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Labor Law in Indonesia

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Abstract

After reformation era, year 1998, Indonesia has three important acts in the field of labor law. The three acts are (1) Act Number 21 Year 2000 concerning Trade Unions, (2) Act Number 13 Year 2003 concerning Manpower, and (3) Act Number 2 Year 2004 concerning Industrial Relations Disputes Settlement. The new regulations of the acts are (1) every labor has the right to form and become a member of a trade union; (2) labor development shall be carried out based on the principle of integration, (3) Industrial Relations Court as a part of Industrial relations Disputes Settlement

Keywords: labor law, Indonesia government

1. Introduction

Indonesia has three important acts in the field of labor law. The three acts are (1) Act Number 21 Year 2000 concerning Trade Unions, (2) Act Number 13 Year 2003 concerning Manpower, and (3) Act Number 2 Year 2004 concerning Industrial Relations Disputes Settlement. These three acts represent the policy direction in the field of manpower, taking into account future needs and the interest of ensuring justice in society. These three major labor laws also constitute the package of labor law reform which started in 1998.

The government in collaboration with employer and workers' organization has achieved the goal of establishing the basic legal framework governing labor and employment relations in line with national aspirations and interests as well as international labor standards and practices particularly the fundamental principles and rights at work. It has succeeded putting in place a body of labor laws designed mainly to promote sound and harmonious industrial relations while respecting workers' right and to ensure efficiency, stability, and equity at the workplace.

2. Source of Labor Law

The word "source" means a place from which something comes. "Source of law" as a phrase means a place that law comes.[101]

The term "source" is used by lawyers in two different senses. Firstly, it means the historical origins of the now binding rules.[102] Secondly, it may mean the authorities the vest the now binding rules with binding character. Source of law may also be used to indicate the literary sources in which the law founded.

Source of labor law means a place that labor law comes. The said sources of labor law are (1) statutes, (2) contract, (3) custom, (4) judge made law or decision of court, and (5) opinions of learned authors. The regulations below are part of sources of labor law:

1. Act Number 3 Year 1992 concerning Manpower Social Security;
2. Act Number 21 Year 2000 concerning Trade Unions;
3. Act Number 13 Year 2003 concerning Manpower;
4. Act Number 2 Year 2004 concerning Industrial Relations Disputes Settlement;
5. Government Regulation Number 23 Year 2004 regarding The National Agency for Profession Certification;
6. Government Regulation Number 41 Year 2004 regarding Procedures of Appointment and Dismissal of Ad-Hoc Judges of Industrial Relations Court and Ad-Hoc Judges of Supreme Court;
7. Government Regulation Number 8 Year 2005 Regarding Work System and Organizational Structure of Tripartite Cooperation Institution;

[101] Abdul Rachmad Budiono, *Pengantar Ilmu Hukum*, Malang: Batumedia Publishing, 2005, P. 109
[102] Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Alumni, 1986, P. 111.

8. Decision of The President of The Republic of Indonesia Number 107 Year 2004 concerning Wage Council;
9. Decree of The Minister of Manpower and Transmigration of The Republic of Indonesia Number: KEP-20/MEN/III/2004 concerning Work Permit Procedure for Foreign Expatriates;
10. Decision of The Minister of Manpower and Transmigration of The Republic of Indonesia Number: KEP/MEN/VII/2004 concerning Protection for Children Performing Work for Developing Talents and Interests;
11. Regulation of The Minister of Manpower and Transmigration of The Republic of Indonesia Number: PER.01/MEN/XII/2004 concerning The Selection Procedure of Ad-Hoc Judge Candidates of Industrial Relations Court and Ad-Hoc Judge Candidates of The Supreme Court.

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3. Work Agreement

According to article 1 number 14 Act Number 13 Year 2003 concerning Manpower work agreement is an agreement made between a worker/laborer and an entrepreneur or an employer that specifies work requirements, rights and obligations of the parties. Work agreement creates employment relation. According to article 1 number 15 Act number 13 Year 2003 employment relation is a relationship between an entrepreneur and a worker/laborer based on a work agreement, which contains the elements of job, wages, and work order. Employment relation exists because of a work agreement between the entrepreneur and the worker/laborer.

