

The Relations between Employer and Employee

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ABSTRACT

In the Act No 13 of 2003 about manpower is introduced the terms the employer and entrepreneur. The both terms differ in meaning. This research discusses the clear meanings of employer and employee (manpower). The legal issue raised in the research is legal relations between employer and employee. This research is about the law. Legal substances are discussed to find out the clarity of the legal issue. Conceptual, legal, and comparative approaches are used in this research. Legal relationship between employer and employee is not working relationship. Therefore legal relation between employer and employee is not submitted to legal rules in the sector of the working relationship.

Keywords: Employer and employee, the legal issue

INTRODUCTION

Manpower development as an integral part of national development based on Pancasila and the Constitution of 1945 is carried out in order to develop Indonesian people as a whole for increasing dignity of manpower and creating a fair, prosperous, and even society, both materially and spiritually.

In Article 2 of the Act No 13 of 2003 about worker (next, it will be abbreviated with UK), it is stated that “Worker (the employee) is every person who capable of working for producing goods and /service to fulfill his/her own needs or for the public.”

In article 89 of UK, it is stated that:

- (1) Minimum wage as mentioned in article 88 point (3)(a) can consist of:
 - a. Minimum wage is based on area of province or regency/city;
 - b. Minimum wage is based on sector in the area of province or regency/city.
- (2) Minimum wage as meant in the point (1) is directed at the achievement of reasonable need.
- (3) Minimum wage as stated in point (1) is set by governor, by considering recommendation of Dewan Pengupahan Provinsi and/or regent/mayor.
- (4) Component and achievement of reasonable need as stated in point (2) is regulated with decision of secretary.

O Kahn Freud said that labor act exists because of inequality of the bargaining position in the labor relations. The main objective of the act is to abolish the inequality in the relationship. With the same reason, the main legal objective of manpower is to abolish inequality of relations between both of them.

Rights and duties of employee and employer are regulated in the UK. It is stated in one of the legal considerations that in accordance with role and position of worker (employee), development of labor is necessary to increase the quality of manpower and their participation in the development and increase in protection of workers and their families in accordance with human dignity. In addition to that, in other legal consideration states: that national

development is carried out in order to develop Indonesian people as a whole to bring about equally prosperous, fair, and well-to-do people materially and spiritually based on Pancasila and Constitution of 1945.

The aforementioned outline mentions two legal subjects; those are labor (worker) and employer: labor or worker is everybody who capable of working for producing goods and /service to fulfill his/her own needs or for the public. Worker is every person who works by accepting wage or reward in other forms. Employer is individual, entrepreneur, corporation, or others who employs workers by paying wage or reward in other forms. The labor act refers to Constitution of 1945, states that every citizen is entitled to employment and reasonable life to humanity.

In the guidance of implementation of Pancasila industrial relations, it is agreed to the word “worker” instead of “labor” since it has a strong legal ground. This can be seen in the Muhammad Syarif, “Prinsip Keadilan” Dalam Penyelesaian Perselisihan Hubungan Industrial di Indonesia, as quoted by a postgraduate student, Universitas Airlangga Surabaya, 2002 p 21.

Employer means entrepreneur / employment-provider. In article 1 point (5), entrepreneur / employment-provider runs his/her own firm;

- a. Individual, partnership, or corporation independently running a firm which is not his/hers;
- b. Individual, partnership or corporation in Indonesia representing the firm as stated in points a and b located outside Indonesia.

As constitutional base is the Constitution of 1945, as is the article 22 point 2 was explained in front. And the article 33 point (1).

The writer quoted brief explanation by Ahmad Erani Yustika, a professor of Universitas Brawijaya, faculty of economy, the point is “Economic policy actually is also measured and fulfilled by imperative moral. The economic morality lifts social appropriateness on choices of policies made.”

In America today appears an extraordinary concern over concentration of asset and economic riches to few people as a result from divergent economic policy or uncontrolled moral hazard. One of sources of concentration comes from practice of the budgeting-policy on corporate level.

In 1970 an average payment of 100 top CEO in America, 40 times as much of average worker, in 2000, however, the payment the CEO increases to 1000 times.

Economically the fact is legal, but morally bankrupted. That inspired Jeffry Sachs (2012) to use the words *the divided workplace* to explain an absurd economic phenomenon. In Indonesia, even possibly with more intensity, minimum wage is regulated to help the workers to meet their needs, but the limits of salary/bonus of payment is not regulated. Line of poverty is made to indicate poor population, but line of wealth follows the market law.

In Indonesia, the history of worker:

1. Before independence;
 - a. Era of slavery
 - b. Era of Dutch colonialism
 - c. Era of Japanese occupation
2. After independence;
 - a. Era of Sukarno’s administration
 - b. Era of Suharto’s administration

Various problems of labor which will be examined are related to employment relations between worker (employee) and work-provider (employer), the ground is article 50 of UK

stating that employment relations exist because of employment-contract between employee and employer. Written employment-contract is carried out in accordance with the prevailing legal regulation.

It is stated in article 55 of UK;

- (1) Contract is made on the basis of:
 - a. Mutual agreement;
 - b. Capability in legal act;
 - c. Promised employment is existing; and
 - d. The promised employment is not contradictory with public order, norms, and prevailing regulation.

Public order and norms result in various interpretations and constitute vague norms. From the aforementioned background, it appears various problems. For philosophical problem the sense of justice, equality for the worker is disregarded, juridical problem in which vague norm exists from article 52d, from theoretical problem.

Formulation of Problem

Based on the aforementioned explanation, the writer formulates the problem, that is: What is the meaning of legal relations between employer and employee?

