



Fakultas Hukum Universitas Riau, Jalan Pattimura Nomor 9 Gobah, Kel. Cinta Raja, Kec. Sail, Pekanbaru, Riau,  
Kode Pos 28127. Telp: (+62761)-22539, Fax : (+62761)-21695  
E-mail: [melayunesialaw@lecturer.unri.ac.id](mailto:melayunesialaw@lecturer.unri.ac.id)  
Website: <https://myl.ejournal.unri.ac.id>

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## Legal Problems Implementing the Main Cooperative Agreement (PKB) Post Law Number 11 of 2020 on Cipta Kerja in View From the Principle of Legal Certainty

Andi Taslim Rachman<sup>a</sup>, Imam Budi Santoso<sup>b</sup>

<sup>a</sup> Fakultas Hukum, Universitas Singaperbangsa, Indonesia, Email: [anditaslim@gmail.com](mailto:anditaslim@gmail.com)

<sup>b</sup> Fakultas Hukum, Universitas Singaperbangsa, Indonesia, Email: [imam.budi@fh.unsika.ac.id](mailto:imam.budi@fh.unsika.ac.id)

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### Abstract

This research was conducted to analyze the problem of implementing regulations in PKB in a company that has different head offices and branches of districts and provinces. The purpose of this study is to get a factor causing a dispute between trade unions and entrepreneurs in the application of PKB. In manning PKB, it still adopts from UU 13 of 2003 concerning Employment, while there have been several changes in the regulation of the Labor in Law UU 11 of 2020 concerning Cipta Kerja. The results of this study indicate that the application of regulations in PKB in national scale companies has the potential to cause disputes in different branches of regions. As a result of differences in work location affect wages, work relations, work facilities and others. In addition, between the two laws there are differences in the calculation of severance pay and rights replacement money. The result of this study recommend that the entrepreneur and trade unions apply the science of quality in the stages of preparation, negotiation and implementation by human resources who are also qualified for conduct intensive discussions in the solutive dialogue forum to overcome the problem of implementing regulations in PKB so as to encourage the improvemnet in the quality of the implementation of industrial relations that are increasingly harmonious, dynamic, and just.

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## INTRODUCTION

That national development is carried out in the context of the development of the Indonesian people as a whole and the development of the Indonesian people as a whole to realize a prosperous, just, prosperous society that is evenly distributed, both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI). Article 1 Law Number 13 of 2003 what is meant by Employment is all matters relating to labor before, during, and after the working period. In several kinds of literature, many opinions always place the position of workers as a weak position. In the book Abdul Khakim

(2020:12)<sup>1</sup> Collect Finawati (2004:4) that the working relationship is a relationship above/ dienstverhoeding which places the position of workers/laborers in a bargaining position the weak.

Although the concept of justice is very abstract, it is quite generally accepted that "fair" does not mean equality in all actions, but is proportional depending on the need.<sup>2</sup> According to Guus Herma van Voss, labor law departs from the recognition that workers to economic reality are not parties who are on an equal footing with employers. in the hands of the employer. Like in industrial relations disputes, it is the duty of the court to balance the legal standing of the parties to the dispute, among other things, by shifting the burden of proof for certain matters to the employer. In the development of labor law, in the current era, the labor sector involves stakeholders are Government, Workers, and Entrepreneurs. So the term employer has been replaced with Entrepreneur.

According to KBBI Entrepreneurs are defined as people who try in the field of trade. Whereas in Law 13 of 2003 in Chapter I, Entrepreneurs are:

- a. Individuals, partnerships, or legal entities that run a company owned by themselves;
- b. Individuals, partnerships, or legal entities that independently run a company that does not belong to them;
- c. Individuals, partnerships, or legal entities residing in Indonesia representing companies as referred to in letters a and b domiciled outside the territory of Indonesia.

According to Andrew J. Dubrin Entrepreneurs are people who set up a company in an innovative way. It will provide many benefits for many people too, of course for the people who run the company. In this working relationship between Employers and Workers, there is the potential for disputes to arise in the form of disputes over rights or disputes over interests. Preparation and stipulation of Law Number 11 of 2020 concerning Cipta Kerja to create the widest possible work for the Indonesian people evenly throughout the territory of the Republic of Indonesia to fulfill the right to a decent living. Furthermore, as a follow-up to the Constitutional Court Decision Number 91 / PUU -XVIII/2020, the Government made changes by issuing PERPPU Number 2 of 2022 concerning Cipta Kerja, which was subsequently stipulated to become Law in Law Number 6 of 2023.

