

## CHAPTER II

### REVIEW OF REFERENCES

#### A. Overview of Employment

##### 1. Definition of Employment

In Article 1 Number 1 of Law No. 13 of 2003 on Employment it is explained that Manpower is all matters relating to labor in the before, during, and after work.<sup>1</sup> M.G. Levenbach, labor law is the law relating to employment relationships, the workers under the leadership and the living conditions that are directly related to the employment relationship.<sup>2</sup>

Indonesian legal expert Soetikno also argues that labor law or employment is the whole legal regulation concerning employment relations which results in an individually placed under the command / leadership of another person and concerning the conditions of livelihood directly related to the employment relationship which is then reaffirmed by expert opinion Halim's law that the labor law is a legal regulation that regulates work relations that must be heeded by all parties, both workers / employers and employees.<sup>3</sup>

Therefore, according to the explanation of Law number 13 of 2003 concerning employment and based on the opinions of experts, it can be concluded that employment regulates all matters relating to labor starting

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<sup>1</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003, Ps. 1.

<sup>2</sup> Bitar, " *Tenaga Kerja : 13 Pengertian Menurut Para Ahli, Dan Jenis-Jenisnya Beserta Contohnya Secara Lengkap*", <https://www.gurupendidikan.co.id/tenaga-kerja-13-pengertian-menurut-para-ahli-dan-jenis-jenisnya-beserta-contohnya-secara-lengkap/>, accessed Juli 5, 2018.

<sup>3</sup> Admin, " *Pengertian Hukum Ketenagakerjaan | Pengantar Hukum*", <http://www.pengantarhukum.com/2014/06/pengertian-hukum-ketenagakerjaan.html>, accessed Juli 15, 2018.

from the workers who have not entered a company to work or during the employment period until the worker has not worked in the company.

## 2. **Character of Labor Law**

All matters relating to employment in the Unitary State of the Republic of Indonesia are regulated in Act No. 13 of 2003 concerning labor as its philosophical basis which in fact has the following legal characteristics:

### a. **As a Public Law**

Labor law can be classified as a law that has the character of the public because in carrying out these laws and regulations, Law number 13 of 2003 concerning employment does not only depend on the company as the employer with the employees who work in the company but in this labor law the government also act actively in ensuring the welfare of employers and recipients of work such as the role of the government in providing minimum wage stipulations, regarding the problem of resolving disputes or problems surrounding the settlement of industrial relations between employers and recipients of work or the government also acting actively in giving licenses needed regarding employment.

**b. Character of Private Law**

Labor law can be said as part of private law because indeed in the implementation of labor law more regulates the private relationship between the employer and the employee.

**c. Character as Facultative (Regelendrecht)**

Employment Law in addition to having a public and private nature Labor law also has facultative legal nature which means that labor law as a reference or guiding between the employer and the recipient of work both before, during and after the employer employs the employee, so that it is standardized than the rules of each company there is no violation of the laws and regulations in the Republic of Indonesia

**d. Character of Forced (Dwingenrecht)**

In the Labor Law, besides having a regulating nature, it also has a coercive nature which forces the parties, both the employer and the recipient of the work to comply with applicable laws and regulations, and may not violate existing regulations, even the contract that have been signed by both parties have the law binded (Pacta Sunt Servanda).



### 3. Employment Objectives

The purpose of this manpower is stated in Article 4 of Law

Number 13 of 2003 concerning Manpower as reads as follows:<sup>4</sup>

*“Article 4 of Law Number 13 of 2003 Employment development aims:*

- a. empower and utilize the workforce optimally and humanely;*
- b. realize equal employment opportunities and the supply of labor in accordance with national and regional development needs;*
- c. provide protection to workers in realizing prosperity; and*
- d. improve the welfare of workers and their families”*

Therefore, it can be concluded that the main purpose of this employment is the existence of national development due to the existence of employment, it is expected that every Indonesian citizen can get

employment evenly from Sabang to Merauke to improve the welfare of the Indonesian people and also provide security and protection the law to the parties both the employer and the recipient of the work.

