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Assistance The Drafting Of Permanent Employee Letter And Fixed-Term Work Contract In Pt Sukses Media Kreatif

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Abstract

Regulations of specified period and unspecified period work agreement was formed as a guarantee of the working relationship existence in a company between the employer and the employee. In the world of legal practice, this work agreement is usually realized in the form of a permanent employee letter of appointment for the unspecified period work agreement and a fixed-time work contract fix the specified period work agreement.

This work agreement is crucial to exist because if an industrial dispute occurs, the two parties can refer back to the agreed and signed agreement. However, even though the regulation exists, it is still common to find companies that do not implement work agreements following the Law Number 13 of 2003 concerning Manpower.

PT Sukses Media Kreatif is a start-up company that utilises the social media as a platform for social media marketing. This company offers social media marketing services which include marketing strategies and an interactive media in the form of videos and photos as the promotional content. This company consists of management and employees, whom are young fresh graduates. Thus, the problem of ethical work discipline becomes a problem since no regulation has been established yet.

This research was conducted to resolve the legal issues that exists in the company, which is the absence of work agreements in the existing work relationship. The research method uses applied research that offers applied solutions to legal problems in PT Sukses Media Kreatif after an observation, problem finding, literature, and regulation study related to agreements in general and work agreements.

Keywords: *Work Agreement, Permanent Employee Letter, Work Contract*

Introduction

Indonesia is a country located in Southeast Asia that profoundly respects the law. In Indonesia, every relationship between a people, or between a person and a legal body, or between judicial institutions must abide by the

rules of law practised in Indonesia; this can be proven authentically. The Labor Law in Indonesia must be formulated in such a way that it fully protects the rights and obligations of workers. This way, the labour law can guarantee a conducive work

environment, thus contributes to the development of the business industry.

In carrying out the development obligation, labours have a crucial role as the agent of change. The development of protection for workers and their family following the labour law and humanitarian principles must be acted with degree and prestige to improve the quality and welfare of workers in Indonesia. To achieve maximum efficiency, each party must be aware of their work relationship legality status in the form of a legal document. This legal document can be given in the form of the Permanent Employee Letter of Appointment in a company. This legal document serves its purpose to ensure the existence of a working relationship, thus protecting both parties' rights and obligations between employers and employee.

The Permanent Employee Letter of Appointment between workers and employers is the evidence that a working relationship exists, thus binds both parties in an employment relationship status. However, it is rare to be practised that this permanent employee letter of appointment completed with details of both parties' rights and obligations. Thus, a company regulation is still needed to serve as the reference for both parties' rights and obligations. One thing for sure is that the worker provides the employer with his/her skills which then will be paid in the form of salary by the employer.

However, based on a quick survey in Batam, the importance of legality and a form of guarantee for both parties' rights and obligations in an employment relationship is still not fully understood by many people. A work agreement in the form of a permanent employee letter of

appointment often is seen as a formality only, even not made at all because it is considered not necessary. Consequently, many of the workers' rights are often ignored or not fully granted, unpaid overtime working hours, unpaid maternity leave, and many more. Therefore, legal assurance must exist.

The Work Agreement in Indonesia is regulated in Law Number 13 of 2003 of Manpower. Article 1 number 14 defines an employment agreement as an agreement between the worker or labourer and the employer or employee in which are stated terms of work, rights, and obligations of the parties. The scope of this agreement consists of the following elements: 1) The existence of a legal event in the form of agreement

- 2) The existence of a subject or parties named workers or labourers and employee or employers each with its interests in making work conditions
1. 3) The rights and obligations of each party

To summarise it, the work agreement is a legal action taken between workers or labourers, and an entrepreneur or employer to bind themselves in a mutual normative legal relationship. In the contract law, as stated in Article 1320 BW, an agreement is a form of engagement where two parties commit themselves to do or not to do, to give or not give what is stated in the agreement, both verbally and written. The agreement must write the rights and obligations of each party involved in detail.

