

## **WORKER RIGHTS AND PROTECTION ACCORDING TO LAW NO. 13 OF 2003 ABOUT EMPLOYMENT**

**Asuan, SH., M. Hum**  
Palembang University  
[asuan.okay@gmail.com](mailto:asuan.okay@gmail.com)

### ***Abstract***

*This research is a type of normative legal research or library legal research which is research into legal systematics. Primary legal materials include statutory regulations, namely: the Civil Code, Law no. 13 of 2003 concerning Employment and laws and regulations related to the problem. Secondary legal materials, namely discussing primary legal materials including scientific works, research results and articles related to research topics. Tertiary legal materials are legal materials that support primary and secondary legal materials consisting of dictionaries, encyclopedias, and others. The legal material is prepared systematically and a conclusion is drawn regarding the problem. The discussion concludes: A work agreement is an agreement between a worker/laborer and an entrepreneur/employer which contains the work conditions, rights and obligations of the parties as regulated in chapter IX concerning Employment Relations (article 51 and article 52 of Law No. 13 of 2003 About Employment). Work protection rights for workers, namely occupational safety and health (article 86), wages (article 88) and welfare rights, namely social security for workers in the form of BPJS health, BPJS employment (article 99 of the Employment Law) and welfare of workers/their families (articles 100 and 101 UUK)*

***Keywords : workers' protection rights, workers, laborers, entrepreneur, employer***

### **1. INTRODUCTION**

Employment development as an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, is carried out in the context of developing Indonesian people as a whole and developing Indonesian society as a whole to increase the honor, dignity and self-esteem of the workforce and create a prosperous, just society. , prosperous and equitable, both materially and spiritually.

Employment development must be regulated in such a way that basic rights and protection are met for workers and workers/laborers and at the same time can create conditions that are conducive to the development of the business world.

In connection with this provision, the government has an obligation to ensure the welfare of the community, one of which is by providing employment opportunities and developing the workforce. This direction of development is also manifested in legal policies in the field of employment, namely developing employment in a comprehensive and integrated manner which is directed at increasing the competence and independence of the workforce, increasing wages, guaranteeing welfare, protecting work and freedom of association. The labor factor as a human resource in national development, especially in the economic sector, is one of the important components as an actor in national development.<sup>1</sup>

The aim of government intervention in employment is to realize fair employment by providing rights for workers as complete human beings, therefore they must be protected regarding safety, health, decent wages, apart from that the government must also pay attention to the interests of employers. The government's influence in the employment sector is manifested by Law Number 13 of 2003 concerning Employment.

Employment is a problem related to the relationship between workers and employers which is subordinate in nature so that it often gives rise to the perception that workers are the weak party therefore the role of the government is needed to protect workers so that they can realize their rights and obligations. The implementation of work within

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<sup>1</sup>Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, Cetakan Pertama, Edisi III. Bandung : Citra Aditya Bakti, 2003, hal. 27

the employment relationship between employers and workers requires legal protection to provide protection and legal certainty for both parties regarding problems that arise during the implementation of work. One form of legal protection and certainty for both parties is through the existence of a work agreement regulated in Law Number 13 of 2003. This work agreement is The beginning of the creation of this employment relationship must be made based on the principles of an employment agreement. This work agreement is used as a means of realizing the rights and obligations of employers and workers which must be obeyed and implemented properly in order to provide benefits for both parties, to create a sense of justice and create prosperity for all parties.<sup>2</sup> The work agreement is intended for protection at work, especially in the aspect of work norms.

Labor protection is divided into 3 (three) types :

1. Economic protection, namely protection of workers in the form of sufficient income, including if workers are unable to work against their will.
2. Social Protection, namely labor protection in the form of occupational health insurance, and freedom of association and protection of the right to organize.
3. Technical Protection, namely worker protection in the form of work safety and security.<sup>3</sup>

From the description above, a problem can be drawn, namely how to form a work agreement and the rights and protection of workers according to Law no. 13 of 2003 concerning Employment. In normative legal research or doctrinal legal research (perscriptive, not descriptive).

