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Study of Legal Protection for Unregistered Workers at the Tukad Mas Corporation in Bima: A Contract Law Analysis

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Abstract

In Indonesia, the practice of employment without using written legal agreements are still happening in several corporations. For example, unwritten working employment for casual daily workers at Tukad Mas Corporations located in Bima, West Nusa Tenggara, resulted in a lack of legal certainty and the loss of rights to social security insurance that should be issued through BPJS insurance. The absence of written documentation places workers in a vulnerable position regarding the burden of proof, even though the law mandates such protections. From this legal issue, this article examines contract law through a study of legal protections for workers without written employment contracts at Tukad Mas Corporation in Bima. This article employs an empirical

legal research method, utilizing both a statutory and sociological approach through interviews with some workers who have no formal written documentation regarding their employments. From the study, we conclude that it is mandatory for the corporation to ensure legal protection for workers requires a written employment agreement between the workers and the employers to establish a legally provable employment relationship. Consequently, this research is crucial for affirming and strengthening the legal protections afforded to workers without written contracts at Tukad Mas Corporation in Bima.

Keywords: Contract Law, Legal Protection, Work Agreements

Introduction

A work agreement is one kind of contract entered into between a trade union or labor union registered with the Ministry of Manpower and an employers' association—or other employers or legal entities—under which work is assigned, whether in general or specific terms ^[1]. Legal protection for workers encompasses the right to improve their standard of living, the prevention of a decline in purchasing power, and the safeguarding of rights regarding employment and income in the event of workplace accidents—whether caused by vehicle collisions, illness, or even death ^[2]. Even though verbal agreements do not inherently violate existing laws and regulations relating to employments, it is preferable to establish employment agreements in writing, as oral agreements place workers in a vulnerable position, particularly regarding legal proof in case there are any forms of violation within the company.

In addition, legal protection for workers also requires a work agreement in written form between the worker and the employer in order to create a legal relationship that can be proven in court or what is commonly called an agreement ^[3]. Tukad Mas Corporation, located in Bima, West Nusa Tenggara, becomes the object of this research due to the reports of some workers still do not have written agreement of their employment. The absence of such written agreement resulted in the absence of protection for casual daily workers who enter into work agreements without a formal written work agreement from the corporation itself.

From the legal issue that has been presented above, this article addresses the urgent need to utilize and empower the workforce to the fullest extent in a humane manner, while upholding the respective rights and obligations of workers and employers in accordance with applicable regulations. To ensure that the rights and obligations of workers are recognized by national law, it is essential to formalize them within an agreement—specifically, to issue an employment contract ^[4]. Thus, this article tries to answer the issue regarding the legal protection framework for workers without written employment contracts and the specific forms of legal protection afforded to workers at Tukad Mas Corporation in Bima.

Research Method

This article employs an empirical legal research method in order to see the sociological reality regarding the legal protection of workers at Tukad Mas Corporations in Bima, Wes Nusa Tenggara. By utilizing socio-legal approach through interview with some workers, the primary data of the research will be used to examine and analyze the normative legal framework relating to employment. This research utilizes two types of data, mainly: 1) Primary data, regarding the results of interviews with workers in the corporations who have worked without formal written contract; and 2) Secondary data in the form of legal literatures and previous related research as references for this article.

Results and Discussion

1. Analysis of Legal Protection for Workers in Tukad Mas Corporation Based on Law No. 13 of 2003 concerning Manpower

Within the framework of Manpower Law in Indonesia, the law classifies employment contract into two types: Fixed-Term Employment Agreements (*Perjanjian Kerja Waktu Tertentu* (PKWT)) and Indefinite-Term Employment Agreements (*Perjanjian Kerja Waktu Tidak Tertentu* (PKWTT))^[5]. Normatively, a company has to make sure to which type do their workers belong, proven by a written contract to make clear of their status in the corporate. If a company fails to use a written agreement drawn up with the worker, the company or employer may be required to continue providing employment, thereby transforming the employment relationship into an indefinite-term arrangement (PKWTT)—commonly referred to as contractual employment^[6].

In this article, we conducted a research on Tukad Mas Corporation, located in Bima, regarding the legal issue of its employment. This is a company that produces gravel and asphalt. The workforce at Tukad Mas Corporation consists of casual daily workers, regular daily workers, and permanent employees. Eventhough there are already classification of workers, we still found that some workers still lack employment contracts and, consequently, do not have job security or safety protections. Some individuals, such as Arif, who is a casual daily workers at Tukad Mas Corporation perform tasks in the field without a formal employment contract; from a legal standpoint, these casual daily laborers lack protection in the event of a workplace accident such as falling onto gravel or asphalt crushing machinery, resulting in a broken arm or leg that causes paralysis for a casual daily worker. Beside casual daily workers, there are also permanent employees such as Feo, a worker whom we interview. Based on his information, permanent employees engaged under an employment contract or agreement who are entitled to severance pay upon termination. In terms of legal protection, they are covered through some insurances such as Employment Social Security Agency (*BPJS Ketenagakerjaan*) and the Healthcare and Social Security Agency (*BPJS Kesehatan*).

