

THE LEGAL PROTECTION OF MARRIAGES BETWEEN EMPLOYEES OF ONE COMPANY BASED ON A JURIDICAL PERSPECTIVE

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Abstract

In managing its employees, every company has several policies, such as regulating employees who cannot marry within the same company for reasons of reducing conflict, subjectivity, corruption and nepotism. This writing aims to find out and analyze the legal protection of marriage between workers in a company which is analyzed using legal studies. The research method used is normative legal research with a statutory approach and uses a library method that is analyzed juridically. The results of the research are a form of legal protection for husband and wife who work in the same company and legal protection for workers or laborers, namely protection of the right to terminate employment relations, workers/laborers have the right to receive compensation from the employer in the event of layoffs, compensation consisting of severance pay, money long service awards and compensation money for workers' rights.

Keyword: *Constitutional; Court; Decision; Protection.*

A. INTRODUCTION

Marriage is a way to channel the biological needs of men and women and connect them as husband and wife. This is the strongest bond in human social relations.¹ Article 1 of Law No. 1 of 1974 concerning Marriage states that what is meant by marriage is the physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God.²

Discussing marriage law is closely related to Islamic sharia which cannot be separated from elements of Islamic faith and morals. As a component of Islamic teachings, Islamic sharia is a system of divine norms that regulate human relationships with God, which are usually called the rules of worship, regulate human relationships with each other and human relationships with other natural worlds, which are called the rules of mu'amalah.³

According to Article 1 of Law No. 1 of 1974 concerning marriage, it is explained that: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal

1 Kamal Mukhtar., *Asas-Asas Hukum Islam Tentang Perkawinan*, Jakarta, Bulan Bintang, 2013, page. 8.

2 Soemiyati., *Hukum Perkawinan Islam dan Undang-Undang Perkawinan*, Yogyakarta, Liberti, 2012, page. 43.

3 M. Anshary MK., *Hukum Perkawinan di Indonesia*, Yogyakarta, Pustaka Pelajar, 2015, page. 10.

family or household based on the belief in the Almighty God." Meanwhile, Article 2 of the Compilation of Islamic Law explains that: "Marriage according to Islamic law is a marriage, namely a very strong contract or *miitsaaqon gholiidhan* to obey Allah's commands and carrying them out is worship."

Marriage aims to form a happy and eternal family and create a household life that is *sakinah, mawaddah* and *rahmah*. The other purposes of a marriage are: (1) To obtain legitimate offspring, in order to continue future generations, because to obtain legitimate offspring, one must also go through a legitimate marriage, (2) To obtain a happy family full of peaceful life and affection.⁴

Regarding the legal conditions for marriage, it is also regulated in Article 2 paragraph (1) and paragraph (2) of Law No. 1 of 1974 concerning marriage which explains that marriage is valid, if it is carried out according to the laws of each respective religion and belief, and each Marriages are recorded according to applicable laws and regulations. Regarding the explanation above, it is clear that it has a very close connection with each religion adhered to by the prospective bride and groom. Thus, a marriage can only be said to be legally valid if the marriage is carried out according to the religion of those carrying out the marriage. For example, a person who is Muslim who wants to enter into a new marriage is declared valid if it complies with the provisions of Islamic law.

A marriage is valid if the marriage does not violate the prohibitions stipulated in Article 8 of Law No. 1 of 1974 concerning marriage. The text of this article is that marriage is prohibited between two people who are related by blood in a straight line downwards or upwards, are related by marriage, namely in-laws, stepchildren, daughters-in-law and stepmother/stepfather, have a relationship that is regulated by their religion or other applicable regulations, it is forbidden to marry, to be related by blood in a lateral lineage, namely between siblings, between one person and one's grandmother's sibling.⁵

Based on the prohibition on marriage above, especially in letter f there is a clause "or other applicable regulations, marriage is prohibited" giving rise to many interpretations. This is in line with Article 153 paragraph (1), letter f, Law No. 13 of 2003 concerning employment, namely regarding the issue of marriage prohibitions, which states that: "Companies are prohibited from terminating employment relations in the event that workers/laborers have blood ties and/or marriage ties with other workers/laborers in the same company, unless it has been regulated in work agreement, company regulations, or collective work agreement". The clause which states that "unless it has been regulated in the work agreement, company regulations, or collective work agreement" contains an implied meaning regarding the prohibition of marriage.

