

Application of the Pacta Sunt Servanda Principle to A Certain Time Employment Agreement

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Abstract. *The purpose of this study is to analyze the application of the pacta sunt servanda principle in PKWT at PT. Energi Bumi Sakti Semarang, and analyze the obstacles that become obstacles and the solutions in applying the principle of pacta sunt servanda in PKWT at PT. Semarang Sakti Earth Energy. The method used is empirical juridical research. The research specification used in this legal research is descriptive analysis. The data used in this study are primary data supported by secondary data. Primary data is data taken directly from sources while secondary data is data obtained from library research which includes primary legal materials, secondary legal materials and tertiary legal materials. The data analysis method required in this study is a qualitative method. The results showed that the PKWT at PT. Energi Bumi Sakti Semarang has been carried out by applying the principle of pacta sunt servanda properly between companies and workers. The company's consistency in carrying out the articles stated in the agreement is in accordance with the agreements that occur in the work agreement. The obstacles encountered in applying the principle of pacta sunt servanda in the Specific Time Work Agreement (PKWT) include obstacles related to defaults committed by employees. The solution is, for obstacles related to defaults committed by employees, the company seeks to hold deliberations to resolve them.*

Keywords: Agreement; Pacta Sunt Servanda; Work.

1. Introduction

In carrying out their work, workers and employers are bound by a work agreement. According to the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, a work agreement is an agreement between a worker/laborer and an entrepreneur or employer that fulfills the working

conditions, rights and obligations of the parties. From the agreement between workers and employers will give birth to rights and obligations between the two.

The types of work agreements consist of 2 (two) categories, namely the Specific Time Work Agreement (PKWT) and the Unspecified Time Work Agreement (PKWTT). PKWT is a work agreement between workers/laborers and employers to enter into a working relationship for a certain time or for certain workers.¹Whereas PKWTT is a work agreement between workers/laborers and employers to establish a permanent working relationship.²In this research will be focused on the study of the Specific Time Work Agreement (PKWT).

Starting from these provisions, it can be said that the contents of the work agreement are a form of legal protection for workers/laborers. Because basically when there is a dispute it is returned to the work agreement. According to Article 1338 of the Civil Code, all agreements made in accordance with the law apply as laws to those who make them. This agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreement must be executed in good faith³.

The principle of binding as law (*Pacta Sun Servada*) is an agreement made legally binding on both parties as binding on a law. The PKWT that has been made must be registered at the agency responsible for the local Regency/City Manpower sector no later than 7 (seven) working days after signing it. The characteristics of the agreement regulated in Article 1338 paragraph (1) of the Civil Code, that all agreements made legally apply as laws for the parties who make them (*pacta sun servanda*). This is intended because with the consensus of the parties to the contract, the binding power of the contract arises as befits a law. What someone states in a legal relationship becomes law for them (*cum nexus faciet mancipiumque, uti lingua mancouassit, ita jus esto*). This principle is the binding force of the contract (*verbindende kracht van de overeenkomst*). This is not only a moral obligation, but a legal obligation whose implementation must be obeyed. As a consequence, neither a judge nor a third party may interfere with the contents of the agreement.⁴

However, there are cases where a PKWT is not made based on the requirements stipulated in Law Number 13 of 2003 concerning Manpower, so workers do not get the legal protection they should, at PT Energi Bumi Sakti Semarang, a company engaged in the mining contractor with an office in Semarang is one of

¹Decree of the Minister of Manpower and Transmigration No. KEP.100/MEN/VI/2004, Certain Time Work Agreement, Article 1 Number (1).

²*Ibid.*, Article 1 Number (2).

³Civil Code Article 1338.

⁴Ridwan Khairandy, *Freedom of Contract & Pacta Sunt Servanda Versus Good Faith: Attitude the Court Must Take*, FHUIIPress, 2015, p. 38

the companies that currently employs workers with an employment relationship based on PKWT. In accordance with the applicable provisions, PT. Energi Bumi Sakti Semarang must also provide legal protection for its workers who are bound by PKWT.