A Work agreement shall be made based on:

1. The agreement of the parties;
2. The capability of competence to take legal actions;
3. The availability/existence of the job which the parties have agreed about;
4. The notion that job which parties have agreed about is not against laws and regulations.

If work agreement, which have been made by the parties, turns out to be against what is prescribed under point 1 and point 2, called subjective requirements,[103] the agreement may be abolished or cancelled. If work agreement, which have been made by the parties, turns out to be against what is prescribed under point 3 and point 4, called objective requirements.[104] The agreement shall be declared null and void by the law.

According to article 51 section (1) Act number 13 Year 3003 a work agreement can be made either orally or in writing. A written work agreement shall at least include:

1. The name, address and line of business;
2. The name, sex, age and address of worker/laborer;
3. The occupation or the type of job;
4. The place, where the job is to be carried out;
5. The amount of wages and how the wages shall be paid;
6. Job requirements stating the rights and obligations of both entrepreneur and the worker or laborer;
7. The date the work agreement starts to take effect and the period during which it is effective;
8. The place and the date where work agreement is made; and
9. The signature of the parties involved in the work agreement.

The provisions in a work agreement must not against the company regulations, the collective labor agreement and prevailing laws and regulations.

A work agreement cannot be withdrawn and/or changed unless the parties agreed otherwise. A work agreement may be made for specified time or for an unspecified time. A work agreement for a specified time shall be based on:

1. A term;
2. The completion of certain job.

[103] Abdul Rachmad Budiono, *Hukum Perburuhan*, Jakarta: PT Indeks, 2009, p. 96.
[104] *Ibid*, p. 96

3.1 Work Agreement for a Specified Time

Work agreement for specified time is a work agreement between worker/laborer and employer to have a working relationship for a certain period of time or for certain type of work.

A work agreement for a specified time shall be made in writing and must be written in Indonesian language with Latin alphabets. A work agreement for specified time, if not made in writing shall be regarded as a work agreement for an unspecified time. If a work agreement is written in both the Indonesian language and a foreign language and then differences in interpretation arise, then the Indonesian version of the agreement shall prevail.

A work agreement for specified time cannot stipulate probation. If a work agreement stipulates the probation, it shall be declared null and void by law.

A work agreement for a specified time can only be made for a certain job, which, because of the type and nature of the job, will finish in specified time, that is:

1. Work to be performed and completed at once or work which is temporary by nature;
2. Work whose completion is estimated time which is not too long and no longer than three years;
3. Seasonal work;
4. Work that related to a new product, a new activity or an additional product that is still in the experimental stage or try-out phase;

A work agreement for a specified time cannot be made for jobs that are permanent by nature. A work agreement for a specified time can be extended or renewed. A work agreement for a specified time may be made for a period of no longer than two years and can only be extended one time that is not longer than one year.

Jobs that are permanent by nature refer to continuous, uninterrupted jobs that are not confined by a timeframe and are part of production process in an enterprise or jobs that are not seasonal. Jobs that are not seasonal are jobs that do not depend on the weather or certain conditions. If a job is a continuous, uninterrupted job that is not confined by a timeframe and part of a production process but depends on the weather or the job is needed because of the existence of a certain condition, then the job is a seasonal job. The job does not belong to permanent employment and hence, can be subjected to a work agreement for a specified time.

Entrepreneurs who intend to extend work agreement for specified time shall notify the said workers/laborers of the intention in writing within a period of no later than seven days prior to the expiration of the work agreements. Any work agreement for a specified time that does not fulfil the requirements shall, by law, became a work agreement for an unspecified time.