4 Amir Syarifuddin, *Hukum Perkawinan Islam di Indonesia*, Jakarta, Kencana Prenada Media Group, 2009, page 46-47.

5 Hilman Hadikusuma, *Hukum Perkawinan Indonesia (Menurut: Perundangan Hukum Adat Hukum Agama)*, Bandung, CV Mandar Maju, 2003, page. 62.

One of the things that workers or laborers are concerned about is Article 153 paragraph 1, letter f, Law No. 13 of 2003, namely regarding marriage issues, which states that companies are prohibited from terminating employment relationships in the event that workers or laborers have blood ties and/or marriage ties with other workers or laborers in the same company, unless it has been regulated in the work agreement, company regulations or collective labor agreement.⁶

If a work agreement, company regulations or collective work agreement contains provisions that prohibit workers/labourers from getting married, whether they like it or not, they must comply with these regulations. This restriction means that if workers get married, one of them must resign from the company. Provisions like this are not constructive, because the worker is denied the right to marry anyone.⁷

Quoted from Soeroso, "Legal protection arises because of the existence of a legal relationship. Legal relations are interactions between legal subjects that have relevant legal consequences, namely the emergence of rights and obligations." The theory of legal protection integrates and coordinates various interests of society by arranging protection and restrictions on these various interests so that abuse of power does not occur.⁸

There is previous research that discusses marriage between companies, namely research conducted by Winda Wijayanti and Alboin Pasaribu which was published in the journal *Constitution*. Previous and current research have similarities, namely examining marriages between employees in the same company. Apart from that, there is a difference, namely that the current research examines two legal regulations as a basis for analyzing a problem, namely Law No. 13 of 2003 concerning Employment and the Constitutional Court decision No. 13/PUU-XV/2017.

The protection provided for workers or laborers is aimed at fulfilling the basic rights of workers or laborers and ensuring harmony in agreements and treatment of workers' or laborers' basic rights and guaranteeing harmony and treatment without any discrimination. This is to realize the welfare of workers or laborers and their families by paying attention to developments in the progress of the business world. This work protection aims to ensure the continuity of the work relations system without any pressure from various parties. Therefore, this research aims to find out and analyze the legal protection of marriage between workers in one company which is analyzed using legal studies.

B. RESEARCH METHODS

This type of research is normative legal research which uses law as material to be used in analyzing problems using existing legislative

6 Abdul Khakim., *Pengantar Hukum Ketenagakerjaan Indonesia*, Bandung, PT Citra Aditya Bakti, 2007, page. 192.

7 Abdul R. Budiono., *Hukum Perburuhan*, Jakarta, PT Indeks, 2011, page. 51.

8 Kadek Januarsa Adi Sudharma, Ida Ayu Ketut Artami, dan Baby Rachella, Tinjauan Yuridis Perlindungan Hukum Hak Cuit Haid Dalam Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan, *Jurnal Vyavahara Duta*, Vol. 16, No. 1, 2021, page. 5.

approaches and is linked to applicable positive law, namely Law No. 13 of 2003 and Constitutional Court Decision No. 13/PUU-XV/2017. In reviewing and analyzing this research, the author uses materials that support and uses types of library research, such as books, journals, laws and regulations, and so on that support this research.

