

# The Principle Of Good Faith In Collective Labor Agreements Between Employers And Labor Unions In Review Of Contract Law

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## **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 by 2 (two) phases, namely the pre-contract phase and the contract execution phase. The pre-contract phase is called subjective good faith, which means that good faith is more directed towards honesty, while good faith in the contract implementation phase is called objective good faith, which means that good faith is interpreted as appropriateness and decency or justice. A work agreement is an agreement between workers/laborers and employers or employers that contains working conditions, rights and obligations for the parties. The definition of working conditions is the rights and obligations of employers and workers that have not been regulated in laws and regulations. Work agreements made must not conflict with existing labor agreements or Collective Labor Agreements (KKB)/Collective Labor Agreements (PKB). This research uses normative legal research sourced from secondary data related to the research topic, secondary data that has been regularly arranged 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 stage of making (signing) and post-making (implementation) of the contract, but also at the pre-making (drafting) stage of the contract because in the practice of contract law the judge does use his authority to interfere with the contents of the contract. The legal consequences of a collective bargaining agreement that does not contain the principle of good faith are that if the subjective requirements concerning the subject of the CBA are incomplete, or in other words the requirements that must be met are not appropriate for those who wish to make a CBA, then the CBA that has been made can be requested for cancellation by the trade union/labor union. If the cancellation is not requested by both parties concerned, then the PKB remains valid for the parties. The first legal effort made by PT United Rope with the labor union is by way of deliberation to reach consensus first, although in dispute resolution if there is no good faith in the collective labor agreement is through 2 (two) systems, namely first, non-litigation / outside the industrial relations court, namely bipartite settlement, mediation, conciliation and arbitration, while the second settlement is litigation.*

**Keywords:** *The Principle of Good Faith, Collective Labor Contracts and Employers with Labor Unions Labor Union.*

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## **I. 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 the other party, the employer, who binds himself to employ the worker by paying wages to the other party."<sup>1</sup>

Another opinion states that an employment relationship is a relationship between a worker and an employer after an employment agreement is established, namely one in which a wage is paid and the employer expresses its ability to employ all of them by paying wages.<sup>2</sup>

The Civil Code (KUHPerdata) recognizes the relationship between two parties who carry out work with payment as remuneration, but is not called an employment relationship, namely as follows<sup>3</sup>:

1. The relationship between a person who does one or more specific jobs and another party, for example: a doctor and his patient, a notary and his client and so on. This kind of relationship which occurs after there is an agreement to do one or several specific jobs, is said to not be an employment relationship, because there is no authority on the part of the job provider to direct the carrying out of the job by the person receiving the job, no authority to give instructions, especially regarding how to do the job. that is to the party doing the work, while the authority lies in the employment relationship. This kind of employment relationship is an agreement to carry out one or several specific jobs, regulated in article 1601 of the Civil Code.
2. The relationship between a job taker and a job contractor. This relationship occurs after there is a contractor-work agreement, where the first party, the contractor-worker, commits himself to a certain work, for example erecting or dismantling a building, at a certain price with the other party. This relationship is also not a work relationship, because there is no element of giving direction and leading to the party doing the work. This contractor-work agreement is regulated in the Civil Code, book III Chapter 7A articles 1601, 1601b, 1602c (2) and 1604-1617.

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>4</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 a single unit that cannot be separated as a component of industrial relations.<sup>5</sup>

Arrangement of individual working conditions between workers and employers can be carried out by making a Work Agreement, while collective working conditions can be regulated by the trade union and employer by making a PKB.<sup>6</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 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>7</sup>

The objects agreed upon in the PKB are the work conditions, rights and obligations of both parties, which must be heeded or guided when making individual agreements or guided when making individual agreements, namely work agreements.<sup>8</sup>If the PKB must go through negotiations between worker/labor representatives through their unions and employers, employers' associations or associations, then in the Employer Regulations (PP) the employer alone has the full right to determine the content/material.

When making or implementing an agreement or contract, it must be based on good faith. Carrying out an agreement in good faith means that the agreement must be implemented according to propriety and justice (naar redelijkheid en billijkheid).<sup>9</sup>The principle of good faith regulated in Article 1338 Paragraph (3) of the Civil Code states that an agreement must be implemented in good faith.<sup>10</sup>

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 controversial.<sup>11</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 fairness.<sup>12</sup>

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>13</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, namely that 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 position (for example, a dominant position). The party who has a special position takes inappropriate advantage of other parties who are weaker.<sup>14</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>15</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 while 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 allowances 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 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 union 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

needed 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>16</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 Department 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 results from the PKB negotiations. If PT. 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 which is highly expected because of the regulations issued by the government which Initially, it was hoped that it would be able to guarantee 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 workers/labor unions.

