

The Legal Result of Employment Agreement Contradicting to Morality in the Perspective Labor Protection

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Abstract

Based on the Labor Law of Indonesia (the 2003 Law No. 13 concerning Manpower - Article 52 paragraph 3) states that if the agreements made by the labors and employers are contrary to morality so the agreement will be legally abandoned. These provisions do not indicate the aspects of legal protection for workers, because until now it has not been found the certain formulation for the nature of the morality essence within the employment relationship, so that there are no concrete parameters to measure the violation of moral values . Besides, based on the Labor Law, the omission of employment agreements mean that every points of the agreement that has been made are cancelled also. The omission of the agreement legally means that the legal relationship among the agreement builders has never happened. This means that there will be no avowal of the labors 'rights which are supposed to be gotten by them based on the agreement. Moreover, the position of labor existence is always in the sub-ordinate toward the employers. Labor does not have a balanced bargaining power in front of the employers so that in turn, Labors do not get a legal protection in the employment relationship. Therefore, the omission of employment agreement as the result of the contradiction between the Law and morality is necessary to be reconstructed once more, so it will create the legal reasoning that is oriented to the effort in giving the Law protection for the labors.

Keywords : labor law, agreement, protection, parameter, contradiction

1. Introduction

Labor law, based on The 2003 Law No. 13 concerning to the Manpower is the further description of the 1945 Constitution of the Republic of Indonesia as the state constitution. So constitutionally, the labor laws must reflect the mandate of the constitutional. In other words normatively, labor laws must reflect the constitutional guarantees for the rights of labors. In this case, the constitutional rights of the labors are as the obligation of the state to give protection for the labors (Maruarar Siahaan , 2011 : 1-2) as contained in the Preamble of the 1945 Constitution of the Republic of Indonesia.

The protection of the labors' rights absolutely must be reflected into the employment relationship. The workrelationship is the relationship between the employers and labors based on employment agreements, which have employment element, wages, and orders (the 2003 Law No. 13 related to the employment article 1 point 15). Employment agreement is an agreement between labor and employers or the employer which includes the terms of employment, rights, and obligations of each sides (the 2003 Law No. 13 related to the employment article 1 point 14). Based on the understanding of the employment agreement, it can be concluded that the employment agreement is the basic to create the cooperation in working (the 2003 Law No. 13 related to the employment article 50). Employment agreement becomes the factor which determine the aspect related to the law protection for the labors especially if it corresponds to the fulfillment of constitutional rights for labors. Thus terms emphasize the position of the importance that the employment agreement must be accommodative to the will of the employment relationship's doer, reaching all the aspects of the employment relationship, having the law certainty and being justice -oriented, although in the view of sociology the relationship between labor and employers is never equivalent (equal).

The employment agreement is a special subject of the general law agreement. Thus understanding means that the content of the employment agreement is not allowed to be contrary to the formulation, the essence, the general principles of the agreement. Agreement is the basic of the existence of the law certainty. According Roescoe Pound,(Peter Mahmud Marzuki, 2005 : 158) the existence of law certainty will create the predictability, especially for the parties who made it. Law certainty is the certainty of law rules, it is not the certainty of the action to, or the action that will be appropriate to the rules of law. It is because the rule of law is not able to describe the certainty of behavior toward the law precisely.

Based on the 2003 Law No. 13 –article 52 mentioned completely:

- (1) Agreement is made based on

- a. The dealing of both sides;
 - b. The ability and the skill in doing the Law action;
 - c. A job that will be agreed; and
 - d. The agreed employment is not allowed to be contrary to general order, morality, and the prevailing legislation regulation.
- (2) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter a and letter b can be aborted.
 - (3) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter c and letter d can be aborted legally.

The terms of the 2003 Law No. 13 –article 52 related to Provisions of the 2003 Law No. 13 –article 52 above refers to civil law of KUH specifically governing the agreement. In terms of civil law of KUH article 1320 that is mentioned that the legal term agreement contains of:

- (1) Agree to the term that is bound themselves
- (2) Skills to make an engagement
- (3) A specific case
- (4) A legal cause.

The legal cause in this case is a cause that is not forbidden. Under Civil Code Section 1337 states that some cause is forbidden when it is argued by the legislation, or if it is contrary to good morals or public order. Based on the relationship between the provisions of Civil Code Article 1320 and Article 1337, by the provision of work agreement with as The 2003 Law No. 13, it can be understood that the article 52 of the law is the legal requirement of agreement. Article 1335 KUH Perdata basically described that an agreement which has no reason or made from the fake cause or from the forbidden cause, it will not have any strength indeed. Based on the law concept above, then on The 2003 Law No. 13 Section 52 paragraph 3 stated that the agreement that is made by the contrary parties of the terms as mentioned in paragraph (1) letter c and d is aborted legally. The problem is if only one of the provisions in the employment agreement that is exclaimed as disability law for it is contrary to the morality, so legally, new problems will emerge based on the term above, consequently all of the provision that have been made will be aborted too.