C. RESULTS AND DISCUSSION

1. Legal Protection for Marriages Between Employees of One Company Based on Constitutional Court Decision No. 13/PUU-XV/2017

The Constitutional Court is a constitutional court established on the basis of the assumption of the supremacy of the constitution which is the highest law underlying state activities and as a parameter to prevent the state from acting unconstitutionally. The establishment of the Constitutional Court proves that Indonesia adheres to free and independent judicial power, as well as an affirmation of the principles of a democratic rule of law.⁹ The Constitutional Court emerged as a State institution with the right to conduct judicial review of laws (hereinafter abbreviated as Laws) against the 1945 Constitution of the Republic of Indonesia.¹⁰

In addition to the jurisdiction for conducting constitutional review, the Indonesian Constitutional Court has other jurisdictions, which include: determining disputes concerning the authorities of the state institutions whose powers are derived from the constitution; deciding matters concerning the dissolution of a political party; and deciding disputes over the result of general elections.¹¹

It needs to be understood that the Constitution must be deemed as an agreement between the people and the government. The people are seen as the party having sovereignty as well as the party ruled. Meanwhile, the government in a broad sense is the party receiving the mandate to execute sovereignty as well as the party ruling the people.¹²

Enforcement of Constitutional Court decisions needs to be carried out at the level of statutory regulations under the law by the Supreme Court, this is in line with the constitutional power that has been granted by Article 24 A paragraph (1) of the 1945 Constitution, namely, "The Supreme Court has the authority to adjudicate at the cassation level, review statutory regulations invitations under the law against the law, and have other authorities granted by law." so that the judicial function of the Constitutional Court is the guardian of the Constitution, while the

9 Asmaeny Aziz dan Izlindawati., *Constitutional Complaint & Constitutional Question Dalam Negara Hukum*, Jakarta, Kencana, 2018, page. 2

10 Mohd. Mahfud MD., *Membangun Politik Hukum, Menegakkan Konstitusi*, Depok, Rajawali Pers, 2017, page. 104.

11 Pan Mohamad Faiz., The Protection of Civil and Political Rights by the Constitutional Court of Indonesia, *Indonesia Law Review*, Vol. 6, No. 2, 2016, page. 159.

12 Hikmahanto Juwana., The Obligation to Ensure the Conformity of International Treaties with the Constitution, *Indonesian Journal of International Law*, Vol. 8, No. 3, 2011, page. 436.

Supreme Court is the guardian of the law.¹³

The problem is that Article 153 paragraph (1) letter (f) of the Law No. 13 of 2003 concerning Employment is always used as a basis for employers to make regulations that prohibit the existence of marriage ties for fellow workers in their companies, whether in work agreements, company regulations, and the collective work agreement has been subject to material review through the Constitutional Court. The application for material review was based on the fact that this article was contrary to the 1945 Constitution of the Republic of Indonesia.¹⁴

The idea of establishing a Constitutional Court is an access to the development of modern legal and constitutional thought that emerged in the 20th century. In its development, the idea of establishing a Constitutional Court was based on serious efforts to provide protection for the constitutional rights of citizens and the spirit of upholding the constitution as a grundnorm or highest norm. This means that all existing laws and regulations must not conflict with the constitution.¹⁵

The issuance of the Constitutional Court Decision No. 13/PUU-XV/2017 gives hope that there will be a guarantee of fulfilling the right to get a job and the right to form a family as regulated by the 1945 Constitution. This decision confirms that employers are prohibited from terminating employment relationships on the grounds that the worker/laborer has ties marriage with another worker/laborer in the same company.¹⁶

In the decision of the Constitutional Court No. 13/PUU-XV/2017, protection of workers or employees means all efforts to guarantee legal certainty to provide protection to workers or employees. The material review of Article 153 paragraph (1) letter (f) of Law No. 13 of 2003 concerning Employment of the 1945 Constitution to the Constitutional Court is a form of legal protection for husband and wife who work for the same company. After the issuance of Constitutional Court Decision No. 13/PUU-XV/2017, it provides a guarantee of legal certainty for workers and employers as a basis for making collective work agreements (PKB).¹⁷

The binding power of the Constitutional Court's decision is clearly binding on all state institutions and society, although the Constitutional Court cannot directly execute its decision, there are further legal mechanisms that can be used to enforce the decision. Meanwhile, the

13 Jimly Asshidiqie dalam Arie Satio Rantjoko., Hak Uji Materiil Oleh Mahkamah Agung Untuk Menguji Peraturan Perundang-Undangan Dibawah Undang-Undang Di Indonesia, *Jurnal Rechtsens*, Vol. 3, No. 1, 2014, page. 40.