The 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 a decrease in work productivity levels, also gives rise to levels of industrial relations disputes which often lead to labor strikes.

From the results of the interview, Mrs. Mymoonah RM Sitanggang as Mediator at the Medan City Manpower Office stated that the PKB was made to be implemented in accordance with the agreement. If the PKB is violated by one of the parties then the applicable law is the agreed rules contained in the PKB because if the PKB has been signed by both parties, including the signature of the Medan City Employment Service, then the PKB has become a regulation that must be obeyed, and if it is not complied with, a criminal offense can be committed or the employment relationship can be terminated.<sup>17</sup>

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 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.

## II. RESEARCH METHODS

In this research, legal research is used to find regulations relating to work conditions, normative rights in making Collective Labor Agreements (PKB) that fulfill statutory provisions, especially in the field of employment. Judging from the problem that wants to be researched, the researcher uses a type of normative legal research. This type of research method is also commonly referred to as doctrinal legal research or library research. It is called doctrinal legal research because this research is only aimed at written regulations so this research is very closely related to libraries because it will require secondary data in libraries.<sup>18</sup>In normative legal research, written law is studied from various aspects such as theory, philosophy, comparison, structure/composition. Consistency, general explanation and explanation of each article, formality and binding force of a law and the language used are legal discussions. So we can conclude that normative legal research has a broad scope.

The nature of this research is analytical descriptive where the purpose of analytical descriptive research is a problem solving procedure that is investigated by describing the condition of the subject or object in the research, which can be people, institutions, society and others which are currently based on visible or existing facts.<sup>19</sup>The aim of this research is to produce an accurate picture of a group, describe the mechanism of a process or relationship, provide a complete picture in either verbal or numerical form, present basic information about a relationship, create a set of categories and classify research subjects, explain a set of stages or processes, and to store contradictory information regarding the research subject.<sup>20</sup>So this research will provide an overview or phenomenon related to good faith in collective work agreements.

The data source used in this research is secondary data. Where secondary data is data that includes official documents, books, research results in the form of reports and so on.<sup>21</sup>In this research secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consisting of laws and regulations relating to employment issues such as the Civil Code, Law 13 of 2003 concerning Employment. Secondary legal materials are materials that provide explanations of primary legal materials such as textbooks written by legal experts who are influential in legal journals, opinions of scholars, jurisprudence and the results of recent symposiums or legal magazines relating to internal issues. this research.<sup>22</sup>This secondary legal material, apart from being taken from primary legal material, is also supported by interview methods obtained directly from sources, namely the Mediator of the Medan City Employment Service, the Chairman of the Branch Leadership Body of the Indonesian Independent Workers' Union and the company, namely HRD at PT. UNITED ROPES. Tertiary legal materials are materials that provide instructions or explanations for primary legal materials and secondary legal materials, in the form of General Dictionaries, Language Dictionaries, Newspapers and Websites.<sup>23</sup>

Data collection used in this research was carried out through library research. Literary research is carried out to obtain theoretical concepts or doctrines, opinions or conceptual thoughts and previous research related to the object of this research in the form of statutory regulations. Library research is research to obtain secondary data. The secondary data for this research are laws and ministerial regulations as well as conducting interviews to collect supporting data other than the legal materials used through secondary data. The respondents interviewed were the Mediator for the Medan City Employment Service, the Chairman of the Branch Leadership Body of the Indonesian Independent Workers' Union and the company, namely HRD at PT. UNITED ROPES.

Primary legal materials and secondary legal materials that have been compiled systematically are then analyzed qualitatively. Qualitative analysis is an activity carried out by the author to determine the content or meaning of a legal rule that is used as a reference in resolving legal problems that are the object of study.<sup>24</sup>

### **III. RESULTS AND DISCUSSION**

#### **4.1. 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 National Civil Law Symposium organized by the National Legal Development Agency (BPHN) in 1981, defined good faith, namely:<sup>25</sup>

- a. Honesty when making contracts;
- b. At the making stage, it is emphasized that if the contract is made in the presence of an official, the parties are considered to be in good faith (although there are also opinions that express objections);
- c. "As propriety in the implementation stage, which is related to a good assessment of the behavior of the parties in carrying out what has been agreed in the contract, solely aimed at preventing inappropriate behavior in the implementation of the contract."