Under that law, so that this research is done in order to create the construction of legal reasoning that pragmatically can be used as the basic for the employment agreement so then the admission of one provision will not easily aborted the whole of the agreed provisions that have been made between the labors and the employers. If the admission of the provision in the employment agreement means aborting the whole of agreement that have been made before, then the intended employment agreement cannot create the law protection (Philipus M. Hadjon, 1987 : 2) for the labors. Based on those views, there are two law issues that will be explained through this research: (1) Will the admission of employment agreement which contradict to morality create the law protections for the labors? (2) How should be the construction of legal reasoning in order that the admission of employment agreement which is contrary to morality will still be oriented to the principles of labor law protection?

2. Research Methods

Research is one of a principal tool in the development of science and technology. Research has the aim to reveal the truth systematically, methodically and consistently, including the law research. Law research is a process to discover the rule of law, principles of law even the legal doctrines in order to address the legal issues that arise. The research method is a procedure and techniques to answer the legal issues as problems that are going to be conducted by the researcher. Therefore the use of research methods is always adapted to the paradigm based on the type of research being used.

This research is a normative law research, means the process of law research is undertaken to produce arguments, theories, new concepts as prescriptions to answer the legal issues. This normative law research was conducted by reviewing and analyzing the provisions of the law and the other legal materials. In other words, as a kind of research this normative law research is a research-based on the analysis of the law norms so that the expected findings in the study of law are right, appropriate, or wrong. Thus it can be said that the results obtained in the study of law already contains a value (Peter Mahmud Marzuki, 2005 : 29-36).

In the context of normative law research, Abdul Kadir Muhammad further stated that normative law research is a law research that reviews the written laws of the various aspects: theoretical aspects, historical aspects, philosophy, comparative, structure and composition, scope and material, consistency, overview and chapter after chapter, the formality and the strength that binds of the laws and the legal language used. Normative legal research did not analyze the applied aspects or legal implementation.

Consistent to the purpose that to be obtained, then the method in the design of this law research using

four kinds of approaches. The approaches are, first, a conceptual approach (Conceptual Approach), which is the approach taken by searching the views and doctrines developed in the jurisprudence derived from expert opinions or theories, especially concerning to the agreement understanding. Second, regulatory approaches (Statute Approach) which are done with the verification activities, the classification of law products in the form of legislation that are expected to attract the basic principles of the substance of the law issues in this case understanding of the agreement. Third, historical approach (Historical Approach), this approach is conducted by reviewing and analyzing the process of regulation formation that contains or regulates the law issues that become the object of the study and analysis, especially concerning to labor relations and employment agreements. The concentration of this historical approach is focused through the efforts to understand the regulation which controls the previous applicable Law Labor agreement, including the proceeding of labor law formation that are applicable now (the 2003 Law No. 13) . Fourth, the case approach (Case Approach) (Bambang Sunggono, 2000 : 76), the approach that is done with the inventorying the cases, examining, reviewing and analyzing the court's decision to be abstracted as well as formulated into the concept in order to answer the legal issues that must be answered in the research.

3. Result and Discussion

3.1. Agreements Omission that are contrary to morality observed from the aspects of labor protection

In the labor law, which is the 2003 Law No.13 article 52 paragraph 3 explained that if there is no job that will be agreed in the employment agreement or the agreed work contradicts to morality so then the intended employment agreement is aborted legally. On the perspective of the law protection, that policy is deserved to be reviewed as well as reconstructed once more in order that the legislation regulations that control the normative and the functional labor laws will be able to create justice for the labors in which have many limitation in front of the employer. The provision of UUK Article 52 ayat 3 does not reflect the law protection for the labors.

There are two important and also base law terminologies in this research, those are the omitting and the omission. One of differentiates between “omitting (omitted because of the law)” with “omission” can be seen from the existence of the agreement omission’s claiming in front of the court to omit the bounding. There must be a claim in “Omission” of the agreement, while “omitting” is described as negative-there must not be a claim. The differentiation between “omitting (omitted because of the law)” and “omission” is explained effectively, beginning with the explanation of “omitting (nietigheid)- omitted because of the law”. “Omitting (omitted because of the law)” with its own strength makes the law action does not reach its aim, causing the agreement ended, and since the beginning the law action does not create the law consequence that is hoped. Therefore, the law omitting that is pointed in this research is ‘omitted because of the law’.