The understanding of an employment agreement is also stated in Article 1601 BW, as quoted below:

“De arbeidsovereenkomst is de overeenkomst waarbij de eene partij, de arbeider, zich verbindt, in dienst van de andere partij, den werkgever, tegen loon procedende zakerentijd arbeid te verrichten (translated: a labor agreement is an agreement in which one party, the laborer, binds himself under the command of the other party, the employer, for a certain period of time and perform salary-rewarded works.”

The Law Number 13 of 2003 brings a new concept of an employment in employment relationship aside from the permanent employee relationship. This concept serves as an extension of legal protection to certain parties who work a certain job-scope for others. The elements contained in this relationship are work, salary or wage, and orders. These three elements distinguish the working relationship from other legal relationships.

The work relationship between an employee and an employer happened after the agreement is made. The agreement states what the labourer will do in his work and what the employer will reward him. Law Number 13 of 2003 about Manpower, article 50 states that:

“Employment relationship occurs because of an employment agreement between the employer and the worker or labourer.”

It can be concluded that there is no connection between both parties if there is no agreement that binds both of them. According to Article 1320 of the Civil Code, for an agreement to valid by law, four conditions must be met, such as the agreement between both parties, the ability to make an agreement, the object of the agreement, and a lawful cause.

In Law Number 13 of 2003, employee agreements are classified into two categories, which are:

1. a) Specified-time employment agreement
2. b) The non-specified time employment agreement

This classification is essential to know because the legal protection for each category is different. The law stipulates a certain number of conditions for the specific-time employment agreement that applies if the worker or labourer is under the agreement. However, studies have shown that in the practical world, many specific-time employment agreements are made even though it does not meet the conditions for a specific-time employment agreement. Employers often insist on making specific-time employment agreements to avoid several possible law burdens, while this is a loss for the workers or labourers.

With the absence of legal knowledge regarding employment agreement and the rights and obligations that comes with it, it is necessary as a future legal practitioner to apply the correct legal procedure in her workplace by implementing both the specified-time employment agreement in the form of the fixed-term employment contract and the non-specified employment agreement in the form of a permanent employee letter of appointment.

It must be noted that the absence of a written employment contract does not mean there is no employment agreement, since an agreement can be made both verbally and written. It is also stated from Article 51 Law Number 13 of 2003 that a work agreement can be made by both written and verbal methods. The

verbal work agreement is still valid if it fulfils the principles of agreement and Article 52 Subsection (1) Law Number 13 of 2003, which quote:

“A work agreement shall be made based on

1. The agreement of both sides;
2. The capability or competence to take legally-sanctioned actions;
3. The availability/ existence of the job which both sides have agreed about;
4. The notion that the job which both sides have agreed about does not run against public order, morality and what is prescribed in the valid legislation.”

Based on the background that elaborated before, the researcher found that the issue PT Sukses Media Kreatif has is the legal gap in the employment law. This gap is detected from the lack of employment agreement in the company from the human resource department. Thus, the researcher proposes an internship program in which titled, “The Drafting of Permanent Employee Letter and Fixed- term work contract in PT Sukses Media Kreatif”.

Methods

As the research’s foundation and base, the researcher collect data with the qualitative method, which is a data collection method using literature review as the secondary database then compared to primary data collected through interviews and observation.

1) Primary Data

The primary data is data collected through the interview with other parties’ result, field observation, and questionnaire sampling if needed. The primary data used in this internship project are:

- - Interview: Interview with PT Sukses Media Kreatif management and staffs,
- - Observation: Field observation conducted by the researcher in order to solve the existing problem.

2) Secondary data

The secondary data is data collected through a literature review of acts, jurisprudences, constitutions, or official records. The secondary data in the legal research field consists of a few types:

1. Primary legal material
This legal material consists of a few binding materials, such as:
 - - Law Number 13 of 2003 about Manpower
 - - Indonesian Civil Code
2. Secondary legal material
Secondary legal material consists of legal materials that support the basic principles of this research. Secondary legal material also provides additional supportive data for primary data. This material consists of books, journals, scientific research, thesis, dissertation, and other previously done researches.

