

Legal Relationship between Employer and Labor

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Abstrac

In the Act No. 13 of 2003 concerning Manpower, it is known term of employer and entrepreneur. The two terms have different meanings. This study discusses about the clarity of the meaning of an employer in relation to labor. Legal issues was raised in this study is the legal relationship between employers and workers. This research is legal study. Legal materials discussed to gain clarity about the legal issues raised. The approach of law, the approach of the concept, and the approach of comparison or ratio are used in this study. The legal relationship between employers and workers is not an employment relationship. Therefore the legal relationship between employers and workers are not subject to the laws and regulations in the field of labor relations.

Keywords: Legal relationship, employer, labor

1. Background

Manpower development as an integral part of national development based on *Pancasila* and the Constitution of the Republic of Indonesia Year 1945, carried out in order development of Indonesian human fully and development of Indonesian society wholly to enhance the dignity and self-regard of labor and the creation of a prosperous society equitable, prosperous, and evenly, both material and spiritual.⁵

In the provisions of Article 2 of Law No. 13 of 2003 on Employment (hereinafter abbreviated LE) stated, “Labor is any person who is able to do the work in order to produce goods and / services to meet the needs of both themselves and for society.”

In the provisions of the Article 89 of LE stated:

- a. The minimum wage referred to in Article 88 paragraph (3) letter a may consist of :
 - 1) minimum wage based on the province or district / city ;
 - 2) minimum wage by sector in the province or district / city .
- b. The minimum wage referred to in paragraph (1) is directed to the achievement of decent living.
- c. The minimum wage referred to in paragraph (1) shall be determined by the Governor with regard to the recommendation of the provincial councils and / or Regent / Mayor .
- d. Components and implementation stages of achievement of decent living in paragraph (2) shall be regulated with a Ministerial Decision.

Correspondingly, O. Kahn Freud stated that the onset of labor laws because of the inequality bargaining position contained in the employment relationship. By the same reason, it can be seen that the main purpose of labor law is to be able to negate the imbalance in the relationship between the two.⁶

The rights and obligations of workers and employers are regulated in the LE. In one legal consideration mentioned that in accordance with the role and position of labor, manpower development needed to improve the quality of the workforce and their participation in the development and improvement of the protection of workers and their families in accordance with the dignity of humanity.⁷ In addition to other legal considerations are no less important reads: that national development carried out in the framework of development of Indonesian human fully and development of Indonesian society wholly to build a prosperous society that is fair and equitable prosperous material and spiritual based on *Pancasila* and the Constitution 1945.⁸

The above description mentions the existence of two (2) legal subjects that is labor and employers, while that which is referred to as: Labor is every person who is able to do the work in order to produce goods and/or services to meet the needs of both themselves and for societies.⁹ Labor is any person working for a wage or other forms of remuneration. Employers are individuals, entrepreneur, legal entities, or other entities that employ workers by paying them the wages or other forms of remuneration.¹⁰ Law on Employment was based on the provisions one of which is Constitution 1945, which mentions ‘Every citizen has the right to work and decent

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⁵ General Explanation, on Law Indonesian Republic No. 13 of 2003 on Employment

⁶ Quoted by Geoffrey Kay and James Mott, *Political Order and The L Of Labour* (The Maccmilan Press Ltd., London, 1982, pp. 112, also in the writings of Claire Kilpatrick, *Has New LabourRecognifured Employment Legislation (Industrial Law Journal,)* Vol. 32, No. . 3 Sept. 2003, p. 137

⁷ Law No. 13 of 2003 on Employment, considering letters c, p 1

⁸ *Ibid*, considering letters a, p 1

⁹ Chapter I General Provisions Article 1 paragraph 2 of Law No.. 13 of 2003 on Employment

¹⁰ *Ibid* Article 1, paragraph 4 of Law No.. 13 of 2003 on Employment

living for humanity'.¹

In addition to the provisions of Article 27 paragraph (2) also based on the provisions of Article 33 paragraph (1)² of Constitution 1945. Estuary provisions of Article 27 paragraph (2) and Article 33 paragraph (1), cannot be released to the preamble of which direction to the general welfare, educate life of the nation, and participate in the establishment of a world order based on freedom, lasting peace and justice social. Related to social justice described in one dissertation of Doctoral SaefulAschar as described next.