The phrase of ‘omitted because of the law’ is a kind of specific phrase in the law study means not prevailing, illegal based on ‘law’. In general understanding, the meaning of omit is not capable, illegal (W.J.S Poerwadarminta, 2005 : 105). so, even though the word ‘omit’ actually has explained that something is cancelled or becomes illegal, it seems that the phrase of ‘omitted because of the law’ give more strength because the prevailing or the illegality of something is justified or strengthen legally, not only prevailing based on the consideration of the subjectivity’s person or the based on morality or the properness. Omitted because of the law means something becomes out of the order or illegal for based on the law (or specifically, based on the legislation regulation) that is the existing regulation. Therefore, ‘omitted because of the law’ shows that the process of the abortion or the illegality of something happens quickly, spontaneously, automatically, or independently, as long as the condition that abort the provision is fulfilled.

The phrase of ‘ can be cancelled’ and the phrase of ‘omitted because of the law’ have a different meaning, ‘can be cancelled’ means the active action is need to abort something, or the abortion does not happen automatically, not independently, but it has to be requested to do the abortion. Besides that, the phrase of ‘can be cancelled’ means that the main problem should not always been aborted, but if it is wanted that can be asked the aborted process. In summary, there are two possibilities if something can be aborted:

- It will be absolutely aborted because its omission has been clarified for there are the demand of the omission, or
- It will not be aborted because there are no the omission demands of its so there will be no any omission clarification.

Based on 1320 KUH Perdata, the legality of an agreement can be reached if there are the legal causes of it. Those are called as the objective terms to legal the agreement. The first objective term is as stated by Mariam Darus Badruzaman (Mariam Darus Badruzaman, 2001 :79-80) and Herlien Boediono (Herlien Budiono , 2009 :47-48) something that is an object or the main agreement. The second objective terms for the agreement legality are the legal causes or causa. It is called as the objective terms for it is as the object of the agreement. The agreement will be aborted if those terms are

not fulfilled.

In KUH Perdata, There are no explanation about the meaning of those legal causes, but the expert of the law agreed describe it as the content or the basic of the agreement, not as the reason or the motive of the agreement made, but the causes in that agreement itself reflect the intended purpose that will be reach by each parts. Laws does not care of the reason why people build the agreement, the action of laws is to notice and watch” the content of the agreement” which reflect the intended purpose, whether the content is forbidden by the law or not, whether the content contradict to the public order or morality or not.

Some agreements that are made without the legal causes will be illegal, has no law strength. It is insisted by Article 1335 KUH Perdata said “An agreement that has no motives or made based on the fake or forbidden reason, has no any strength”. Causa of the agreement that is not a legal motive is forbidden, based on Article 1337 KUH Perdata if causa is ”forbidden by law or contrary to good morality or public order”. Those agreements should not or cannot be conducted because breaking the law or morality or public order. According to Subekti, such condition is clearly known by judge and public so for the reason of public order and public security therefore the agreement is automatically omitted for law. (Subekti, 1977 : 19)

Related to the legal Kausa which is contained in Jurisprudence that is Decision of MA No.1180K/SIP/1971 on 1972, 12 April within the buying –selling agreement of generator machines that requires the goods import with the cash payments in which the number increases due to the changes of exchange rate. This jurisprudence is not directly relevant to the issue, but quite valuable because in his opinion the judge asserted that the legal causa of an agreement a different meaning to law norms of the compelling condition. The legal causa is assessed or determined at the agreement was made, while the issue of the forcing condition is assessed or determined at the time of execution of this agreement. The judge opinion in the jurisprudence functions to clarify the meaning of the legal causa which is as the requirement of objective term.

To understand the concept of the legal causa related to the aspect of employment agreement, it can be noticed from those terms:

- (1) the employemen agreement is made based on:
 - a. The agreement of both parts;
 - b. The ability and the skill in doing the law action;
 - c. The existence of the wrok that will be agreement; and
 - d. The agreed work is not contrary to the public order, morality, and the applied legislation .
- (2) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter a and letter b can be aborted.
- (3) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter c and letter d can be aborted legally.

