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BREACH OF EXPERIMENTAL PROVISIONS ON RECRUITMENT OF PERMANENT WORKERS (CASE STUDY)

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ABSTRACT

Workers are entitled to receive recognition of work competence after attending job training organized by government job training institutions, private work training institutions, or training in the workplace. However, in practice there are still a number of violations against labor related to work agreements and work tenure, one of which is the banking industry. The purpose of this research is to find out violations and legal protection efforts that can be done by permanent workers in the banking industry. This research is a doctrinal research using the approach to the problem of legislation (*statute approach*) and conceptual approach (*conceptual approach*). The results of the study found that there were companies violating workers based on Article 185 jo Article 90 paragraph (1) of Law No. 13 of 2003 concerning Manpower because it provides a probation period of more than 3 (three) months and provides workers' wages not in accordance with the minimum by region. In resolving the legal remedies that can be done, namely negotiations by mediators through mediation to reporting to labor inspectors as a criminal offense.

INTRODUCTION

The needs of a modern economy are making banks more prevalent in Indonesia (Sochih, 2019). Issuance of currency and replaced by *e-cash* in banking products can make it easier for people to pay for their daily needs besides that *e-cash* can also facilitate access to national finance. In addition, the bank also functioned as a business loan for people who want to expand or develop a business, the goal is that people in Indonesia can be more productive in developing a business other than that it can encourage and expand the economy.

A systematic worker of a bank has different procedures and rules for each bank which includes 4 main types of status of workers namely permanent workers, temporary workers, contract workers, workers *outsourcing* (Brisebois et al., 2017). Based on Article 18 Paragraph 1 of Law No. 13 year 2003 Workers are entitled to receive recognition of work competence after attending job training organized by government job training institutions, private work training institutions, or training in the workplace. After participating in training, workers are entitled to participate in an apprenticeship program in recognition of work competency qualifications from companies or certification bodies that serve as the basis for workers to obtain rights in accordance with their competencies, based on Article 23 of Law No. 13 year 2003(Pratama et al., 2017; Wardani and Rahmat, 2020).

The process of recruiting workers is synonymous with the idea of 'probation period' for workers, in the probation period is an important period for workers and the company itself because at this time the feasibility will be assessed in meeting the competencies required by the company (Haque, 2018). Whereas for companies it is also important to determine whether workers who are conducting probation are eligible to become permanent workers.

The process of granting probation for the recruitment of new workers is regulated in article 58 and article 60 of Law No. 13 of 2003 concerning employment(Pratama et al., 2017). The law explains that companies or employers are prohibited from imposing probation for workers with a certain time work agreement but sometimes in practice sometimes things still occur that are not in accordance with what is written in the law because there are still requirements and are added to the contract, of course this collides with existing laws and regulations. The purpose of this research is to find out violations and legal protection efforts that can be done by permanent workers in the banking industry.

RESEARCH METHOD

This research is a doctrinal research. This research was arranged using two research methods. First is the Law approach (*Statute Approach*) which was conducted by examining all laws and regulations relating to the legal issues being undertaken. The second was the conceptual approach (*Conceptual Approach*) which was done by moving from the views and doctrines developed in the science of law (Harymawan and Nowland, 2016). The primary legal material used is the Law Regarding Law No. 13 of 2003 concerning Manpower, Law Number 10 of 1998 concerning Banking. Secondary legal material in the form of books on related law, legal dictionaries, legal journals, legal articles and comments on court decisions. Analysis of legal materials in this study used a descriptive analysis method. In addition, the analysis of legal materials was also carried out with the method of interpretation, among others, were grammatical and systematic interpretation.

LITERATURE REVIEW

An employment agreement is a binding agreement between the employee and the employer, but in the agreement, it still has terms and conditions that have been made by the employer in accordance with the company's needs. So that

this employment agreement arises with the agreement between the worker and the employer or employer by containing the terms of work, rights, and obligations of the parties so that they understand and understand each other from the conditions / conditions given by the employer / employer to the worker. (Adams et al., 2017)

In carrying out work agreements, there are conditions that must be fulfilled by the parties. The work agreement must fulfill the legality requirements of the agreement as stipulated in Article 1320 of the Civil Code (BW) which is also contained in article 52 paragraph 1 of Law No.13 of 2003 concerning Manpower with the provisions that there is agreement between the two parties, the ability or ability through actions, the existence of the agreed work agreement, the work promised must not be contrary to public order, decency and statutory provisions in force (Van Diermen, 2019). Based on the terms of the agreement above, all four are cumulative, thus these conditions must be met, if one of the conditions is not fulfilled then the agreement can be said to be invalid (Pratama et al., 2017).