### 4. Basis of Manpower

The general basis of employment is set out in Article 2 of Law No.

13/2003 on employment which states the Manpower Development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which means the establishment of an employment in the Unitary State of the Republic of Indonesia shall be built on the basis of the values, the value contained in Pancasila and does not violate the laws of the Unitary State of the Republic of Indonesia and the 1945 Constitution which

<sup>4</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003, Ps. 13.



basically aims to build national development which ultimately affects the general well-being of all Indonesian people

Not only in Article 2 of Act Number 13 of 2003 but also in Article 3 of Law Number 13 Year 2003 about Manpower, it is also reaffirmed that manpower development is carried out on the principle of integration

with cross-sectoral and regional functional coordination which is then explained. The Explanation of Article 3 of the Law of the Republic of Indonesia Number 13 of 2003 concerning Labor, by the principle of labor

development basically in accordance with the principles of national development, especially the principle of Pancasila democracy and the principle of just and equitable.<sup>5</sup> Employment development has many

dimensions and linkages with various parties, namely between the government, employers and workers / laborers. Therefore, labor development is carried out in an integrated manner in the form of mutual

support.

## 5. Functional of Manpower

In the opinion of the legal expert Prof. Mochtar Kusumaatmadja, the function of the law is as a means of renewing society. In the framework of development, the definition of renewal is to channel the direction of human activities towards what is expected by development.<sup>6</sup>

<sup>5</sup> *Ibid.*

<sup>6</sup> Admin, "Pengertian Hukum Ketenagakerjaan | Pengantar Hukum", <http://www.pengantarhukum.com/2014/06/pengertian-hukum-ketenagakerjaan.html>, accessed Juli 15, 2018.

The function of Labor Law is as a guide or juridical basis that serves to regulate the relationship between the parties providing employment as well as for those who work in all respects both in the work, law protection and so on who have the nature of compelling use for the security and well-being of the parties so that labor law can serve as a means of liberating labor from slavery or slanderous labor, etc. which does not comply with the provisions of its laws and regulations as well as freeing the workforce from the risk of losing unpaid work and the existence of this labor law makes position the law of the employer and the employer is equal before the law or equally for the parties.

## **B. Overview of Grantees and Workers**

### **1. The Meaning of Employer**

The definition of an employer is a party that has a job that then employs parties who are in need of work and the employer pays the recipient of the work in order to obtain work results from the recipient of the work, in the Republic of Indonesia Act No. 13 of 2003 concerning Labor number 4 is reaffirmed and also explains that the employer is an individual, businessman, legal entity, or other bodies that employ workers by paying wages or other forms of compensation.<sup>7</sup> So that it can be concluded that the employer can consist of entrepreneurs who are individuals both legal entities and non-legal entities such as limited liability companies, cooperatives, commanders and so on because in

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<sup>7</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003, Ps. 1 angka 4.

Article 1 Number 5 of the Republic of Indonesia Law Number 13 of 2003 concerning Employment explained that entrepreneurs are:

- a. *"an individual, partnership or legal entity that runs a self-owned company;*
- b. *an individual, partnership, or legal entity that independently runs a company not his property;*
- c. *an individual, partnership or legal entity in Indonesia representing the company as referred to in letters a and b domiciled outside the territory of Indonesia."*

## 2. Company Forms

The definition of the company according to Much Nurachmad who is an Indonesian economist is any form of business that is legal or not, owned by an individual, belonging to a corporation, or owned by a legal entity, both privately owned and state owned that pays workers by paying wages or rewards in the form. Another statement was also issued by Murti Sumarni in 1997 who explained that the Company is a production activity unit that processes economic resources to provide goods and services for the community with the aim of obtaining profits and satisfying the needs of the community.<sup>8</sup>

In addition to the opinions of experts, the definition of the Company is also explained in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower Article 1 Number 4 that:<sup>9</sup>

*"Company is :*

- a. *Any form of business that is legal or not, owned by an individual, a partnership, or a legal entity, both privately*

<sup>8</sup> Sacha Meliala, "Definisi Perusahaan Menurut Para Ahli", <https://www.scribd.com/document/336336121/Definisi-Perusahaan-Menurut-Para-Ahli>, accessed July 15, 2018.