In this research, the primary-secondary data used are:

- - “Hukum Kontrak & Perancangan Kontrak” written by Dr. Ahmadi

Miru, S.H., M.S. (2018),

- - “Contract Law: A Layman’s Guide” written by Catherine Tay

Swée Kian and Tang See Chim (1989),

- - “Pengantar Hukum Perdata Tertulis (BW)”, written by Prof. Dr.

R.M. Sudikno Mertokusumo, S.H (2016),

- - “Kompilasi Surat/Kontrak Perjanjian Terpilih” written by Andika

Wijaya and Wida Peace Ananta (2018),

- “Pokok-Pokok Pengetahuan Hukum Dagang Indonesia” written by Prof. Drs. C.S.T. Kansil, S.H. and Christine S.T. Kansil, S.H., M.H. (2013, 2nd ed.)

The most crucial part in the permanent employee letter is the appointment date, the appointer's identity (in this case, the management representative), and

the identity of the employee who will be the appointee. This letter must be signed by the Director of the company or its representative. The components that are included in the final draft of the letter are:

1. Letter title and numbering;
2. Place and date the letter was signed;
3. Appointer identity;
4. Appointee identity;
5. The clause “to appoint the person concerned to be a permanent employee;
6. Employee working period;
7. Employee rights and obligations;
8. Cover;
9. Signatures of both parties.

The next obstacle is to collect all employee data. Since PT Sukses Media

Kreatif is a new company, the standard operating procedure in the human resource department is not organised neatly and systematically. Therefore, it is necessary to collect employee data in detail and quickly in advance for the accuracy of the information. After all the information

and biodata have been collected, a permanent employee letter of appointment can be made for permanent management staff such as the Director and department heads.

Based on the content / content in the work agreement above, the authors classify it as follows:

1. Title of Contract

In designing this work agreement the author begins with a title, namely "a specified time work agreement".

2. Opening (description of instrument)

In the opening of the Work Agreement, the agreement number is also placed which becomes an internal recapitulation for the Company.

3. Identity of the Parties

Relating to both parties is very important because it is to ensure a complete profile of the parties, including addresses of the parties, company domicile, and so on.

4. Premise or preamble

The premise is a preliminary information and is usually referred to as the background to a particular situation in an agreement with the aim of explaining the basis for the agreement made by both parties described in the comparisons.

After much discussion and consideration, the final draft of fixed-term work contract in PT Sukses Media Kreatif includes these structures:

1. Contract title

2. Entrepreneur identity

Identity consist of name, work position, and the company's address

3. Prospective employee identity

Identity consists of name, gender, place and date of birth, age, religion, tertiary education, current address, and ID number.

4. Contract body:

1) Article 1: Acceptance clause

In this article, the clause that explains the employer has accepted the employee as a worker in the company.

2) Article 2: Wage and work hours

This article states the wage the employer will receive monthly and their work hours.

3) Article 3: Allowance

This article explains the allowance benefit the employee will receive

from the company.

4) Article 4: Premature work agreement termination

This article becomes the basic rule if there is a premature work

agreement termination among the employer and the employee.

5) Article 5: Public order maintenance

This article states that in executing their work, an employee must always remember and maintain public order, inside or outside of the company's area.

6) Article 6: Employee rights

This article elaborates the employee's rights in the working relationship.

7) Article 7: Employee obligations

This article elaborates the employees' general obligations (outside of their specific work scope) in the working relationship

8) Article 8: Working time and paid leave

This article elaborates employee's working time and specifically discuss in detail about employee's paid leave rights.

9) Article 9: Work ethics

This article elaborates the work ethics that every employee must follow. It contains the elements of law and necessary public order.

10) Article 10: Sanction

This article elaborates the types of sanctions that is applied in PT Sukses Media Kreatif, in case there is any rule violation done by the employees during work employment.

