



## LEGAL PROTECTION FOR EDUCATORS AS LECTURERS FOR OBTAINING LABOR RIGHTS

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### ABSTRACT

Legal protection for all workers/employees, especially for lecturers who work under foundations, is absolutely necessary, considering that there are still many cases involving universities and foundations. These problems still haunt lecturers, so there needs to be a joint effort to minimize existing problems. Even though there are already regulations governing the relationship between workers/laborers and employers, in practical terms they have not yet been fully implemented. This is related to several problems, one of which is the position of lecturers at the subordinate level more than the foundation. This phenomenon will not occur when educators take advantage of legal protection that has been regulated in legislation. This study will elaborate on legal protection for workers, especially for educators. The research method used is a normative juridical approach using a statutory approach. The result is legal protection for educators as stipulated in Law Number 21 of 2000 concerning Trade Unions, in particular regarding the purpose of the formation of trade unions. In addition, Law no. 13 of 2003 concerning Manpower has protected workers/employees, including educators, namely through trade unions/employees.

Keywords: **Educator, Job, Legal Trade Union.**

### 1. INTRODUCTION

Indonesia is a developing country which is currently trying to become a developed country by increasing development in all sectors of life, including development in the economic and education sectors. Development in the economic and education sectors is important because it is one of the supporting factors for the realization of national development that leads to improving the welfare of the people's lives. Economic development is very important for a country, this can be seen from the past history where no country is economically advanced if it does not carry out the development of its industrial system first.

In Indonesia, the development of the industrial system is part of the national development which is carried out based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The objective of the development of the industrial system is to improve the quality of the workforce and increase protection for workers and their families, as well as increase the protection of workers and their families. welfare of the workforce and their families while still upholding human dignity, while accelerating the pace of Indonesia's economic growth. However, if the slow economic growth will have an impact on people's lives, this will cause high unemployment rates, an increase in the number of poor people, and job opportunities are increasingly difficult to obtain. While on the other hand, The number of job seekers is increasing over time. So that human resources in Indonesia are only superior in terms of quantity without being supported by superiority in quality. It turns out that one of the factors behind the slow economic growth is the low level and quality of one's education.

If viewed from the side of the working relationship, Educators as Lecturers are appointed and placed by the organizing body, namely the Foundation. Related to the

placement, there are important things that must be observed by education staff or lecturers who are appointed and placed by the organizing body, namely the agreement contained in the work agreement or work agreement in accordance with the provisions of the legislation, in particular Law no. 13 of 2003 concerning Manpower<sup>4</sup>. Considering that both parties have been bound in an agreement, both parties are voluntarily obliged to carry out the agreement in earnest and must be carried out in good faith, not just written on a piece of paper which is only a formal agreement.

The employment relationship that is built between lecturers as educators and the education administration body cannot be seen from one law alone, but must be seen from other laws, including the law on teachers and lecturers. This needs to be done so that the main tasks and functions of lecturers can be in line with the provisions stipulated in the legislation and not only place lecturers as a means of production for the sake of making profits for the Foundation.

When referring to the provisions stipulated in Law no. 14 of 2005 concerning Teachers and Lecturers, the position of educators is very respectable. This is in financial form on a regular basis in accordance with the laws and regulations<sup>5</sup>. Meanwhile, the Manpower Law does not use the term “salary”, but “wages” to refer to remuneration. See the definition of wages in Article 1 number 30 of the Law. No. 13 of 2003.

In order to realize the goals and place the position of lecturers as professional educators, joint efforts are needed between all elements, especially education providers. The implementation of higher education as part of the national education system cannot be separated from the participation of the community, especially in its management, where tertiary institutions can be established by the community by forming an organizing body with a non-profit principle. This principle also provides an understanding that lecturers and other education personnel cannot be treated the same as workers/workers in a profit-oriented company.

But unfortunately, not all employment relationships can run smoothly. This can be seen from the hierarchy that occurs between lecturers and education organizing bodies. Lecturers are still often seen as being in a weaker position than the education administration body. Therefore, lecturers as educators must really know the rights and obligations that have been regulated and protected by law.

Based on the above background, there are several problems that will be investigated, namely how the legal protection for lecturers in order to obtain employment rights and obligations and how the strategy so that lecturers have an equal position with the education administration body.

## **2. DISCUSSION**

### **2.1. Legal Protection Against Lecturers**

#### **Position of Lecturer in Employment Law**

The strength and enthusiasm of the implementation of education is increasing with the promulgation of various laws and regulations related to the implementation of education<sup>7</sup>. The emergence of these laws and regulations still raises various problems that ensnare the world of education, even though many aspects have been regulated in it. One of the problems that arise is the position of lecturers as professional educators whose existence and placement are based on work agreements between employers and job recipients.



