

The Implementation Of The Principle Of Freedom Of Contract In Providing Legal Protection For Workers Under Indefinite-Term Employment Contract At CV Soloarsi Studio

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Abstract.

The establishment of worker protection arises from the contractual agreement between employers and employees. The legal relationship between these parties is constituted through an employment contract. The principle of freedom of contract, as stipulated within Article 1338 paragraph (1) of the Civil Code, is embodied in employment contract. Employment contracts that adhere to this principle can prevent the commodification of workers. However, within its practical endeavor, the principle of freedom of contract is frequently compromised in employment contract, leading to an imbalance of rights and obligations between workers and employers. CV Soloarsi Studio, a limited liability company, distinguishes between two types of employment agreements: fixed-term employment contract (PKWT) and indefinite-term employment contract (PKWTT). The aim of this research is to investigate and comprehend the application of the principle of freedom of contract in providing legal protection for workers under indefinite-term employment contract (PKWTT) at CV Soloarsi Studio. The research employed normative methodology, involving the examination of library materials and secondary data. The findings of this research indicate that legal protection for workers can be categorized into three types: economic, social, and technical protection. CV Soloarsi Studio, through its indefinite-term employment contract (PKWTT), has provided legal protection across these three categories. This compliance is evidenced by the allocation of rights and obligations to workers in alignment with the provisions stipulated by Law of Republic of Indonesia Number (No.) 6 of 2023, which ratifies Government Regulation of the Republic of Indonesia in Lieu of Law of Republic of Indonesia Number (No.) 2 of 2022 concerning Job Creation into Law of Republic of Indonesia (UU 6/2023).

Keywords: *Employment Contract, The Principle of Freedom of Contract and Legal Protection.*

I. INTRODUCTION

Within this era of the industrial revolution 4.0, the intensity of competition in the business world is undeniably dynamic. Employers are, therefore, expected to exhibit heightened creativity in conducting business activities to remain abreast of contemporary developments. Business expansion necessitates the engagement of workers, initiating a relationship between employer and employee, which subsequently culminates in employment contract between the parties. In conducting business operations, employers and employees mutually commit to each other through either specific or non-specific employment contract. According to Article 1313 of the Civil Code, contract is defined as "an act by which one or more persons bind themselves to one or more other persons." The establishment of legal protection for workers constitutes an agreement forged between employers and employees (Zaeni, 2008) Said legal relationship between employers and workers manifests in the form of an employment contract, delineated within Article 1 point (14) of Law of Republic of Indonesia Number (No.) 13 of 2003 concerning Employment (Employment Law). This statute defines said contract as "pacts between workers or laborers and entrepreneurs or employers outlining work conditions, rights, and obligations of the involved parties". Employment contract may take either oral or written form. Normatively, the written format ensures clarity regarding the parties' entitlements and responsibilities, thereby bolstering evidential substantiation in case of disputes (Sendjung, 2001).

As stipulated in Article 1 point (14) of the Employment Law, the articulation of rights and obligations between employer and employee transpires subsequent to the signing of the employment agreement by both parties. Consequently, an individual's endorsement of a work agreement signifies their personal engagement in tasks commissioned by another party in exchange for remuneration (Sundalangi, 2018). The principle of freedom of contract, as enshrined within employment contract pursuant to Article 1338 paragraph (1) of the Civil Code, mandates that all agreements concluded possess legal validity and enforceability for the contracting parties. Embedded within this principle is the ethos that employment

contract governed by the tenets of freedom of contract preclude the potential commodification of workers. This safeguard arises from affording workers the agency to choose, thereby upholding fundamental principles such as the respect for their dignity, autonomy, and egalitarian status (Budi Santoso, 2012). However, within its practical application, the integrity of said principle is frequently compromised within employment contract. The notion of legal protection for workers encompasses the delineation of rights subsequent to the fulfillment of their obligations. Historically, employers have often perceived workers as disadvantaged entities, while workers themselves may remain unaware of their rights and obligations.

Essentially, workers tend to adhere solely to the directives established by their employers. In an ideal collaborative dynamic, neither party holds precedence over the other, given the mutual interdependence between employers and employees. Consequently, effective legal protection for workers necessitates the assurance of legal certainty concerning their respective rights and obligations in regards to the employers (I Wy Subangun Wirang Garda Satria, 2014). CV Soloarsi Studio operates as a limited liability company, structuring its employment arrangements into two distinct categories: fixed-term employment contract and indefinite-term employment contract. The focus of this study revolves around the latter, specifically the indefinite-term employment contract (PKWTT). Within the framework of an indefinite-term employment contract, such as those established between an employer, exemplified by CV Soloarsi Studio, and its employees, delineations encompass the reciprocal rights and obligations of each party. These include stipulations concerning working hours, remuneration, and termination protocols encapsulated within the agreement. However, the formulation of the employment agreement primarily resides with the employer, without full engagement of prospective employees during the negotiation process. Consequently, addressing the issues delineated in the preceding context, the author intends to undertake a legal inquiry under the following research title: **“THE IMPLEMENTATION OF PRINCIPLE OF FREEDOM OF CONTRACT IN PROVIDING LEGAL PROTECTION FOR WORKERS UNDER INDEFINITE-TERM EMPLOYMENT CONTRACT AT CV SOLOARSI STUDIO”**.

