

THEORY AND PRACTICE

Law
Towards Era 5.0

Sebagai negara hukum, prinsip hukum dan asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah. Mereka memerlukan keadilan.

Tujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu, pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan. Namun, dalam implementasinya, pemberian bantuan hukum untuk mencapai keadilan masih rendah.

Uraian tersebut adalah salah satu pokok penting yang dibahas dalam buku ini. Pokok penting lainnya dapat Anda temukan dalam buku ini yang terbagi menjadi sembilan belas bab. Buku ini diterbitkan sebagai bacaan positif mengenai penerapan hukum di Indonesia. Selamat membaca!

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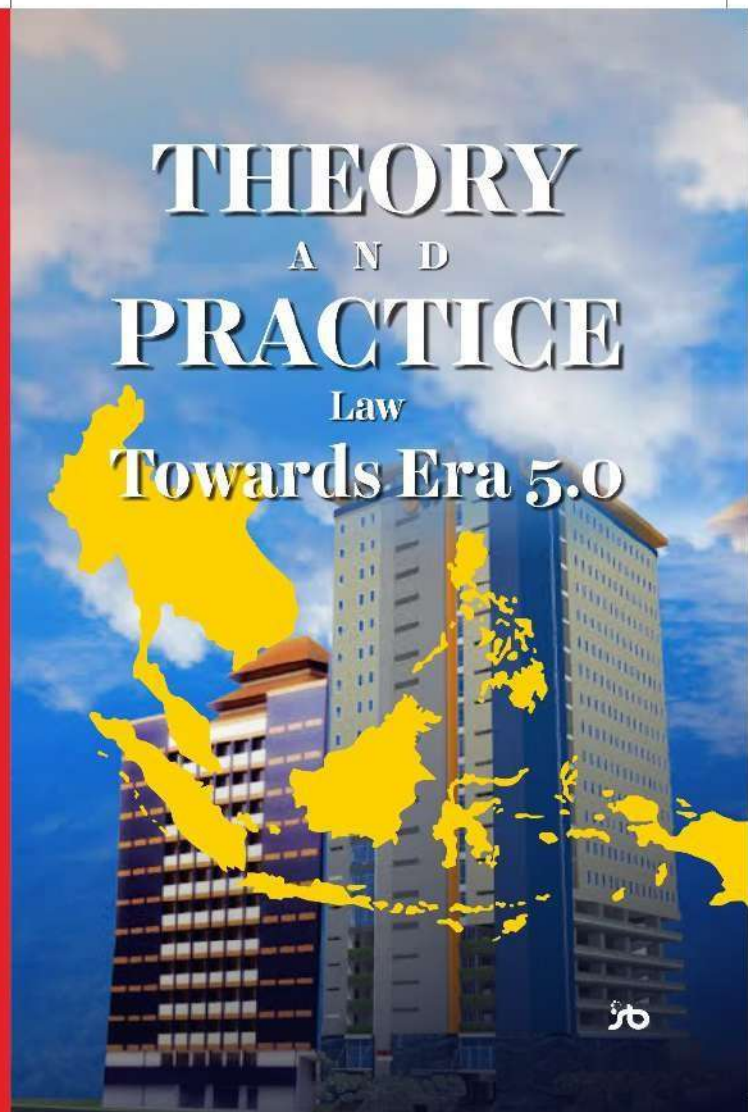
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KATA PENGANTAR

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Indonesia, sebagaimana dinyatakan dalam Pasal 1 Ayat 3 Undang-Undang Dasar 19fi5, menjelaskan posisinya sebagai negara hukum. Dalam sebuah negara hukum, prinsip hukum, asas yang dianut adalah bahwa setiap orang dianggap mengetahui hukum dan peraturan pada saat diundangkan; ketidaktahuan akan hukum tidak dapat dimaafkan. Ketidaktahuan akan hukum umumnya dialami oleh kelompok masyarakat yang tidak mengenyam pendidikan tinggi atau mereka yang berada dalam kategori ekonomi rendah.

Mereka memerlukan keadilan. Lujuan dari keadilan adalah untuk memastikan bahwa hukum tidak hanya terbatas pada kelompok tertentu, karena menempuh jalur hukum, atau mencari mencari keadilan melalui jalur hukum dapat memakan biaya yang mahal. Oleh karena itu pemberian bantuan hukum secara cuma-cuma kepada masyarakat miskin merupakan salah satu bentuk pemerataan keadilan.

Pasal 3fi Ayat 1 Undang-Undang Dasar 19fi5 menekankan kewajiban negara untuk hadir dalam kehidupan masyarakat.

Kehadiran ini menegaskan bahwa negara harus memastikan bahwa setiap warga negara atau anggota masyarakat mendapatkan hak-haknya yang tanpa diskriminasi. Proses bantuan hukum dapat diakses secara langsung oleh masyarakat melalui interaksi dengan para bantuan hukum. Menurut Pasal 22 Ayat 1 Undang-Undang Nomor 18 Tahun 2003, advokat wajib memberikan bantuan hukum secara cuma-cuma kepada pencari keadilan yang tidak mampu. Hal ini mendorong lahirnya Peraturan Pemerintah Nomor 83 Tahun 2008 tentang Persyaratan dan Tata Cara Pemberian Bantuan Hukum Secara Cuma-Cuma.