Referring to regulation of article 1320, these are the causa concept as KUH civil law article 1337 related to regulations on the law 2003 No.13 articles 52, it can be concluded:

- The existence of the contracted work in terms of KUH Civil Law Article 1320 is a specific thing. The contracted work is the object of the employment agreement between labors and employers, and consequently the law creates the rights and obligations of the parties.
- The Object agreement is that the work must legal, which must not be contrary to the law, public order and morality. Type of the contracted work is one of the employment agreement elements that should be mentioned clearly. According to Asser that in this case, work as object agreement is as the main point (wezenlijk oordeel) or as the essentiality of the employment agreement. The essentiality element is the element that must be present in each the employment agreement. An agreement will not be existing without this element.
- Normatively, if the work that has been agreed in the agreement contradicts to morality so then the intended agreement will be omitted.

Based on the formulation of the provisions within KUH civil law Article 1320 this is the legal causa concept as mentioned in KUH civil law Article 1337 therefore the provisions as in the law 2003 No. 13 Article 52 paragraph 1 and paragraph 3, letter d can be understood that it does not indicate the legal protection . Thus, the existence of the law 2003 No. 13 Article 52 paragraph 1 letter d and paragraph 3 does not represent the spirit of protection and justice for labors because: first, the blur norms of the meaning nature which is not contrary to morality creates the uncertainty in practicing the law especially the justice for labors; secondly, if in the agreement there is a causa that contradicts to morality so then the omission of the employment agreement that is caused by motive is intended to omit the whole rights of labors. In a sense that the consequent of the

employment agreement omission is similar with omitting the existence of agreement that has been conducted or it means that the employment agreement never exists before. Thus, the labor rights of their achievements are useless because the employment agreement is merely omitted (omitted because of the law). This fact that is said harm the labor rights as the shape of justice distortion as the reflection of having no law protection for labors.

Juridically, based on Article 27 the 1945 Constitution Republic of Indonesia can be understood that labors and employers have the same position. Nevertheless, the social and economic positions of them are different. The position of employers is higher than the labors' position. The low-high position in this working relationship has resulted a controlling relationship (*dienstverhoeding*) or correlation of supervisor and subordinate, this condition evoked to the tendency of employers (supervisor) do anything as they like to their labors (subordinates).

The legal facts of the controlling relationship as a form of unequal position between employers and labors can be observed as normative in the sense of employment relationship in article 1 paragraph number 15 the law 2003 No. 13 concerning with the employment which was stated in its contents that the employment relationship is the relationship between employers and workers / labors based on working agreements that have the elements of jobs, wages and "command". So that, the agreements made by the employers and workers which consists of the regulations about working requirements, rights and obligations of the parties, does not negate the element of "command" in relation of employers and labors. According to the element of "command", so it can be understood that there are an unequal position between employers and the workers in the working agreements.

Both the Law 2003 No.13 and previous legislation did not impose the limits or definitions of "command". Lexically command means (1) words that intend to order to do something, or (2) the rules which come from the employers that have to be done (Abdul Rachmad Budiono, 2009 : 31). Meanwhile in Oxford Advance learner's Dictionary, the word "command" is defined as "(of somebody of authority) to tell somebody that they must do something" or to have authority over somebody / something. Black Law Dictionary (Henry Campbell Black, 1991 : 267) gives the definition command as power to dominate and control.

Contrary to other civil law relationships, in the employment relationship the position of the parties are not equals, labors cannot be not free to determine their willing in the employment agreement. This unequal position happened because labors only rely on their power to carry out the work, while the employers are the ones who are as social economical more capable so that any kinds of the activities depends on their will. Based on the differences in the position that is sub-ordinated, in turn, it creates a distinction between general agreement and employment agreement.

The principal differences between the general agreement and employment agreement, is a reality that cannot be denied. This is because if in an agreement that has been made, the parties have the same degree and condition as well as balanced rights and obligations. But it is contrary with the employment agreement, the positions of the parties are not balanced. The fact of this unequal position is the key that has created the element of "command in the employment agreement.

Based on some notion of "command" and the interpretation of the meaning of labor relations, as explained above, it is understood that the employment agreement is an agreement that has a special character or nature that distinguishes it with other general agreement, so that the employment agreement is *contractus sui generis*, means the agreement does not only covered by the general doctrine (of the agreement), but there are specific provisions that partially deviate from the general provisions in that agreement (Volmar, H.F.A, 1984 : 144-146). The facts of deviation agreements can be observed from the indication of the existence of the deviations on the principal of freedom of contract, as summed up in Article 1338 (1) Book of Civil Law legislation.

In today's practice, the freedom in contract is not understood perfectly, it evoked many (impression) patterns of unbalanced contractual relationships and only supported one-sided, including the parties in the employment agreement. Freedom of contract is based on the assumption that the parties in the contract have a balanced bargaining power (bargaining position) (A.G Gues, Conrad Zweight & Hein Kotz, 2003 : 1-2) but in reality the parties do not always have equal bargaining power.