II. METHODS

The present study adopts normative research methods, specifically categorized as library legal research. This form of legal inquiry entails an examination of library materials or secondary data (Soerjono Soekanto, 2013). It constitutes a normative research endeavor, emphasizing an exploration of legal principles inherent within the legal domain. As posited by Scholten, a fundamental function of legal scholarship involves the scrutiny and evaluation of legal principles enshrined within positive law (Soekanto, 1986). The methodological approach employed herein is the statutory approach, characterized by a systematic review of statutes pertinent to the legal issues under consideration. In accordance with Soerjono Soekanto's framework, data for this study may be derived from both field sources and library repositories, with field data originating from direct research activities and library data obtained from diverse scholarly sources. The data collection procedures implemented in this study encompassed Library Research, a methodological approach reliant on secondary data acquisition.

Central to this endeavor was the retrieval of critical documents, notably the employment contract pertaining to indefinite-term employment between CV Soloarsi Studio and its employees. Secondary data sources comprised primary legal materials, inclusive of the 1945 Constitution, the Civil Code, and legislative acts such as Law of Republic of Indonesia Number (No.) 8 of 1999 concerning Consumer Protection, as well as the amalgamated Law of Republic of Indonesia Number (No.) 13 of 2003 and Law of Republic of Indonesia Number (No.) 6 of 2023, which collectively determine Government Regulation of the Republic of Indonesia in Lieu of Law of Republic of Indonesia Number (No.) 2 of 2022 concerning Job Creation. Augmenting these primary legal references were secondary materials such as textbooks, legal journals, precedents, and regulatory directives germane to the research topic. Additionally, tertiary legal resources, serving to complement primary and secondary materials, were consulted, including dictionaries, bibliographies, pertinent literature, and media publications, among others, to enhance the comprehensiveness and clarity of the legal analysis undertaken.

III. RESULT AND DISCUSSION

When formulating a contract, the primary principle to be considered is the principle of freedom of contract. This principle is enshrined within Article 1338 of the Civil Code, which stipulates that all agreements lawfully executed are binding as law upon those who pertain with it. The principle of freedom of contract grants parties the autonomy to:

- 1) Freely select the partners with whom they wish to enter into a contract,
- 2) Freely decide the form of the contract, whether in written or unwritten form,
- 3) Freely determine the contents of the contract, allowing the parties the liberty to include any number of clauses as desired, aligned with their business objectives,
- 4) Freely choose the forum for resolving contract disputes, whether through judicial proceedings or arbitration, should any disagreements arise (Moch Isnaeni, 2017).

However, this freedom is not without constraints; there are limitations in forming agreements, specifically that they must not conflict with the law, morality, or public order. Beyond these constraints, parties are at liberty to create any agreement they desire. Regarding employment contract, these agreements form the foundation of the employment relationship. An employment relationship is established between a worker and an employer following the conclusion of a work agreement. This agreement entails the worker's commitment to perform tasks for the company in exchange for wages, and the employer's commitment to employ the worker and provide remuneration (Husni, 2003). Law of Republic of Indonesia Number (No.) 8 of 1999 concerning Consumer Protection defines a standard agreement, referred to as a standard clause, as any rule, provision, or condition that has been prepared and established unilaterally in advance by the business actor, as set forth within a document and/or agreement that is legally binding and must be adhered to by the consumer. Interpreted literally, a standard work agreement implies that all rules stipulated within such an agreement have been pre-prepared and unilaterally determined by the employer, and these conditions are legally binding and must be fulfilled by the worker/employee.

When an indefinite-term employment contract is crafted in a standardized form, the freedom accorded to one party, specifically the weaker party—namely the worker or the second party—is significantly constrained. In this scenario, workers lack the liberty to influence the content and formulation of the agreement, as it has already been unilaterally standardized by the employer or first party. This restriction of freedom is evident in the indefinite-term employment contract at CV Soloarsi Studio. Despite this limited autonomy in forming such agreements, workers do participate in certain aspects of the process, such as negotiating wages and expressing consent to the terms by signing the agreement. According to Purwahid Patrik, the act of signing signifies that a party has agreed to the terms stipulated in the agreement (Patrik, 1986). In light of the preceding discussion, CV Soloarsi Studio asserts that upon mutual signing of an indefinite-term employment contract, the agreement attains legal validity and binding force in accordance with the mutual consent of the involved parties, as delineated in Articles 1337-1338 of the Civil Code. Furthermore, it has been explained that the principle of freedom of contract is not fully realized in the fixed-term employment contract crafted by CV Soloarsi Studio, given that the latitude to determine the agreement's contents and formulation lies predominantly with the employer or the First Party. Despite this constraint on autonomy in formulating indefinite-term employment contract at CV Soloarsi Studio, workers are still afforded some participation in the agreement formation process, particularly in negotiating wages and expressing concurrence with the terms through the affixation of their signatures to the agreement.

