A juridical review of partnership agreements that have the elements of work agreements in Indonesia

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Abstract. The Partnership Agreements place the parties in an equal position each party has something as the bargaining power. In some cases, employers prefer to use Partnership Agreements to some individuals to complete the work in their company than Work agreements. Practicality and the absence of obligations to fulfil workers' rights such as the right to join a Union and to get social security are some of the reasons why employers use the Partnership Agreements. Sometimes Partnership Agreement contains jobs, wages and orders which is the characteristic of work agreement. Based on the fact above, the legal issues arise whether the Partnership Agreement can be considered as the Work Agreement or not and which court is authorized to hear in the event of a dispute. To analyze the above legal issues, this research uses normative legal research type with the statute approach. The technique of legal material analysis uses prescriptive techniques to assess the issue and make recommendations. Based on the analysis, it can be concluded that the Partnership Agreement, of which the elements are: wages and orders can be categorized as Work Agreement and therefore in the event of a dispute, the authorized court is Industrial Relations Court.

1. Introduction

Research on Partnership Agreements and Work Agreements has been widely conducted in Indonesia, but there are still very few, if any, studies that discuss the Partnership agreement in which the contents are the Employment Agreement. This is important to discuss as it relates to the consequences of the rights and obligations of the parties to the agreement[1]. Partnership Agreement is one form of agreements. According to article 1313 of the Indonesian Civil Code, the Covenant is: "The act by which one or more persons commit themselves to one or more persons. From this event, a legal relationship exists between two or more persons called the agreement in which there are rights and obligations of each party. Another notion of the Covenant is "an event in which a person promises to others or where the two men promise to do something. From that event, an agreement arises "[2].

Partnership Agreement has a distinctive feature which is not shared by any other agreement that is equality in each party. The legal basis of the partnership agreement is Article 1338 of the Indonesian Civil Code which states that All legally-made agreements act as laws for those who make them Whereas more specific arrangements can be seen in the terms of civil fellowship in Article 1618 of the Indonesian Civil Code - Article 1641 of the Indonesian Civil Code, which is the legal relationship between the parties between one partner with another partner by entering a "capital" as "seserahan" (inbreng). Agreement must have the prohibition of discrimination, means that the rights and freedom declared in the Agreement must be ensured without any discrimination, e.g. gender, race, color, language, religion, political or other opinion, national or social origin, national minority, financial situation, birth or other
situation[3]. At some point, an entrepreneur uses a partnership agreement with someone to do a job. One example that is currently being discussed is the Partnership Agreement between employers and drivers of online transport services

Unlike the Partnership Agreement, the relationship between the parties in the Work Agreement is a superior and a subordinate. It can be seen in from the term of the Work Agreement which is an agreement whereby the first party (workers) commit themselves to work by receiving wages from the other (the employers) who are binding to employ the workers by paying wages"[4]. Furthermore, the terms of the Work Agreement Article 1 point 14 of Law Number 13 Year 2003 Concerning Manpower states that: "Work agreement is an agreement between the Workers / Employeee and Employers which contains the terms of job, the rights and the obligations of the parties". From the two definitions above, it can be seen that there are three elements in the Work Agreement namely: work, wages and orders. In the relationship between the worker and the employer there is an inequality of the position in which the worker's position is below the employer even though both are actually equal in need [5]. The employer orders the worker to do the work and as the work has been done the employer will pay the wage. Working relationships on the basis of this Work Agreement provide legal certainty to each party. On the part of the employer, he can firmly give orders to the workers to do the work in his company while for the workers he has a strong foundation to gain employment rights such as wages, allowances, leave entitlements, severance and pensions when he stops working.

Nowadays, some employers in Indonesia use the Partnership Agreement mechanism with people in doing business. Based on the principle of Pacta Sunt Servanda which is generally interpreted as free to enter into an agreement, then the entrepreneur uses the Partnership Agreement with the person who will do the work in his company. The Partnership Agreement between the Driver Transport business entrepreneurs is one of such examples. Under the agreement, the entrepreneur owns a number of trucks used to transport consumer goods. He needs people to be the truck driver. By reason of practicality then the selected agreement form is Partnership Agreement. This is understandable because with the Partnership agreement, the employer avoids the obligation to fulfill the right of the workers. Among the workers' rights as regulated in Law Number 13 Year 2003 Concerning Manpower are wages in accordance with District Minimum Wages, Social Security covering: work accident, death, old age and pension, Right to form union, severance pay when terminated and pension. Establishing a minimum wage in an area is a problem because employers generally consider external and internal factors when making agreements with new workers[6]. The social security is also an issue that is not less interesting because it is also associated with the operational costs of the company [7].