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 referred to *ius civile*. If a judge faces such a contract case, the judge must decide according to the law. The judge is bound to what is expressly stated in the contract (express terms).<sup>26</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>27</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>28</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 apart from 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>29</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 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>30</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 the community.<sup>31</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>32</sup>

"It was also explained by Mrs. Mymoonah RM 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 may be committed or the employment relationship may be terminated."<sup>33</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.

#### **4.2. Legal Consequences of Collective Labor Agreements between Employers and Worker Unions that do not Contain the Principle of Good Faith at PT. UNITED ROPES**

Having the principle of good faith in collective work agreements can prevent injustice that workers will experience. As we know, the existence of good faith in law guarantees the possibility for the parties to both benefit from the agreements they make and obtain justice.

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 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:

**Table 1.**  
**Verification of PKB PT. UNITED ROPES**

No	Chapter/Article	Written	Should
1	Chapter VI, Ps 22 (4)	Meal allowance of Rp. 6,500 every working day	Every worker/laborer has the right to earn an income that fulfills a life worthy of humanity. This is adjusted to the current economic situation.
2	Chapter IV, Ps 14	Working hours at the company are 7 hours a day with a maximum of 40 hours a week. The agreement is separate and the minimum working hours that must be met by workers are 8 working hours a day for 5 working days	Minimum working hours that must be met by workers work 7 hours a day for 6 days Work.
3	Chapter XIII, Ps 38	Negotiations will resume 90 days before the validity period of this collective work agreement ends. The reality is that until now the entrepreneurs have not carried out negotiations, only made agreements outside of the PKB negotiations	The term of the PKB is valid for a maximum of 2 (two) years and can be extended for 1 (one) year and can be extended for another 1 (one) year if the two parties do not/have not reached an agreement in negotiations.

Source: PKB data at PT. UNITED ROPE Medan City

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 includes, among others;

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 prior negotiation with the trade 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 did 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. Entrepreneurs claim to workers/labor unions 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>34</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. There is a certain thing, and
4. There is a legitimate 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 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.<sup>35</sup>

The legal consequences of not having good faith in a collective work agreement are not simply null and void, even though the procedural law that applies to the Industrial Relations Court is the Civil Procedure Law that applies to courts within the General Courts, but can be excluded if specifically regulated in law. This can be seen in Article 57 of Law Number 2 of 2004 concerning PPHI which states that: "The

procedural law that applies to the Industrial Relations Court is the Civil Procedure Law that applies to courts within the General Courts, except as specifically regulated in this law. ”.<sup>36</sup>

According to Mr. Syaiful Amri, he explained that the consequences of the law due to the absence of the principle of good faith could be null and void by law, but in reality the legal consequences do not yet exist because of the weakness of our law regarding worker welfare, because the law is not yet strong, it makes companies become arbitrary. - authority over the contents of the collective work agreement, thus making the agreement take longer in the process of making it, even in the law, entrepreneurs who have a lot of workers, meaning that the company is already large, are obliged to have a collective work agreement, but in reality there are still entrepreneurs who do not have an agreement working together, so the rules for entrepreneurs to have such an agreement already exist but the sanctions do not exist until now so the legal consequences do not yet exist, one example is in PT companies. United Rope.<sup>37</sup>

If the PKB at PT. That United Rope is not registered with the Manpower Service means that the agency cannot take any action if a dispute occurs between PT. United Rope with workers/labor unions because the agency does not know whether the company has a PKB. In Article 30 paragraph (1) of the Minister of Manpower Regulation Number 28 of 2014 concerning Procedures for Making and Ratifying Company Regulations and Making and Registration of Collective Work Agreements, it is emphasized that the PKB is registered as a monitoring and evaluation tool for the regulation of work conditions implemented in the company and as a the main reference when there is a dispute over the implementation of the PKB. Therefore, the PKB must be registered with the Manpower Service so that if a dispute occurs, the agency can follow up on problems that occur between employers and workers/labor unions.

In collective work agreements, it is important to know that a collective work agreement is a form of agreement in an employment relationship which is stated in the form of a work agreement by the employer and the labor union so that where the collective work agreement can be null and void by law, which means the agreement is deemed to have never existed, then this will detrimental to entrepreneurs and trade unions, entrepreneurs will experience losses because workers will not work so that the production process of goods and services is stopped or hampered, thereby threatening business continuity, and workers will not receive wages because workers do not work, thereby threatening the lives of themselves and their families.