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<sup>1</sup> Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia* (Bandung: Citra Aditya Bakti, 2020), 12.

<sup>2</sup> Finawati, A.S., *Buruh di Indonesia Dilemahkan dan Ditindas*, (Depok: MaPPI FH UI, 2004), 4

Disputes between workers through the Labor Union and Employers arise because of the inconsistent application of the PKB. As is known, the contents of this PKB, the *lex generalis* of legal basis for collective labor agreements is Article 1601n of the KUHPerdata.<sup>3</sup> And *lex specialis* one of which is regulated in Permenaker number 28 of 2014. Since the enactment of the Job Creation Law and its derivative regulations for the employment cluster in 2021, namely PP number 34 to PP number 37, specifically PP number 35 regarding PKWT, Outsourcing, Working Time and Rest Time, and layoffs, and 36 concerning Wages this has triggered the occurrence of disputes due to differences in application between Employers and Workers.

## **CONCEPTS OF EMPLOYMENT RELATIONS AND EMPLOYMENT AGREEMENTS**

The definition of employment relationship contained in Law 13 of 2003 Article 1 number 15 is the relationship between employers and workers/laborers based on work agreements, which have elements of work, wages, and orders, so it can be understood that employment relations can occur if there is a work agreement. According to Iman Soepomo, the employment relationship occurs after a work agreement is made between the worker and the employer, namely an agreement in which the first party, the worker, binds himself to work and receives wages from the other party, the employer, who binds himself to employ the worker by paying wages to the others. Based on the General Provisions of Article 1 of Law number 13 of 2003 several matters related to the title and background of the research include the following:

1. A work agreement is an agreement between an employee/laborer and an employer or employer that contains the work conditions, rights, and obligations of the parties.
2. A working relationship is a relationship between an employer and an employee/laborer based on a work agreement, which has elements of employment, wages, and orders.
3. Industrial Relation is a system of relations that is formed between actors in the process of producing goods and/or services consisting of employers, workers/laborers, and the government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia.
4. A Collective Labor Agreement is an agreement that is the result of negotiations between a trade union/labor union or several trade unions/labor unions registered with the agency

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<sup>3</sup> Abdul Khakim, *Aspek Hukum Perjanjian Kerja, Peraturan Perusahaan, Dan Perjanjian Kerja Bersama (PKB)*, (Bandung: PT.Citra Aditya Bakti, 2017), 135.

responsible for manpower affairs and an entrepreneur, or several employers or an association of employers which contains working conditions, rights and obligations of both parties.

5. Industrial Relations Disputes are differences of opinion that result in conflicts between entrepreneurs or groups of entrepreneurs and workers/laborers or trade unions/labor unions due to disputes regarding rights, disputes over interests, and disputes over the termination of employment relations as well as disputes between trade unions/labor unions in only one company.<sup>4</sup>

Based on the general explanation of the Labor Law, it can be seen that there are general interests and special interests. For example, the provisions regarding work agreements are regulated in Article 1 point 14. work agreements are agreements between workers/laborers and employers or employers which contain the terms of work, rights, and obligations of the parties. between workers/laborers and employers or employers has the nuance of special/private interests, but the working conditions, rights, and obligations of the parties have the nuances of public/public interests. Why is it public? Because the Labor Law regulates working conditions, rights, and obligations along with sanctions if they are not fulfilled.<sup>5</sup>

Work agreements between workers and employers create a legal relationship called an employment relationship which contains 3 characteristics, namely:

1. There is a job.
2. There is an Order.
3. There are Wages.

According to Prof. Dr. Tarsisius Murwadji, S.H., M.H. that legal problems stem from "ignorance" and "reluctance" to study quality. product quality. This it is as if people who have a profession outside the field of economics do not need to study quality science. That is why the development of human resources through a quality system does not develop quickly.<sup>6</sup> So it should be that stakeholders who handle HR and Industrial Relations in the Company, in particular, must refer to the quality of the rules or norms that are made to be implemented in the Company. For example, the CLA will become a reference in the implementation of

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<sup>4</sup> Abdul Khakim, *Aspek Hukum Perjanjian Kerja Peraturan Perusahaan Dan Perjanjian Kerja Bersama*, (Bandung, : Citra Aditya Bakti, 2017), 136.

<sup>5</sup> Susilo Andi Darma, "Kedudukan Hubungan Kerja: Berdasarkan Sudut Pandang Ilmu Kaidah Hukum Ketenagakerjaan dan Sifat Hukum Publik dan Privat", *Mimbar Hukum* 29, no. 2 (Juni,2017): 223.