11) Article 11: Industrial dispute resolution

This article serves as a statement of commitment for a solution in case of any industrial dispute resolution

12) Closing statement

This section declares that the agreement is made based on the agreed clauses from both sides voluntarily (with no outside interference that affects both parties' judgement) and are valid per signed date.

13) Closing signature, place and date of signature

Result and Discussion

After carrying out the internship work at PT Sukses Media Kreatif for 3 (three) months from June to August 2020, several conclusions can be concluded on why legal certainty in the work relationship at PT Sukses Media Kreatif is necessary. Some things that can be improved in PT Sukses Media Kreatif are:

1) The absence of legal certainty that exists in PT Sukses Media Kreatif due to the assumption that a new company does not need to have a contract and a lack of concern for the law in the company because the management and employees consider following legal procedures to be complicated.

2) There is no standard operating procedure for human resource administration in PT Sukses Media Kreatif, making it difficult to get the required data. This absence exists because PT Sukses Media Kreatif is still relatively new, so a proper and systematic procedure has not been established.

3) The low work ethic in PT Sukses Media Kreatif is caused by the absence of regulations that strictly regulate the employee's discipline, so the employees do whatever they want.

4) The implementation of the permanent employee letter and the fixed-term contract work in PT Sukses Media Kreatif has proofed itself to be a solution for the legal absence of work agreement in this company, and has now been implemented for both new workers, current employees, and sub-cons.

All of these conclusions have been discussed with the management of PT

Sukses Media Kreatif and the human resource department. Through the proposed project as a solution, the author has helped to fix the absence of human resource department standard operating procedure. These projects also helped provide the legal certainty of work relationship and produce a good work ethic for employees in PT Sukses Media Kreatif.

References

Indonesia. "The Manpower Law." *Law Number 13 of 2003*. State Gazette No. 39 of 2003. Supplement to the State Gazette No. 4279.

Kitab Undang-Undang Hukum Perdata. [*Burgelijk Wetboek*]. Translated by Soedaryo Soimin. Jakarta: Sinar Grafika, 2016.

Chim, Catherine Tay Swee Kian and Tang See. *Contract Law: A Layman's Guide*. Canada: Times Editions, 1989.

Chynoweth, Paul. *Advanced Research Methods in the Build Environment*. Chichester, West Sussex: John Wiley & Sons Ltd, 2012.

Harahap, M Yahya. *Hukum Acara Perdata*. Jakarta: Sinar Grafika, 2005.

Kansil, C.S.T., and Christine S.T. Kansil. *Pokok-Pokok Pengetahuan Hukum*

Dagang Indonesia. 2nd. Jakarta: Aksara Baru, 2013.

Mertokusumo, Sudikno. *Hukum Acara Perdata*. Yogyakarta: Liberty, 2006.

Miru, Ahmadi. *Hukum Kontrak & Perancangan Kontrak*. Jakarta: Rajawali Pers,

2018.

Peursen, C.A. Van. *Orientasi di Alam Filsafat*. Translated by Dick Hartono.

Jakarta: Gramedia, 1983.

Rizal, Yose. *Komponen-Komponen Dasar Korespondensi*. Jakarta: Aneka Ilmu,

2003.

Soekanto, Soerjono, and Purnadi Purbacaraka. *Perihal Kaidah Hukum*. Bandung:

Alumni, 1979.

Subekti. *Hukum Pembuktian*. Jakarta: Pradnya Paramita, 2010.

Sugiarto, Agus, and Teguh Wahyono. *Manajemen Kearsipan*. Yogyakarta: Gava

Media, 2003.

Sunggono, Bambang. *Metode Penelitian Hukum*. Jakarta: RajaGrafindo Perkasa,

2016.

Wijaya, Andika, and Wida

Peace Ananta. *Kompilasi
Surat/Kontrak Perjanjian
Terpilih.* Jakarta: Gramedia
Widiasarana Indonesia, 2018.
Yatimah, Durotul.
*Kesekretarian Modern dan
Administrasi Perkantoran.*
Bandung: Pustaka Setia, 2013.