There are various definitions of work agreements, both those put forward by legal scholars and by laws and regulations, including:

- a. One of the definitions of an employment agreement is defined by Shamad, he argues that "A work agreement is an agreement in which a person binds himself to work for another person in return for wages in accordance with the promised or mutually agreed terms";
- b. Law No. 13 Year 2003

About Employment defines:

"A work agreement is an agreement between a worker/worker and an entrepreneur or employer that contains the terms of work, rights and obligations of the parties";

- c. Government Regulation of the Republic of Indonesia Number 37 of 2009 concerning Lecturers defines work agreements as follows:

"A work agreement or collective bargaining agreement is a written agreement between a lecturer and a higher education provider or a higher education unit that contains working conditions and the rights and obligations of the parties with the principles of equality and equality based on the laws and regulations".

The provisions stipulated in the article above indicate that there is an equal position between lecturers and the organizing body as a result of an agreement between the two parties, as stipulated in the Civil Code. Whatever the contents of the work agreement between the lecturer and the foundation depends on the agreement of both parties, as long as it does not conflict with the laws and regulations, decency and order. This is commonly referred to as freedom of contract<sup>1</sup>. The principle of freedom of contract is regulated in Article 1338 paragraph (1) BW with due observance of Articles 1320, 1335, and 1337 BW.

Although the legal relationship that is built between lecturers and education providers is essentially the same in the engagement, what makes the difference is the rights and obligations of each party. The phrase "appointment and placement" if interpreted grammatically, then there is an element of "order" in it or in other words a form of delegation of authority because the entrepreneur has the right to place workers/laborers in any place as desired by the entrepreneur. Based on this, the position of the lecturer seems to be unequal to the organizing body where the legal relationship that is born in the form of "gift of work" contains "orders" from the employer to the employee.<sup>2</sup>. Regarding the position of lecturers in labor law, it can be seen from Law no. 13 of 2003 concerning Manpower defines: "Employment relationship is the relationship between the entrepreneur and the worker/labourer based on a work agreement, which has elements of work, wages, and orders".

Some of the definitions put forward in Law no. 13 of 2003 concerning Manpower Article 1 points 3 and 4 which states that:

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<sup>1</sup>Subekti, *Covenant Law*, Jakarta: Intermasa, 1979, p. 13.

<sup>2</sup>The reason that workers/labourers have a more subordinate position than employers can be seen from the working relationship that is built. Based on

1. "Worker/labor is any person who works by receiving wages or other forms of remuneration;
2. Employers are individuals, entrepreneurs, legal entities, or other entities that employ workers by paying wages or other forms of remuneration."

The provisions in the article above can be interpreted that anyone, both individuals and groups, who binds himself in a work agreement or collective agreement with other parties, both individuals and business entities, then there has been a relationship between the employer and the worker. Therefore, it must be admitted that private lecturers are the same as workers/workers, precisely skilled workers.

## 2.2. Legal Protection Against Lecturers in the Law of Employment.

Lecturers as a profession need guarantees and protection through certain laws or regulations. This is very important so that in addition to getting a sense of security, they also have clarity about their rights and obligations, what they can and cannot do, and what other parties can and cannot do to them, both as human beings, educators, and workers. . This rule becomes a reference for the course of the working relationship between lecturers as workers and foundations as employers, including legal protection.

Along with the development and dynamics of state life in Indonesia, the labor regulations regulated in the Civil Code are deemed to be more liberal in nature in accordance with the philosophy of the state that made them, so that if applied it will not be in accordance with the personality of the Indonesian nation.<sup>3</sup> This condition requires the state (Government) to provide proper legal protection to workers/laborers and their families in order to obtain their labor rights in line with the development of the business world.<sup>4</sup> On this basis, laws and regulations related to employment emerged.

One of the experts in Indonesian Law who defines "legal protection" is Soedikno Mertokusumo, he argues that:

"Legal protection is a guarantee of rights and obligations for humans in the context of fulfilling their own interests and in relationships with humans"<sup>5</sup>.

One way to see the preventive legal protection provided by the state is to look at the agreement or agreement before committing an act, including the work agreement made by the worker/worker with the entrepreneur, which will be used as a basis or further footing. Related to this preventive protection, there are other

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<sup>3</sup>Then Husni, Indonesian Labor Law Revised Edition, Jakarta: Raja Grafindo Persada, 2010, p. 21. An example of the liberal nature of the Civil Code can be seen from Article 1602 which states "No Wages must be paid for a period of time as long as the worker does not carry out the work". This article will certainly be used by the authorities to do whatever they want to interpret the clause "not carrying out the work".