If the principle of good faith in the collective work agreement is not fulfilled, unrest will arise for the workers and there will be a conflict of interest between the employers. On the one hand, workers have an important role in the well-being of their lives and on the other hand, entrepreneurs gain an interest, namely as much profit as possible, regardless of the lack of good faith in the collective work agreement.

PKB is a means of industrial relations that involves employers and trade unions in the negotiation process and involves workers as actors in the process of producing goods and services that fall within the scope of labor law, therefore if problems arise in the PKB, the resolution process is guided by the law. employment, namely Law Number 13 of 2003 concerning Employment.

#### **4.3. 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 RM 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>38</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 RM 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 been signed by the Manpower Service employee, the agreement will turn into a regulation that must be implemented, which if If it is violated, criminal sanctions will be imposed."<sup>39</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 impropriety will certainly be detrimental to 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>40</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).

The negotiation process is intended to prevent disputes being delegated to the Court. Because resolving industrial relations disputes prioritizes win-win solutions, namely through deliberation to reach consensus.

As regulated in Law Number 13 of 2003 concerning Manpower, the resolution of industrial relations disputes adheres to the principles of:<sup>41</sup>

1. Deliberation to reach consensus Settlement through deliberation to reach consensus in a bipartite manner is mandatory.
2. Free to choose a dispute resolution institution. Parties to resolve industrial relations disputes, based on an agreement, are free to choose arbitration, conciliation or mediation institutions, to resolve the disputes they face.
3. Fast, precise, fair and cheap

If non-litigation resolution fails, the parties can proceed through a special court within the general court environment, namely the Industrial Relations Court.<sup>42</sup> Dispute resolution through the Industrial Relations Court uses a fast, precise, fair and inexpensive process. This can be seen in terms of the settlement process time, namely: bipartite 30 days, if you choose one of the Arbitration, Conciliation or Mediation

institutions, where at that institution the settlement time is 30 days. 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.

Each alternative dispute resolution has its advantages and disadvantages, namely:<sup>43</sup>

- 1) Settlement at the Bipartite level that occurs is still very ineffective, because most of the parties do not know the correct negotiation techniques at the company level and settlement still uses force, this happens even though the Government has carried out outreach but it is a habit that if the parties have not encountered a problem, they have not/haven't I want to report for a solution.
- 2) Settlement at the Mediation or Conciliation level can be said to be effective if the Mediator or Conciliator has undergone special industrial relations education and is truly impartial in their work.
- 3) The existence of Conciliation is currently still of little interest to the parties, because Conciliators are not always in the Department of Manpower, because work as a Conciliator is a side job.
- 4) Settlement through arbitration is also still less popular with the parties, because it involves costs that must be incurred by the parties.

For parties whose settlement is by choosing to use the services of an Arbitrator, if in the Arbitrator's decision it is felt that there are still things that do not meet the sense of justice, then the aggrieved party can continue their case by submitting a review to the Supreme Court of the Republic of Indonesia in Jakarta.

#### **IV. CONCLUSIONS & RECOMMENDATIONS**

##### **4.1. CONCLUSION**

- 1) 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.
- 2) 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. 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.

- 3) 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.

#### 4.2. SUGGESTION

- 1) Considering that the principle of good faith has a high urgency in making a PKB, stakeholders who have duties and authority in the field of labor rights, namely the Department of Manpower and Transmigration in Indonesia, are expected to be more active in carrying out socialization regarding the obligation to contain the principles of existing agreements. in the provisions of laws and regulations so that each material contained in the employment agreement can provide justice to both parties making the agreement.
- 2) The Department of Manpower and Transmigration as the relevant government agency in the field of employment is expected to be able to impose sanctions or take firm action against companies that make PKBs without referring to the principle of good faith as a consequence of ignoring the importance of the presence of the principle of good faith in the PKB that has been made, so that this action can provide a deterrent effect to other companies as well as provide guarantees for the continued welfare of workers and support workers to obtain appropriate justice according to the provisions of the applicable laws and regulations.
- 3) To support the implementation of legal measures that can be carried out by the company well, quickly and without obstacles, it is hoped that in the future the parties involved in the PKB can include special provisions regarding legal measures that can be taken by both parties in the PKB which will be formed if this occurs. disputes in the future, especially if they are caused by the principle of good faith not being contained in the agreement in question, there is already a framework that can be used as a reference if problems arise in the future.

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