Ensuring the protection of workers under an indefinite-term employment contract within the Company. Within any organizational setting, the imperative for entrepreneurs to provide legal protection holds significant importance for its workforce. This necessity arises from the entrepreneur's obligation to assume responsibility in instances where workforce welfare is compromised, thereby fostering a conducive and harmonious working environment. As elaborated by Soepomo, legal protection embodies the practical application of legal statutes aimed at providing economic, social, and technical protection (Khakim, 2003).

The research findings reveal that:

1) Economic Protection

Economic protection encompasses the safeguarding of workers through adequate remuneration, including provisions for income during periods of involuntary absence from work. Concerning remuneration and working hours at CV Soloarsi Studio, the SECOND PARTY is entitled to receive a monthly basic wage of Rp. 2,500,000 (Two Million Five Hundred Thousand Rupiah) from the FIRST PARTY. In instances where additional work beyond regular hours is required, the SECOND PARTY is eligible for overtime compensation as stipulated in the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number (No.) KEP-102/MEN/VI/2004 regarding Working Time and Overtime Wages. Should the SECOND PARTY fail to meet the stipulated working hours outlined in Article 6, the FIRST PARTY is committed to ensuring equitable wage calculations.

Within the indefinite-term employment contract of CV Soloarsi Studio, the stipulated salary amount is initially determined by the company; however, workers are given the opportunity to negotiate their expected salary. The base wage provided by CV Soloarsi Studio aligns with the provisions of Article 88D Paragraph (1) of Law of Republic of Indonesia Number (No.) 6 of 2023, which pertains to the Determination of Government Regulations of Republic of Indonesia in Lieu of Law of Republic of Indonesia Number (No.) 2 of 2022 concerning Job Creation. This article states that "The minimum wage as referred to in Article 88C paragraph (1) and paragraph (2) is calculated using the minimum wage calculation formula," which, for Surakarta (Solo), is set at Rp. 2,269,070. Based on the aforementioned explanation, CV Soloarsi Studio has demonstrated commendable efforts in providing economic protection for its workers. The wages offered exceed the stipulated minimum wage for Surakarta (Solo). Additionally, the provision of food and holiday allowances further contributes to the financial well-being of the employees.

2) Social Protection

Social protection pertains to safeguard workers in relation to communal efforts. Within the indefinite-term employment contract, provisions for social security are delineated. Specifically, the collective agreement refers to social security in Article 7 of Paragraph (4), stipulating that the SECOND PARTY is entitled to receive benefits beyond the basic wage as follows:

- a. Transportation, communication, and meal allowances when undertaking field assignments as designated by the FIRST PARTY,
- b. Health and occupational safety benefits.

Social protection is of paramount importance for the workers within the Company, especially considering the inherent risks associated with handling heavy equipment. The Company's approach to social protection is commendable, as it has implemented provisions for both Health Insurance (BPJS Kesehatan) and Occupational Safety Insurance (BPJS Ketenagakerjaan). Consequently, employees who encounter work-related accidents or illnesses will be ensured access to necessary health services.

3) Technical Protection

Technical protection encompasses the safeguarding of workers' well-being, encompassing aspects such as security, comfort, tranquility, and occupational safety. As what it is explained within indefinite-term employment contract Article 3 Paragraph (2) letter b, the second party is entitled to receive appropriate and respectful treatment within the workplace. This provision aligns with the stipulations outlined in Article 86 Paragraph (1) letter c of Law of Republic Indonesia Number (No.) 13 of 2003 regarding Employment, emphasizing treatment in accordance with both human dignity and religious precepts. Furthermore, within the indefinite-term employment contract Article 3 Paragraph (2) letter c, the Second Party is granted access to utilize the facilities and participate in the training programs provided by the First Party. The provision of facilities and vocational training is in line with Article 81 of Law of Republic of Indonesia Number (No.) 6 of 2023 regarding the Establishment of Government Regulations of Republic of Indonesia in Lieu of Law of Republic of Indonesia Number (No.) 2 of 2022 concerning Job Creation, which mandates that vocational training be conducted by:

- a. Government-affiliated Job Training Institutes;
- b. Private Vocational Training Institutions; or

c. Corporate Vocational Training Centers.