THEORETICAL FRAMEWORK

1. Theory of Constitutional State

Democracy and rule of law (constitutional state) will not be separated from development of constitutional state in the past. Democracy in 19th century reappeared to grant political rights of the people and human rights individually constitute the main theme in political thinking. Then ideas appeared about how to limit the governmental power by formulating good written and unwritten constitution. These ideas are known as constitutionalism in the constitutional law.

2. Theory of Welfare

Article 1 point 3 of 1945 Constitution states that “Indonesia is constitutional state”, this indicates that our political system is rule of law.

According to Julius Stahl inspired by Immanuel Kant said that elements of constitutional state (rechstaat) are: protection of human rights; division of authority to guarantee the rights; rule of law; administrative court (justice) in the dispute.

Utrecht said that government in a modern constitutional state which underlines public interest, i.e. a ‘welfare state’, partakes actively in the social milieu so that social welfare for every individual is still preserved. Bestuurszorg is modern label in the practice of public administration so that in every activity the government must actively take part in the increase of social welfare. 3). Contract of employment. Employment contract in the Dutch word is called Arbeidsovereenkomst has several meanings. The first meaning is stated in article 1601a of KUHP:

“Contract of employment is a contract where one party, worker, binds himself or herself to be under the command of another party, employer to work by obtaining wage in one certain time.”

Employment contract is a contract between worker and entrepreneur/employer which has employment conditions, rights, and duties of both parties (article 1 number 14). Because there are two possibilities of compositions of legal subjects who act as parties in the contract of employment, they are: (a) worker and entrepreneur/employer, (b) worker and employer, so

there are also differences between contracts of employment with (a) worker and entrepreneur/employer, and (b) worker and employer. Analysis of these differences has to be related to article 50 which states that employment relations exist because there are contracts of employment between entrepreneur/employer and employee (worker). It can be inferred that employment relations exist because of employment contracts between labor and entrepreneur/labor-provider (employer).

Contract of employment brings about employment relations. As described in the previous part, labor/employment relation is the relation between entrepreneur/employer with worker based on contract of employment, which has three elements; employment, wage, and command. The elements differentiate between employment-relations and legal relations. Legal relations with the three elements constitute employment-relations.

RELATIONS BETWEEN EMPLOYER AND EMPLOYEE

Employment Relations

Employment relations occur because there are contracts of employment between entrepreneur/employer and employee (worker). The contracts can also bring about other legal relations. The contracts can be made by (1) worker and entrepreneur/employer, and (2) worker and employer (employment-provider). Legal relations between worker and employer are employment relations. Employment-provider (employer) consists of (1) individual, (2) entrepreneur/employer, (3) corporation, (4) other bodies.

According to article 1 number 3 of UK, labor is every individual who works by obtaining wage or reward in other form. It can be inferred from previous explanation that worker (labor) can make contract of employment with legal subjects other than entrepreneur/employer. Every person who works by getting wage or reward in other form is a worker. Things which limit are the meaning of wage, and (2) reward in other form. According to article 1 number 30, wage is rights of the worker which is obtained in the form of money as reward from entrepreneur/employer or employer to employee paid in accordance with contract of employment, agreement, and legal regulation. (3) it has three elements; (1) employment, (2) wage, and (3) command. These elements are cumulative. There is no employment relation if one of the elements is absent.

The laws divide contracts of employment into three kinds, those are:

- a. Contract of certain services,
- b. Contract of employment,
- c. Contract of employment as a whole.

Employment relation is a relation between a worker and an employer. The relation indicates the positions of both parties, i.e. rights and duties of the worker toward employer, and rights and duties of employers toward employee.

The relation exist if only there are worker and employer, and vice versa. The relation between someone who is not a worker and someone else who is not an employer does not constitute employment relation.

Employment relations occur after employment contract has been made between employee (worker) and employer, that is a contract where the first party, worker, is binding himself to work by taking wage to other party, employer, who is binding himself to employ the worker by paying wage.

The first condition of a contract is “an agreement from parties who are binding themselves to.” The agreement is not just “agree” to bind himself to, but also “agree” to get an achievement.

Employment relation (Soepomo, 1987:1) is:

A relationship between labor and labor provider (employer), this relationship occurs after employment contract has been made between both parties. They are bound in a contract, the labor will work by taking wage and the entrepreneur / employer employs the labor by paying wage.

Husni in Asikin (1993: 51) inferred that employment relation is:

Relation between employee and employer after contract of employment exists, that is a contract where the worker (employee) binds himself to the employer for working by taking wage and the employer will employ the worker by paying wage.

The Element of Employment Relations

Employment relations consist of parties as subjects (worker and work provider), contract of employment, and the employment exist, wage, and command. Therefore, employment relations occur because of employment contracts, in writing or not (verbally).

Some experts inferred that there are four important elements in the contract of employments, those are:

1. Employment exists (article 1601a of KUH Perdata and Article 341 of KUH Dagang).
2. Wage exists (Article 1603p of KUH Perdata)
3. Command from other people exists (Article 1603b of KUH Perdata)
4. Limited specified time, because there is no employment relation exists continually
Duties of parties

Employment relations occur after employment contracts exist, and the contracts are legal facts, so the consequence of an employment relation causes legal consequence in the form of rights and duties of both parties, i.e. entrepreneur/employer and worker.

Rights are roles which are allowed or not allowed to do by legal subjects. Therefore, if the rights are violated, there are no sanctions to be imposed against the actor. Duties are roles which have to be or do not have to be done by legal subjects. Therefore, if the duties are violated, there are sanctions to be imposed against the actor.

CONCLUSION

Legal relations between employer and employee (worker) constitute legal relations outside employment relations, because there is no element of command in the legal relations. The legal protection is outside legal protection in the area of employment relations.

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