14 I. Wayan Agus Vijayantera., Kajian Yuridis Larangan Adanya Ikatan Perkawinan Terhadap Sesama Pekerja Dalam Satu Perusahaan, *Jurnal Analisis Hukum*, Vol. 1, No. 1, 2018, page. 78.

15 Utang Rosidin dan Rusdiana., *Pengantar Hukum Acara Mahkamah Konstitusi*, Bandung, Pustaka Setia, 2018, page. 12.

16 Winda Wijayanti, dan Alboin Pasaribu., Konstitusionalitas Perkawinan Antar-Pegawai Pasca Putusan Mahkamah Konstitusi, *Jurnal Konstitusi*, Vol. 17, No. 3, 2020, page. 633

17 Gusti Ayu Ratih Damayanti, Perlindungan Hukum Bagi Suami Istri Yang Bekerja Pada Satu Perusahaan Setelah Putusan MK No. 13/PUU-XV/2017, *Jurnal Unizar Law Review*, Vol. 3, No. 1, 2020, page. 46

legal consequences of the Constitutional Court decision no. 13/PUU-XV/2017 in the Indonesian Legal System, namely that workers or laborers are allowed to have a marriage partner in the same office or it can also be said that employers are prohibited from making work agreements that prohibit workers or laborers from having a marriage relationship in the same office.¹⁸

According to the court, the prohibition on workers or laborers who have blood ties and/or marriage ties in the same company is not in line with these articles, because the right to work is the right of every citizen, everyone is free to choose the job they like as long as they do not commit acts against the law. as well as getting fair rewards and treatment and protection in work relationships as an effort to protect themselves from unemployment.

The philosophy of freedom of contract is one of the conditions for the validity of an agreement, but it is not fully fulfilled. Based on this aspect, the word "is" included in the wording of Article 153 paragraph (1) letter (f) of Law 13 of 2003 does not automatically mean that the philosophical principle of contract is fulfilled. Candidates in accordance with the Ministry of Manpower's law support the Constitutional Court's decision, make employee reporting a success, the aim of which is for every company to respect the Constitutional Court's decision without exception, while companies continue to implement the marriage ban. However, it needs to be re-evaluated, not everyone can obey the Constitutional Court's decision. This means that as long as internal policies are communicated first to prospective employees, so that they can decide whether to remain employees or not, and marry a colleague, knowing all the consequences. This option is a constitutional protection for prospective employees, namely the right to information. Meanwhile, every person has the right to form a family and continue their offspring through a valid marriage as regulated and guaranteed in Article 28B.¹⁹

2. Legal Protection for Marriages Between Employees of the Same Company Based on Law No. 13 of 2003

Three laws in the labor sector were born after the reform. The three laws are (1) Law No. 21 of 2000 concerning Trade Unions or Labor Unions, (2) Law No. 13 of 2003 concerning Employment, and (3) Law No. 2 of 2004 concerning Dispute Resolution Industrial relations. One of the improvements brought about by Law No. 13 of 2003 concerning Employment (hereinafter abbreviated as UK) is the regulation of

18 Muhammad Reza Winata, dan Intan Permata Putri, Penegakan Putusan Mahkamah Konstitusi Nomor 13 PUU-XV/2017 Mengenai Hak Mendapatkan Pekerjaan dan Hak Membentuk Keluarga, *Jurnal Konstitusi*, Vol. 15, No. 4, 2018, page. 868.