Based on this phenomenon, it is necessary to conduct further research empirically on the application of the *pacta sunt servanda* principle in work agreements for a certain time by raising the issue of how to apply the *pacta sunt servanda* principle in PKWT at PT. Energi Bumi Sakti Semarang, and what are the obstacles and how are the solutions in applying the principle of *pacta sunt servanda* in PKWT at PT. Semarang Sakti Earth Energy?

2. Research Methods

This research is an empirical juridical research that is a type of research that is used to look at legal aspects of social interaction in society.⁵This type of research is used because in this study will examine the application of the principle of *pacta sunt servanda* in a certain time agreement at PT. Energi Bumi Sakti Semarang. The research specification used in this legal research is descriptive analysis which describes the application of the *pacta sunt servanda* principle in a certain time agreement at PT. Semarang Sakti Earth Energy. The data used in this study are primary data supported by secondary data. Primary data is data taken directly from sources in the field obtained through in-depth interviews. While secondary data is data obtained from library research which includes primary legal materials, secondary legal materials and tertiary legal materials. The data analysis method required in this study is a qualitative method.

3. Results and Discussion

3.1. Application of the principle of *pacta sunt servanda* in PKWT at PT. Semarang Sakti Earth Energy

An agreement must be executed in good faith." Implementation of an agreement between workers and employers in order to create good and harmonious conditions without any aggrieved party being able to sue for the losses they have suffered. Article 1365 of the Civil Code states that "Every unlawful act that causes harm to another person, causes the person who, due to the mistake of issuing the loss, to compensate for the loss."

In carrying out an agreement there is a process to bind the parties to a company. The process carried out at the company PT. Energi Bumi Sakti Semarang, namely, first, there is an acceptance and offer stage for workers. The workers/laborers follow the process of accepting workers with the criteria according to the company's wishes. After the workers are accepted, they negotiate regarding the provision of salary/wages at work. If this has been agreed upon, the parties sign

⁵.Zainudin Ali, *Legal Research Methodology* (Jakarta: Sinar Graphic. 2009) page 175

a work contract which is called the contractual stage. The final stage is that the parties carry out the agreement according to what has been mutually agreed upon.

In general, the protection of workers has been regulated in Law Number 13 of 2003 concerning Manpower. However, lately there has been a lot of anxiety in society, especially about workers doing work under a contract system. The community's anxiety arises because in reality there is a very striking difference in welfare received by workers with a contract system when compared to permanent workers.

In connection with the Labor Law, it has been explained that the contract system may only be carried out for temporary work and may not be implemented for continuous work. It can be seen that the PKWT system is a system that places workers as temporary workers. This agreement relates to the relationship between workers in the context of carrying out a job that is temporary.

In the event that the implementation of a work relationship is based on an existing work agreement, it is possible that there may be things that can cause problems, both of which result in violations of the contents of the work agreement between the worker/laborer and the entrepreneur, which can result in labor disputes, so that if this cannot be resolved, it could result in end of working relationship.

Each company has its own rules. Among them must comply with all the rules of conduct that have been agreed between the two parties, as in Article 5 of the work agreement for a certain time it is stated that "the second party promises to comply with the regulations of the work order and always comply with the applicable provisions both written and unwritten".

In field research, it was found that there was no notification of the expiration of the working period on the work contract for 1 (one) month. The workers/laborers hope that their work will continue for the sake of the survival of these workers/laborers. This is due to the lack of knowledge of workers/laborers about a work agreement. A certain time work agreement here means a work agreement that is limited by a certain period of time.

Making PKWT made by employers is essentially aimed at protecting both employers and workers. Where PKWT has a fairly large role, both for employers and workers. This can be known because the PKWT is a binding legal provision (principle of *pacta sunt servanda*) for employers and workers. The contents of the PKWT have regulated provisions on matters relating to workers and employers in the form of rights and obligations.⁶ However, the implementation of the contents of the PKWT is often not carried out properly, where the implementation of the contents of the agreement is not in accordance with statutory regulations. As a result, the rights of workers are violated. If there is a violation of the implementation of the PKWT, the work agreement does not exist

⁶Soedarjadi. 2009. Rights and Obligations of Workers-Entrepreneurs. Yogyakarta: Yustisia Library p. 37

or is null and void by law and becomes PKWTT. Where workers who are bound by PKWT get legal protection like workers who are bound by PKWTT.