<sup>9</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003, Ps. 1 angka 4.



- and state-owned, that employs workers / laborers by paying wages or other forms of compensation;*
- b. *Social enterprises and other businesses that have management and employ other people by paying wages or other forms of compensation."*

Types of companies that are in Indonesia as stipulated in existing laws and regulations:

a. Individual Company

An individual company is a company that is not a legal entity because the individual company is a company whose ownership capital is only owned by one person so that this business is managed by someone and whatever the responsibility of the company is the responsibility of the person who owns the capital as company owner, understanding than Definition of Individual Companies according to Indonesian economist Murti Sumarai and also Jhon Suprianto is a company that is managed, and owned and also led by someone who is fully responsible for all risks and activities of the company even the Definition of the Individual Company is also reaffirmed by Basswasta, one of the form of business owned by someone and he is fully responsible for all risks and activities in a company.<sup>10</sup>

In managing this individual company, often the person who owns the capital pays several employees to be able to help

<sup>10</sup> Admin, "Pengertian BUMS, Fungsi, Ciri-ciri dan Bentuk-bentuknya", <https://www.artikelsiana.com/2015/02/pengertian-bums-fungsi-ciri-ciri-bentuk-bentuk-bums.html>, accessed July 15, 2018.

manage the company so that the individual company can run as it should and generate profits for the owners of capital

because the company is a private company that focuses on maximum profit with minimum risk.

b. Limited Liability Company (PT)

Limited Liability Company is a legal entity based on the laws and regulations of Law number 40 of 2007 about

Limited Liability Companies where as the regulations are regulated in the law so that it can be concluded. The Definition of Limited Liability Companies is itself a body

legal entity business where there is a capital alliance between the owners of capital based on an agreement agreed upon by the parties using Bahasa Indonesia and made in a notary deed

and registration and endorsement by the Minister of Law and Human Rights of the Republic of Indonesia, limited liability company are company conducts business activities with an

authorized capital that is entirely divided into a share so that it can be concluded that as a company incorporated as a legal entity, a Limited Liability Company can be considered as a

legal subject to conducts legal actions for himself as appropriate as a human being in general which results in the Limited Liability Company possessing its own wealth beyond

the wealth of the owner of the capital so that the Limited

Liability Company can also be prosecuted as a legal subject acting on itself.

As a capital partnership company, the owners of capital are referred to as shareholders because the capital owned by the parties is made in the form of shares where the owners of capital will be given proof of share certificates as proof of capital participation that has been included by the owners of capital or as shareholders. Shareholders only have limited liability as capital that is included when establish a company or limited liability so that there is a separation of assets between a limited liability company and capital owners or shareholders.

The types of limited companies in Indonesia are further divided into 6 types:

*1) Public Limited Liability Company*

Public Limited Liability Company is a limited liability company whose shares can be traded or open to the public.

*2) Private Limited Company*

Private Limited Liability Company is a limited liability company whose ownership of capital is only limited to certain parties such as families and so on, where as the share are not traded for the general public.



### 3) *Domestic Limited Company*

Domestic Limited Liability Company is a type of limited liability company that only does business in the territory of Republic Of Indonesia and complies to all the valid regulations.

### 4) *Foreign Limited Company*

Foreign Limited Company is a limited liability company originating from abroad that have located in the territory of the Republic Indonesia, commonly known as foreign investment where the foreign company is located in the territory of the Republic Indonesian which has also implicated the limited liability company subject to legal provisions or statutory regulations in the unitary state of the Republic of Indonesia.