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<sup>2</sup>Heru Suyanto, Andriyanto Adhi, *Perlindungan Hukum Hak – hak Pekerjaberdasarkan Asas Keadilan*, Jurnal Universitas Pembangunan Nasional – Vol 1 , Jakarta, 2016, hal. 1

<sup>3</sup>*Op. Cit*, Abdul Khakim, hal. 61.

Research sources in the form of primary legal materials are binding legal materials such as statutory regulations (Law Number 13 of 2003 concerning Employment, Civil Code) and statutory regulations. Non-binding secondary legal materials such as the results/thoughts of legal experts as well as tertiary legal materials (law dictionaries, encyclopedias, and so on).

## **2. DISCUSSION**

### **2.1. Employment Agreement According to Law no. 13 of 2003 concerning Employment**

A work agreement is a derivative of agreements in general, where each agreement has special characteristics that differentiate it from other agreements. However, all types of agreements have general provisions which are universally shared by all types of agreements, namely regarding legal principles, validity of the agreement, subject and object of the agreement. The provisions and conditions in the agreement made by the parties contain the rights and obligations of the parties. each party must fulfill. In this case, the principle of "freedom of contract" is stated, namely to what extent the parties can enter into an agreement, what relationships occur between them in that agreement and to what extent the law regulates the relationship between the parties.<sup>4</sup>

Work agreements are specifically regulated in CHAPTER VII of the KUH Civil law regarding agreements to carry out work. According to Article 1601 letter a of the Civil Code, what is meant by a work agreement is, "An agreement in which one party, the worker, binds himself to work for another party, the employer, for a certain time, by receiving wages." Furthermore, in Article 1 number 14 of the

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<sup>4</sup>Sentosa Sembiring, *Himpunan Peraturan Perundang-undangan Republik Indonesia Tentang Ketenagakerjaan*, CV Nuansa Aulia, Bandung, 2005, hal. 17

Manpower Law, a work agreement is an agreement between a worker or laborer and an entrepreneur or employer which contains work conditions, rights and obligations of the parties .

A work agreement must fulfill the following elements :

a. There is work

Work is an achievement that must be carried out by the recipient of the work himself, and cannot be transferred to another party (individual in nature). Which work, namely that which is carried out by the worker himself, must be based on and guided by the employment agreement.

b. There is an element of command

That in carrying out the work carried out as a manifestation of the existence of the agreement, the worker must submit to the orders of another person, namely the employer and must submit to and be under the orders of another person, namely the superior. The existence of these provisions shows that the worker in carrying out his work is under the authority of his superior.

c. There are wages

Wages are compensation for work carried out by the recipient of the work, which can be in the form of money or non-money (in kind). This wage can be seen from a nominal perspective (the amount received by the worker), or from a real perspective (the use of the wage) in order to meet the worker's living needs. The wage system is usually based on time or results of work, which in

principle refers to the law, provisions of applicable laws and regulations, or customs existing in society.

d. There is a time period

That in carrying out the employment relationship, it must be carried out in accordance with the time specified in the employment agreement or statutory regulations.<sup>5</sup>

Confirmation that the existence of an employment relationship arises from a work agreement between the employer and the employee is in Article 1 point 15 of Law Number 13 of 2003 concerning employment which states that the employment relationship is a relationship between the entrepreneur and the worker/laborer based on a work agreement which has elements of employment, wages, and orders.<sup>6</sup>

The implementation of the employment agreement, in addition to having to be in accordance with the contents of the employment agreement, is in accordance with the time specified in the employment agreement or company regulations. Likewise, the implementation of work must not conflict with statutory provisions, local customs and public order.

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<sup>5</sup>Handri Raharjo, *Hukum Perjanjian di Indonesia*, Pustaka Yustitia, Yogyakarta, 2009, hal. 41.

<sup>6</sup>Lalu Husni, *Pengantar Hukum Ketenagakerjaan, Edisi Revisi*, Jakarta, 2019, hal. 61.