Thus, the point that should be understood and should be a concern is that the principle of freedom of contract as mentioned in paragraph 1 of article 1338 Book of the law is civil law should be read / interpreted in the frame of mind that puts the position of the parties in balanced-proportioned position. Philosophically, this principle is not allowed if in an agreement there is an unbalanced, injustice, inequality, unequal position and others which put one hand to control the other side, an "exploitation de l'homme par Lhomme". If that condition happens, so it is as a denial of the principle of freedom of contract itself. Therefore the realization of proportionality in the relationship of the parties, according to Patterson (E.Allan Fransworth , 1995 : 7), it will

make the contract becomes more valuable.

Law Workshop organized by National Law Development Agency (BPHN), the Ministry of Justice of the Republic of Indonesia on December 17 to 19 December 1985 has been successfully formulated eight law principles of national association such as law equality and the principle of balance (Tim Naskah Akademis BPHN, 1985 : __). The principle of equality law explains that the subjects who have created the agreement have the same position, rights and obligations in the law. Although the legal subjects have different position, color, religion, and race, it should not be discriminations among them. While the principle of balance mandates that there should be balance ability among the parties who made the agreement. Both principles are not reflected in the employment agreement.

Regardless of the quality degree of employment agreement value that should refer to the principles of general agreement, because the law 2003 No.13 puts laborers under the command of employers so in order to provide protection to the workers government intervention is needed as a form of consistency as the commitments contained in the preamble of the law 2003 No. 13, namely:

The manpower development to improve the quality of labors and their participation in the development and improvement of the protection for labors and their families which are appropriate with the dignity of humanity in order to guarantee the basic rights of labors and ensure the equal opportunity and treatment without discrimination on any reason to create the welfare of labors and their families by kept attention to the progress of the development of the business world.

Based on Soepomo, law protections are divided into three kinds:

1. Economic protection, law protection such as enough payment, include labor is capable to do work out of his/her will.
2. Social protection, that is law protection in the form of helth guarantee, freedom in associate, right to join the organization.
3. Technical protection, that is law protection in the form of savety and the work salvation.

Furthermore, he said that "legal protection for labors is the condition where labors can be protected in conducting the decent occupation for humanity. The conception of labor protections oriented in the attempts to create a situation which is called as 'decent occupation'. According to the International Labour Organization (ILO), Decent work involves opportunities of protective occupation and provides a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration freedom for people who express their concerns, organizing and participating in the decision maker that affect their lives and equality of opportunity and the treatment for all women and men.

The four idea components outlined in the Report of the Council Director-General to the 87th in the International Labour Conference: the rights of working, social protection and social dialogue. Work here includes all types of work and has both quantitative and qualitative dimensions. Social protection is an important component-defined according to the capacity of each community and the level of development. Fundamental of labor rights such as freedom of association, non-discrimination in the workplace, and the absence of forced labor and child labor. Social dialogue, in which the workers using their rights to express their views, defending their concerns and involving themselves in discussions to negotiate matters related to work, employers and authorities.

According to Imam Supomo, the contents of an employment agreement are the basic issue, the contents consist of the existence of the contracted job, must not conflict with the provisions within the coercive law, public order or public morals. Furthermore, according to Imam Supomo, agreement is contrary to the law related to public order, if the agreement is contrary to or break the prohibition which is explained in the law, such the prohibition in the the law of criminal law (KUHP). Employment agreement which expect that labors perform the prohibited acts, for example producing the artificial money, so then that agreement will be illegal.

Conflict with the provisions of the law which tend to organize (Regeling) does not give any effect as described above. For example, KUH criminal law articles 1602r organizing the employer's right to deduct from the wages of labor earns. The Both sides, labors and employers may deviate from the regulation by conducting the agreement that the wages of labor earns will not take from the salary.

Imam Soepomo said (Koko Kosidin, 1999 : 24-25) that legally, the employment agreement which contradicts to society morality is not allowed. Commonly, the employment agreement that contradicts to the morality is also contrary to the civilization basic which becomes the sendi perikehidupan negara dan masyarakat (Pancasila, justice, morality, politeness, and so on. For examples, the employer made an employment agreement that contains the provisions that labor:

- It is not allowed to hold a certain religion.

- It is not allowed to have children.
- Women labor in the restaurant should serve the guest until late at night with the unusual way.
- It is not allowed to join a certain organizations or maybe should be a member of labor union.
- It is not allowed to get the decent life for humanity.
- Women should do the prostitution with the customers of the company.
- Those provision is omitted, so, it is not tied the concerned labors.

