Collective Agreements as Solutions to Industrial Relations Disputes in the Tourism Industrial Sector

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Collective Agreements as Solutions to Industrial Relations Disputes in the Tourism Industrial Sector

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Abstract. Tourism can experience labor-management conflicts between employers and employees. A collective agreement is one method of resolving industrial relations conflicts. The provisions of a collective agreement may contradict the contents of a work agreement, a collective labor agreement, corporate policies, or laws and regulations. Sometimes workers, as the aggrieved party, report a violation of the contents of the Collective Agreement, which contrasts with the laws and regulations of the labor inspector. This study aims to determine the Collective Agreement's legal position if it contradicts autonomous or heteronomous laws. A statutory and conceptual approach is used in this legal research. According to the findings of this study, collective agreements are legal documents created by employers and workers separately. The terms of the Collective Agreement contravene higher standards, yet the district court already has a registration document at the industrial relations court. There are two options for legal action. First, the aggrieved party may petition for execution at the local district court's industrial relations court. The second petitioned the local district court for the revocation of the Collective Agreement's contents. The Collective Agreement, in conclusion, is a solution for settling industrial relations conflicts. The legal remedy for non-execution of the registered Collective Agreement is to apply to the industrial relations court at the local district court, rather than filing a lawsuit or reporting an alleged breach of labor laws and regulations to the labor inspector.

Keywords: Collective Agreement · Registration · Disputes · Industrial Relations

1 Introduction

In labor law, industrial relations are described as a system of interactions generated between players in the process of creating products and or services that includes aspects of employers, employees, and the government and is founded on Pancasila ideals and the Indonesian constitution.

The fact is that there are still disputes in the implementation of industrial relations in all sectors, one of which is the tourism business sector. Nevertheless, industrial relations

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are expected to run well and be conducive. Efforts are made to speed up minor disputes through the formulation of clauses in work agreements or collective agreements made by the parties.

The fact is that there are still disputes in the implementation of industrial relations in all sectors, one of which is the tourism industry sector. Disputes in the tourism industry can occur between employers and women workers. Endang Sutrisna states that the dual role of women workers as housewives and tourism industry workers can lead to gender bias, a source of industrial relations disputes [1]. Disputes in the tourism business are increasing during the Covid-19 pandemic.

Many strategies have been offered to minimize industrial relations disputes, especially during the Covid-19 pandemic. Desy Anggarini says there were three events as a strategy to restore the tourism industry during the COVID-19 period, namely cleanliness, health, security, eco-friendly, and collaboration [2].

Various techniques to reduce the likelihood of industrial relations problems are still ineffective. According to Ni Putu Suci Meinarni, several workers were put off without severance pay during the Covid-19 epidemic. To protect employees, the Manpower Office must take an active role. [3].

Industrial relations disputes between employers and workers can occur in the tourism business sector. A collective agreement is one method of resolving industrial relations conflicts. However, sometimes, the contents of the collective agreement contradict the work agreement, collective labor agreement, company regulations, or laws and regulations. Sometimes, workers as the aggrieved parties report violations of the contents of the collective agreement, which contrasts with the laws and regulations of the labor inspector. The purpose of this research is to assess if a collective agreement violates autonomous or heteronomous laws.

2 Method

This legal research uses a statutory and conceptual approach [5]. In addition, this study examines the position of Collective Agreements as an alternative solution in settling industrial relations disputes described descriptively [6]. In addition, this research also uses unstructured interviews with officials of the Manpower Office of employers and workers related to the use of Collective Agreements as an alternative solution for resolving industrial relations disputes.

3 Results and Discussion

Collective Agreement is part of the agreement made when an industrial relations dispute occurred.

3.1 Tourism Industry

The tourism industry is a field of business that produces various services and goods people need to arrange a trip. The tourism industry is a business that provides goods and

or services to meet tourists' needs and implement tourism [7]. Accommodation, food and beverage services, transportation, travel agencies, and other bookings are all part of the tourist sector.

Cultural tourism, maritime tourism or marine tourism, nature reserves or conservation parks, tourist conventions, agricultural tours, hunting tours, pilgrimage tours, or cultural tourism are all subcategories of the tourism sector.