3.1.1 Work Agreement for Specified Time for Work Completed Once or Temporary by Nature of Which The Completion of Work is for Maximum of 3 Years

A work agreement for a specified time for work completion at once or temporary by nature is a work agreement for a specified time based on the completion of certain work. A work agreement for a specified time is prepared for three years at the longest. In case that a certain work can be completed earlier than the agreed period of time therefore the work agreement for specified time is severed by law on the settlement of the work. In a work agreement for specified time which is based on the completion of certain work, shall be stated the limitation of the work to be finished.

In the case that a work agreement for specified time is prepared on the settlement of certain work, however due to certain condition the work cannot be completed yet, the renewal of work agreement for specified time can be done. The renewal is made after a period of 30 days is over since the working agreement comes to an end. During the 30 days period there is no working relationship between worker/laborer and employer. The respective parties can have different condition, which is stated in the agreement.

3.1.2 Work Agreement for Specified Time for Seasonal Work

Seasonal work is a work that its execution depends on season or weather condition. A work agreement for seasonal work can only made for one type of work in a certain season.

The works which have to be done to fulfill orders or certain target can be executed with work agreement for specified time as seasonal works. The work agreement for seasonal work is only valid for worker/laborer who does additional work. Entrepreneur who employs worker/laborer based on work agreement for specified time for seasonal work shall create name list of workers/laborers who perform additional work. The work agreement for

specified time for seasonal work cannot be renewal.

3.1.3 Work Agreement for Specified Time for Work Related to New Product

A work agreement for specified time can be made with worker/laborer for the work that related to new product, new activity, or additional product which are still in trial or probation. A work agreement for specified time for work related to new product can only be made for the period of 2 years at maximum and can be extended for another one time for one year. The work agreement for specified time for work related to new product cannot be renewal.

3.2 Work Agreement for A Unspecified Time

A work agreement for an unspecified time may require a probation period for no longer than three months. A requirement for a probationary period must be stated in a work agreement. If the work agreement is made orally, the requirement for probationary period must be made known to worker and stated in the worker's letter of appointment. If the work agreement or the letter of appointment is silent about probationary period, probationary period shall be considered non-existent.

During the probation period the entrepreneur is prohibited from paying wages less than the applicable minimum wage.

If a work agreement for an unspecified time is made orally, the entrepreneur is under an obligation to issue a letter of appointment for relevant worker/laborer. The letter of appointment shall at least contain information concerning:

1. The name and address of the worker/laborer;
2. The date the worker starts to work;
3. The type of job or work;
4. The amount of wages.

4. The End of Work Agreement

A work agreement comes to an end if:

1. The worker dies;
2. The work agreement expires;
3. A court decision and/or a resolution or order the industrial relations disputes settlement institution, which has permanent legal force;
4. There is a certain situation or incident prescribed in the work agreement, the company regulation, or the collective labor agreement which may effectively result in the termination of employment.

In the event of a transfer ownership of an enterprise, the new entrepreneur shall bear the responsibility of fulfilling the entitlements of worker/laborer unless otherwise stated in the transfer agreement, which must not reduce the entitlements of the worker/laborer.

If the entrepreneur, individual, dies, his or her heir may terminate the work agreement after negotiating with the worker/laborer. If worker/laborer dies, his or her heir has a rightful claim to acquire the worker's entitlements according to the prevailing laws and regulations or to the entitlements that has been prescribed in the work agreement, the company regulations, or the collective labor agreement.

If either party in a work agreement for a specified time shall terminates the employment relations prior to the expiration of the agreement, or if their work agreement has to be ended for reasons other than, the party that terminates the relation is obliged to pay compensation to the other party in the amount of the worker's/laborer's wages until the expiration of the agreement.

4.1 Industrial Relations Disputes Settlement

Disputes in the field of industrial relations up to now have been identified as occurring with regard to

predetermined rights, or with regard to any manpower condition that have been codified whether they are work agreement, company regulation, or legislative articles. Industrial disputes can also be caused by termination of the work relationship. The stipulation on layoffs that up to know has been arranged under Act Number 12 of 1964 concerning the Termination of Employment in Private Corporation, turn out to be no longer effective in preventing an revolving cases involving layoffs. This is caused by the fact that the relationship between the workers/laborers and employers is a relationship based on agreement between the parties involved to bind themselves within such a work relationship. In the event one party no longer wishes to be bound by such a work relationship, it becomes difficult for the parties concerned to maintain harmonious relation.

