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Principle of Freedom Contracts at a Company

Principio de libertad de contratación de una empresa

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ABSTRACT

Employers' and workers' equality rarely meet for several reasons and realities. Equality between business owners' and workers' positions has also not been materialized if both parties do not have equal ability. This research used the normative juridical research method by inventorying the statutory regulations, especially in work agreements and the regulation of national legislation. Study's results indicated that the first application of the freedom of contract principle in the work agreement has not been fully implemented because of the conditions of each different company. Secondly, the role of the government, business actors, and laborers/workers were not optimally been working.

Keywords: Principles of freedom of contract, work agreements, protection of laborers/workers.

RESUMEN

La igualdad de empleadores y trabajadores rara vez se cumple por varias razones y realidades. La igualdad entre los puestos de empresarios y trabajadores tampoco se materializa si ambas partes no tienen la misma capacidad. Esta investigación utilizó el método de investigación jurídica normativa mediante el inventario de las regulaciones estatutarias, especialmente en los convenios laborales y la regulación de la legislación nacional. Los resultados de este estudio indicaron que la primera aplicación del principio de libertad de contratación en el contrato de trabajo no se había implementado en su totalidad debido a las condiciones de cada empresa. En segundo lugar, el papel del gobierno, los actores empresariales y los obreros / trabajadores no funcionaba de manera óptima.

Palabras clave: Principios de libertad de contratación, convenios laborales, protección de obreros/trabajadores.

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INTRODUCTION

In the nineteenth century, along with the increasingly influential economic thought doctrine of *laissez-faire*, freedom of contract became a universal principle in supporting free competition (Bezin & Ponthière: 2019, pp. 1-10). If there was state interference in contracts, it was against the free market principle (Horwitz, 1992, p. 173). Research by Edwards (Edwards: 2008, pp. 647-696) stated that the freedom of contract principle is made between parties who have equal bargaining power, abilities, and knowledge relevant to market conditions. Even freedom of contract tended towards freedom without limits (*unrestricted freedom of contract*). However, the principles underwent significant developments and shifts. Such a shift was caused by: first, the growth of standard contract forms; second, the reduced meaning of freedom of choice and the will of the parties, as a result of the widespread interference of the government in people's lives; third, the entry of consumers as parties in contracting. The first and second factors have a close relationship where the form of a standard contract was a condition where a person loses some of his rights in a contract agreement (Webber: 2013, pp. 1-53). The government intervention factor was the most massive part of this shift in understanding. Policymakers saw the need to make boundaries and regulations to prevent social conflict (Rogeborg: 2018, pp. 153-161). One aspect considered necessary to regulate cooperation between parties, which too exclusive and even reached price clauses that did not make sense (Beale et al.: 2016, pp. 203-230). Micklitz (Micklitz: 2015, pp. 1-32) saw that this condition made it difficult for small businesses to develop, not to mention the government's demands to open extensive employment. The development of the understanding of free contracts also made consumers less attended. The position of consumers who also needed guarantees of the existing contractual content from entrepreneurs contributed to causing the shift (Boone: 2019, pp. 1-16).

A person's free choice to make a binding agreement with the contract was also adopted in the employment agreement. The employment agreement also adopted freedom in aspects of self-respect and choices so that it was not coercion. A person obtained freedom through rights, which given restrictions with legal binding in the form of obligations. The findings by Hesmondhalgh & Baker (Hesmondhalgh & Baker: 2010, pp. 4-20) showed that the freedom sought was in the following areas, including income, working hours, job security, comfort, socialization, and networking. Civil law gave authorities on one hand and imposed obligations. On the other hand, whose fulfillment, if necessary, can be forced with the authorities. Because civil law also provided norms based on fairness and propriety. According to Kiriak Kiriak, (2015), civil law adhered to a system of balance and justice, where the two parties' symbiosis was as fair as possible. In addition to balance, Nevisandeh & Chalkasari (Nevisandeh & Chalkasari: 2016, pp. 321-326) stressed the importance of speed and accuracy of decisions so that the warring parties did not last long. Balanced positions between business actors and workers are not always fulfilled because the strong parties tended to dominate weaker parties. The findings by Raff (Raff: 2015, pp. 24-32) shown that law was often more vertical than horizontal. Horizontal law meant that both parties considered having the same degree regardless of who was in power and not (Obicci, 2019; Razaq, Maqbool, & Hameed, 2019; Rex, 2019). Then in the twentieth century, various criticisms and objections to the freedom of contract arose related to the negative consequences caused. One of the impacts was that the procedure for reaching an agreement was often not following market demands (Irakli: 2017, pp. 62-72). On the other hand, freedom of contract often resulted in losses to one party due to less binding rules (Virgo: 2014). Freedom of contract shifted towards the propriety paradigm (Mouzas & Furnston: 2008, pp. 37-50). Nevertheless, unlike the freedom of contract that developed in the nineteenth century. Now freedom of contract was not unlimited freedom. The strength of the bargaining position depended on the position of the parties' ability to negotiate (Satiani et al.: 2014, pp. 253-259). Workers who have the criteria of educational ability, expertise, skills, and experience were scarce and needed by business actors to have a higher bargaining position (Hall & Zoega: 2020, p.109277). Not infrequently, those who have more reputation will get several jobs to offer options (Schaerer et al.: 2016, pp. 156-171). Reputation also determined negotiation flexibility concerning the content, time, and type listed in the employment agreement.