Drawing conclusions from the preceding discussion, the technical safeguarding measures implemented by CV Soloarsi Studio for its employees are commendable, particularly concerning equitable treatment within the organization and the provision of facilities and vocational training to support their professional activities.

IV. CONCLUSION

Legal protection provided to workers encompasses three principal categories: economic, social, and technical protection. In addition to the regulatory framework delineated in Law of Republic of Indonesia Number (No.) 13 of 2003 concerning Employment, in conjunction with Law of Republic of Indonesia Number (No.) 6 of 2023 concerning the Determination of Government Regulations of Republic of Indonesia in Lieu of Law of Republic of Indonesia Number (No.) 2 of 2022 concerning Job Creation, the company has established an Indefinite-term employment contract (PKWTT) as a proactive measure to safeguard the legal rights of its workers. In the context of the company's Indefinite-term employment contract, as evidenced by research findings, comprehensive legal protection is provided across economic, social, and technical dimensions. This comprehensive protection is attributed to the alignment of the Indefinite-term employment contract with the stipulations outlined in Law of Republic of Indonesia Number (No.) 13 of 2003 concerning Employment, in conjunction with Law of Republic of Indonesia Number (No.) 6 of 2023 concerning the Establishment of Government Regulations of Republic of Indonesia in Lieu of Law of Republic of Indonesia Number (No.) 2 of 2022 concerning Job Creation, as well as company-specific statutes and regulations.

REFERENCES

- [1] Zaeni, A. (2008). *Hukum Kerja*. Jakarta: Rajawali Persada.
- [2] Sendjung, M. H. (2001). *Pokok-Pokok Hukum Ketenagakerjaan di Indonesia*. Jakarta: PT. Rineka Cipta.
- [3] Sundalangi, Y. (2018). *Tinjauan Yuridis Pekerja Freelance Berdasarkan Prinsip Keadilan The Juridical Review Of Freelance Workers Based On The Principles Of Justice*. *Journal Tadulako Law Review*, Vol 3, No1, pp.40-56.
- [4] Budi Santoso, R. D. (2012). *Eksistensi Asas Kebebasan Berkontrak Dalam Perjanjian Kerja*. *Jurnal Arena Hukum*, 6, 155-226.
- [5] I Wy Subangun Wirang Garda Satria, N. N. (2014). *Perlindungan Hukum Terhadap Pekerja Harian Lepas Ditinjau Dari Peraturan Perundang-Undangan Di Indonesia*. *Journal Kertha Semaya*, Vol 2, pp. 1-5.
- [6] Soerjono Soekanto, S. M. (2013). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.C.E.
- [7] Soekanto, S. (1986). *Pengantar Penelitian Hukum*. Jakarta: Rineka Cipta.
- [8] Moch Isnaeni, S. P. (2017). *Hukum Perikatan (Bagian Umum)*. Surabaya: PT Revka Petra Media.
- [9] Husni, L. (2003). *Pengantar Hukum Ketenagakerjaan Indonesia*. Jakarta: Cet. III: PT. Raja Grafindo Persada.
- [10] Patrik, P. (1986). *Asas Itikad Baik dan Kepatutan Dalam Perjanjian*. Semarang: Badan Penerbit Undip.
- [11] Khakim, A. (2003). *Pengantar Hukum ketenagakerjaan Indonesia*. Jakarta: Citra Aditya Bakti.
- [12] Ahyanuardi, A., Hambali, H., & Krismadinata, K. (2018). Influence Of Pedagogical And Professional Competence Of Secondary Vocational School Teachers. Doi: <https://doi.org/10.24036/invotek.v18i1.169>
- [13] Kim, B., Kim, T., Shin, S.W. (2011). Understanding Antecedents Of Continuity Intent In Social-Networking Services. *Journal Of Behavior Of Social Networks*, 14, 45-51. Amsterdam: Elsevier. Doi: <https://doi.org/10.1089/Cyber.2010.0009>
- [14] Khairani, M., & Febrinal, D. (2016). Development Of Learning Media In The Form Of Macromedia Flash Tube Material For Junior High School Class Ix. *Journal Of Applied Science And Technology*, 10 (2), 95-102
- [15] Masykur, R., Nofrizal., & Syazali, M. (2017). Development Of Mathematics Learning Media With Macromedia Flash. Al-Jabar: *Journal Of Mathematics Education*, 8 (2), 177-186
- [16] Mayana, I., Sthephani, A., Effendi, L. A., & Yolanda, F. (2021). Student Learning Motivation To Use Macromedia Flash 8 During The Covid-19 Pandemic. Cognitive: *Hots Research Journal Of Mathematics Education*, 1(2), 144-155. <https://doi.org/10.51574/Kognitif.V1i2.109>