

Default Settlement in Employment Contract in Legal Perspective

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Abstract. In the civil law, the freedom to make an agreement is given to everyone, either the agreement in form or material, as long as the agreement does not conflict with the rule of law, decency, and decency in society. When an agreement is made and binding on the parties, the next thing to pay attention to is how the agreement is implemented. In this case the employment agreement. If there are parties who do not carry out the contents of the agreement, there will be a default and if the party's default in the employment relationship of a person who is in default, various problems will arise which are carried out by the worker. In the employment relationship, a worker who is in default will cause various problems that arise which are carried out by the worker, namely resigning while still being bound by a contract agreement with the company, and resigning without giving 30 days' prior notice. A normative juridical approach to the title's laws and regulations is used in this research method. Employees who abruptly resign from the company without prior notice, in violation of the provisions of Article 162 paragraph (3) of Law Number 13 of 2003 concerning the terms of resignation, are the focus of this study's discussion. According to Article 162 paragraph 3 of Law No. 13 of 2003, employees are prohibited from resigning during the work contract period.

Keywords: default, Employment Contract Agreement, employment

1 Introduction

One of the steps in economic development is human capital, which is crucial to all national endeavors and especially to the nation's economy in terms of boosting productivity and standard of living. Economic life is driven by abundant labor, which is a resource that is abundant in abundance. (Then Husni, 2014:47). Therefore, there is a need for jobs that can accommodate all workers, but workers who have skills and expertise in accordance with their abilities, so that the required workforce can increase company productivity (Zainal Asikin, 1994: 76).

The correct term is employed, which is "people who work" or "work," which is more likely to be associated with "non-physical work" and describes work that is clean and smooth.

Subekti, on the other hand, says that an agreement is a legal event when two people promise to do or not do something to each other. This means that the contract is a union of the expectations of each party that agreed to be fulfilled. (Rendy Saputra, 2016: 13).

According to Sudikno Mertokusumo, an agreement is a legal relationship between two or more parties that creates rights and responsibilities for a goal.. That is, one party has the right to an achievement, while the other party is obliged to fulfill that achievement (Firman F. Adonara, 2014: 3).

A Ridwan Halim is of the opinion that, A labor agreement is an agreement between a worker and employer that binds them to each other and commits them to working together. In a labor agreement, the worker promises to follow the employer's orders well and the employer will take care of the worker's (and his family's) life well, based on their respective abilities and consent. (Eko Wahyudi et al)

In general, there are two types of employees in a company, namely contract employees and permanent employees. based on Article 59 of the Manpower Act No. for contract employees 13 of 2003 and the Announcement of the Pastor of Labor No. Kep.100/MEN/VI/2004. In the explanation of Article 59 paragraphs (1) and (2) it is explained that work classified as permanent work can be included in the category of seasonal work if it depends on weather conditions or if the work is required for certain conditions, so that it can become the object of a Fixed Time Work Agreement (PKWT).

The law's definition of a work agreement 1, is the motivation behind the reason organizations and employees collaborate. A work agreement is an agreement between a worker or laborer and an entrepreneur or employer containing the terms of work, rights, and obligations of the parties, according to Manpower Act 13 of 2003.

Article 57 paragraph (1) states that PKWT is made in writing and must use Indonesian and Latin letters. The purpose of the PKWT is made in writing to provide legal certainty to the parties so as to ensure that rights and obligations are fulfilled.

When it comes to agreements, in general the definition of an agreement is regulated by the Civil Code (KUH Perdata) article 1313 which states, "agreement is an act whereby one or more people bind themselves to one or more other people."

With the understanding of the agreement above, it can be concluded that the position between the parties to the agreement is equal and balanced. This will be different if the meaning of the agreement is compared with the position of the work agreement. In this case, the parties who make the agreement are not in an equal and balanced position, because one of the parties, namely the worker, binds himself and works under the orders of another person, namely the entrepreneur. The employment agreement must be made based on:

1. The agreement of both parties
2. Ability or ability to perform legal actions
3. There is a promised job
4. The agreed-upon work complies with all applicable laws and regulations, decency, and public order.

According to Article 1320 of the Civil Code, the four components of the work agreement are prerequisites for the agreement's general validity.