The business conductor/employer recruited workers who were willing to approve the work agreement based on the provisions stipulated by the business actors unilaterally. The worker only needed to accept the

conditions, rights, obligations, and rules in the work agreement previously determined by the business actor/employer. It was not uncommon for employers to violate agreements made by themselves, as was the case with system *outsourcing*. Several factors caused the occurrence of work agreements without bargaining. Ravn and Sterk (Ravn & Sterk: 2017, pp. 125-141; Din et al., 2021, pp. 1,10) emphasized that the main factor was job uncertainty due to macroeconomic conditions, so that every job obtained was very valuable. The next factor was the low quality of labor intellectually or its credibility (Huysse-Gaytandjieva et al.: 2015, pp. 325-346). Even the number of workers was not ready to use due to the low educational background (Dalle et al.: 2015, pp. 63–68) expected to increase to almost 25% in the coming years (Vasile & Anghel: 2015, pp. 64-71).

Labor activities were the necessary foundation of the economic movement (Bazzhina: 2015, pp. 74-81). Suhartoyo (Suhartoyo: 2019, pp. 326-336) argued that discussing legal protections for workers must begin with an understanding of the relationship between employers and employees. In the labor-employer relationship, the labor position was always subordinate to the employer. It was a result of the imbalance of economic power (which ultimately created an imbalance of political power) inherent in workers and employers. It was because workers were sociologically not free. As a person who has no provision of life other than his strength, he was forced to work for others. Moreover, it was the employer who determined the conditions of work. Alternatively, it was called personal weaknesses in structural relationships.

Simply stated, this imbalance of the employee-employer relationship could be illustrated by everyone's experience when applying for a job. People who applied must need a job because they were not brave and cannot determine their work conditions. If anyone dared to determine the terms of work such as salary, then they would not be accepted if the business actor did not agree with the offer from the job applicant, which must be borne by the job applicant. Thus actually, there was never freedom of contract in an employment agreement. It was compounded by the fact that the unemployment rate was high, so that the workers' turnover was directly proportional to this amount. Employers did not feel the need to fulfill the requirements proposed by applicants. From the employer's perspective, the work performed must be equal with the workload carried out where it was a subjective assessment of the employer (Judge et al.: 2010, pp.157-167).

The inability to negotiate in terms of finding and providing actual work has several negative impacts. Azharudeen & Arulrajah (Azharudeen & Arulrajah: 2018, pp. 8-18) stated the compulsion to work in an environment that was not appropriate because the urgency of needs can cause stress at work. Besides, the salary, which was not under workload perspective, also influences productivity and satisfaction in working (Nuraya & Pratiwi, 2017). According to Schaufeli (Schaufeli: 2017, pp. 120-132), the inability to negotiate also affected workers psychologically impacting (2017), the inability to negotiate also affected workers psychologically, impacting work laziness, work accidents, unsatisfactory performance, and reduced productivity. Based on these problems, the objectives of this study were: (1) find out how the application of freedom of contract in an employment agreement in a plantation company; and (2) determine the role of Government, business actors, and workers/laborers in a working agreement with the plantation companies.