While Aries Harianto in his dissertation research said that morality is the attitude value especially related to sexual behavior based on local ethic awareness that has been normatively approved as the ideal of National law.²⁰⁷ By observing mount of literatures and within the practice so it will be known that content of employment agreement is about the responsibility and the rights of both sides (worker and owner). The main responsibility of labor is doing the work, while the main responsibility of the employer is to pay the labor. The labor responsibility is the right of the employer. Otherwise, the responsibility of the employers is the rights of the labor. Relating to the meaning of word 'omission' in the meaning omitted legally those can be observed the provisions of the law 2003 No. 13- article 52:

- (1) the employment agreement is made based on:
 - a. The agreement of both parts;
 - b. The ability and the skill in doing the law action;
 - c. The existence of the work that will be agreement; and
 - d. The agreed work is not contrary to the public order, morality, and the applied legislation.
- (2) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter a and letter b can be aborted.
- (3) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter c and letter d can be aborted legally.

In the literature, the first terms is called as subjective term, while the last second terms is called an objective term. Subjective term that is not fulfilled causes the omission of the agreement, while the non-fulfillment of objective term causes the admission of the agreement legally (admission of the employment agreement). Article 52 paragraph 2 and paragraph 3 emphasize the statement above.

There are important and fundamental things that need to be observed the law 2003 No.13 Article 52 paragraph 3. This article emphasize that the agreement made by the parties which contradicts to paragraph (1) letter c and d will be aborted legally. Legal issues that arise are about something that is aborted legally, the issue

²⁰⁷ The explanations of nature of morality essence are, firstly, value is something interesting, something that is sought, something that is liked and wanted, shortly value is something good. Value is something that is agreed or expected. Value always has positive connotation. Positive in this understanding is oriented to kindness and truth. Secondly, attitude value meant that the value is used as the measurement related to physical aspect of human as intentionally. Thirdly, word "especially" meant as the replacement of word "specific". Based on the nature of moral essence above, word "especially" meant there are some attitudes that is not categorized as genitalia exploitation. Ethic awareness is as the will of human natural universal to do or produce the positive attitudes. Fourth, awareness of the local ethic means the universal ethic awareness that must accommodate local values. Local values are the reflection of culture observed from the local community. Local values in this condition are reflected as the forms of thought, attitudes, and behaviors. Local values are a long experience, which is collected as a attitude clue of someone in local community. Local values covers any knowledge, views, value and also the practices of some community whether get from the previous generation of the community or come from that community at present, which does not come from previous generation, but from any experience at present, including from its contact with community or other cultures. The local ethic awareness (species) is the further description of universal ethics awareness (genus). Fifth, the normative avowal. Normative in this case pointed to local community commitment of the values which is positions as the parameter. This normative avowal consists of written and unwritten. Sixth, the ideal national law is Pancasila. Even though, local value is the element to measure the attitudes/ behavior, but the existence of those local values are contrary to the ideal of national law.

is whether the admission of the law related to the whole content of the employment agreement or only the part contents of it?

This question is purposed based on the those illustrations: A business man, making agreement with B, a labor. One of the points in the labor agreement is that the labors' working time is 12 hours a day. This is contrary to Article 77 paragraph 2 of Article 78, the law 2003 no.13 paragraph 1. Article 77 paragraph 2 confirms that the working times consists of : (a) 7 (seven hours) of 1 (one) day and 40 (forty) hours of 1 (one) week, six (6) working days within 1 (one) week , or (b) 8 (eight) hours of 1 (one) day and 40 (forty) hours of 1 (one) week, 5 (five) working days within 1 (one) week . While Article 78 paragraph 1 letter b emphasized that overtime work can be done at most 3 (three) hours in one (1) day and 14 (fourteen) hours in one (1) week . Based on those rules, one of the points of the agreement between A (employers) to B (the workers) is contrary to the law. According to Article 52 paragraph 3, the agreement is omitted legally.

Relating to the law theory, if an agreement is omitted for the law so then the agreement does never exist. It is also in accordance with KUHP Article 1335. This article emphasize: eene overeenkomst zonder oorzaak, of uit eene valsche of ongeoorloofde oorzaak, aangegaan, is krachteloos (an agreement without a motive or is made by the fake or forbidden motive, has no power). If there is no agreement, then there is no any legal effect. Thus, if a labor agreement is omitted legally, so there will be no any law consequences including no employer and worker status. In addition, the employment agreement that is omitted legally, will give no rights both for employers and workers.