Meaning of the workers as in the provision of LE already described, in a Implementation of Relationship *Pancasila* Industrial guidelines agreed upon use of the term "worker" instead of "labor" because it has a strong legal basis, this can be seen in Muhammad Sharif, "Principles of Justice" In the Industrial Dispute Settlement in Indonesia, as taken writing by a student Graduate Program, University of Airlangga, 2002 p. 21.³

Meanwhile the meaning of the employer can be interpreted as an entrepreneur/employer. Further described in the provisions of Article 1, paragraph (5), mentioned that the entrepreneur / employer is running a self-owned enterprise;

- a. Individual, association, or legal entity that is independently run company is not his;
- b. Person or individual, a partnership or legal entity located in Indonesia, which represents companies referred to in paragraphs (a) and (b) are domiciled outside Indonesia.

As the constitutional basis is State Constitution Republic Indonesian of 1945, as stipulated in Article 27, paragraph 2, is described in advance.⁴ And Article 33 paragraph (1).

From the above discussion, that will be a lot of reviews and a focus of study is related to the labor / workers with employers/companies, although it is possible there are others.

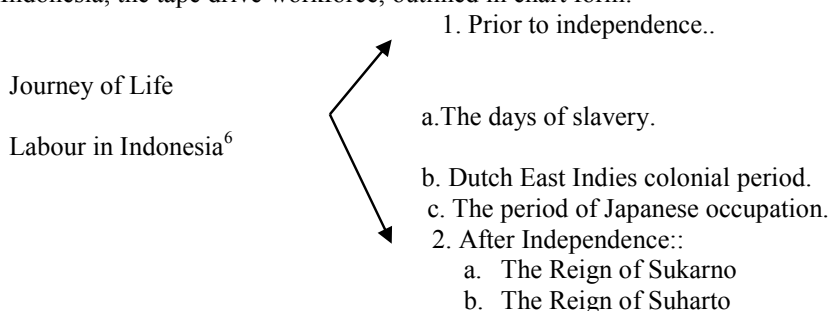
In America related to employees, described as follows: Operating Obama struggling to restore economic / United States by raising taxes for the rich, the economy should not deviate from the moral imperative not to create damage and greed. The author cites a brief description of Ahmad Erani Yustika, Professor of Brawijaya University of Economics that essentially, "Economic policy is actually also measured and fed by a moral imperative. Economic Morality raised the social propriety on policy choices are taken."

In the United States today appeared a tremendous concern about the concentration of wealth and economic asset to the few, due to misguided economic policies or moral hazard that cannot be blocked. One source concentration was derived from the practice of budgeting policies at the corporate level.

In the 1970s the average payment of 100 (one hundred) Chief Executive Officers (CEO) which is top in the United States, only 40 times from average workers, but in 2000, the average CEO's payout shot to 1,000 (one thousand) times folding.

Economically fact it is valid, but actually morally bankrupt. That which later inspired Jeffrey Sachs (2012) use the term divided workplace (worlds apart) to explain incongruity of economic phenomena such. In Indonesia, even perhaps with a higher intensity, the minimum wage is regulated (although be controversial every time) to help the workforce could meet the needs of be feasible, but the limit of the salary / bonus payments are not regulated. The poverty line is contrived to show the population that still shape the economic misery, but property line submitted runs accordance with the laws of the market was left headed up the sky.⁵

In Indonesia, the tape drive workforce, outlined in chart form:



¹ Article 27 paragraph (2) of the Constitution of the Republic of Indonesia Year 1945

² Article 33 paragraph (1) of the Constitution of the Republic of Indonesia stated that "The economy is structured as a joint effort based on a family basis of Article 33 paragraph (1) of the Constitution of the Republic of Indonesia stated that" The economy is structured as a joint venture based on the principle of kinship

³ SaefulAschar, Dissertation: Legal Protection for Women Workers in Industrial Relations "Law Science Doctoral Program, University of Brawijaya, 2011, p 3

⁴ Article 27 paragraph (2) of the Constitution of the Republic of Indonesia: Every citizen the right to work and decent living for humanity

⁵ Professor Ahmad Erani Yustika UB Faculty of Economics and Business, Director Indef, Reuters December 15, 2012

⁶ This chart initiative researcher, after reading some reference books relating to labor, especially Asri Wijayanti, Employment Law, Rays Graphic Jakarta 2009, p. 18, s / d 41

A brief description

Among the various employment issues that are interesting and will be studied with regard to the working relationship between workers with employers, on which the basis is Article 50 of LE which states that the labor relations is due to the employment agreement between workers and employers. Employment agreement is made in writing or orally. Employment agreement that stipulated in writing executed in accordance with applicable legislation regulations.