Employment agreement according to article 56 of Law No.13 of 2003 is divided into two types, namely certain time work agreements and non-certain time work agreements (Pratama et al., 2017). A specific time employment agreement is a work agreement between the worker or laborer and the employer to establish a work relationship within a certain time or for certain workers (Redgrave, 2016) This specific time work agreement is seasonal. Seasonal work is work whose implementation depends on the season or weather, where the work carried out is to fulfill certain orders or targets. In addition, the provisions of this specific time work agreement are regulated in article 59 paragraph (1) of Law No. 13 year 2003. The provisions of a specific time work agreement are workers who are finished once or are temporary in nature, work that is expected to be completed in a time that is not too long and not later than 3 (three) years, work that is seasonal, or work related to new products, or additional products which is still being tested or explored. Whereas an employment agreement for an indefinite period is a work agreement between the worker / laborer and the employer or employer to establish permanent employment relations (Perritt Jr, 2019)

The work agreement also regulates the probation period for workers. Provision for probation for workers according to Law No.13 of 2003 can be divided into two, namely based on the trial period of a specific time work agreement and a trial period of a non-specified time work agreement. In article 58 of Law No. 13 of 2003 regulates the conditions of work agreement for a certain time that is the work agreement for a certain time cannot require a trial period of work, an employment agreement as referred to in paragraph (1), a work trial period that is required is null and void (Pratama et al., 2017).

Under an indefinite time employment agreement, the company may provide a probation period for new workers who will become prospective permanent workers in the company. Based on article 60 paragraph (1) of Law No. 13 of 2003 concerning manpower regulates the probation period for an indefinite time work agreement, namely an employment agreement for an indefinite period of

time may require a trial period of work of no longer than 3 (three) months as specified in paragraph (1). Employers are also prohibited to wage below the applicable minimum wage.

Violation is the negligence of a person's behavior in acting in order to be able to carry out their own desires without the existence of a rule that basically every determination made must be obeyed accordingly. These violations often occur in the world of work, in practice the professional world is of course familiar with Work Regulations. Initially work regulations were made so that workers could be at peace or comfortable doing their jobs with the company. Violations of probation occur because of the inconsistency of time given by the company to its workers in conducting probation and the probation period for these workers exceeds the probation period stipulated in the regulations of Law No. 13 of 2003 concerning employment (Setiyono and Chalmers, 2018)

RESULTS AND DISCUSSION

Labor often occurs disputes between companies and workers, disputes that arise are usually caused by incompatible provisions that have been promised (Yekini and Anjorin, 2016). Disputes between employers and workers often occur because of feelings of dissatisfaction. Employers try to provide policies which according to their consideration are good and will be accepted by workers but because the workers concerned have different considerations and views, laborers or workers who are satisfied will continue to work with more enthusiasm while for laborers or workers the person concerned or dissatisfied will show a morale that decreases until disputes occur (Schwab, 2017).

Violations of probation for permanent workers found in this study include probation given by companies to prospective permanent employees exceeding 3 months or probation given by the company twice. The form of the violation is not in accordance with Article 60 paragraph (1) of Law No. 13 of 2003 concerning employment. Because on probation the permanent workers provided by the Company are not in accordance with applicable Laws, in the probation period referred to in the Manpower Act, workers pass a probation period of not more than 3 (three) months at the latest. The definition of 3 (three) months based on this labor law cannot be used as a trial period for the second time or more. Then the second probation is considered to be non-existent due to the incompatibility of an agreement promised by the company to the worker.

Disputes between workers or laborers and employers can occur because they are preceded by violations of the law and can also occur because they are not violations of the law (Schwab, 2017). Labor disputes that occur as a result of violations of the law are generally caused by discriminatory employer actions, for example position, type of work, education, same term of service but because of sex differences and then treated differently. Differences in understanding in the implementation of labor law (Perritt Jr, 2019). This is reflected in the actions of workers or laborers or employers who violate legal provisions can also lead to disputes.