19 Revina Heliyensi, Kontrak Kerja Larangan Kawin Bagi Karyawan Yang Bekerja Dalam Satu Perusahaan (Studi Putusan MK No. 13/PUU-XV/2017), In *Prosiding Seminar Nasional PSSH (Pendidikan, Saintek, Sosial dan Hukum)*, Vol. 2, 2023, page. 172.5

employment relations.²⁰

One of the legal protections for workers or laborers is protection of the right to terminate employment relations. Workers/laborers have the right to receive compensation from employers in the event of layoffs. Compensation consists of severance pay, long service pay and compensation for rights. Regulations regarding compensation in Law No. 13 of 2003 concerning Employment have been amended through Law No. 11 of 2020 concerning Job Creation, then further regulated in Government Regulation No. 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.²¹

In order to provide legal protection, specifically in Law No. 13 of 2003 in the general explanation section it is stated: Legal protection for workers, including protection of workers' basic rights to negotiate with employers, protection of occupational safety and health, special protection for workers women, children and people with disabilities, as well as protection of workers' wages, welfare and social security.²²

Abdul Khakim revealed that "if two workers are married in the same company, then one of them is obliged to leave or can even be laid off, which can be regulated in the work agreement, company regulations or collective work agreement. This is in the provisions of Article 153 paragraph (1) letter f of Law No. 13 of 2003 concerning Employment."²³

The consideration for the drafting of Law No. 13 of 2003 concerning Employment is to support national development in the context of developing Indonesian people as a whole to create a prosperous, just, prosperous society, which is equitable both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Development Employment as an integral part of national development based on Pancasila and the 1945 Constitution, is implemented in the context of developing Indonesian people as a whole, increasing the dignity and self-respect of the workforce and creating a prosperous, just, prosperous and equitable society, both materially and spiritually.²⁴

In this case, the Labor Law does not regulate the prohibition of

20 Abdul Rachmad Budiono., Makna "Perintah" Sebagai Salah Satu Unsur Hubungan Kerja Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, *Jurnal Arena Hukum*, Vol. 6, No. 2, 2012, page 137.

21 Tri Manisha Roitona Pakpahan., Si Nguruah Ardhya, dan M.Jodi Setianto, Tinjauan Yuridis Mengenai Perlindungan Hukum Terhadap Hak Tenagag Kerja Yang Mengalami Pemutusan Hubungan Kerja Secara Sepihak Ditinjau Dari Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja, *Jurnal Komunitas Yustisia*, Vol. 5, No. 3, 2022, page. 135

22 Joupy G.Z., Mambu, Aspek Perlindungan Hukum Terhadap Pekerja Wanita (Menurut Undang-Undang Nomor. 13 Tahun 2003), *De Jure Jurnal Syariah dan Hukum*, Vol. 2, No. 2, 2010, page. 151.

23 Abdul Khakim., *Pengantar Hukum Ketenagakerjaan Indonesia*, Bandung, PT Citra Aditya Bakti), 2007,page. 110.

24 Septina Lia Triastuti., Perlindungan Hak Konstitusional Oleh Mahkamah Konstitusi: Pembatalan Larangan Pernikahan Pegawai Satu Atap, *Jurnal Masalah-Masalah Hukum*, Vol. 47, No. 4, 2018, page. 378.

marriage between workers under the same company roof or the prohibition of workers having blood or family relations, such as parents, children, husband and wife, or brother and sister. It's just that the company prohibits family relationships in the company because there are personal interests in it.²⁵

Letter (f) paragraph (1) Law No. 13 of 2003 concerning Employment explains that it is prohibited to terminate employment relations with workers or laborers in a company who are related by blood or marriage, but this can still be done if it has previously been regulated in a work agreement, company regulations or collective work agreement.²⁶

Protection of workers is intended to guarantee the basic rights of workers and guarantee equality and treatment without discrimination on any basis in order to realize the welfare of workers and their families while still paying attention to developments in the business world and the interests of employers. The scope of protection for workers according to labor law, includes protection of the basic rights of workers or laborers to negotiate with employers, protection of occupational safety and health, special protection for women, children and disabled workers or workers, and protection regarding wages welfare and social security of workers.²⁷