Regarding the form of employment agreement, it is regulated in CHAPTER IX Concerning Employment Relations Law no. 13 of 2003 concerning Manpower in Article 51 paragraph (1) states that work agreements are made in writing or verbally, and Paragraph 2 states that work agreements that are required to be in writing are carried out in accordance with applicable laws and regulations. The conditions for the validity of a work agreement are regulated by Article 52 Paragraph (1) which determines that the work agreement is made on the basis of :

- a. Both side agreement;
- b. Ability or skills to carry out legal actions;
- c. There is work that has been agreed upon; and
- d. The work agreed upon does not conflict with public order, morality and applicable laws and regulations.<sup>7</sup>

If the conditions in points a and b are not fulfilled in making a work agreement, then the work agreement that has been made can be cancelled, whereas if points c and d are not fulfilled, then the work agreement made will be null and void.

Article 54 Paragraph (1) of the Manpower Law determines that employment agreements made in writing must at least contain :

- 1. Name, company address and type of business;
- 2. Name, gender, age and address of the worker or laborer;
- 3. Position or type of work;
- 4. Place of work;
- 5. Amount of wages and method of payment;
- 6. Working conditions which contain the rights and obligations of the entrepreneur and workers/laborers;
- 7. Start and term of validity of the employment agreement;
- 8. Place and date of employment agreement;
- 9. Signatures of the parties in the employment agreement.

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<sup>7</sup>Op. Cit, Sentosa Sembiring, hal. 37

The Employment Law qualifies work agreements into two, namely :

1. A certain time work agreement (PKWT) is a work agreement between a worker or laborer and an entrepreneur to enter into a work relationship for a certain time or for a certain job (Article 56 paragraph (2) UUK). Apart from that, a certain time work agreement (PKWT) is only can be made for certain work which, according to the type and nature or activity of the work, will be completed within a certain time, namely:
  - a. Work that is completed once or is temporary in nature;
  - b. Work that is estimated to be completed within a short period of time and a maximum of 3 (three) years;
  - c. Seasonal work; or
  - d. Work related to new products, new activities or additional products that are still under trial or exploration.
2. PKWTT is a work agreement between a worker or laborer and an entrepreneur to establish a permanent work relationship (Article 1 Number 2 of the Decree of the Minister of Manpower and Transmigration Number KEP.100/MEN/VI/2004 concerning Provisions for Implementing a Certain Time Work Agreement). As stated in Article 63 of the UUK, it states :
  1. If the work agreement for an indefinite period of time is made verbally, the entrepreneur is obliged to make a letter of appointment for the worker/laborer concerned.
  2. The letter of appointment as intended in paragraph (1), at least contains the following information :
    - a. Name and address of worker/laborer;
    - b. Date started work;
    - c. Type of work; And
    - d. The amount of wages.



An Indefinite Time Work Agreement (PKWTT) can be made in writing or orally and is not required to obtain approval from the employment agency.<sup>8</sup>

## **2. 2. Workers' rights and protection in employment relations**

Legal protection is to provide protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. Law can be used to create protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.<sup>9</sup>

Worker protection can be carried out either by providing guidance or by increasing recognition of workers' basic rights, physical and technical as well as social and economic protection through norms that apply in the work environment. The following are forms of legal protection based on work environment norms :

- a. Work safety norms relate to equipment, materials and work processes, conditions of the place, environment, and ways of doing work.
- b. Occupational health norms and company hygiene include; maintaining and improving the health status of workers, carried out by administering medicines, caring for sick workers.
- c. Work norms which include; protection for workers related to working time, wage systems, rest, leave, women's work, children, morality, worship according to their respective beliefs recognized by the government, social obligations to society and so on in order

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<sup>8</sup>Suwarto, *Hubungan Industrial dalam Praktek*, Penerbit Asosiasi Hubungan Industrial Indonesia (AHII), Jakarta, 2003, hal. 48.