<sup>4</sup>See Law no. 13 of 2003 concerning Employment, the dictum considering the letter "d" which states "that the protection of workers is intended to guarantee the basic rights of workers/laborers and guarantee equal opportunity and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families on a permanent basis. pay attention to the development of the progress of the business world.

<sup>5</sup>Sudikno Mertokusumo, Introduction to Law, Yogyakarta: Liberty, 1991, p. 40. 15 Muchsin, Legal Protection and Assurance for Investors in Indonesia, Surakarta: Magister



important things that must be considered, namely the existence of lecturers as educators who have several differences with rough workers.

Based on Law no. 12 of 2012 concerning Higher Education, lecturers are educators who are placed based on an agreement. This can be traced from the provisions of Article 70 paragraphs (2) and (3) of Law no. 12 of 2012 concerning Higher Education which states:

- (1) The appointment and placement of lecturers and education staff by the organizing body is carried out based on a work agreement or work agreement in accordance with the provisions of the legislation;
- (2) The organizing body as referred to in paragraph (2) is obligated to provide basic salary and allowances to lecturers and education staff in accordance with the provisions of the legislation.

Meanwhile, the discussion of work agreements can be seen in Law no. 13 of 2003 concerning Manpower, which is contained in several articles. Article 52 paragraph (1) states:

- (1) The employment agreement is made on the basis of:
  - a) Both side agreement;
  - b) Ability or ability to perform legal actions;
  - c) The existence of the promised work; and
  - d) The agreed work does not conflict with public order, decency and applicable laws and regulations.

Meanwhile, Article 53 states that all matters and/or costs required for the implementation of making a work agreement are carried out by and are the responsibility of the entrepreneur.

Further provisions regarding work agreements can be seen in Article 54 paragraph (1) which states:

- (1) A written work agreement shall at least contain:
  - a) Name, company address, and type of business;
  - b) Name, gender, age, and address of the worker/labourer;
  - c) Position or type of work;
  - d) Place of work;
  - e) the size wages and the method of payment;
  - f) Working conditions that contain the rights and obligations of the entrepreneur and the worker/labourer;
  - g) Start and run the validity period of the work agreement;
  - h) Place and date the work agreement was made; and
  - i) Signatures of the parties in the employment agreement.

In order to realize a fast, precise, fair and cheap settlement, the settlement of industrial relations disputes through the Industrial Relations Court (PHI) is limited in its process and stages by not opening the opportunity to file an appeal to the Court of Appeal.

The High Court, the decision of the Industrial Relations Court at the District Court concerning disputes over rights and disputes over termination of employment can be directly appealed to the Supreme Court. While the Court's decision

Industrial Relations at the District Court concerning disputes over interests and disputes between trade unions/labor unions within the same company are decisions of the first and final level which cannot be appealed to the Supreme Court.<sup>6</sup>

Disputes that arise as a result of the existence of a working relationship do not only dwell on cases that are the authority of the Industrial Relations Court alone, but various other issues that do not escape the scourge of lecturers, one of which is a crime committed by the foundation against lecturers. One form of crime that is often committed by employers to workers/labor is paying workers wages lower than the minimum wage and preventing workers from forming unions.<sup>7</sup>

Regulations regarding employment crimes can be seen in the provisions of Articles 183 to 189 of Law no. 13 of 2003 concerning Manpower. This provision gives lecturers the right to report criminal acts committed by the foundation to the police if there are provisions for criminal acts that are violated, up to the next level examination, namely the decision of the District Court. However, technically there are many things that need to be resolved if the entrepreneur is a legal entity<sup>8</sup>.

### **2.3. Strategy for Lecturers to Have the Same Position as the Education Organizing Body**

The provisions in the laws and regulations place the parties on an equal footing in an agreement. However, at the level of implementation, there are still some cases whose implementation has not been in accordance with the laws and regulations and collective agreements. This happens because the bargaining value of workers/workers is low in the eyes of employers, as well as the fact that the number of workers with available job opportunities is still not comparable, giving rise to an understanding that employers treat workers/workers arbitrarily because there are still many workers who replace them if workers/workers are the worker is dismissed.

The biggest fear for companies is that when their “smooth game” employs workers/laborers not in accordance with the provisions of laws and regulations, it is known to the public, such as paying wages below the UMK, not providing health insurance, providing overtime that is not eligible to be paid, requiring workers (lecturers)

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<sup>6</sup>Elucidation of Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes in General Provisions Number. 10.

<sup>7</sup>One such case is the decision of the panel of judges at the Bangil District Court, East Java, which sentenced a furniture entrepreneur to one year in prison. The entrepreneur is declared proven to have committed a labor crime by paying low wages for his workers and preventing his workers from joining association. In addition to imprisonment, the businessman was also sentenced to a fine of Rp. 250 million.