### 5) *General Limited Company*

General Limited Company is a limited liability company that is almost similar to an open limited company where in this general limited liability company shares can be traded by anyone and registered in the Indonesian securities market.

c. Commissioner Company (CV)

Commissioner Company is a company formed due to an agreement between 2 (two) people or more by pouring the contents of the agreement of the parties in an establishment deed issue by a notary which is then considered as an authentic valid deed of establishment. In a partnership company there are two types of holders such as active holder and passive holder; where each type of holder holds the duties and responsibilities of each party and the different tasks and responsibilities of the parties lie in the responsibilities of each of the different parties, a partnership company can be established based on an agreement that has been agreed upon by the parties which can also end due to the agreement of the parties or others.

d. Firm

A firm is a company concept in the form of a trade union that binds two or more people to run a business that has been agreed upon by the parties using the names of the founding parties of the firm where the founders of each firm give up some of their personal wealth. Each of them is used as a company capital where the amount as agreed upon by the founding parties of the firm that has been included in the deed of establishment of the firm is in accordance with the

provisions of Article 16 (sixteen) of the Law on commercial law. A partnership held to run a company by using a joint name.

In another opinion, the Firm Fellowship is every company established to run a company under a joint name or Firm as the firm used to trade together. Where in establishing a firm must be included an authentic deed as stipulated in article 22 of the law - commercial law and registered in the courtroom court as stipulated in article 23 and 28 of the law on trade law because if the deed of establishment has not been registered with the court of law and is also announced, the third party considers the firm as a general alliance to be established for an unlimited period of time and all allies are authorized to sign various letters for the firm.

The official deed of establishment of a firm shall comply with the standards prescribed by the laws of the Republic of Indonesia, therefore pursuant to article 26 of the Commercial Laws clarifies that the firm's authentic deed at least meets the following elements:

- 1) Name, first name, occupation and residence of the firm's allies;
- 2) Statement of the word by showing whether the partnership is general or limited to a particular branch



of a particular company and in the last case by showing that particular branch;

3) Appointment of allies not allowed to sign on behalf of the firm;

4) When the partnership starts and when it ends, and thereafter;

5) In general, the parts of the agreement must be used to determine the rights of third parties to allies.

#### e. Perum / General Company

Public companies have a corporate concept that focuses on achieving maximum profits besides doing service to the public even though this public company is a state-owned or government-owned company whose entire capital is owned by the state and controlled by the government and generally these public companies are managed by related ministers and so on with the following characteristics:

1) Capital from a public company originates from government funds which are state assets that have been devoted to the public company and also this public company can also raise funds from other parties by selling the value of shares of public companies in the form of bonds or government bonds which is open to the public.

2) Because the capital of this public company is entirely from the government, therefore the employee or

worker from this public company is a state civil apparatus which has been regulated in legislation separately according to the type of public company

that exists.

3) Public companies have the same concept as state-owned enterprises in general, namely having the aim

to provide the maximum possible service to the existing community, but the general company concept in addition to providing services to the community, the

company also seeks the amount for the purpose of the profit can be used to add to the state treasury of Indonesia.

4) Management rather than a state-owned public company headed or under the leadership of a director who is responsible for the running of the public

company entrusted to be led.

5) A public company is a company with a legal entity status, which means that a public company can act for

itself as a legal subject and a public company also has its own wealth and moves in a private company, which means that a public company can make a working

contract with all parties that exist as long as does not

conflict with the laws and regulations that apply in the Unitary State of the Republic of Indonesia.

f. Foundation

Yayasan / Foundation is a legal body governed by the laws of the Unitary State of the Republic of Indonesia which has a juridical basis in the legislation "Law Number 28 of 2004 on the Amendment to Law Number 16 of 2001 on the Foundation". The concept of a Foundation is aimed at an activity that has religious, social, and humanitarian activities and is established in accordance with the provisions set forth in the prevailing laws and regulations where the establishment of a foundation is done by establishing a foundation act before the competent authorities and afterwards the foundation which has been made an authentic act can be filed with the approval of the Ministry of Justice and Human Rights so that the foundation has obtained confirmation from the law and human rights as well as published in the news of the republic of Indonesia, the foundation has legal status.