Before discussing the applicability of the principle of *pacta sunt servanda* in the agreement between workers and at PT. Energi Bumi Sakti Semarang must first know the relationship between legal principles and the rule of law, so it is the legal principle that creates legal norms and then legal norms that give birth to legal rules. From one legal principle can give birth to more than one legal norm to infinity.⁷

In this case, from the legal principle of *pacta sunt servanda*, the legal norm was born "an agreement made legally binding on the parties as binding by law" contained in Article 1338 Paragraph (1) BW which is one of the bases for the movement of contract law. The principle of *pacta sunt servanda* or the full term is *pacta convent quae neque contra leges neque dalo maloinita sunt omnimodo observanda sunt* means that a contract which is not made illegally and does not originate from fraud must be fully followed. The force of effect of this *pacta sunt servanda* is very strong giving only a few exceptions.⁸

The purpose of the *pacta sunt servanda* principle in an agreement is none other than to obtain legal certainty for the parties who have made the agreement. According to Subekti that:⁹"The principle objective of *pacta sunt servanda* is to provide protection to buyers that they don't have to worry about their rights because the agreement applies as law for the makers."

In the agreement between workers and at PT. Energi Bumi Sakti Semarang, the binding power of the contract lies in its written form and in the agreement of the parties. Contracts that are limited to spoken words are not binding on this agreement at all. According to Rusman Thoeng, it is very important to make a contract with the service user first before providing services, the contract is in a written form called an engagement letter. According to Blasius Mangande, contracts are made so that both parties get legal certainty.

As stipulated in the BW, the *pacta sunt servanda* principle requires that a contract must also be carried out in good faith and attachment to a contract is not only to what is written in the contract, but in carrying out the contract the parties are also bound by the principle of good faith. , fairness, decency and custom in executing contracts.

Thus the contract or agreement made by PT. Energi Bumi Sakti Semarang with workers must also be carried out in good faith and the parties, including at PT. Energi Bumi Sakti Semarang and employees are not only bound by what has been written in the contract they have made but in carrying out the contract they are also bound by the principles of good faith, fairness, decency and custom.

⁷Achmad Ali, 2015, *Revealing the Veil of the Law* Second Edition, Prenamedia Group, Jakarta, p.9.

⁸Munir Fuady, *Big Theories in Law*, Op,Cit, p.210.

⁹Qirom A. Syamsudin Meliala, 1985, *Principles of Agreement Law and Its Development*, Liberty, Yogyakarta, p.20

Good faith in the science of law itself is divided into two, namely subjective good faith and objective good faith. Good faith in a subjective sense can be interpreted as a person's honesty in carrying out a legal action, namely what lies in a person's inner attitude at the time the legal action is carried out. While good faith in an objective sense means that the implementation of an agreement must be based on the norms of decency or what is felt to be appropriate in society. Before making a contract with the aim of avoiding unwanted things, the code of ethics requires that PT. Energi Bumi Sakti Semarang must recognize its prospective employees, the desires of the workers and the capabilities of PT. Energi Bumi Sakti Semarang itself, so as to create trust (trust) between the parties, PT. Energi Bumi Sakti Semarang believes in its employees that the existence of the company will not be used for things that are contrary to justice, custom or decency and employees believe that PT. The concerned Bumi Sakti Energy Semarang does have the necessary competence to carry out the work agreement properly. This is also closely related to good faith which is the main basis for the enactment of the *pacta sunt servanda* principle, in which a contract must be carried out without prejudice.

3.2. Obstacles in applying the principle of *pacta sunt servanda* in PKWT at PT. Semarang Sakti Earth Energy

In implementing the Specific Time Work Agreement (PKWT) at PT. Energi Bumi Sakti Semarang does not always go according to the expectations of the company and employees. In this implementation, there were obstacles both from the company and from the employees themselves. However, in its settlement, the company prioritizes the deliberation process as the main way of solving these problems.