If related to the principle of labor law, which provides protection to labors, so that such omission is not right. According to Abdul R. Budiono, if there is a point of the agreement that is contrary to the law (illegal causa), it does not automatically void the agreement. If the omission harms the labors, such as reducing the labor rights or dismissing the rights of labors, or adding the burden of the labors, while the reduction or suppression of labor rights or the additional burden to the labor is against the law so then just the points that are contrary to law that is omitted. As the view of law, it is more constructive than omitting the whole agreement.

That idea can be understood based on the regulation of Law 2003 No.13 article 124 that is explicitly mentioned:

Article 124

- (1) The employment agreement at least contains of
 - a. The rights and obligations of the employer;
 - b. The rights and obligations of trade unions / labor unions including workers / laborers;
 - c. The regulation in employment agreement should not be contrary to the prevailing legislation regulation; and
 - d. Signatures of the parts who make employment agreement together.
- (2) The provisions within the employment agreement should not be contrary to the prevailing legislation regulation. The provisions in collective bargaining agreements peraturan must not conflict with the applicable legislation.
- (3) If the contents of the collective labor agreement are contrary to the prevailing legislation regulations as mentioned in paragraph (2), so the contrast provision of the employment agreement is omitted legally and the prevailing law is the provision of legislation regulation.

Article 127

- (1) The work agreement made by employers and labors must not conflict with the collective employment agreement.
- (2) If the provisions in the agreement refer to in paragraph (1) contrary to the collective employment agreement, so the provisions in the agreement will be omitted legally and the prevailing provision is the provision that is mentioned in the collective agreement.

Based on the provision mentioned in the law 2003 No.13, especially Articles 124 and 127 relating to efforts in providing the labor protection, so only the contrary provisions that are omitted legally, not the whole of agreements that are omitted legally. Therefore, if reviewed and observed there is normative inconsistency in the law 2003 No. 13 of 2003 in Article 52 to Article 124 and Article 127, especially on legal regulation omission of the employment agreement. The law 2003 No.13 article 52 distorts the law protection considering if there is a provision in the employment agreement as opposed to the legislation so that it will be omitted, while according to The law 2003 No. 13 the article 124 and article 127 only the pointed provision that will be legally omitted . The admission of certain point laws still leaves the protection of other labor rights without aborting agreements that have been made and agreed. This is meant as the essence of labor law protection.

Based on the intended description necessary affirms the omission between the whole employment

agreement and the pointed regulation of the employment agreement. The omission of the agreement means that the whole regulations of the agreement are aborted, while the omission of certain regulation in the agreement means that only some parts of the agreement content that are aborted.

3.2. Construction of legal reasoning of omitted employment agreement that contradicts to morality

For the benefit of omitted law construction the employment within the law protection perspective so it is necessary to remind the existence of the essence of law text. The normative regulation of the law 2003 No.13 article 52 paragraph 1 d and paragraph 3, is a law text. The complete regulations are:

- (1) the employment agreement is made based on:
 - a. The agreement of both parts;
 - b. The ability and the skill in doing the law action;
 - c. The existence of the work that will be agreement; and
 - d. The agreed work is not contrary to the public order, morality, and the applied legislation.
- (2) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter a and letter b can be aborted.
- (3) The employment agreement that is made by contrary sides of the regulation as mentioned in paragraph (1) letter c and letter d can be aborted legally.

The law text reflected into the Law 2003 No.13 article 52, if it is interpreted textually so it is substantively reflected the reality of the position of labor in front of the employer within the employment agreement contexts. The omission of employment agreement that is caused of its contrast to morality does not give any protection for labors. Aspects of labor constraints need to be accommodated in order to interpreting the law omission of employment agreement so justice will be formed in the work relationship which is made through the employment agreement.

As the law text, the Law 2003 No.13 article 52 is the product of the legislators. Created and abandoned by its constituent in order to do the changes. At least, change of the meaning as well as efforts to reconstruct in order that the omission of employment agreement still provides the law protection. Thus, the existence of the law text of Law 2003 No.13 article 52 still has power as facilitators of creating justice, not the contrast.

In this position the law text being the stimulant to be read and interpreted so there is a possibility to find the meaning contained in the text at the time the reader or interpreter reads and observe it. The law text is a world of meaning, needed a certain way to understand it both internally and externally in the corridors of understanding of the function and purpose of employment law. In the context of understanding the law text, there are two sides that should be observed in the Law 2003 No.13 article 52.

First, the law text of article 52 is reasoning product or argument that is a model of logic proposition or statements that can be evaluated as right or wrong based on the reasoning regulation. In this view, of course the reasoning product will not be separated from the conventions of academic reasoning to keep being extrovert and adapt to the social dynamic that keep growing and developing. Shortly, the law that manifest within the law text is usually characterized with imperfection.