<sup>9</sup>SatijiptoRaharjo,*IlmuHukum*,PT.CitraAdityaBakti, Bandung, 2000,hal. 53.

to maintain enthusiasm and work morale which guarantees high work efficiency. and maintaining treatment in accordance with human dignity and morals.<sup>10</sup>

According to Heru Suyanto, worker protection is as follows :

- a. Economic protection, namely protection of workers in the form of sufficient income, including if workers are unable to work against their will.
- b. Social protection, namely labor protection in the form of occupational health insurance, and freedom of association and protection of the right to organize.
- c. Technical protection is worker protection in the form of work safety and security.<sup>11</sup>

Worker protection is the basic rights of workers and guarantees equality, opportunity and non-discriminatory treatment to achieve the welfare of workers and their families, taking into account the progress of the business world and interests businessman. Law Number 13 of 2003 concerning Employment is the basis for protective legislation for workers.<sup>12</sup>

One of the objectives of employment development is to provide protection to workers or laborers in realizing welfare, namely as regulated in Article 4 letter c of the Employment Law and mentioned in CHAPTER X Protection, Wages and Welfare.

Protection of occupational safety and health is one of the rights of workers. Article 86 paragraph (1), paragraph (2), paragraph (3) of the Manpower Law states that protection as intended in paragraph (1) and

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<sup>10</sup>. ZaenalAsyikin,dkk, *Dasar – Dasar Hukum Perburuhan*,RajaGrafindo Persada, Jakarta, 2008,hal. 95

<sup>11</sup>Op. Cit, Heru Suyanto, hal. 1

<sup>12</sup>*Op. Cit*, Asikin Zainal, hal. 97

paragraph (2) is carried out in accordance with regulations. current regulation :

#### **a. Remuneration**

Wages are one source of income for workers in fulfilling a decent life, the right to wages arises from an employment agreement, and is one of the rights in an employment relationship. These constitutional rights are protected in Article 27 paragraph (2) of the 1945 Constitution. These constitutional rights are further regulated in Law no. 13 of 2013 concerning Employment and its implementing regulations, namely Presidential Regulation no. 78 of 2015 concerning Wages. The definition of wages according to Article 1 paragraph (30) of Law no. 13 of 2003 concerning Employment, Wages are the rights of workers/laborers which are received and expressed in the form of money as compensation from entrepreneurs or employers to workers/laborers which are determined and paid according to a work agreement, agreement or statutory regulations, including allowances for workers /workers and their families for work and/or services that have been or will be performed.

Article 88 of the Manpower Law states that :

Paragraph 1: Every worker has the right to earn an income that fulfills a decent living for humanity;

Paragraph 2: To realize income that fulfills a decent living for humanity as intended in paragraph (1), the government establishes a wage policy that protects workers/laborers;

Paragraph 3: Wage policies that protect workers/laborers as intended in paragraph (2) include :

- a. Minimum wage;
- b. Overtime pay;
- c. Wages for not coming to work due to absence;
- d. Wages not coming to work due to carrying out other activities outside of work;
- e. Wages for exercising the right to rest time;

- f. Form and method of payment of wages;
- g. Fines and wage deductions;
- h. Things that can be taken into account with wages;
- i. Proportional wage structure and scale;
- j. Wages for severance pay; And
- k. Wages for income tax calculation.

Paragraph 4: states that the Government determines the minimum wage as referred to in paragraph (3) letter a based on the needs for a decent living and taking into account productivity and economic growth.

Implementation of wages for workers as stated in article 89 of the Manpower Law is as follows :

1. The minimum wage as intended in Article 88 paragraph (3) letter a may consist of:
  - a. Minimum wage based on province or district/city;
  - b. Minimum wages based on sectors in provincial or district/city areas;
2. The minimum wage as intended in paragraph (1) is directed towards achieving the needs of a decent living.
3. The minimum wage as intended in paragraph (1) is determined by the Governor taking into account recommendations from the Provincial Wage Council and/or Regent/Mayor.
4. The components and implementation of the stages of achieving decent living needs as referred to in paragraph (2) are regulated by Ministerial Decree.

