the provisions of Article 156 paragraph (4).

The legal consequence is also in the form of the company's obligation to issue a Certificate of Ever Working to employees which basically states that the employee has carried out his job properly while working for the employer's company. This relates to the right of every worker or laborer to receive recognition from the employer, in this case the work experience can be a complement to the portfolio's track record and achievements of the worker or laborer in pursuing a

career. A work certificate is a normative right for former workers or laborers as well as an employer's obligation to give it to workers or laborers when they ask for it.

Furthermore, the legal consequence received by the company is that it is obliged to pay the normative rights of workers or laborers in accordance with the provisions in Article 57 of the Collective Labor Agreement in the form of severance pay, gratuity pay and compensation for other rights. The amount of compensation that must be provided by the company is stated in Article 58 and Article 59 of the Collective Labor Agreement which states that severance pay, long service awards and replacement of entitlements are paid once and at the same time which is carried out at the time of Termination of Employment in effect, the amount of which is a multiple of the monthly salary based on the number period of service at the time of termination of the employment relationship. The calculation of the amount of severance pay, gratuity and compensation for other rights is adjusted to Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and

Rest Time, and Termination Work relationship.

However, if the entrepreneur terminates the employment relationship on the basis of provisions that conflict with laws and regulations, the termination becomes null and void and is deemed to have never existed. This provision is contrary to Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation which is a prohibited clause as stated in Article 1335 jo. Article 1337 of the Civil Code states that a clause is declared prohibited if it conflicts with the law on decency and public order. A clause is declared contrary to the law if the clause in the contents of the agreement is contrary to the applicable law. Furthermore, in Article 1254 of the Civil Code, agreements containing conditions that are contrary to decency or even prohibited by law are null and void.

The Collective Labor Agreement between PT x and the Labor Union has several provisions that are contrary to the laws and regulations as explained in Chapter II. For violations committed by the company, the company can face demands filed by workers and trade unions. Claims filed by workers and unions stem from industrial relations disputes, in this case a rights dispute. Rights disputes are disputes arising from

non-fulfillment of rights due to differences in implementation or interpretation of one of the provisions of the Collective Labor Agreement in accordance with Article 1 of Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement. If based on a court decision regarding rights disputes it is stated that the company is proven to have violated the Collective Labor Agreement by not fulfilling its obligations as an employer, the company may be subject to criminal sanctions according to Chapter XVI Articles 183 to Article 188 and administrative sanctions based on Article 190 paragraph Law Number 13 Year 2003 in the form of:

1. rebuke;
2. written warning;
3. Limitation of business activities;
4. Suspension of business;
5. Cancellation of approval;
6. Cancellation of registration;
7. Temporary suspension of part or all of the means of production; or
8. License revocation.

#### **D. Conclusion**

The Collective Labor Agreement is an aspect of private law in Law Number 13 of 2003 concerning Manpower. the

author found several discrepancies between the contents of the clauses contained in the Collective Labor Agreement (PKB) with the provisions contained in the Law governing Manpower in Indonesia. Even though there are some discrepancies in the contents of the Collective Labor Agreement clause carried out between PT x and the Workers' Union y. However, the substance and other components contained in the Collective Labor Agreement (PKB) are in accordance with the laws governing employment in Indonesia. Several provisions in the Collective Bargaining Agreement that are not in accordance with statutory regulations have the effect of being null and void so that these provisions are deemed to have never existed. The legal consequences of violations of the Collective Bargaining Agreement committed by the company are that the company can face demands filed by workers and trade unions. Claims filed by workers and labor unions stem from industrial relations disputes, in this case a rights dispute. Legal consequences if workers and trade unions violate the provisions as stated in the Collective Bargaining Agreement, whether in the form of speech, verbal or deed can be subject to sanctions. Apart from

sanctions, the company also requires employees to compensate the company for losses.

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