Among the categories of workers mentioned above, it can be seen that casual daily workers in the company are not protected in the event of a workplace accident. Normatively, according to Article 15 Paragraph (1) of Law No. 24 of 2011 concerning Employment Social Security Agency (*BPJS Ketenagakerjaan*) employers are required to gradually register themselves and their workers as

participants of the insurance in accordance with the social security programs in which they participate; furthermore, Paragraph (2) mandates that, when carrying out the registration referred to in Paragraph (1), employers must provide complete and accurate data regarding the identity of the company itself, their workers, and their workers' family members to the insurance^[7]. In addition, Job Creation Law and Government Regulation Number 35 of 2021 were designed to provide better protection for workers under Fixed-Term Employment Contracts (PKWT)—including daily workers—by regulating entitlements, wage allowances, and social security. However, empirical facts in Tukad Mas Corporation reveals significant violations, with these non-permanent workers consistently receiving lower wages than permanent workers (PKWTT). Furthermore, many companies—particularly small and medium-sized ones—have yet to implement wage structures and scales or establish Bipartite Cooperation Institutions, indicating weak oversight and law enforcement in ensuring that these statutory rights are upheld in practice.

Judging from the prevailing regulations, we can see that Law No. 13 of 2003 concerning Manpower contains several articles governing occupational safety and health protection: Article 86 Paragraph (1) states that every worker/laborer has the right to obtain protection regarding: a. occupational safety and health; b. morals and decency; as well as c. treatment that is consistent with human dignity and religious values. Furthermore, Paragraph (2) states that occupational safety and health measures are implemented to protect the safety of workers/laborers and achieve optimal work productivity; Paragraph (3) stipulates that the protection referred to in Paragraphs (1) and (2) shall be carried out in accordance with applicable laws and regulations. Then Article 87, Paragraph (1) stipulates that every company is required to implement an occupational safety and health management system that is integrated with the company's management system; Paragraph (2) stipulates that provisions regarding the implementation of the occupational safety and health management system as referred to in Paragraph (1) shall be regulated by a Government Regulation. Additionally, Article 99, Paragraph (1) stipulates that every worker/laborer and their family is entitled to obtain workers' social security; Paragraph (2) The social security for workers referred to in paragraph (1) shall be implemented in accordance with applicable laws and regulations.

Furthermore, if we refer to the Indonesia's Civil Code, we can define employment contract as an agreement in which one party binds themselves to perform work for another party in exchange for wages. Law Number 13 of 2003 concerning Manpower also stipulates that an agreement between a worker and an employer must set forth the terms of employment as well as the rights and obligations of the parties involved. The employment contract serves as the foundation for the legal relationship between the worker and the employer. The requirements for the validity of an agreement, as set out in Article 1320 of the Civil Code, are:

1. An agreement between the parties binding themselves.
2. The capacity to enter into an agreement.
3. A specific subject matter.
4. A lawful cause^[8].

Article 1313 of the Indonesian Civil Code defines an agreement as a legal act wherein one or more persons bind themselves to one or more other persons. Workers are entitled to legal protection. An employment relationship

entails rights and obligations for both the worker and the employer; consequently, an employment agreement constitutes a crucial element of such a relationship ^[9]. Furthermore, to ensure legal protection for workers, a written employment agreement between the worker and the employer is required to establish a legal relationship. Indonesian labor regulations—which encompass worker protection—must be championed to uphold the dignity and humanity of the workforce ^[10].

2. Legal Protection for Workers by the Social Security Agency for Employment Based on Law No. 24 of 2011

The obligation to register workers with the insurance of Social Security Agency for Employment (*BPJS Ketenagakerjaan*) is a crucial step toward improving workers welfare. Workers often find themselves in a weaker position relative to companies, making the protection of their rights essential. Law Number 24 of 2011 concerning Social Security Administrator mandates that employers, or companies, register both themselves and their workers through the agency ^[11].

In terms of legal protection, casual daily workers are usually not protected when an accident occurs at work because casual daily workers are workers who work in the field without a work agreement. This situation places workers in a highly disadvantageous position regarding the burden of proof and results in a lack of legal certainty concerning their fundamental rights. Furthermore, violations frequently occur in practice, with non-permanent workers receiving lower wages than permanent staff and a failure to enforce standards for fair wage structures. Law No. 24 of 2011 mandates that employers register all their workers for social security coverage to protect them against risks ranging from workplace accidents and illness to death. In reality, however, when workplace accidents—such as fractures or paralysis—occur, casual daily workers lacking written contracts receive neither legal protection nor coverage for medical expenses; this highlights the need to establish verifiable legal relationships and implement intensive oversight by local governments to ensure companies fulfill their obligations regarding occupational health and safety protection in a manner consistent with human dignity. Thus, every company should recognize employees as corporate's valuable assets and must guarantee their rights to occupational health and safety protection through insurance covering Death Benefits, Work Accident Benefits, and Old-Age Benefits in accordance with the employment contract ^[12]. Such workforce protection aims to ensure the continuity of the employment relationship ^[13].