In the provisions LE of Article 52 mentioned

(a) Agreement is made on the basis of :

- 1) agreement of both parties ;
- 2) ability or competence to take legal action ;
- 3) there are jobs promised ; and
- 4) The work does not conflict with the agreed order general, decency, and legislation regulations applicable.

Meaning of public order and decency raise to various interpretations and are the norms that are not clear (vague norms). From the description of the background of the problems as above, then arise various problems. For the Philosophical problem of sense of justice, equality for workers neglected; the juridical problem of the presence of norms that vague from the provisions of Article 52 paragraph d; from the theoretical problems, the development of Indonesian society fully by enhancing the dignity and self-esteem, is only a theory associated with reality difficult to materialize and sociological problems fate of the workers are always plagued with the difficulties of life, until often protested which can also harm society as a whole.

2. Problem Formulation

Based on the description on the background of the problem, can be formulated the problem, so authors formulate the problem, namely: what is the significance of the legal relationship between employers and labors?

3. Framework Theory

3.1 State Law Theory

Democracy and state of law will not be separated from the development of a formal legal state from time to time. Democracy in the 19th century in Europe resurfaced giving political rights of the people and the rights of the individual is the basic theme in political thought (constitutional). For that reason, appear ideas on how to limit the powers of government through the constitution-making both written and unwritten. On top of this constitution can be determined the limits of government power and the guarantee of political rights of the people, so that the power of the government is balanced by the power of the parliament and legal institutions. The idea is then called constitutionalism in the state system.¹

Juridical formulation of the idea of constitutionalism is achieved in the 19th century and beginning of the 20th century is characterized by the provision of the terms *rechtsstaat* (given by legal experts Continental Western Europe) or the rule of law (given by the experts Anglo-Saxon), *rechtsstaat* at *du rule of law* which in Indonesia translated as “state law” at the 19th century until the 20th century referred to as the law of the state of classical (formal) with its own characteristics.²

3.2 Theory of Welfare

Article 1 paragraph 3 of the Constitution 1945 states that the “Indonesia is a State of Law”, it confirms that our constitutional system adopts *nomocracy* concept which runs the rule of law.

According to Friedrich Julius Stahl inspired by Immanuel Kant said that the elements of state law (*rechstaat*) are: the protection of human rights; separation or division of powers to ensure the rights; government based on laws and regulations; justice of administration in the dispute.³

While Utrecht stated that the government in a modern constitutional state that promotes the interests of all the people, that is a “welfare state”, participate actively in the social interaction that social welfare for everyone to be maintained. In Indonesian, the implementation of the government's general welfare is also called “*bestuurszorg*”. *Bestuurszorg* is a modern term in the practice of public administration and administrative law of the modern state so that in any activity or task the government should actively participate in the improvement of people's welfare.⁴

This is consistent with the intent and spirit of the constitution of Indonesia, which is the opening paragraph of the 1945 Constitution states that “ ... the Government of the State of Indonesia which shall protect all the Indonesian

¹Moh.Mahfud, Democracy, LocCit, p.27

²*Ibid.*

³Ridwan HR. *ibid.*, p.3, see also Miriam Budiardjo, “*Fundamentals of Political Science*”, Jakarta: Gramedia, 1982, p. 57-58 and Philip M. Radjon, *Legal Protection for the people Indonesia*, Surabaya: Binallmu, 1987, p. 7682

⁴E. Utrecht, *Introduction to Administrative Law of Indonesia*, (London: FH & PM UN Padjadjaran, 1960, p. 22-23.

people and the entire country of Indonesia and to promote the general welfare, the intellectual life of the nation ... “, while in the body of Article 33 and 34 reflects the operational norm Indonesian state welfare law known as the rule of law concept of *Pancasila*¹.

3.3 Employment Agreement

We know that an important task of legal theory is reflecting objects and methods of the science of law. But how this is done, is closely related to point of departure of the philosophy of science selected (used). Because it is also understandable that there are different views on the development of the jurisprudence adopted.²

Therefore knowledge of law is as the beginning of work agreements. Labor agreements in the Dutch language commonly called *Arbeidsovereenkomst* can be interpreted in some sense. Definition of the first mentioned in the provisions of Civil Code section 1601A, the Employment Agreement states that:

“Employment Agreement is an agreement whereby one party of the workers, bound themselves under his command to the other party, the employer for a certain time do the job with pay”.