Based on Article 1 number 1 of Law No. 2 of 2004 concerning the settlement of industrial relations disputes, "Industrial relations disputes are differences of

opinion which result in conflict between employers or employers' relations with workers or workers or trade unions or labor unions due to disputes regarding rights, disputes of interest, disputes regarding termination of employment and disputes between trade unions or labor unions in a company ". The principal dispute in dispute is a work agreement, which can be in the form of one of the parties in the work agreement not fulfilling the obligations that are charged in accordance with what was agreed in the agreement (*wanprestatie*), the two parties disagree in understanding the contents of the agreement and disputes regarding the interests of which the solution needs to be intervened by the company (Rakasatutya and Sapta, 2020).

Settlement of industrial relations disputes can be done in 2 ways namely, settlement of industrial relations disputes outside the court and settlement of industrial relations disputes through the industrial relations court (Adams et al., 2017). The procedure for settlement through bipartite in the Industrial Relations Dispute Settlement Act is regulated in Article 6 and Article 7. The best settlement of disputes is the settlement of the disputing parties by consensus agreement without interfering with other parties so as to obtain results that benefit both parties. In addition, deliberation can reduce costs and can save time. That is why Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes requires that any industrial relations disputes that occur are first resolved through deliberate bipartite negotiations for consensus. (Yunarko, 2011) Bipartite negotiations are negotiations between workers or laborers or trade unions with employers to resolve industrial relations disputes, which in decisions concerning *Alternative Disputes Resolution (ADR)* called negotiation settlement. (Setiyono and Chalmers, 2018)

If the bipartite settlement fails, then the dispute resolution can use mediation (Yunarko, 2011). Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes states that Industrial Relations Mediation, hereinafter referred to as Mediation, is the settlement of disputes over rights, disputes of interest, disputes about termination of employment, and disputes between trade unions or trade unions only within a company through deliberations mediated by one or more persons neutral mediator (Article 1 number 11 of the Industrial Relations Dispute Settlement Act)

Settlement through conciliation (conciliation) is done through a person or several persons or bodies as intermediaries referred to as conciliators by bringing together or providing facilities to parties to the disputes to settle the dispute peacefully. Conciliators actively participate in providing solutions to disputed problems. Article 1 number 13 and Article 1 number 14 of the Conciliator Industrial Relations Dispute Settlement Act comes from a third party outside the employee of the agency responsible for labor affairs. The conciliator must complete his duty no later than 30 (thirty) working days from receiving the request for dispute resolution.

With the democratic era in all aspects of national and state life, it is necessary to accommodate the involvement of the community in the settlement of industrial relations disputes through conciliation and arbitration. Dispute resolution through Arbitration and Alternative Dispute Resolution as

stipulated in Law Number 2 of 2004 constitutes a Special arrangement for dispute resolution in the field of industrial relations, in accordance with the principle of law. *lex specialis derogat lex generali.* (Pradima, 2013) Arbitration is the settlement of disputes outside the court based on the agreement of the parties conducted by a third party called an arbitrator and the parties declare that they will obey the decision made by the arbitrator.

The Industrial Relations Court is a special court within the general court environment (article 55 of Law Number 2 of 2004). The absolute authority or absolute competence of the Industrial Relations Court is stated in article 56 of Law Number 2 of 2004, namely that the Industrial Relations Court has the duty and authority to examine and decide upon the first level regarding disputes over rights, at the first and last level regarding disputes of interest, at the first level regarding disputes over termination of employment, at the first and last level concerning disputes between trade unions or trade unions in one company (Asha, 2018).

Efforts to resolve disputes between workers and employers in this study can be resolved outside the court through Bipartite, Mediation, and Conciliation. However, if there is no agreement in the settlement of a dispute between one party, the party that feels disadvantaged can submit a dispute resolution through the court

CONCLUSION

Violations against workers based on Article 185 jo Article 90 paragraph (1) of Law No. 13 of 2003 concerning Manpower because it provides a probation period of more than 3 (three) months and provides workers' wages not in accordance with the minimum by region. In resolving the legal remedies that can be done, namely negotiations by mediators through mediation to reporting to labor inspectors as a criminal offense.

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