g. Cooperation / Koperasi

Cooperative is an organization made by someone or more useful to be allocated to public interests in general and the interests of its members in particular based on the principles



of the economy of democracy and has the legal basis of Law No. 25 of 1992 concerning Cooperatives by adhering to cooperative principles namely as follows:

- 1) The cooperative membership system that is open and voluntary;
- 2) The management of cooperatives is carried out in a democratic manner to achieve consensus and uphold the people's principles;
- 3) There is a division of SHU that is done equally with each member of the cooperative in accordance with the services or business of each member of the cooperative that exists;
- 4) Hold the principle of independence;
- 5) Having various types of cooperative education in order to equip members to be better;
- 6) Having cooperation between existing cooperatives in order for the welfare of each member of the cooperative.<sup>11</sup>

### 3. The Meaning Work Recipient / Worker

The Work Recipient is the party that accepts employment rather than the employer where the work recipient will work according to his agreement with the employer and will receive payment in the form of

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<sup>11</sup> Indonesia, *Undang-Undang Perkoperasian*, UU No. 25 tahun 1992.

salary from the employer in accordance with the work he has done by contributing to management who need labor services. Simply can be understood that the recipient of work can be referred to as an employee which means someone who works and contributes to management to an agency or company both private companies or state-owned companies to get a salary every month in accordance with the agreement between the employers and parties recipient of work. According Melapyu SP Hasibuan in his book MSDM (1993: 13), stated that employees are people selling services (mind and energy) and getting compensation (remuneration) whose amount has been predetermined, where they are obliged and bound to do the work given and entitled obtain salary in accordance with the agreement.<sup>12</sup>

The meaning of employees in expert opinion:

*"According to Hasibuan "Understanding of employees is every person who provides services (both in the form of mind and in the form of energy) and gets remuneration or compensation whose amount has been determined in advance ".<sup>13</sup>*

According to Subri,

*"Employees are every resident who enters working age (aged 15 to 64 years), or the total number of all residents in a country that produces goods and services if there is a demand for the energy they produce, and if they want to participate in the activity."<sup>14</sup>*

The definition of Employee itself is then reaffirmed in article 1 paragraph 2 of Act number 13 of 2003 concerning employment which

<sup>12</sup> Dosen Pendidikan 2, "7 Pengertian Karyawan Menurut Para Ahli Lengkap", <https://www.dosenpendidikan.com/7-pengertian-karyawan-menurut-para-ahli-lengkap/>, accessed July 25, 2018.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

explains that employees are anyone who is capable of doing work to produce goods and services both to fulfill their own needs and society, both inside and outside the relationship work".<sup>15</sup>

It can be concluded that the relationship between the employer and the recipient of work or employee is based on the relationship of work that arises from the work agreement that has been agreed by the both parties that the employer and the recipient of work. Need to know that employees can be likened to assets of a company because a company could not run optimally if it does not have good employees and is competent in its field to run the company because the activities of the company's operations will not be carried out properly.

There have several types of employee:

**a. Non – Permanent Employee / Part-timer**

Non-permanent employees are employees whose work period is limited by the time period stated in the work agreement that has been agreed upon by the parties both the employer as the company and the work recipient as employee so that the types of non-permanent employees are very risky for them at any time the employment contract has expired, the non-permanent employee can lose their job due to their contract not being extended or not being appointed as a permanent employee.

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<sup>15</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003.



The provisions that apply to non – permanent employees are as follows:

- 1) Non-permanent employees or usually referred to as employees with a contractual employment agreement working only for a maximum of 3 years in accordance with the provisions of law number 13 of 2003 concerning employment, usually the contract is made for an initial period of two years which can be extended for one more year.
- 2) The working relationship between the company as the employer and employee as the recipient of work is limited to the employment contract for PKWT only.
- 3) Status of contract employees from the nature of work:
  - a) Work that is only temporary and not permanent;
  - b) Work which is a new project from both the private sector and the government;
  - c) Work per project for a maximum period of three years and the project will be completed;
  - d) Work that is only seasonal so that it does not require permanent employees to work because after the season has passed the non – permanent employees can be dismissed;
  - e) Non-permanent employees who are still in the current contract period that are agreed upon if they

can make a good and profitable contribution to the company does not rule out the possibility that the

company as the employer can also appoint employees as recipients of employment from non-permanent employees or employees contract to be

a permanent or permanent employee

4) The parties that have agreed for a certain period of time are bound to the procedure for termination of

employment because if there is a party who wants to terminate the employment relationship unilaterally before the contract expires then sanctions can be

imposed in accordance with the agreement of the parties at the beginning of signing the employment contract agreed.

***b. Permanent Worker / Full – Timer***

Employees or permanent employees according to the

provisions of the Director General of Taxes Number 31 / PJ /

2009 are employees who receive or earn certain amounts of income regularly, including members of the board of

commissioners and members of the supervisory board who regularly participate in managing company activities directly,

as well as employees who works based on a contract for a

certain period of time as long as the employee is working full

(full time) in the work so it can be concluded that permanent employees are employees.<sup>16</sup> Who have become permanent

employees of a company with a system of work agreements with concepts in the term unspecified time so that employees still have the certainty of jobs that are safer than employees

with employment status of employment contracts for a certain time or employees who have not been permanent or employees who are not permanent.

The provisions that apply to permanent employees are as follows:

- 1) Employees still have no time limit for how long the employee is contracted by the company where the employee works because the employee has a permanent employee status in the company with a system of employment contracts not at a certain time.
- 2) The working relationship between the employer and the employer is governed by the agreement of the parties in the PKWTT agreement whose contents have been agreed by the parties both the recipient and the employer.
- 3) In general, employees still have passed the trial period set by the employer's company so that the status of the

<sup>16</sup> Direktorat Jenderal Pajak, *Peraturan Direktorat Jenderal Pajak tentang Pedoman Teknis Tata Cara Pemotongan, Penyetoran dan Pelaporan Pajak Penghasilan Pasal 21 dan/atau Pajak Penghasilan Pasal 26 Sehubungan dengan Pekerjaan, Jasa, dan Kegiatan Orang Pribadi*, Peraturan Dirjen Pajak Nomor 31/PJ/2009.



employee from the employee does not remain a permanent employee through a letter of appointment

issued by the company as the employer.

#### 4. Overview of Work Agreement

##### a. The Meaning of Contract

The agreement is an act committed by a person with another person (more than one person) whether the promise is to

do something or the promise not to do something which then raises the rights and obligations of the parties to which the promise is agreed upon by the parties to the agreement

consciously (Subekti, "Agreement Law," Cet. XII, (Jakarta: PT Intermasa, 1990), page 1).<sup>17</sup>

The definition of a juridical agreement is also explained in

the Civil Code in article 1313 which states that the agreement is "an act by which one or more people tie themselves to one or more people".<sup>18</sup>

According to Handri Raharjo Agreement is "A legal relationship in the field of wealth based on an agreement between legal subjects with one another, and between them (the parties /

legal subjects) mutually binding themselves so that one legal subject has the right to achievement and legal subject others are

<sup>17</sup> Diana Kusumasari, "Perbedaan Dan Persamaan Dari Persetujuan, Perikatan, Perjanjian, Dan Kontrak", <https://www.hukumonline.com/klinik/detail/lt4e3b8693275c3/perbedaan-dan-persamaan-dari-persetujuan,-perikatan,-perjanjian,-dan-kontrak>, accessed October 6, 2018.

<sup>18</sup> *Ibid.*

obliged to carry out their achievements in accordance with the agreements agreed upon by the parties and cause legal consequences".<sup>19</sup>

According to Prof. R. Wirjono prodjodikoro, SH, agreement is "Legal relations where a particular person, based on a promise and is obliged to do something and certain other people have the right to demand that obligation".<sup>20</sup>

According to Abdulkadir, the Treaty is "an agreement with which two or more persons are bound to do one thing in the estate of the property".