Furthermore, regarding the definition of the Employment Agreement, Employment Agreement is stated that: Agreement between a “labor” with an “employer”, where the agreement is characterized by the following characteristics: the presence of a certain wage or salary of the agreement and the existence of a relationship on top of that is a relationship under which one party (the employer) entitled to give orders that must be obeyed by the other party.³

Having presented on some understanding of the employment agreement, in particular the sense defined in section 1601A of the Civil Penal Code, there are presented the words “under command”, then the word is which is the norm in the employment agreement and that distinguish between working agreement with other agreements. Subject provision “under” this means that the one who entered into employment agreements should be subject to the other party, or under the command or leadership of others then there are elements of arbitrary order. And with the element of arbitrary commands between the two parties means there is not the same position is called subordination. So here there are those who position above, i.e. the ruling and which ruled.⁴ So with these provisions, the workers would have to be subject to and under the command of the employer.

The employment agreement is an agreement between workers with entrepreneur / employer that contains the terms of employment, rights, and obligations of the parties (Article 1 paragraph 14). Because there are two possibilities for the legal subject composition of which acts as a party in the employment agreement, namely: (a) the worker and the entrepreneur / employer, and (b) the worker and the employer, then the logic of the law, there is also a difference between working agreement with the (a) workers and entrepreneur / employer, and (b) workers and employer. Analysis of these differences must be attributed to Article 50 which states that the employment relationship is due to the employment agreement between the entrepreneur / employer, and worker. It can be inferred from this passage is that the employment relationship is only happening because the employment agreement between workers and employers / employer. In *a contrario*, it can be concluded that the employment agreement was not made by the worker and not the entrepreneur / employer (in this case the employer) did not bring forth to the employment relationship. The employment agreement between labor and the employer bring forth legal relationship, but not the employment relationship.⁵

Law of Employment (LE) brings a new paradigm, in which there is labor agreement that didn't bring forth to the employment relationship. Direction that will be built is an extension of legal protection to certain parties who do work for other. It can be seen from the provisions of Chapter VII of the Employment Expansion, which includes Article 39 to Article 41, and Chapter VIII on the Use of Foreign Workers, which includes Article 42 to Article 49. Before this law, protection by law labor is only limited to labor, but after this law was born, extended protection by labor laws. Subject of law to be protected not only labor, but every person employed by others. It is also the reason for the legal field is called employment law. I still prefer to use the term labor law, as I have described in the introduction.

The employment agreement is bring forth to the employment relationship. As described in the previous section, the working relationship is the relationship between entrepreneur / employer with workers based on labor agreements, which have elements of work, wages, and commands. Three elements are what distinguish between labor relations on the one hand with the legal relations on the other. Legal relationship that clung to the three elements is a working relationship.

¹Ridwan HR, "Administrative Law", Publisher RajaGrafindoPersada, Jakarta, 2006, p, 1-2

²AriefSidhartha, *Meuwissen about developing of Law, Legal Studies, Legal Theory and Philosophy of Law*, RefikaAditama, Bandung, 2009, p.49

³Subekti, *Assorted Agreement ... op.cit.*, p.63

⁴Djumialdji, *Employment Agreement, Literacy Development*, Jakarta, 1977, p.14

⁵Abdul R. Boediono, *Labour Law ... op.cit.*, P.27

4. Discussion

4.1 Employment

Understanding the meaning or definition of the employment relationship according to Law 13 of 2003 on Employment should be by the employer based on the agreement. This means that only the labor agreement that could bring forth to legal relationship which called employment relation. This will be more obvious meanings when linked with Article 1 paragraph 14. According to Article 1 paragraph 14 'labor agreement' is an agreement between workers with entrepreneur / employer or employer that contains the terms of employment, rights, and obligations of the parties. Meanwhile the employer is an individual, the entrepreneur / employer, legal entity or other entities that employ workers by paying wages or other forms of remuneration (my italics).¹

The working relationship occurs due to the employment agreement between the entrepreneur / employer and labor.²

If the limit labor relations, employment agreements and employers are associated, understanding will be obtained as described below. Besides born of labor relations, employment agreements can bring forth to other legal relationships. It is based on the fact that the employment agreement can be made by (1) workers and entrepreneur / employer, and (2) workers and employers. The legal relationship between labor and entrepreneur / employer is working relationship, whereas the legal relationship between labor and employer is a legal relationship other than a working relationship. This conclusion is supported by the employer limits. Employers are consisting of (1) an individual; (2) the entrepreneur / employer; (3) legal entities; and (4) other entities. Employer as legal subjects includes something broader than entrepreneur/employer. This is the justification that the employment agreement may be made by law subject other than the entrepreneur/employer.³