Regarding the implementation of the wage scale structure, it is regulated in the Minister of Manpower Regulation No. 1 of 2017 concerning Wage Scale Structure, the wage structure and scale is the arrangement of wage levels from the lowest to the highest or from the highest to the lowest which contains the range of nominal wage values from smallest to largest for each position group. Regarding class, position, length of service, education and competence

Article 92 of Law 13/2003 concerning employment, states that the preparation of wage structures and scales is intended as a guideline for determining wages so that there is certainty in wages for each worker/laborer

and to reduce the gap between the lowest and highest wages in the company concerned.<sup>13</sup>

## **b. Social Security for Workers**

Social Security for Workers in Law no. 24 of 2011 concerning Social Security Administering Bodies (BPJS), there are 2, namely: BPJS Health and BPJS Employment, the explanation is as follows:

### **1). BPJS Health**

BPJS Health or commonly called health insurance, according to Law no. 40 of 2004 concerning the National Social Security System (SJSN), health insurance aims to ensure that participants receive health care benefits and protection in meeting basic health needs. The definition of social security is explained in Presidential Regulation no. 19 of 2016 concerning the Second Amendment to Presidential Regulations Number 13 of 2013 concerning Health Insurance. Article 1 paragraph (4) PP No. 19/2016 concerning Health Insurance, what is meant by Health Insurance Participants is, Every person, including foreigners who work for a minimum of 6 (six) months in Indonesia, is obliged to become a Social Security program participant.

Health insurance for employees is explained in PP No. 19 of 2016 concerning Health Insurance, Article 1 paragraph (7) contains the definition of a wage-receiving worker as anyone who works for an employer and receives a salary or wages, in article 4 paragraph (1) letter a , states that health insurance is intended for workers who receive wages and their families, then in Article 5 it states that, workers who receive wages and their family members as intended in Article 4 paragraph (1) letter a include workers who receive wages, legal wives/husbands,

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<sup>13</sup>TriJataAyuPramesti, *StrukturSkalaUpah*, RinekaCipta, Jakarta, 2005, hal.51

children biological, stepchildren from a legal marriage, and legally adopted children, a maximum of 5 (five) people.

Article 16 C paragraph (2), that, health insurance contributions for wage-earning worker participants, will be paid starting July 1 2015 at 5% (five percent) of the monthly salary or wages provided that 4% (four percent) is paid by the employer. and 1% (one percent) paid by the participant. The benefits of BPJS Health are explained in Article 20 PP 19/2016 concerning social security, that, Every Participant has the right to obtain health insurance benefits in the form of individual health services, including promotive, preventive, curative and rehabilitative services including drug services and consumable medical materials in accordance with with necessary medical needs. Both medical and non-medical benefits (*Article 20-26 PP 19/2016 concerning Health Insurance*).

## **2).BPJS of Employment**

BPJS Employment in Law no. 40 of 2004 concerning SJSN, divided into 4 (four) forms, namely; job security, pension security, old age security and death security. The explanation will be explained as follows:

### **1. Guarantee of work safety**

According to Government Regulation no. 44 of 2015 concerning the Implementation of Work Accident Insurance and Death Benefit Programs, Work Accident Insurance is a benefit in the form of cash and/or health services provided when participants experience a work accident or illness caused by the work environment. Meanwhile, work accident insurance aims to ensure that participants receive health service benefits and cash compensation if a worker experiences a work accident or suffers from an occupational disease.

## **2. Pension guarantee**

Pension guarantees are regulated in Government Regulation no. 45 of 2015 concerning the Pension Security Program, what is meant by pension security is social security which aims to maintain a decent standard of living for participants and/or their heirs by providing income after the participant reaches retirement age, experiences permanent total disability, or dies. UU no. 40 of 2004 concerning SJSN explains that, Pension guarantees are provided to maintain a decent standard of living when participants lose or reduce their income due to entering retirement age or experiencing permanent total disability.

Retirement age limit in PP No. 45 in 2015 is 56 (fifty six) years. and starting January 1 2019, the retirement age will be 57 (fifty seven) years. The retirement age increases by 1 (one) year for every 3 (three) years until reaching the retirement age of 65 (sixty five) years.