In the implementation of PKWT, employees can also default by terminating the work contract unilaterally. Employees who leave the placement location sometimes do not return to the location for various reasons. Regarding defaults committed by employees, Mr. Djoko Head of HRD PT. Energi Bumi Sakti Semarang said, "Employees leave their work placement locations usually for family reasons, such as their wife being sick, giving birth or a family member who has passed away. For this event, the company gives permission to the employee to leave the location and the employee does not return to the location again."¹⁰ Meanwhile Budiharjo, an employee of PT. Energi Bumi Sakti Semarang said that there were employees who left the placement locations and did not return. Usually he doesn't come back because he doesn't feel comfortable at the placement site. He left the location for family reasons and received transportation costs from the company, so he returned home without incurring

¹⁰Interview with Mr. Djoko Head of HRD PT. Semarang Sakti Earth Energy

transportation costs because the company bears transportation costs if there are certain events that require employees to leave the placement location.¹¹

To resolve the problem of default by employees, Mr. Djoko Head of HRD PT. Energi Bumi Sakti Semarang said that employees who commit defaults should be subject to sanctions giving compensation to the company. The company tries to hold deliberations and make efforts so that the employee returns to the placement location. If the employee does not wish to continue the work contract, the company gives full freedom to the employee, but the employee is required to reimburse the transportation costs incurred by the company when the employee returns from the placement location.¹²

To avoid the reoccurrence of these problems Mr. Djoko Head of HRD PT. Energi Bumi Sakti Semarang emphasized that the company has finally adopted a policy for employees if the employee leaves the placement location before the contract period ends, then the transportation costs that are the company's obligation are not given at the beginning of the trip. Employees who leave the placement location for certain reasons must first bear the transportation costs. The fee reimbursement system is carried out by rebusment and is paid in the following month's wages after the employee returns to the placement location.¹³

The implementation of the work agreement for a certain time at this company is carried out by PT. Energi Bumi Sakti Semarang for workers in the company. The guidelines used as a reference in implementing the agreement are the Company Regulations of PT. Energi Bumi Sakti Semarang which is made by the company with representatives of workers in the company and has been approved by the relevant Manpower Office. Most of the provisions contained in the Company Regulations have been implemented.

3.3. Efforts to overcome the obstacles that exist in the implementation of the pacta sunt servanda principle in PKWT at PT. Semarang Sakti Earth Energy

Law Number 13 of 2003 concerning Manpower is one of the laws that regulates labor issues which in principle regulates manpower development in such a way that fundamental rights and protections are fulfilled for workers and workers/laborers and at the same time can create conditions that conducive to the development of the business world. This law regulates how to make work agreements, both Work Agreements for a Specified Time (PKWT) and Work Agreements for an Unspecified Time (PKWTT).

a. Unilateral Termination of Work Agreement

¹¹Interview with Budiharjo Employee of PT. Semarang Sakti Earth Energy

¹²Interview with Mr. Djoko Head of HRD PT. Semarang Sakti Earth Energy

¹³Interview with Mr. Djoko Head of HRD PT. Semarang Sakti Earth Energy

Furthermore, if one of the parties to the agreement terminates the employment relationship before the expiration of the period specified in the employment agreement for a certain time, the party terminating the employment relationship is required to pay compensation to the other party in the amount of the worker's/labourer's wages until the deadline for the expiration of the employment agreement (Article 62 Law No. 13 of 2003).

So, if a worker/labourer is bound by a PKWT for two years, if he has only worked for two months and wants to end the employment relationship, then the worker is obliged to provide compensation to the employer in the amount of 24 months (two years) minus two months, which is 22 months multiplied by the salary. during one month.

Many employers tend to bind workers/labourers with PKWT. They don't realize that the PKWT is actually detrimental to the entrepreneur, unless the entrepreneur wants to bind the worker/laborer so they don't quit before the PKWT expires. For example: We know that PKWT may not include a probationary period of three months. If the new worker/labourer has worked for two months from the time period stipulated in the PKWT, then the entrepreneur wishes to terminate the employment relationship with the said worker/labourer, then the entrepreneur is required to provide compensation for 24 months minus 2 months and the remainder multiplied by the amount of salary per month . On the other hand, if the worker/laborer is bound by PKWTT, then a probationary period of three months can be held, and if after only two months of work the worker/laborer leaves, then the entrepreneur does not need to provide any compensation to the worker/laborer because it is still in the probationary period. Therefore, if the entrepreneur is concerned that the worker/laborer will terminate the employment relationship prematurely, then the entrepreneur should bind the worker/laborer with a PKWTT. Conversely, if no one is worried about losing workers/labourers, then the work agreement should be with PKWT.

b. Worker/Labourer Benefits

Workers/laborers who are bound by the PKWT may or may not receive benefits, which can be read in the employment agreements made by employers and workers/laborers, because according to Article 1338 BW, agreements made legally apply as law for those who make them.