In short, the agreement is a legal act that causes, changing, abolishment of the right, or give rise to a legal relationship and in this way, the agreement creates legal effect which is the goal of the parties. If a legal action is an agreement, the people who carry out legal action called parties.⁴

The description must still obtain justification from limits of labor according to the LE. According to article 1 paragraph 3 laborer is someone who works for a wage or other forms of remuneration. Previous descriptions bring the conclusion that workers can make a working agreement with legal subjects other than entrepreneur / employer. Limitation of labor in the article is to justify that conclusion because workers in the article very broad meaning. Every person who works for a wage or other forms of remuneration is labor. Things limiting sense are (1) wages, and (2) other forms of remuneration. According to Article 1 number 30 the wage is labor rights received and expressed in terms of money as compensation from entrepreneur / employer or employers to labor which set and paid by an employment agreement, deal, and legislation regulations, including allowances for workers and his family for a job and / or services that have been or will be made.⁵

Third, have the elements (1) employment, (2) wages, and (3) command. These three elements are cumulative. That is, the absence of one element causes no working relationship. Indeed these three elements that give distinctiveness to the employment relationship when compared to other legal relationship in which there is also an element of work. The relationship between a doctor and patient, advocate and a client, notary and the client, accountant and the client (accountant service users), not an employment relationship, because working of doctors, lawyer, notaries, and accountants are not under the command of the patient or client. The following scheme will clarify the description of the meaning of the employment relationship.⁶

Picture 1. Meaning of the employment relationship

¹ *Ibid*

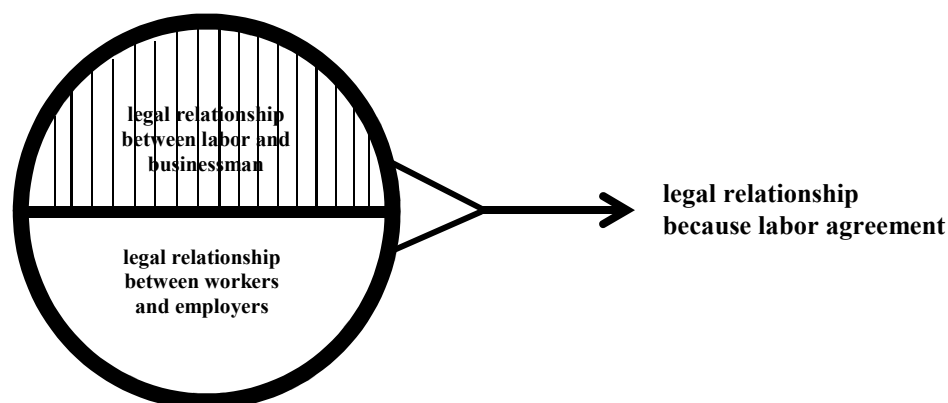
² Sentosa Sembiring, *Association of Legislation of the Republic of Indonesia on Employment*, Nuance Aulia, 2009, p.36

³ Abdul R. Boediono, *Law ... op. cit.*, p.22

⁴ Herlien Boediono, *the General Law of Treaties Doctrine and Its Application in the Field of Notary*, PT. Citra Aditya Bakti, Bandung, 2009, p.3

⁵ Abdul R. Boediono, *Law ... op. cit.*, p.22

⁶ Abdul R. Boediono, *Law ... op. cit.*, p.23



In the shaded semicircle, these working relationships are located. Legal relationship called the employment relationship is a legal relationship that is typical, as already described.¹

The law divides the agreement to do the work in three kinds, namely:

- a. Agreement to perform specific services,
- b. Employment agreement / labor,
- c. Chartering jobs agreement

Theoretically, the public recognition on restrictions of freedom through the law is based on the realization that the law has the function of regulating in order to realize a better life.²

Before LE bring forth, limits employment relationship found in the doctrine. BurgerlifckWetboek for example, only determine to the limits of agreement (Article 1601 a). After the Act No. 13 of 2003 was born, there are definitive limits on the employment relationship.³

The positive side of the definitive arrangements regarding the employment relationship is presence of legal certainty. In the past many labor disputes (current term becomes industrial disputes, with an expanded scope) occurs because there are differences in the understanding of the employment relationship.⁴

The employment relationship is a relationship between workers with employer. Employment-relationship showed that the position of the two parties that basically describes the rights and obligations of workers towards employers and the rights and obligations of employers towards workers.⁵