Based on the above reasons, the Partnership Agreement becomes profitable for the entrepreneur and becomes the first choice in running his business [8]. However, there is a problem in the content of the partnership agreement as exemplified above which includes elements of work, wages and orders in their clauses. Normatively, the partnership agreement is not allowed to include elements of wages and orders in its clause because the nature of the partnership agreement is the equality and not the subordinate's superiors. Based on the aims of this research, 1) to know whether the Partnership Agreement whose substance includes the elements of wages and orders can be categorized as Work Agreement and 2) to know which courts are authorized to adjudicate the disputes of the parties in Partnership Agreement whose substance there is an element of command and wages.

2. Methods
This study uses normative legal research. Normative legal research uses secondary sources of legal materials or materials obtained from library materials. Under these conditions, the research was done by researching library materials and other secondary materials relating to research objects such norms and rules and regulations. This study is expected to describe in a clear and systematic analysis about " A Juridical Review of Partnership Agreements That Have The Elements Of Work Agreements in Indonesia ".
The analysis technique used is prescriptive, a technique that is intended to provide arguments on the research that have been done. The argument here is done by the author to assess whether an action is correct or incorrect and/or what it should be according to the law to the facts or legal events of the research results. This study uses Statute approach which means the researcher uses the regulation as the basis for the initial analysis.

The source of legal materials used in this paper is in the form of primary and secondary legal materials.

a. Primary Legal Materials

Primary legal materials are authoritative which mean the materials which have the authority, which is the result of actions or activities undertaken by the competent institution. Primary legal materials here are norms or basic principles of law in Indonesia and some regulations that are relevant to this study, namely:

1. The Constitution of the Republic of Indonesia Year 1945;
2. The Indonesian Civil Code
3. Act Number 13 Year 2003 Concerning Manpower;

b. Secondary Legal Materials

The secondary legal materials are matters of law which are closely related to the primary legal materials that can help understand and explain the primary legal materials. The secondary legal material may be books of law, law journals, papers, magazines, news, articles and internet, the results of legal research, legal dictionary and encyclopedia of law relevant to this study.

3. Results and Discussion

3.1. Partnership Agreements which include elements of wages and orders can be categorized as Work Agreements

The Partnership Agreement and the Work Agreement have formal requirements that must be in accordance with article 1320 The Indonesian Civil Code, namely:

1. Agreement of the parties

The terms of the parties' agreement are meant for a treaty to be lawful. Both parties shall have an opinion of the terms of the treaty. By law, there is a theory that agreement comes into force when there is no following elements’ namely:

a) Duress
b) Fraud
c) Mistake

Article 1321 of the Indonesian Civil Code determines that an agreement is illegitimate if it is made with a mistake or obtained by duress or fraud.

2. Ability to enter into an agreement

The condition of the ability to enter into an agreement to do so is that the contracting party shall be a person who, by law, is authorized to enter into the agreement. Article 1330 of the Indonesian Civil Code specifies that everyone is capable of making engagement, unless the law determines that he is incompetent. Of those who are incompetent to enter into an agreement can be found in article 1330 of the Indonesian Civil Code, namely:

a) People who are immature
b) Those who are under the ability
c) Married woman. This provision was abolished by the enactment of Law Number 1 Year 1974 Concerning Marriage because article 31 of this Law determines that the rights and position of husband and wife are equal and each has the right to do legal action.

3. A certain thing

An agreement must be subject to certain things, clear and justified by law. The legal basis is on chapters 1332 and 1333 of the Indonesian Civil Code. Article 1332 of the Indonesian Civil Code
determines that "Only merchandise can be the subject of an agreement" While article 1333 of the Indonesian Civil Code specifies that "A treaty must have as the subject of an item at least determined its kind does not become an impediment that the quantity of goods is indeterminate, provided that the latter may be determined / calculated"

4. Permitted Action
The point is that a contract must be made with the intent / reason according to applicable law. So no contract should be made to do things that are against the law. Moreover, the contents of the agreement are not prohibited by law or not contrary to morality / public order (Article 1337 of the Indonesian Civil Code). In addition, article 1335 of the Indonesian Civil Code also provides that a covenant made without cause or created for a false or forbidden cause is unenforceable.