So, to find out whether a worker/laborer is a worker/laborer who can receive benefits, one can trace them to the work agreement. If there are no rules in the work agreement regarding this matter, the next step is to check the Company Regulations, only if that doesn't work, you can check the Collective Labor Agreement, finally the Laws and Regulations.

UU no. 13 of 2003 does not specifically regulate benefits for workers/laborers who are bound by PKWT, meanwhile Article 88 of Law no. 13 of 2003 only states that every worker/laborer has the right to earn an income that fulfills a decent

living for humanity. The definition of worker/labor in that article, according to Article 1 point 2 of Law no. 13 of 2003, is every person who works by receiving wages or other forms of compensation. So it does not specify who is meant by workers/laborers, whether they mean workers/laborers who are bound by PKWT or workers/laborers who are bound by PKWTT, or both.

c. Statement Letter about Worker/Labourer Self

Currently, a statement stating the personal identity of the worker/laborer when working for a company is very important, because this certificate can be used as a reference for employers to help smooth the recruitment of new workers. UU no. 13 of 2003 does not regulate this, therefore we can look for a legal basis regarding a statement in the Civil Code. Article 1602z of the Civil Code states that the employer is obliged at the end of the employment relationship, at the request of the worker, to provide him with a statement. This certificate must contain a statement that is true about the work that has been done and the length of the employment relationship, namely the date of entry into force and the date of termination. This certificate must be dated and signed by the employer.

Upon that request, the entrepreneur must mention the reasons that form the basis for terminating the employment relationship. If the employer has terminated the employment relationship without giving a reason, at this time this attitude is unacceptable, because each termination must be based on a reason. Article 5 Law no. 12 of 1964 concerning Termination of Employment in Private Companies states that an application for a permit for termination of employment along with the reasons that form the basis must be submitted in writing to the Regional Committee. Actually Law No. 12 of 1964 has been repealed by Law no. 2 of 2004 concerning Settlement of Industrial Relations, but in Article 125 paragraph (2) it is stated that all laws and regulations which are implementing regulations include Law No. 12 of 1964 is declared to remain valid as long as it does not conflict with the provisions in Law no. 2 of 2004.

According to Iman Soepomo, a worker/ laborer who does not receive a certificate or receives a certificate that is incorrect or incomplete, according to Iman Soepomo, has the right to demand before the court to be given a certificate or a correction or addition to the certificate, if necessary, with a coercive money for each the day the businessman does not fulfill his obligations.

4. Conclusion

PKWT at PT. Energi Bumi Sakti Semarang has been carried out by applying the principle of *pacta sunt servanda* properly between companies and workers. The company's consistency in carrying out the articles stated in the agreement is in accordance with the agreements that occur in the work agreement. PT. Energi Bumi Sakti Semarang also provides protection for its workers in the PKWT

system. This protection is provided in accordance with applicable regulations. Protection for workers/laborers in the Specific Time Work Agreement (PKWT) is basically running optimally, although violations still occur, due to employees' lack of understanding about the contract clauses listed in the PKWT. The obstacles encountered in applying the principle of *pacta sunt servanda* in the Specific Time Work Agreement (PKWT) include obstacles related to defaults committed by employees and supervision constraints. The solution is, for obstacles related to defaults committed by employees, the company seeks to hold deliberations in their resolution and for obstacles related to supervision, it is better for each supervisory employee to be given the authority to take direct action against violations that occur in workers/laborers with a Specific Time Work Agreement (PKWT).) carried out by the company, so that the supervisory function can provide a deterrent effect on entrepreneurs who commit violations.

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