The tourist business expands labor market prospects. The labor market may be defined as a market that connects suppliers and purchasers of labor. There are several types of the labor market, namely the educated, trained, uneducated, and untrained labor market [8]—the existence of a tourism and trade information center. The need for a tourism and trade information center can positively impact workers' welfare.

The work related to tourism marketing in the tourism business is looking for detailed information about transportation transactions, lodging, travel tickets, tour packages, and the location of tourism destination sites.

The availability of a tourism industry information center adaptive to digital developments in the 4.0 revolution era and society 5.0 requires a strategy related to working comfort. Openness is needed between tourism industrial providers and workers who run tourism businesses. This openness can be realized in the form of a work agreement clause. Occasionally, the employment agreement clause in the tourism industry can be deviated by the parties intentionally or not. For example, during the Covid-19 Pandemic, the declining condition of the tourism industry could lead to employment or industrial relations disputes.

3.2 Industrial Relations Disputes

Conflicts between employers and workers arise as a consequence of disagreements over rights, interests, termination of employment, and trade unions inside the same firm. As a result, labor-management conflicts must be avoided [9]. The study of labor-management disputes can be split into three categories: legal topic, object, and process.

3.2.1 Legal Subjects in Industrial Relations Disputes

Employers and workers are the legal subjects in industrial relations issues. The definition of employer and workers can be interpreted more broadly, which includes a combination of employers or workers' unions. The labor law limits the legal supremacy in industrial relations disputes by the employer, not the employee provider.

Employer has a tighter definition than employee provider. The employer is an individual, a Guild, or a legal organization that manages a self-owned firm that operates a company that he does not own or who represents a corporation based outside of Indonesia's jurisdiction. In essence, an employer is a person who runs a business. People who do not run a business but employ other people cannot be categorized as employers, for example, housewives who employ housemaids. Disputes between homemakers who do not run a business and housemaids cannot be categorized as industrial relations disputes.

This narrower limitation causes industrial relations dispute cases between workers and employers cannot be resolved through an industrial relations dispute settlement mechanism.

3.2.2 Legal Objects in Industrial Relations Disputes

Industrial relations disputes have four legal objects: rights, interests, termination of employment, and disputes between labor unions in the same company.

The legal theory, which separates industrial relations problems into two categories, namely disputes over rights and interests [10], does not split the four legal objects in industrial relations disputes.

Disputes over rights are disagreements about something that has been controlled. Something governed by a work agreement, a collective bargaining agreement, firm policies, or laws and regulations. The point in a rights dispute is that there is a breach of the agreed-upon clause or a violation of the law on anything governed by laws and regulations.

Disputes of interest emerge in an employment relationship when there is no agreement on making changes to the working conditions specified in the work agreement, collective agreement, and corporate laws. A conflict of interest is defined as a disagreement about anything that is not covered by a work agreement, collective work agreement, or firm laws.

3.2.3 The Procedure for the Settlement of Industrial Relations Disputes

The procedure for resolving industrial relations disputes begins with bipartite deliberation, as prescribed by Law No. 2 of 2004. If the bipartite effort cannot result in a settlement or agreement, the next step is taken, namely through mediation, conciliation, or arbitration efforts can be made [11]. Finally, if mediation is unsuccessful, a lawsuit can be filed with the industrial relations court.

Discussions between employees and employers must take place within 30 working days after the start of the negotiations. Failure is defined as the absence of consensus on bipartite discussions. Assume an agreement is achieved in the bipartite discussions. In that situation, the parties might enter into a Collective Agreement that is recorded in the industrial relations court at the district court of the agreement's domicile. This Collective Agreement has genuine executory authority, which means that if one of the parties fails to carry out the terms of the Collective Agreement, the aggrieved party may move for execution to the industrial relations court in which the Collective Agreement is detailed [12].

The failure of bipartite negotiations can be continued by conducting mediation efforts. Law number 2 of 2004 appoints government employees who have responsibilities in the field of staffing as labor mediators. The time allotted for the mediation process is 50 days from the first hearing conducted by the mediator. The success of mediation efforts is marked by the conclusion of a Collective Agreement between the parties registered at the industrial relations court at the local district court. This Joint Agreement has real executor power so that if it is not implemented, the aggrieved parties can submit an execution to the head of the local district court.