The state of Indonesia has a very abundant workforce, but it is unfortunate that there are very few job vacancies in the country (Indonesia) so that labor mobility is not only moving from villages to cities, this is understandable because industrial growth is stronger in urban areas. and it is felt that the income obtained is more adequate, thus further indicating that the workforce has crossed between countries (Malayu S.P Hasibuan, 2008: 23).

If a dispute arises in the employment relationship between the employer and the worker or labourer, this is often unavoidable. This happens usually because of feelings of dissatisfaction with employers who develop policies that they believe are good and accepted by workers or workers, but the workers concerned have different considerations and views, so the policies given by contractor employers are not the same. Workers or workers who feel satisfied remain or are more enthusiastic about their work, while workers or workers who are dissatisfied show a decrease in morale and consequently workers commit violations. As explained in article 1603

b of the Civil Code, workers must obey the rules of work implementation and the rules aimed at perfecting the rules of the employer company in the rules, laws, agreements or regulations, or if they are not within the limits - habit limit. An agreement is defined as a contract between two or more people that imposes a partial obligation to do or not do something. Additionally, if a worker breaks the rules, this may be regarded as a default.

If one of the parties fails to fulfill the terms of the agreement, then the party who violates the agreement is said to be in default. The term default comes from the Dutch language, which is defined as a bad performance. Default consists of four types, namely:

1. Not doing what was promised
2. Doing what was promised, but not as promised.
3. Fulfilled what was promised, but it was too late,
4. Doing something that according to the agreement should not be done.

In an employment relationship, a worker who is in default will cause various problems that arise and are borne by the worker, namely resigning while still being bound by a contractual agreement without a mechanism. Of course, violating the terms of employment agreed in the employment contract made with the employer or company. According to article 1 number 20 of the manpower law number 13 of 2003, labor regulations are regulations issued in writing by employers that regulate working conditions and company regulations. Therefore, the act is considered a violation or violation by the worker, which hinders the fulfillment of the obligations stipulated in the employment contract.

2 Research Method

In order to solve this issue, the author of this article conducts an analysis of secondary data derived from the findings of the literature review. For legal research, there are two types of sources: secondary legal documents and primary legal documents. Statutory regulations, specifically Law No. 13 of 2003 regarding Human Resources. Books on labor law constitute secondary legal materials, while legal dictionaries and Indonesian language dictionaries used to interpret the terms used in this article constitute tertiary legal materials. The data from the literature review were then scientifically and methodically examined to find a solution to the problem's formulation.

3 Problem

The problem in this research is how are the provisions for default in the employment contract agreement in the perspective of labor law? How is the settlement of default in the employment contract agreement in accordance with labor law?

4 Discussion

Default in Employment Contract Agreement in Legal Perspective Employment

Prior to the existence of an agreement, a work agreement entered into between a worker/laborer and an entrepreneur/company, usually the worker/labourer must first fulfill the administrative requirements and the legal requirements determined by the employer/company such as a job application letter, yellow card/KTP of job seekers, list Curriculum Vitae,

Photocopy of Diploma, Photocopy of KTP/Personal Identity, Photocopy of Family Card, Police Record Certificate (SKCK), Health Certificate from a doctor.

According to labor law, the conditions that must be met in a work agreement/time work agreement are based on Article 52 paragraph (1) of Law Number 13 of 2003 concerning Manpower, namely:

1. There is an agreement for those who bind themselves.
2. Able or competent for the party to carry out legal actions.
3. The existence of certain agreed work.
4. The work that has been agreed upon complies with all applicable laws and regulations and maintains public order and decency.

An employment agreement is a contract in which a worker agrees to work for the employer for a set amount of time, complete the work, and be paid. There must be an agreement between the parties, namely the worker or worker and the employer or company, before a work agreement or work agreement can be made for a certain amount of time. The rights and responsibilities of the parties to the work/company agreement are derived from a legal relationship if an agreement is made for a specific period of time for the parties who are legal subjects in the work agreement.

In the exercise of their rights and obligations, the parties are subject to the provisions of the Manpower Act no. 13 of 2003 which regulates the obligations of employers/companies to workers.

However, in practice, empirically the company and the workers agree on a work agreement that is made independently in written form in the form of a standard agreement (ie an agreement made unilaterally by the company and the workers will sign if the work agreement is agreed), the standard agreement the validity period is 1 year, and can be extended based on the agreement of both parties, and the agreement is still in the form of a hand.