<sup>6</sup> Tarsisius Murwadji, "Integrasi Ilmu Mutu Kedalam Audit Mutu Hukum Di Indonesia", *Jurnal Hukum Positum Karawang, Unsika* 1, no. 2 (2017): 151. <https://doi.org/10.35706/positum.v1i2.845>.

industrial relations in the Company. The quality of the PKB must be accompanied by the quality of the human resources involved in its formulation.

## **PKB AS A RULE OF AUTONOMOUS LAW DERIVED FROM THE LAW OF CIPTA KERJA AS HETERONOMOUS LAW**

Work relations including Collective Labor Agreements (PKB) are governed by the same autonomous legal principles as PK (Work Agreement) and PP (Company Regulations) as well as governed by heteronomous legal principles which are a consequence of the scope of Labor Law in which there are aspects of Civil Law and as well as aspects of Public Law. The procedure for making a PKB is regulated in Permenaker Number 28 of 2014 which is part of the heteronomous law. Even though the PKB negotiation process only involves elements of Employers and Workers. Work agreements that are based on autonomous legal principles but contain heteronomous legal principles such as those that contain working conditions, rights, and obligations of the parties that have the nuances of the public interest.

Opinion from Prof. Dr. Aloysius Uwiyono, based on the scientific point of view, the Principles of Employment Law consist of Autonomous Rules and Heteronomous Rules.<sup>7</sup> Autonomous legal rules are legal provisions in the field of employment made by the parties involved in a working relationship, in this case between employers and workers or their unions, outside the parties involved in the employment relationship.<sup>8</sup> Based on this, ideally, the PKB resulting from the negotiation process will not and does not need to be questioned or even disputed. This is because the legal force is already strong and provides legal certainty. Even in Law Number 6 of 2023 which has stipulated PERPPU Number 2 of 2022 concerning Cipta Kerja as a law in the Employment cluster, it still strengthens the work conditions in the work agreement and provides legal protection and certainty for workers if an employer's obligations are not carried out. One example is the article governing work agreements, and working conditions such as wages and sanctions.

Industrial Relations Disputes are differences of opinion that result in conflicts between entrepreneurs or groups of entrepreneurs and workers/laborers or trade unions/labor unions due to disputes regarding rights, disputes over interests, and disputes over the termination of

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<sup>7</sup> Aloysius Uwiyono, *Asas-asas Hukum Perburuhan*, (Jakarta: Rajawali Pers, 2014), 7-8.

<sup>8</sup> *Ibid*

employment relations as well as disputes between trade unions/labor unions in only one company. Learning the science of law in legal theory, Lawrence M. Friedman argues that there are 3 purposes of law, namely:

1. Legal Justice,
2. Legal Benefits.
3. Legal certainty.<sup>9</sup>

If there is a dispute, actually the settlement route can be carried out at the bipartite level. Continuing up to the Judge's decision at the Industrial Relations Court, elements of Legal Justice in the Purpose of Law can be found here. According to F.J. Sthall defines a rule of law state by presenting the basic elements of a rule of law which include:

1. Recognition and protection of human rights;
2. Separation of state power based on principle *political trials*;
3. Government is organized based on law (*legal administration*); and
4. There is a state administrative court.<sup>10</sup>

According to B. Arief Sidharta in the mind of Pancasila, the purpose of the law is to create social conditions that are humane in such a way as to enable social processes to take place fairly, where fairly every human being has the widest opportunity to develop all of his or her full human potential.<sup>11</sup> The elements of workers and entrepreneurs are human beings who of course have basic rights. According to Joel Feinberg, Human rights are "general moral rights regarding something fundamentally important and owned equally by all people, unconditionally and cannot be contested. Whether these rights are included in the category of "moral" in the strict sense, I let them, as an open problem that must be resolved through argumentation, and not through definition. Three elements of human rights include:

- a. As a moral right;
- b. Owned by everyone; and
- c. Cannot be contested.<sup>12</sup>

Article 1 number 1 Law Number 39 of 1999 concerning Human Rights, is "a set of rights that are inherent in the nature and existence of human beings as creatures of God

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<sup>9</sup> Margono, *Asas Keadilan Kemanfaatn & Kepastian Hukum Dalam Putusan Hakim*, (Jakarta: Sinar Grafika, 2020), 27.

<sup>10</sup> Salim HS dan Erlies Septiana, *Penerapan Teori Hukum*, (Depok: Raja Grafindo Persada, 2019), 7.