According to R. Setiawan, the Covenant is "a legal act in which one or more persons binds or binds himself to one or more persons".

According to Van Dunne, the Treaty is "a legal relationship between two or more parties based on consensus to cause legal consequences".

According to KMRT Tirtodiningrat, the Covenant is "a law-based act of agreement between two or more persons to cause the consequences of the law to be enforced to be enforced by law".

<sup>19</sup> *Ibid.*

<sup>20</sup> D. Eninta, "Pengertian Perjanjian Menurut Ahli", [http://repository.usu.ac.id/bitstream/handle/123456789/46727/Chapter II.pdf?sequence=3&isAllowed=y](http://repository.usu.ac.id/bitstream/handle/123456789/46727/Chapter%20II.pdf?sequence=3&isAllowed=y)., accessed July 28, 2018.

## b. The Terms and Condition of Agreement

Not all agreements can be made as legitimate agreements because of the laws of the Unitary State of the Republic of Indonesia governing anything which becomes a legitimate requirement in an agreement because if the agreement does not meet those elements then the agreement may be considered as an agreement canceled by law or cancellable agreement. The valid conditions of an agreement are governed by the Legislative Rules of the Civil Code of the Civil Procedure Article 1320 which reads as follows:

Article 1320 Civil Code - In order to have a legitimate

agreement, it is necessary to meet four conditions:<sup>21</sup>

- 1) their agreement which binds itself; (KUHPerd 28, 1312 etc.);
- 2) the ability to make an alliance; (KUHPerd 1329 etc.);
- 3) a subject matter; (KUHPerd 1332 dst.);
- 4) an unnecessary reason. (KUHPerd 1335 etc.)

The terms of the agreement or the employment contract are specifically regulated in the Laws Act No. 13/2003 on employment in Articles 51 to 1 and 2 which read as follows:

- 1) "The employment agreement is made in writing or oral;
- 2) Required written employment agreement shall be carried out in accordance with the prevailing laws and regulations "<sup>22</sup>

<sup>21</sup> *Ibid.*

<sup>22</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003.



It can be concluded that an agreement can be legally valid if it meets the elements as it has been regulated in the prevailing laws and regulations both in terms of subjective terms which speaks of the parties who carry out the agreement either in terms of competent jurisdiction is viewed on the basis of age of law rather than the person executing the agreement or the ability of a person to commit a legal act to himself which means that the person is not under the abilities or not under guardianship so that any act of law which gives rise to the rights and obligations of the party executing the agreement which is then by the law can be held accountable by the person who made the agreement and the agreement between the parties being consciously committed by the parties and not under the conscious pressure for the parties who will execute the agreement because if the subject could not be fulfilled then the agreement previously agreed upon by the previous parties can be canceled because it does not meet the subjective elements in article 1320 paragraph 1 and 2 of the legal code of the civil event or an agreement may also be viewed in terms of the objective side of the agreement which has been made by the parties in which the object of the agreement shall be a halal clause and there are certain things which have been previously agreed as though in terms of subjective terms an agreement has met the prescribed standard by the rules of law in Indonesia especially in article 1320 of the law of the civil law of the event in phases 1 and 2 but if in terms of objective that has

been regulated in the law of the law of civil event article 1320 paragraph 3 and 4 is not fulfilled the agreement, it may also be considered null and void so that from the very beginning the agreement which has been agreed upon by the parties to the agreement is deemed that the agreement has been initially unavoidable because it does not comply with the objective side of such an arrangement.