The existence of the employment relationship is only when there are workers and their employers or employers with workers. The relationship between one not the worker and one not the employer is not the working relationship.⁶

Employment relationship occurs after the employment agreement between workers and employers which an agreement in which the one parties, labor, bind themselves to work for a wage of the other parties, an employer, which binds itself to employ the workers by paying wages. "On the other parties" means that the labor in doing this work is under the leadership of the employer.⁷

The first requirement for the agreement is "agreed they were bound themselves". Agreed to terms not only include "agreed" to bind themselves, but also "agreed" to get the achievement. In a reciprocal agreement, each party has not only the obligation, but also entitled to the achievements that have been agreed.⁸

In Indonesian society is known that there are varieties of other relations between the two sides which are essentially also do the job by payment as fringe benefits, but not called - employment relationship.⁹

Differences between chartering agreement this work with do one or several certain jobs is that in the chartering agreements the primary purpose of work is the completion of making the work in question.

Chartering agreement - work divided into two kinds, namely: (a) where the contractor is required to give material for the job, and (b) where the contractor would only be doing his job.¹⁰

Employment relationship (Supomo , 1987:1) is :

a relationship between a worker and an employer where the employment relationship that occurs after the employment agreement between the two sides. They bound in an agreement, on the one hand labor willing to

¹ Abdul R. Boediono, *Law ... op. cit.*, p.23

² Bahder Johan Nasution, *Employment Law*, CV.Mandar Forward, Bandung, 2010. p.23

³ Abdul R. Boediono, *Law ... op. cit.*, p.23

⁴ Abdul R. Boediono, *Law ... op. cit.*, p.24

⁵ Supomo Faith, *Labor Laws Labor Relations*, Djambatan, Jakarta, 2011, p.1

⁶ *ibid*

⁷ *Ibid*

⁸ Herlien Boediono, *the Doctrine ... op. cit.*, p. 73

⁹ Imam Supomo, *Law ... op. cit.*, p. 2

¹⁰ Subekti, *Assorted ... op. cit.*, p. 65

*work for a wage and entrepreneur/ employer employing labor by giving wage.*¹
Husni in Asikin (1993: 51) argues that the employment relationship is:

*the relationship between workers and employers after the employment agreement, which is an agreement in which the worker is joined to an employer to work by getting a wage and employer stating its ability to hire workers by paying the wages.*²

4.2 Elements of Employment

Looking at the above description, elements of the employment relationship it is made up of the parties as subjects (workers and employers), employment agreements, there are jobs, wages, and commands. Thus grounding employment relationship because the presence of labor agreements, whether written or unwritten (oral).

While some experts argue that in the employment agreement, as the basis of the employment relationship there are four essential elements, namely:

- 1) The existence of the work (Article 1601 [a] of the Civil Code and Article 341 of Code Section Trade).
- 2) The existence of wage (Article 1603 [p] of the Civil Code).
- 3) The command others (Article 1603 [b] of the Civil Code).
- 4) Limited to a specific time, because there is no employment relationship that going continuously.

4.3 Obligations of the Parties

Employment relationship occurs after the employment agreements, and employment agreements are legal events, so that the consequence of employment relationship is legal consequences in the form of rights and obligations of the parties, i.e. the entrepreneur / employers and the workforce.

The right is a role that may or may not be done by law subject. Therefore, if the right is violated, does not result in any sanction for the culprit. While liability is a role that should or should not be done by law subject. Therefore if the obligation breached, it will resulting in penalties for each culprit.³

Basically employment relationship is a relationship that is set/load between the rights and obligations of workers and employers. Dose of rights and obligations of each party must be balanced. In the context of the employment relationship, the obligations of the parties take place on a reciprocal basis. That is, the “obligations of the entrepreneur / employers is a labor rights”, and vice versa “labor obligations is the right entrepreneur / employer”. Therefore, in case of breach regulatory obligations that have been set by legislation or employment agreement, each party can sue the other party.

5. Conclusion

The legal relationship between an employer and a labor are the law relationship outside the employment relationship, because there is no element of ‘under command’ in legal relationship. Legal protection is outside the protection of law in the field of labor relations.

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¹ Abdul Khakim, *Introduction to Indonesian Employment Law Under Act No. 13 of 2003*, PT. Citra AdityaBakti, Bandung, 2009, p.25

² *Ibid*

³ Abdul Khakim, *Employment Law Basics Indonesia*, PT. Citra AdityaBakti, Bandung, 2009, p.46

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