METHODOLOGY

The research method used was combining normative legal research methods and empirical/sociological legal research. This study classified into legal research that was holistic, meaning that this research revealed and analyzed data qualitatively. However, it was also possible to examine and analyze data in the form of numbers obtained from the results of research in the field. Used normative legal research methods (*normative legal research*) because the focus of this study was to examine the law as a positive norm contained in the legislation.

Data Collection

Data collected relating to normative legal studies derived from secondary data sources in the form of reading material, including primary, secondary, and tertiary legal materials. Primary legal material in the form of legal regulations that have been issued by the government against workers in the form of Laws, Perpu, Government Regulations, Ministerial decrees, Governor Decrees, Regents / Mayors decisions, Court Decrees, and others.

Data Analysis

This research also used empirical/sociological *legal research (socio-legal-research)* because it also studied and analyzed the operation of law in society. It analyzed the law's effectiveness, the implementation of the rule of law, and the influence of the rule law on some social issues or vice versa.

RESULTS

Application of freedom of contract principle in an employment agreement at a plantation company

In this case, individual freedom also included the power to make a contract, which was legally binding on an agreement that organized the exchange of property on an understanding agreed upon by the contracting parties (Dobrijevic: 2011, pp. 35-41). Among these contracts, there was an agreement that was hardly universal, namely, a legal contract. The role of the law's ambiguity was when regulating the process of private exchange, which has three functions of legitimacy. To be more specific, which agreement would be binding and which was not binding, secondly, establishing rights and obligations made by and able to be carried out if the agreement found ambiguous (having two different interpretations). Finally, to indicate a consequence of an infraction that could not be executed.

The concept of obligation is usually distinguished from the concept of rights. The term rights invited very different meanings. Here we were only concerned with what was seen as "legal rights." This concept must be defined from the perspective of pure legal theory. The law was an instrument to uphold justice in the form of guidelines for behavior with its primary function of regulating human behavior. The law also functioned to protect against irregularities.

In legal terms, labor law, as mentioned above, was a law that was formed to provide justice in employment relations (Hakim & Ispiyarso: 2016, pp. 197-208). The method was taken to realize this justice was carried out in the form of a labor social security program, the making of a fair labor and employer relations law. On the other hand, the socio-economic position of business actors/employers with workers/laborers was very contradictory. The complicated problem about which should take precedence, fairness for workers/laborers, or fairness by the business/employer. The expected answer was justice for both parties. However, the answer would face a conflict in its implementation, when both parties did not want to accept each other and provided a sense of justice to be enjoyed together without having to prioritize conflict.

In the Pancasila industrial relations, every complaint that occurred at the company level and other labor problems arose must be resolved by affinity or deliberation to reach consensus. Industrial relations were the process of fostering communication, consultation and deliberation, and negotiation and supported by the ability and high commitment of all elements in the company. Wardiningsih (Wardiningsih: 2012, pp. 285-292) added industrial relations as a forum to discuss all aspects and issues of economic, social, political, and cultural both directly and indirectly. The labor law has set the basic principles that we need to develop in industrial relations. The direction was to create an ideal system and institution so that productive, harmonious, dynamic, and fair working conditions were created. It was realized that not all complaints that occurred between workers/laborers in a company could be resolved by family or deliberation. It was partly due to differences in understanding or perceptions regarding various matters relating to employment relations and other terms of employment so that the emergence of industrial relations disputes cannot be avoided.

Industrial relations was a dynamic socio-economic process. This condition caused the problems of industrial relations disputes to become increasingly sophisticated and complicated so that institutions and mechanisms for the settlement of industrial relations disputes were needed that are fast, appropriate, fair, and inexpensive. Disputes between business actors and workers/laborers sometimes have to end with the termination of employment. The settlement concerning the issue of termination of employment must meet the sense of justice of each party, especially for workers/laborers. It was also a loss because they have to release workers/laborers who have been educated and already know the ways of working in their companies. Thus, termination of employment not only causes difficulties for workers/laborers but also will cause difficulties for companies. For this reason, the government needs to intervene in overcoming the issue of termination of employment.

The purpose of labor protection was to ensure harmonious employment relations without pressure from the strong to the weak. For this, business operators must implement the labor protection provisions per the applicable laws and regulations. The purpose of labor protection was to ensure harmonious employment relations without pressure from the strong to the weak. For this, business operators must implement the labor protection provisions by the applicable laws and regulations.