Act Number 22 of 1957 that all along has been used at the legal basis for industrial relations dispute settlement is felt no longer to able accommodate the development that have occurred, at the rights of the industrial workers/laborer have not been considered sufficiently important to allow them to be a party in industrial dispute settlement.

With the considerations as outline above Act Number 2 Year 2004 concerning Industrial Relations Disputes Settlement should oversee settlement of industrial disputes caused by:

1. Differences of opinion or interests on labor conditions that have not been covered through work agreement, corporate regulations, collective labor agreements, or legislation.
2. Negligence or disregard by one or both parties in carrying out the normative stipulations as spelled out within the work agreement, company regulations, collective labor agreement, or enacted legislation.
3. Termination of the work relationship.
4. Differences of opinion among the trade unions within one company regarding the implementation of union rights and obligations.

4.2 Industrial Relation Dispute

An industrial relations dispute is a difference of opinion resulting in a dispute between employers or an association of employers with workers/laborers or trade unions due to a disagreement on rights, conflicting interests, a dispute over termination of employment, or dispute among trade unions within one company.

The types of industrial relation disputes cover:

1. Disputes of rights.
2. Disputes of interests.
3. Disputes over termination of employment.
4. Disputes among trade unions within one company.

Dispute over rights is a dispute arising over the non-fulfillment of rights, as a result of difference in implementation or interpretation concerning the laws and regulations, work agreement, company regulations, or the collective labor agreement.

Dispute over interests is a dispute arises in the work relationship due to non-convergence of opinion in the drawing up of, and/or changes in the work requirements as stipulated in the working agreement, or company regulations, or collective labor agreement.

A dispute over termination of employment is a dispute arising from the lack of convergence of opinions regarding the termination of employment as conducted by one of the parties.

A dispute among trade unions is s dispute between one trade union and another trade union within one company, due to the fact there is non-convergence regarding membership, implementation of rights, and obligations to the union.

4.3 Procedure on Settlement of Industrial relations Dispute

Industrial relations disputes are required to be resolved first through bipartite bargaining in deliberation to reach consensus. Settlement of disputes through bipartite mechanism must be settled at the latest within 30 working days from the commencement of negotiations. In the event that within a time frame 30 days one party refuses to continue negotiations or there had been bargaining which did not result an agreement, then the bipartite meetings will be considered to have failed.

In event the bipartite bargaining failed, one or both of the parties can file their dispute to the local authorized manpower offices, and attaching proof that efforts to resolve the dispute through bipartite bargaining have been conducted.

In the event the proof were not attached, then the authorized manpower offices will return the dossier to be made complete at the latest within 7 working days from the date the dossier was returned.

After receiving a written report from one or both parties, the local authorized manpower offices is required to offer to both parties a collective agreement to select a settlement through conciliation or arbitration. In the event the parties do not select settlement through conciliation or arbitration within 7 working days, then the authorized manpower offices will transfer settlement of the dispute to a mediator.

Settlement through conciliation is conducted for resolution of disputes over interests, disputes on termination of work relationship, or disputes among trade unions.

Settlement through arbitration is conducted for resolution of disputes over interest or disputes among trade unions.

5. Conclusion

1. After reformation era, year 1998, Indonesia has three important acts in the field of labour law. The three acts are (1) Act Number 21 Year 2000 concerning Trade Unions, (2) Act Number 13 Year 2003 concerning Manpower, and (3) Act Number 2 Year 2004 concerning Industrial Relations Disputes Settlement.
2. every labour has the right to form and become a member of a trade union,
3. labour development shall be carried out based on the principle of integration
4. A work agreement may be made for a specified time or for an unspecified time.
5. An enterprise ma subcontract part of its work to another enterprise under a written agreement of contract of work.
6. Industrial Relations Court as a part of Industrial relations Disputes Settlement.

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