The occurrence of an error in the implementation of the work agreement by one of the parties causes problems, if in its implementation there is negligence to not fulfill its obligations under the work agreement, it must be subject to legal responsibility for default actions. The purpose of default in the employment agreement is not or without the actions specified in the employment agreement. The act in question is that the worker or company does not comply with the contents of the work agreement that has been mutually agreed upon.

Civil law stipulates that everyone is given the freedom to make agreements both in terms of form and content, as long as they do not conflict with statutory provisions, morality, and decency in society based on the contents of Article 1337 of the Civil Code. When an agreement is made binding on the parties, the next concern is about the implementation of the agreement itself, in this case the work agreement. As a result of the employment agreement, the parties who are bound are obliged to act in accordance with the applicable law.

Certain Time Employment Agreement, is purely a civil agreement with consequences that are also civil in nature. In the material agreed upon in the Specific Time Work Agreement, in general, compensation or compensation payments of a certain value are made if the employee defaults. In addition, the Employment Agreement for a certain period of time usually contains a clause that prohibits employees from resigning before the agreed contract period.

According to paragraph (3) of Article 162 of Law No. 13 of 2003 Concerning Manpower, the worker or laborer who is resigning must meet the following requirements:

1. Send in a written resignation application no later than thirty days before the resignation's start date,
2. Not bound in official ties; and,

3. Continue to fulfill their responsibilities up until the time of their resignation..

Settlement of Default in the Employment Contract Agreement in accordance with Labor Law

In general, violations that usually occur in work relationships can be caused by: (Edy Sutrisna Sidabutar, 2007: 10)

1. Behavior and or actions of employers towards employees.
2. Behavior and or actions of employees towards employers.

According to article 1320 of the Civil Code, a valid agreement is one that satisfies the following four requirements for agreement fulfillment: Having the ability to reach an agreement with self-binding individuals regarding particular things or objects, having a legal cause (cause), the same as what is stated in Article 52 paragraph 1 of Law Number 13 of 2003 pertaining to Human Resources, which states that the work agreement is made on the basis of the agreement of both parties, the existence of the agreed-upon work, and the work performed by the parties. The agreed upon must not conflict with the prevailing laws and regulations, decency, or the public interest.

In empirical practice, companies and workers independently agree on a written employment agreement (ie an agreement made unilaterally by the company and signed by the employee when making an employment contract). The standard agreement period is 1 year, can be extended by mutual agreement of both parties, and the agreement is still under hands.

The work agreement is made in writing with the aim of providing legal certainty for the parties so as to ensure that rights and obligations are fulfilled. Besides, it is also intended to anticipate if there is a dispute in the future. Then the deed of work agreement made will be very helpful in the verification process. In addition, the purpose of making an agreement must use Latin letters, which is to make it easier for the parties to understand the writing in the agreement deed so that it is not difficult to read the existing agreement deed.

One of the very basic provisions in the Manpower Act Number 13 of 2003 is the regulation of employment relations. This becomes very important, because the employment agreement is the starting point of an employment relationship. As long as there is a working relationship between the worker and the entrepreneur, workers who have been bound by a work agreement—whether permanent or temporary—will be required to carry out the terms of the agreement. This is due to the fact that the agreement contains rights and responsibilities for both parties. Despite the fact that a work agreement binds the employment relationship, each party has its own rights and obligations that must be observed in accordance with the law, the working relationship may eventually end for a variety of reasons. The parties' agreement will be affected by the legal consequences of the employment relationship ending.

Regarding the employment contract agreement, the legal consequences arising from default in the employment contract agreement are the party who violates and terminates the employment contract before its validity period ends in accordance with the provisions of the Manpower Act obtained must pay compensation until the time the work is supposed to be finished, in the amount of the worker's wages.

The employee's resignation is in violation of Article 162 paragraph 3 of Law Number 13 of 2003 pertaining to Manpower, which regulates the above-mentioned terms of resignation.

Although workers with PKWT status resign and receive a resignation penalty, the Manpower Law Number 13 of 2003 does not explain in detail the obligation to provide severance pay for those who resign or resign of their own free will. However, based on Article 162a paragraph (4) of Law Number 13 of 2003 concerning Manpower, that workers who resign of their own volition receive compensation for entitlements, as well as in Article 156 paragraph

(4) are given separation money whose amount and application are outlined in the agreement. Collective bargaining agreements, company policies, or employment laws.