The Role of the Parties in the Work Agreement

In the self-government system, the district/city government agency in charge of employment was responsible to the regent/mayor, not to the district/city government agency in charge of the employment nor provincial government agency as a centralized government system. The program of coaching and developing industrial relations activities was often hampered only because of structural problems. Some parties assumed that the agency in charge of district/city level employment was responsible to the regent/mayor, so that the agency in charge of provincial-level employment should not be intervened.

It was not uncommon for the implementation of industrial relations, including the handling of disputes, to be hampered because the labor force was one-sided or flirting, generally with the authorities and business people. The entrepreneur has political power, while the business actor has economic power (capital). As a result, when the employment field's apparatus had a fragile resolution, it could be scared to implement the tasks as applicable regulatory employment law. If it was like this, what else could be expected, it needed the support and control of the community, such as among non-governmental organizations, universities, and labor activists toward apparatus field labor to carry out its duties in pushing the implementation of industrial relationship in harmony.

Some things must still be intervened by the government using *targeted affirmative action* to let social functions continued to run in market mechanisms. So that the market mechanism still contained elements of social functions, including government intervention through taxation, wealth and income distribution instruments, guarantee systems, social and labor systems. *Affirmative action* aimed more at *disadvantaged groups* (mostly small people), not the opposite of conglomerates. By choosing a market economy system that is expected to be more efficient than a guided economic system, the government's role in spurring economic growth will be replaced by the private sector. However, keep in mind, the market economy has two main weaknesses. First, the private sector was susceptible to *"future expectations toward risk"* that can change rapidly.

The demands of the market mechanism for flexible work systems must be responded to by the government by setting clear boundaries so that the most vital interests of workers/laborers, namely welfare and social security, were not neglected. In this case, within the scope of welfare was a wage system that could guarantee a decent life to the worker/laborer—for example, the number of basic wages, overtime pay, and etcetera. While covering social security, there was a protection system in the form of health insurance, severance pay, and old age for workers/laborers.

The main objective of labor law was to eliminate the inequality of the relationship between multiple employers/entrepreneurs with workers/laborers, as mentioned in the introduction, quoting Sinzheimer that the employment relationship business actors were those who have more power than workers/labor. Even in the matter of making an employment contract in which there was the principle of individual freedom, but in reality,

this is only a term because, in the work contract, the worker/laborer still did not have a bargaining position to increase the desired employment relationship.

DISCUSSION

Application of freedom of contract principle in an employment agreement at a plantation company

Freedom of contract was the embodiment of the law (*legal expression*) of free-market principles. Freedom of contract was still an essential principle in contract law, both in *civil law* and *common law* (Cruz, 1993). According to Dunn (Dunn: 2010, pp. 558-561), both employers and candidates typically negotiated contracts as part of work professionalism.

Talking about the law was identical to talking about the relationship between humans (Burchardt: 2019, pp. 409-429). Justice may vary depending on which side we were talking about. The role of law in the issue of justice was to objectively bring the idea of justice into a concrete form so that it could benefit human relations. The principle of Pancasila industrial relations translated into the constitution adopted in Indonesia must be used as a reference in overcoming/solving various problems that arose in the field of employment.

The Role of the Parties in the Work Agreement

The government's role was one of the critical keys in many matters relating to employment, on this occasion, trying to extract it from the law. No. 13 of 2003 concerning employment. The autonomy government realized by the existence of a regional autonomy system, which originally centralized into decentralized. The definition of regional autonomy was the right, authority, and obligation of autonomous regions to regulate and manage their government affairs and local government's interests per the law. Managing and regulating itself was not then interpreted freely and becomes the regent/mayor's prerogative solely because the substance of regional autonomy was also how service to the community was not neglected, including employment services (industrial relations).

CONCLUSION

From the results of the research and discussion previously presented, two crucial points were gathered from this study.

First: Freedom of contract was based on the assumption that the parties to the contract have a balanced *bargaining position*, but in reality, the parties did not always have justice and balance. In other words, the freedom of contract principle in an employment agreement has not yet been fully applied in all companies. It was because the conditions of each company were different.

Second: The role of the government as a regulator (*legislator*) so that the rights and obligations of business actors or workers/laborers were fulfilled and under the agreed agreements, as well as supervisors for the implementation of regulations so that they run smoothly and there was no fraud.

The company has a role in respecting the rights of workers and does not treat workers/laborer discriminatively so that justice and balance are obtained to achieve the wishes/expectations of the stakeholders.

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