## **3. Old age security (JHT)**

Old age security (JHT) is regulated in PP no. 46 of 2015 concerning Old Age Security, what is meant by old age security is a cash benefit that is paid at once when the participant reaches retirement age, dies, or experiences permanent total disability.

## **4. Death guarantee**

Death guarantee is contained in PP no. 44 of 2015 concerning the Implementation of Work Accident Insurance and Death Insurance Programs. Death Benefit, hereinafter abbreviated as JKM, is a cash benefit given to the heirs when the participant dies not as a result of a work accident. JKM benefits are paid

to the participant's heirs, if the participant dies during the active period, consisting of: Children's education scholarships are given to each participant who dies not as a result of a work accident and has had a contribution period of at least 5 (five) years.

### **3. Worker welfare**

. Welfare is a manifestation of the fulfillment of normative or basic rights and obligations for workers/laborers. Welfare regulations are contained in articles 99, article 100 and article 101 of Law no. 13 of 2003 concerning Employment in Chapter X, the third part is regarding welfare.<sup>14</sup>

Regarding the provision of welfare facilities as regulated in Article 100 of the Employment Law, namely:

1. To improve welfare for workers/laborers and their families, employers are obliged to provide welfare facilities;
2. Provision of welfare facilities as intended in paragraph (1), is carried out by taking into account the needs of workers/laborers and the size of the company's capabilities;
3. Provisions regarding the types and criteria of welfare facilities in accordance with the needs of workers/laborers and the size of the company's capabilities as intended in paragraph (1) and paragraph (2), are regulated by Government Regulations."

Discussing the provisions on types and criteria for welfare facilities, it is explained further in the explanation section of articles 100 and 101 of the Manpower Law that types of welfare facilities include:

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<sup>14</sup>ZaeniAsyhadie, *HukumKerjaHukumKetenagakerjaanBidangHubunganKerja*, RajaGrafin do, Jakarta, 2008, hlm. 19-20.



1. Family planning services;
2. Daycare;
3. Housing for workers/laborers;
4. Worship facilities;
5. Sports facilities;
6. Canteen facilities;
7. Health facilities;
8. Recreational facilities; And
9. Cooperative.

Article 101 paragraph 1 of the Manpower Law explains that in order to improve the welfare of workers/laborers, apart from the formation of cooperatives, other businesses are also formed.

The welfare facilities referred to in the Employment Law focus on providing additional services in the workplace or in the employment relationship. Implementation of welfare is further regulated in company regulations and/or collective work agreements.

### **3.CONCLUSION**

1. A work agreement is an agreement between a worker/laborer and an entrepreneur or employer which contains the work conditions, rights and obligations of the parties as regulated in chapter IX concerning Employment Relations (article 51 and article 52 of Law No. 13 of 2003 concerning Employment ).
2. Job protection rights for workers, namely occupational safety and health (article 86), wages (article 88) and welfare rights, namely social security for workers in the form of BPJS health, BPJS employment (article 99 of the Employment Law) and the welfare of workers and their families (article 100 and 101 of the Employment Law)

#### A. Suggestions

1. It is recommended that workers/laborers comply with the rules in the work agreement which is made based on the agreement of the parties (worker and entrepreneur/employer)
2. It is recommended that employers/employers provide worker protection and rights in accordance with work agreements and applicable laws. The government provides supervision over the functioning of employment relations

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5. Civil Code (KUHP)
6. Presidential Regulation Number 13 of 2013 concerning Health Insurance
7. Presidential Regulation No. 19 of 2016 concerning Second Amendment to Presidential Regulation No. 13 of 2013 concerning Health Insurance
8. Decree of the Minister of Manpower and Transmigration Number KEP.100/MEN/VI/2004 concerning Provisions for Implementing Specific Time Work Agreements
9. Minister of Manpower Regulation No. 1 of 2017 concerning Wage Scale Structure

**BIODATA :**

Asuan is a lecturer Faculty of Law University of Palembang, His major

interest in law. Email. [Asuan.okay@gmail.com](mailto:Asuan.okay@gmail.com)