Article 162 of Law Number 13 of 2003 Concerning Manpower regulates this One Month Notice policy. According to paragraph 3 of Article 162, employees must submit a written resignation application no later than 30 days prior to the resignation date.

In addition to the One Month Notice policy, in paragraph 3 it is also explained that employees who wish to submit resignations are not bound by any official ties and will continue to carry out their duties until the specified resignation date is submitted.

Article 62 of Law Number 13 of 2003 concerning Manpower states:

“If one of the parties terminates the employment relationship before the expiration of the period specified in the work agreement for a certain time, or the termination of the employment relationship is not due to the provisions as referred to in Article 61 paragraph (1), the party terminating the employment relationship is required to pay compensation to the other party in the amount of wages of workers/laborers until the expiration of the term of the work agreement.”

According to Article 16 paragraph 2 of the Time Employment Agreement, if the employer and employee terminate their employment relationship before the specified time period in the work agreement has passed, the party terminating the employment agreement is required to pay the other party the employee's wages up until the end of the term.

So if a worker resigns before the contract time ends and moreover if the worker does not notify the company, no matter how long they have worked as long as they have signed a work agreement containing elements of work and wages, then the worker is obliged to pay compensation in accordance with the rules of Article 62 of the Manpower Act and Article 16 of the Employment Agreement for a Certain Time.

Meanwhile, with regard to the losses suffered by the company due to the resignation of the employee, the company cannot claim losses because its business has lost due to the employee's resignation. In this case, the employee is deemed to have defaulted on the work contract by being subject to a written warning/reprimand and is still given the opportunity to continue to complete the work contract until the expiration date or if he still wants to resign must pay compensation according to the contents of the agreed Specific Time Work Agreement. and signed.

According to Article 1243 of the Civil Code, the debtor must begin repaying costs, losses, and interest incurred as a result of non-fulfillment of an agreement when, despite having been found negligent, the debtor fails to fulfill the engagement or if something must be given or done and can only be done given or accomplished outside of the allotted grace period.

Then it is additionally stressed in Article 1244 of the Common Code which expresses that the borrower should be rebuffed for repayment of expenses, misfortunes and interest in the event that he can't demonstrate that he didn't complete the commitment or the error of time in doing the commitment was brought about by something unforeseen, which can't be safeguarded against him, despite the fact that there is no dishonesty in him.

Article 1338 of the Civil Code also regulates the affirmation of the agreement's implementation, stating that: All agreements that are made in accordance with the law will be binding on the parties to them. The agreement can only be revoked with the consent of both parties or for legal reasons. In good faith, the agreement must be carried out.

If there is a default committed by one of the parties or does not want to fulfill the contents of the agreement that has been made, of course it will cause harm to the other party and of course the injured party is entitled to get compensation for the losses suffered.

The initial arrangement of the employment contract if the worker leaves before the employment contract expires, in particular through the imposition of sanctions by the company. Sanctions issued by the company if there is a violation committed by the employee in the form of compensation, but at the will of the worker gives a period of 1 month,

The settlement of the work agreement default if the worker leaves before the work contract ends, which is subject to sanctions by the company. The sanction is given by the company in the event of a default by the employee in the form of compensation, but at the worker's will, it gives a period of 1 month, but for the willingness of the worker to give a deadline of 1 month, so that the company has the opportunity to find replacement workers and for the sake of humanity and company policy on orders from the leadership. the sanction for payment of compensation is waived, replaced by giving a sanction in the form of not giving a work recommendation letter.

5 Conclusion

According to civil law, Default in a work agreement is not doing the actions specified in the work agreement. If the act in question is that the worker or company does not fulfill the contents of the work agreement by mutual agreement. A Specific Time Work Agreement is an entirely civil agreement with equally civil consequences. While the Materials, which are agreed upon in the Specific Time Work Agreement, are generally compensation or compensation payments of a certain value if the employee defaults.

Regardless of the length of the work period, a worker is obligated to pay compensation in accordance with the provisions of Article 62 of the Law if the worker resigns before the end of the contract period, particularly if the worker does not notify the company. This obligation applies regardless of the length of the work period. - Article 16 of the Employment Agreement for Specific Time and the Manpower Act.

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