However, in the case of a Work Agreement, there are special conditions that differentiate the Work Agreement with other agreements, including the Partnership Agreement, as set forth in Article 54 paragraph (1) of Act Number 13 Year 2003 Concerning Manpower:

"(1) A work agreement made in writing shall contain at least the following:
   a. Name, company address and type of business;
   b. Name, sex, age and address of the worker / laborer;
   c. Job title or occupation;
   d. Place of work;
   e. The amount of wages and modes of payment;
   f. Working conditions containing the rights and obligations of employers and workers/laborers;
   g. Start and term of agreement of work;
   h. Place and date of agreement made; and
   i. Signature of the parties in the Work agreement.

The elements of the type of work, the amount of wages and the commencement of work are the things that differentiate the Work Agreement with other agreements. On the other hand, the Partnership Agreement promotes mutualism among the parties. In principle, partnership agreement emphasizes more on mutually beneficial relationships. The position of the parties is equal and no superior or subordinate is marked by the existence of orders and wages. Based on this matter, if a partnership agreement includes elements of orders and wages in its clause, the agreement shall become a Working Agreement as stipulated in Act Number 13 Year 2003 Concerning Manpower.

3.2. Partnership Agreements which include elements of wages and orders can be categorized as Work Agreements
In the event of a dispute relating to the contents of an agreement, the injured party shall be able to determine which court is authorized to hear. In the judicial authority law the case is called Court Competentie. Court Competentie is divided into two, namely Atributive Competentie and Distributive Competentie. Attributes Competentie namely the authority or power to judge between the judicial environment and the authority to judge by type of case. There are four scopes of the Judiciary, including: General Courts; Religious Courts; State Administrative Court; and Military Justice. Agreements generally include civil cases. In Indonesia, civil cases are decided by the General Court. This is in accordance with Article 50 of Act Number 2 of the Year 1986 Concerning General Court "The District Court is in charge of and authorized to examine, decide and settle criminal and civil cases at the first instance".

A civil case is a matter of disputes between individual (legal subject) one with another (legal subject) concerning rights and duties / orders and prohibitions in the civil field, for example, disputes concerning sale and purchase agreements, leases, etc. In civil cases there is no doubt a dispute. In this case there is something that is the subject of disagreement and some are in dispute. Actually the dispute can be resolved by way of kinship or deliberation. If the dispute or dispute can not be resolved by the parties themselves, a settlement of a more competent third party may be required, in the case of a judge in court as a party and authorized institution, and impartial of any party in resolving disputes or disputes the. The
judge in the court is in charge of completing a case by examining and adjudicating the fairest party in a session open to the public according to the prevailing laws and regulations (formal law), in this case the Civil Procedure Code. The judge's verdict is binding on both sides of the litigant.

Based on the above description, the dispute relating to Partnership Agreement has the characteristics of civil case namely:

a. Starting from the dispute that there are parties in the Partnership agreement that feel harmed
b. There are two sides of the litigation of employers and business partners
c. Petitum lawsuits and judgment decisions are condemnatoir,
d. The judges' ruling binds both parties and witnesses

Unlike the dispute on the Partnership Agreement, the dispute over the Work Agreement, although including civil cases but specifically regulated in its own regulation, namely Law No. 2 of 2004 on Industrial Relations Dispute Settlement. The law is known as Lex Specialis Derogat Legi Generalis, which means that the Special Rule of Law excludes the general. Law Number 2 Year 2004 on Industrial Relations Dispute Settlement is a more specific regulation of the Of the Indonesian Civil Code so that in case of dispute between workers and employers in relation to Work Agreement, the legal basis used is Law Number 2 Year 2004 on Industrial Dispute Settlement. Furthermore, it is mentioned in Article 57 of Law Number 2 Year 2004 concerning Industrial Relations Dispute Settlement that "The procedural law applicable to the Industrial Relations Court is the Civil Procedure Code applicable to the Courts within the General Courts, unless specifically regulated in this law ". This clause explains that industrial relations disputes consisting of Rights Disputes, Interest Disputes, Termination Disputes and Disputes among Trade Unions within a Company are the the authority of the Industrial Relations Court. Accordingly, in case there is a dispute about partnership agreement withwhich the substances contain orders, wages and job, then the authorized court to adjudicate is the Industrial Relations Court because the partnership agreement is categorized as a work agreement.

4. Conclusion
Based on the analysis, it can be concluded that Partnership Agreement of which the elements are: wages and orders can be categorized as Work Agreement. Moreover in case there is a dispute concerning the Partnership Agreement in which the elements are: wages and orders, the authorized court is Industrial Relations Court as stated by Article 57 of Law Number 2 Year 2004 Concerning Industrial Relations Dispute Settlement.

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