<sup>8</sup>Based on Law no. 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations. Article 1 states that foundations are legal entities.

Legal consequences of the foundation as an entity



work more than the hours that have been set based on the applicable law under the pretext of loyalty, and so on. Such conditions trigger “resistance” from workers/workers (lecturers), although on a less massive scale. So, it is not surprising that some companies are trying to prevent workers/workers from gathering strength.

Everyone is free to form or participate in membership or become administrators of organizations in social life within the territory of the Republic of Indonesia. However, how this freedom is used, what are the conditions and procedures for the formation, development, implementation of activities, supervision, and disbandment of the organization must still be regulated in more detail, namely by law and its implementing regulations.<sup>9</sup>In other words, the provisions contained in a statutory regulation related to trade unions are essentially to set boundaries between what a trade union/labor union can do and what a trade union/labor union cannot do.

Trade unions are a means of channeling to convey the desires, hopes, complaints, suggestions or criticisms of workers to employers. In the modern management system, it is very important to emphasize the importance of a humanitarian approach to foster employee motivation. In addition, the semi-formal and non-formal channels that exist in the company are a very effective mechanism beyond the hierarchical structural path. In this case the trade union functions as a semi-formal channel. Through the union, expectations, instructions and information from the company can be conveyed properly to workers<sup>10</sup>.

In addition, the benefits of forming a trade union or joining as a member of a trade/labor union, especially those related to or in direct contact with the situation of workers/labor, among others<sup>11</sup>:

- a. Establishing communication between workers/ laborers and workers/ laborers who incidentally have the same interests and equal rights;
- b. Obtain advocacy or defense of problems that are detrimental to workers if the employer or management takes actions that are not in accordance with the labor rules that have been regulated in the legislation;
- c. Moving together to fight for the interests or rights of workers/ laborers will be easier to achieve;
- d. Facilitate workers/laborers in terms of communication to employers/company leaders, because there are workers/labor union administrators who will accommodate interests in accordance with the laws and regulations.

Meanwhile, the function of trade unions/labor unions according to the provisions stipulated in Law no. 21 years 2000 About Trade unions/labor unions can be seen

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<sup>9</sup>Jimly Asshiddiqie, “Regulating Freedom of Association in the Law”, accessed from <http://jimlyschool.com/read/analysis/274/set-freedom-unionize-in-Constitution/> on the 5th November 2016 at 17.30. Arrangements regarding material or issues outlined by legal provisions that form the basis for the issuance of lower or more specific regulations are generally referred to as organic laws and regulations.

<sup>10</sup>Bahder Johan Nasution, “Functions of Freedom of Association for Workers in Pancasila Industrial Relations”, *Innovative Journal*, Volume VIII, Number I, 2015, p. 4-5.

<sup>11</sup>DPC. KSPSI Kab. Light, Benefits and Importance of Association, accessed through <http://kpspitangerang.blogspot.co.id/2015/02/manfaat-and-importance-union.html> on November 7, 2016, accessed at 16.05.

in Article 4 which states: “(1) Trade unions/labor unions, federations and confederations of trade unions/labor unions laborer aims to provide protection, defense of rights and interests, as well as improving proper welfare for workers/laborers and their families.

(2) In order to achieve the objectives as referred to in paragraph (1), trade unions/labor unions, federations and confederations of trade unions/labor unions have the following functions:

- a. As a party in making collective labor agreements and settling industrial disputes;
- b. As representatives of workers/labor in cooperation institutions in the field of manpower according to their level;
- c. As a means of creating harmonious, dynamic, and fair industrial relations in accordance with the laws and regulations valid invitation;
- d. As a means of channeling aspirations in fighting for the rights and interests of its members;

The law clearly mandates companies, in this case the foundation that oversees the education administration body, not to prevent lecturers from forming trade/labor unions. But unfortunately until now it is still very rare to find a union of lecturers who are members of the education administration body. This could happen because the lecturer union is still not familiar in Indonesia. In fact, judging from the understanding and knowledge possessed by a lecturer, of course the lecturer union formed by lecturers and/or education staff is easier to carry out elegant actions, in line with legal corridors, and has a greater success rate.

### 3. CLOSING

Lecturers have an equal position with the foundation in accordance with the work agreement made by both parties. Legal protection given to lecturers can be seen in 2 (two) ways, namely: First, preventive through an agreement made before the lecturer works at the university; Second, repressive through the Industrial Relations Court (PHI).

The strategy so that lecturers have an equal position sociologically is to form a labor union. Trade unions/workers have many benefits and objectives, even the existence of trade unions/workers is protected by laws and regulations, even preventing workers/workers from forming trade unions/labor is a labor crime.

In this study, the author also suggests that lecturers should form a trade union/labor union so that employers (the foundation) do not do what they want.

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