<sup>11</sup> Lili Rasjidi dan Liza Sonia Rasjidi, *Dasar-Dasar Filsafat dan Teori Hukum*, (Bandung: Citra Aditya Bakti, 2016), 188.

<sup>12</sup> Salim HS, *op.cit.*, 257

Almighty and are his gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity.<sup>13</sup> Things that can be taken when the state makes a regulation, one of which is related to labor law, even though politically, there are many legal interests which of course underlie the Government together with the people through the legislature in making laws. One of them is the economic sector and ease of investment. If there is a concrete legal certainty, namely the existence of an immediate derivative of the said law and a complete analysis of all matters that have the potential to cause disputes at the level of employers and workers, then the purpose of the law, namely legal certainty, will be a damper for these disputes.

Legal issues that often occur in the implementation of the Main PKB in a national-scale company are that it is still often the object of disputes between workers/workers' unions and employers. It should be realized that the geographical coverage of Indonesia is very broad and the differences in culture, culture, and customs of the population and the region are the triggering factors for the occurrence of different interpretations which give rise to disputes. This can be an opportunity for all stakeholders in the field of labor midwives to look for a higher quality and more humane pattern in implementing PKB. Article 28D of the 1945 Republic of Indonesia Law clearly states:

1. Paragraph 1 "Everyone has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment before the law".
2. Paragraph 2 "Every person has the right to work and receive fair and decent remuneration and treatment in the work relationship".

Here it is clear that our Constitution also regulates work relations. Which in its development became the term Pancasila Industrial Relations before it was known as Industrial Relations. So the making of PKB should not just be a formality to fulfill the obligation to carry out the contents of the law and its derivative regulations. The importance of awareness and quality of human resources in the company, both the negotiating team of employers and the negotiating team of workers/unions, so that the PKB negotiations begin with the drafting of the Rules of Conduct to the making which are subsequently agreed upon by both parties and ratified by the authorized officials in the field of manpower, both from the Disnaker Office to Ministry of Kemenaker.

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<sup>13</sup> Salim HS, *op.cit.*, 256

Interestingly from the point of view of Sunaryati Hartono in 1991 long before Law number 13 of 2003 concerning Manpower was enacted. discussed Legal Readiness in Anticipating Future Development, that law is also a transformation of society towards the structure, organization, and values of national and state life under the auspices of the Republic of Indonesia, which at the same time lives in an atmosphere of globalization of the world community<sup>14</sup> that above, the role of employers, workers, and the government must make a concrete contribution to creating harmonization in work relations with work norms that are carried out in a quality manner. The government has an important role in maintaining this stability, for example, government intervention in the field of wages has existed since the Old Order Period, namely when Law Number 33 of 1947 concerning Work Accidents was promulgated. The state regulates the provision of wages related to compensation due to work accidents in the employment relationship. The government's role in wages is getting bigger with the stipulation of Government Regulation Number 8 of 1981 concerning Perlindungan Upah. This arrangement has lasted until now with the enactment of Government Regulation Number 78 of 2015 concerning Pengupahan.<sup>15</sup> Indonesian National Law will be more in the form of Customary Law which is based on agreements (contracts) and Written Law (legislation including government decrees).<sup>16</sup>

## CONCLUSION

Based on the problems and research conducted, we have concluded in the form of The Importance of Consistent Labor Law Politics, so as not to cause different interpretations, and applications that trigger disputes. Broadly speaking, in the national context, this will also have an impact on the continuity of good industrial relations, which of course is the hope of the Government and all stakeholders that the application of fair and consistent labor law will have a positive impact on other social sectors.

From this discussion, the author recommends that employers and workers through the Serikat Kerja establish intense and solutive communication in building dynamic, harmonious industrial relations. The government at all levels dealing with Manpower should be responsive to the transitional situation regarding the application of Law 11 of 2020 in the employment

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<sup>14</sup> Sunaryati Hartono, *Politik Hukum Menuju Satu Sistem Hukum Nasional*, (Bandung: Alumni, 1991), 174.

<sup>15</sup> Saprudin, "Sosialisering Process Hukum Perburuhan dalam Aspek Kebijakan Pengupahan", *Mimbar Hukum* 24, no. 3 (2012):544.

<sup>16</sup> *Ibid*, 22.



cluster which changed part of Law 13 of 2003. At least make a regulation that can serve as a guideline for Employers and Workers. The situation was different during the COVID-19 pandemic struck where the Ministry of Manpower to the Regional Government and the Manpower Office quickly and responsively made regulations governing labor arrangements.

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