Protection for every Indonesian citizen, in this case especially workers, based on Law No. 13 of 2003 concerning Employment, was created specifically as a guideline for provisions to fulfill the rights and obligations of workers and entrepreneurs as business actors. Worker protection can be done by providing guidance, or by increasing recognition of human rights.²⁸

Law No. 13 of 2003 concerning Employment was actually drafted to provide protection for workers and fulfill workers' rights. To realize worker protection, the Employment Law ensures that layoffs can be avoided, but if all efforts have been made but layoffs cannot be avoided, then the implementation of layoffs must go through negotiations between the employer and the worker concerned.²⁹

25 Ida Bagus Martha Teja Agastya., Anak Agung Ayu Ngurah Tini Rusmini Gorda, Perlindungan Hukum Terhadap Tenaga Kerja Yang Ada Hubungan Keluarga Ditinjau Dari Undang-Undang No. 13 Tahun 2003, *Jurnal Aktual Justice*, Vol. 5, No. 2, 2020, page. 194.

26 Sri Asmawati dan Ahmad Yamin., Perbandingan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Dengan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja (Klaster Ketenagakerjaan) Menyangkut Pemutus Hubungan Kerja, *Jurnal Prodi Ilmu Hukum (JPIH)*, Vol. 1, No. 2, 2023, page. 144.

27 Fenny Natalia Khoe., Hak Pekerja Yang Sudah Namun Belum Menandatangani Perjanjian Kerja Atas Upah Ditinjau Berdasarkan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, *Jurnal Ilmiah Mahasiswa Universitas Surabaya*, Vol. 2, No. 1, 2013, page. 3.

28 Rohendra Fathammubina dan Rani Apriani., Perlindungan Hukum Terhadap Pemutusan Hubungan Kerja Sepihak Bagi Pekerja, *Jurnal Ilmiah Hukum De'Jure: Kajian Ilmiah Hukum*, Vol. 3, No. 1, 2018, page 124.

29 Patricia Alya Khairani dan Masidin., Analisis yuridis pemutusan hubungan kerja akibat peralihan tenaga kerja manusia menjadi tenaga mesin sebagai bentuk efisiensi perusahaan

The scope of protection for workers or laborers as regulated in CHAPTER X Part One of Law No. 13 of 2003 concerning Employment, namely: "a. Protection of the basic rights of workers or laborers to consult with employers; b. Protection of the safety and health of workers or laborers; c. Special protection for women, children and disabled workers or workers; d. Protection of workers' wages, welfare and social security".³⁰

D. CONCLUSION

Based on the presentation of the results and discussion above, this research aims to find out and analyze the legal protection of marriage between workers in one company which is analyzed using legal studies. Therefore, the conclusion is that the form of legal protection for husband and wife who work for the same company starts from the judicial review of Article 153 paragraph (1) letter (f) of Law No. 13 of 2003 concerning Employment of the 1945 Constitution to the Constitutional Court. The scope of protection for workers according to Law No. 13 of 2003 concerning Employment and Constitutional Court decision No. 13/PUU-XV/2017, includes protection of the basic rights of workers or laborers to negotiate with employers, protection of safety and health work, special protection for women, children and workers or workers with disabilities and protection of wages, welfare and social security for workers.

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- 30 Rudi Febrianto Wibowo dan Ratna Herawati, Perlindungan Bagi Pekerja Atas Tindakan Pemutus Hubungan Kerja (PHK) Secara Sepihak, *Jurnal Pembangunan Hukum Indonesia*, Vol. 3, No. 1, 2021, page. 117.

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- Law No. 11 of 2020 concerning Job Creation;
- Law No. 13 of 2003 concerning Employment;

Other:

Revina Heliyensi, 2023, Kontrak Kerja Larangan Kawin Bagi Karyawan Yang Bekerja Dalam Satu Perusahaan (Studi Putusan MK No. 13/PUU-XV/2017). In *Prosiding Seminar Nasional PSSH (Pendidikan, Saintek, Sosial dan Hukum), Vol.2.*