The failure of efforts to negotiate through mediation is that the mediator makes a written recommendation. Criticism of the mediator's legal product as a written recommendation is that it is difficult to implement an agreement outside of what has been regulated in the legislation. This is not by the spirit and litigation of mediation.

The written recommendation made by the mediator becomes the basis for the aggrieved party to file a lawsuit to the industrial relations court. The proceedings use the provisions of civil procedural law. Fourteen days after the industrial relations court's decision has permanent legal force, the parties can still file an appeal to the Supreme Court. Especially in staffing, if the Supreme Court has issued a decision on Cassation, it cannot be reviewed.

Law 2/2004 also regulates non-litigation institutions settling industrial relations disputes through conciliation or arbitration. Unfortunately, the powers of conciliation and arbitration have been limited by law number 2 of 2004 by not having the authority to settle disputes over rights. As a result, efforts to settle industrial relations disputes through conciliation and arbitration mechanisms are not a choice for the parties in dispute.

3.3 Collective Agreement as an Alternative Industrial Relations Dispute Settlement Effort in Tourism Industry

A Collective Agreement is an agreement reached between an employer and a worker following a labor dispute [13]. The Collective Agreement is the result of the first bipartite effort to resolve industrial relations concerns. The bipartite settlement attempt was successful because the parties reached an agreement as stipulated in the Collective Agreement and registered it with the industrial relations court at the local district court.

Collective bargaining can also be used to settle industrial relations conflicts through mediation. The mediation effort was successful in the form of an agreement specified in the Collective Agreement. This Collective Agreement has been recorded with the local district court's industrial relations court.

Sometimes, the contents of the collective agreement have content that is contrary to the laws and regulations. For example, the firmness of the collective agreement on the release of rights in determining the amount of the wage value given by the employer to the worker in a situation that occurs in the company that leads to a loss.

Theoretically, it is not permissible for the contents of an agreement to contradict the laws and regulations. However, unfortunately, this Collective Agreement is sometimes carried out contrary to the laws and regulations. For example, collective agreements are made between employers and workers regarding paying below the minimum wage.

Indeed, the payment of wages below the minimum is a form of violation or crime. There are sanctions for employers who cannot pay their workers' wages equal to the minimum wage provisions. This assistance has changed the existence of the work copyright law. The employment copyright law allows employers in the small and medium-sized business sector to pay their workers less than the minimum wage as long as an agreement is made between small and medium business enterprises.

A case of the existence of a collective agreement which is an agreement to pay the results of their work in number of wages less than the minimum wage, is a waiver of the right of workers to sue employers who pay wages less than the minimum wage. The waiver of this right is an embodiment of the concept of private law applied in labor practice.

The form of an individual agreement or individual agreement made by the employer with its workers. There is an opinion that this is a form of legal smuggling or fraus legis. It is an act committed by a person to avoid the practice of a certain legal system that

should apply so that by doing this act for that person, another law can be applied than what it should be.

The fact in society that there are still many workers who get wages less than the minimum wage shows that the act is considered fair by them even though the provision of wages below the minimum wage is an act that violates the law. This is what is considered a form of ius contra legem. Using counter-legal is a legal principle that is an act of overriding the law. When laws and regulations cause injustice, the judge reads in favor of justice which overrides the law or statutory regulations that have been set.

The parties who have agreed individually considered that what has been agreed is fair and is by the principle of pacta sunt servanda, even though it violates the provisions of the legislation, in addition to the rules of criminal law, the civil law concept based on the fairness of the parties as indicated in the recorded joint agreement. Judges may give greater attention to the agreement than the results mentioned in the Collective Agreement as the foundation for deciding cases. The judge justifies the Collective Agreement as an alternative solution for resolving industrial relations disputes based on Article 100 of Law number 2 of 2004.

4 Conclusion

In the tourist business, there is a need for flexibility in creating an employment agreement provision between employers and workers. The precarious state of employers in the tourist business as a result of the Covid-19 outbreak has prompted the formation of a Collective Agreement to settle industrial relations conflicts amongst them.

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