## 5. Elements of Agreement

The elements in an agreement are very important to know when you want to make an agreement, either an ordinary agreement or a work agreement because these elements can facilitate the parties to know that which clause needs to be included in an agreement or not is therefore generally an agreement should fulfill the elements of the agreement as follows:<sup>23</sup>

### a. Separate words from two or more parties

An agreement must have been made by more than one person which means an agreement can be made at least by 2 persons or more then the parties to the agreement, on the terms of that agreement which referred to this element of the agreement of statement that will both of the parties agree upon the promised but that will not be sufficient to produce an agreement so that the will or agreement of the party making

<sup>23</sup> Wibowo Tunardy, "Unsur-Unsur Perjanjian", <http://www.jurnalhukum.com/unsur-unsur-perjanjian/>, accessed October 6, 2018.

the agreement is then finally poured out as expressly and expressly which may then be borne an agreement.

b. Made with no violation of laws and regulations

In making a treaty known by the name of a contractual freedom principle which means that each party will carry out an independent agreement in determining the clauses to be clarified but it is important to note that the contractual freedom also does not imply the free agreement because such freedom should not violate the laws and regulations, the invitation applicable in Indonesia so that any agreement to be made is in accordance with the prevailing laws and regulations and may be legally legal.

c. The existence of legal consequences

Generally, an agreement made by the parties must have caused legal consequences as the agreement is made by more than one person, two or more and then the agreement is agreed upon by the parties which ultimately raises the rights and obligations of the parties to the agreement or the agreement the agreement is made on the interests of the parties having mutual relations between the parties and then does not harm any party.



## 6. Types of Working Agreement

In the world of work or employment there are two types of work agreements as stipulated in law number 13 of 2003 concerning employment, namely a certain time work agreement and or an indefinite time employment agreement as stated in article 56 of law number 13 of 2003 concerning employment.

The contents of Article 56 of Law Number 13 of 2003 concerning Labor are as follows:<sup>24</sup>

- a. *"A work agreement is made for a certain time or for an indefinite period of time.*
- b. *The work agreement for a specified time as referred to in paragraph (1) is based on:*
  - 1) *time period; or*
  - 2) *completion of a particular job. "*

### a. Specific Time Working Agreement

The Specific Working Hour Agreement is a work agreement made by the employer and also the worker who is then agreed upon by the parties as a specific working agreement where the agreement is made for a certain period or period in accordance with the agreement between the parties to the plaintiffs receiver.

For the terms of the format of a specific working agreement has been regulated in the statutory law number 13 of 2003 regarding employment in article 57 :<sup>25</sup>

- 1) *"Working agreement for a certain period of time is made in writing and must use Indonesian and Latin letters.*

<sup>24</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003.

<sup>25</sup> Indonesia, *Undang-Undang Ketenagakerjaan*, UU No.13 tahun 2003.

- 2) *A working agreement for a specified time not made in writing contrary to the provisions as referred to in paragraph (1) is declared as an employment agreement for an indefinite period.*
- 3) *In the event that the employment agreement is made in Indonesian and foreign languages, then there is a difference in interpretation between the two, then the employment agreement is made in Indonesian."*

#### b. Uncertain Work Time Agreement

Uncertain work agreements may be interpreted as an agreement between the employer and the employer for an indefinable period of time which means the permanent employment relationship which shall be permanent as set forth in the laws and regulations of law number 13 of 2003 about employment, in executing a PKWTT employment agreement may be executed or conducted by the employer with the employer without having to go through the ratification of the employment agency or the relevant agencies because the PKWTT is due to the agreement previously established by both parties of either the employer or the employer to be able to hold PKWTT.

In the Labor Law Regulation of the Republic of Indonesia it has been stipulated that the minimum requirements of a PKWT employee can be appointed as a permanent employee with a PKWTT employment contract so that the employee must pass a period of work trial with a maximum period of 3 months during which the salary period is paid or wages for employees of PKWT who are undergoing the trial period must be paid according to the minimum wage set by the local government.

Provisions on the conditions for obtaining a PKWT can be appointed as PKWTT which has been regulated in the existing laws

and regulations, in Article 15 of the Decree of Minister of Manpower and Transmigration 100/2004, PKWT can be changed to PKWTT, if:

- 1) *"PKWT which is not made in Indonesian;*
- 2) *Does not meet PKWT standards;*
- 3) *Due to deviations;*
- 4) *PKWT is not in accordance with previous promises;*
- 5) *The existence of neglected worker rights. "*