Secondly, the law text of Law 2003 no.13 article 52 is a politic product which is historically binded and united with history and moved politically and it is influenced by material categories, such as authority, technology, social relation, gender, and so on. The intervension of the authority aspect that guides the creation of law text is prosecuted in order that the labor law regulation that has been made will keep representing the nation existence as the manifestation of law nation's welfare.

Based on the concept above, therefore the understanding of UUK Article 52 related to the omission of employment agreement because being contrary to morality, by observing a few points: first, the contexts of the whole individual that involve to the made of the employment agreement (the unbalance position in work relationship).yuridically, based on the law 1945 constitution of republic Indonesia article 27 said that the position of law and the employer is equal, but based on the economy social their position is different, where the employes' position is higher than labors' position. This condition within the work relation creates the controller relation (dienstverhoeding), and make the employer' side do the arbitrary action to the labor. In contrast to other relationship of civil law, the positions of each party in the work relationship are not equal, the labor cannot express the idea into the agreement freely. This unbalanced position happens because the labors rely on their strength to carry out the work, while the employers are the ones who are as economic social more capable so that all of activities depend on their will. Second, commitment to the protection of labors and their families is as the background and purpose of the Labor Law enactment of UUK. There is a legal principle says that, labors and employers have equal position. According to the terms of labor called a work partner. However, in practice, their

positions are not equal. Employer as the owner of the business has the higher position than the labor. It can be seen clearly within the made of various policies and rules of the corporate. Remembering the position of the labors that is lower than the employers' position, so then intervention of the government is needed in giving the law protection. The law protection means to guarantee the fulfillment of labor's basic rights and to guarantee the equal opportunity and treatment with no discrimination for all reason to manifest of labors and their families by observing the developing of business world. Third, consistent with the Constitution of the Republic of Indonesia Article 27 paragraph 2 of subsection 28D. Consistency is meant in this case is as a manifestation of the nation presence in the work relationship in order to avoid the arbitrariness of employers to labors so normatively labors will get their rights. The nation presence is realized through the regulation in the labor law sustained by the control effectiveness of work relationship. Fourth, in the philosophical aspect of the values of Pancasila Industrial Relationship (HIP) that becomes the basis of industrial relations in Indonesia. Basically, according to the values of HIP, labor is not the production tools, but it is still attached the humanity aspects followed by its normative rights in employment law, not only for their existence but also because they are the partner of the employer and they need each other.

Based on the definition as mentioned above it can be formulated understanding that if the agreements are contrary to morality, so the nullification as the law result is not done to the whole agreement that has been made but the nullification is limited to the point that contradict. Sui generis characteristics of an employment agreement are demanded to carry the meaning that tends to provide the protection to the labors.

4. Conclusion

Based on the explanation of law description above can be understood that the omission of employment agreement because it is contrary to morality, legally it does not reflect the principles of law protection for labors. The omission of employment agreement as the law result if the agreements are contrary to morality, which is omitted is only the Clause or the contrary regulation only, without canceling the other chapters. In other words, if the employment agreement contains the work as the objective term contradicts to morality so only contrary regulation that is omitted as the law result.

The essence construction of the omission considering work employment agreement is *contractus sui generis* or agreement that has a special character that is different from the general agreement. The special character is motivated by the unequal position of the labors as one of the parts in employment agreement so then the employment agreement omission as the effort to provide protection for labors.

Labor protection relating to this, refers to several things, among others, the existence of labor who has unbalanced position in the employment relationship; political commitment of employment law as stated in the Law 2003 No. 13, the Constitution of the Republic of Indonesia Article 27 paragraph 2 of subsection 28D which mandates that the occupation is a constitutional rights of labors, the philosophical aspect of the values of Pancasila Industrial relationship which becomes the basis of industrial relationship in Indonesia. Therefore *contractus sui generis* of the employment agreement also provides the consequences of construction's different meaning with general agreement.

5. Recommendation

Within the framework of establishing the law certainty as a facilitator for providing legal protection for labors in order to create justice employment, the construction of the omission meaning of the employment agreement which are contrary to morality can be used as a legal principle in the employment agreement. The intended principle is the omission of employment agreement for contradicts to morality does not invalidate the overall agreement, but only chapter to the contrary that will be omitted as the law action. Functionally, the principle is expected to contribute as an effort to revise (legal reform) of UUK as well as the legislative process to form labor legislation in the future (legal making). The other side of the law enforcement process where the legal principles can contribute to the judges in the judiciary industrial relations, including practitioners of law practitioners.

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