3. Form of Legal Protection for Workers Without a Work Agreement at Tukad Mas Corporation

Imam Soepomo explains the definition of an employment agreement as "agreement in which one party (the worker) binds themselves to work in exchange for wages from the second party—namely, the employer—and the employer binds themselves to employ the worker and pay wages ^[14]." In the practice of resolving industrial relations disputes, workers can still secure their statutory rights in accordance with the law, even if the employment agreement was made verbally. Thus, a verbal employment contract should remain capable of providing legal protection for a worker's statutory rights. To justify this issue, we can refer to a specific case from the decision of the Industrial Relations

Court at the Medan District Court, Case Register Number 51/G/2013/PHI. Mdn, dated May 27, 2013. In the substance of the case, the Plaintiff stated that he had worked for 19 years as a tow truck driver for Maju Jaya Limited Partnership ^[15].

It frequently happens that parties bound by an agreement—including verbal agreements—choose to litigate the matter under civil law. A verbal employment agreement is permissible only for an employment agreement for an indefinite period (PKWTT). If a PKWTT is employed through verbal agreement and includes a probationary period, a letter of permanent appointment must be issued once the worker completes that probationary period ^[16]. Workers and employers are two inseparable factors; a company can only function effectively when there is synergy between them. Conversely, workers without a company would simply result in unemployment. On the other hand, employers—as company owners—occupy a strong position due to their substantial capital, whereas workers are in a weaker position, relying solely on their labor and skills ^[17].

Employees are a crucial human resource component for a company. Employee performance contributes to the company's overall success. When a company possesses high-quality human resources, its performance improves accordingly. The success of a task is largely determined by effective human resources, as they play a pivotal role in organizational activities or the work itself. Sedarmayanti states that this strategic role of employees has given rise to concepts that place greater value on individuals as whole human beings, rather than merely as a factor of production for the company. Employee empowerment is crucial because, in an era defined by competition and service, companies derive competitive advantage from their human resources. The goal of empowerment is to unlock and maximize the potential and capabilities inherent in employees, fostering their independence and enhancing their performance, which ultimately generates value for both the employees and the organization ^[18].

Conclusion

Under Law No. 24 of 2011, the Social Security Agency for Employment (*BPJS Ketenagakerjaan*) is responsible for administering four programs: work accident security, old-age security, pension security, and death security. Given the vast number of companies and the large workforce in Indonesia, the government has mandated that all companies register their employees with the insurance of *BPJS Ketenagakerjaan*. However, many companies in Indonesia continue to disregard this requirement, including Tukad Mas Corporation in Bima. This obligation is crucial for protecting workers against work-related accidents, occupational illnesses, and death while on the job, as well as ensuring their financial security after their employment ends. Legal protection for the workforce encompasses the freedom to improve one's standard of living, the prevention of a decline in workers' purchasing power, and the safeguarding of rights regarding employment and income in the event of workplace accidents—whether caused by vehicle collisions, illness, or death.

Recommendation

From the result of this article, we give several recommendations to the government of Bima to pay greater

attention to the conditions of workers, particularly regarding their safety and welfare. One measure that can be taken is to draft local regulations that provide legal guarantees and protections for workers, while also supervising companies to ensure they do not treat their employees arbitrarily. In addition, Tukad Mas Corporation in Bima must also provide worker protection through the insurance of Employment Social Security (*BPJS Ketenagakerjaan*) and Healthcare Social Security (*BPJS Kesehatan*). Tukad Mas Corporation should implement policy measures to ensure the creation of written employment agreements that hold strong legal weight for both the company and the workers, based on the following aspects: First, the philosophical aspect—legal protection for freelance workers can be viewed as part of the effort to uphold human dignity and equality within society. Such protection must be provided fairly and equitably, free from discrimination or unfair treatment. Second, the sociological aspect—Positive Social Security theory posits that everyone potentially faces life's challenges; therefore, without state-provided social protection, individuals lack a safety net when confronting issues related to employment, health, accidents, old age, disability, childbirth, and so forth. Third, the juridical aspect—the State bears the obligation and responsibility for social security programs aimed at providing socio-economic protection to the public. Occupational health and safety protection is provided by the government through the safeguarding of workers in accordance with Law No. 24 of 2011.

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