Berkaitan dengan hal tersebut, buku berjudul *Theory And Practice: Law Towards Era 5.0* ini hadir sebagai bacaan positif mengenai penerapan hukum di Indonesia. Pembahasan buku ini terbagi ke dalam 19 bab. Adapun bab pertama membahas tentang "Obstacles In Implementing Passport Issuance Services In The State Of The Covid-19 Pandemic And Its Solutions (Case Study In Class 1 Immigration Office Non-Lpi Langerang)" ditulis oleh Novita Romauli Batubara, Iri Cahya Indra Permana, Gamal Abdur Nasir.

Bab kedua berjudul "Keabsahan Dokumen Elektronik Sebagai Alat Bukti Yang Sah Ditinjau Dalam Hukum Acara Perdata" yang ditulis oleh Perdi Kustiana, Syafrizal, Agus Darmawan. Bab ketiga "The Role Of The Langerang District Government In Implementing A Social Protection Program For Vulnerable Workers Based On Law Number 24 Of 2011 Concerning Social Security Implementing Agency" ditulis oleh Raddani, Ahmad, dan Upik Mutiara. Masih ada enam belas bab lainnya yang perlu Anda baca mengenai penerapan hukum di Indonesia. Selamat membaca!

Langerang, November 2023

DAFTAR ISI

PRAKATA.....	v
DAFTAR ISI	vii

» OBSTACLES IN IMPLEMENTING PASSPORT ISSUANCE SERVICES IN THE STATE OF THE COVID-19 PANDEMIC AND ITS SOLUTIONS (CASE STUDY IN CLASS 1 IMMIGRATION OFFICE NON-TPI TANGERANG).....	1
---	----------

Novita Romauli Batubara, Tri Cahya Indra Permana, Gamal Abdur Nasir

» KEABSAHAN DOKUMEN ELEKTRONIK SEBAGAI ALAT BUKTI YANG SAH DITINJAU DALAM HUKUM ACARA PERDATA	14
--	-----------

Perdi Kustiana, Syafrizal, Agus Darmawan

» THE ROLE OF THE TANGERANG DISTRICT GOVERNMENT IN IMPLEMENTING A SOCIAL PROTECTION PROGRAM FOR VULNERABLE WORKERS BASED ON LAW NUMBER 24 OF 2011 CONCERNING SOCIAL SECURITY IMPLEMENTING AGENCY	30
---	-----------

Raddani, Ahmad, Upik Mutiara

- » **LEGAL INTERPRETATION BY JUDGE IN CONSTITUTIONAL COURT DECISION NO.53/PUU-XV/2017 41**
Ika Siti Atikah, Tri Cahya Indra Permana, Ahmad
- » **LEGAL REFORM IN THE WAGE SYSTEM TO REALIZE JUSTICE FOR WORKERS AND EMPLOYERS IN ACCORDANCE WITH LAW NUMBER 6 OF 2023 CONCERNING THE DETERMINATION OF PERPPU NUMBER 2 OF 2022 CONCERNING JOB CREATION 56**
Moch Edi Priyanto, Auliya Khasanofa, Tri Cahya Indra Permana
- » **LEGALITY OF INTERRELIGIOUS MARRIAGES BASED ON MARRIAGE LAW NO.1 OF 1974 (COMPARATORY STUDY OF THE DIFFERENCES IN VIEWPOINTS OF JUDGES OF THE SOUTH JAKARTA STATE COURT AND THE CONSTITUTIONAL COURT) 88**
Nila Dita Pratiwi, Tri Cahya Indra Permana, Ahmad
- » **THE VALIDITY OF ELECTRONIC DOCUMENTS AS LEGITIMATE EVIDENCE IS REVIEWED IN CIVIL PROCEDURE LAW 102**
Perdi Kustiana, Syafrizal, Agus Darmawan
- » **THE EXISTENCE AND ROLE OF REGIONAL PEOPLE'S REPRESENTATIVE COUNCIL IN IMPLEMENTING LEGISLATION FUNCTIONS 114**
Rina Riniawati, Ahmad, Tri Cahya Indra Permana
- » **EFFECTIVENESS OF ROLE AND FUNCTION OF UNIONS WORKERS/LABOR AFTER IT HAPPENS JOB CREATION LAW 131**
Yayan Supyan, Upik Mutiara, Gamal Abdul Nasir

- » **THE BOARD OF DIRECTORS' ACCOUNTABILITY FOR VIOLATION OF FIDUCIARY DUTIES THAT CAUSED THE COMPANY TO BANKRUPT REVIEWED FROM SPECIAL CIVIL CASE NO.80/Pdt.Sus-PKPU/2022/PN.Niaga.Jkt.Pst 143**
Edwin, Dr. Ahmad, SH., MH. Dr. Upik Mutiara SH., MH
- » **ANALYSIS OF THE RELATIONSHIP BETWEEN THE WORKING PROCEDURES OF THE PUBLIC RELATIONS DIVISION AND THE CRIMINAL INVESTIGATION OF THE INDONESIAN NATIONAL POLICE BASED ON POLICE REGULATION NUMBER 3 OF 2018 IN PUBLIC INFORMATION SERVICES..... 156**
Reza Jihada., Dr. Ahmad, S.H., M.H., Dr. Tri Cahyo Indra Permana, S.H., M.H
- » **"ECONOMIC ANALYSIS OF LAW ON THE OBLIGATIONS OF LAWYERS IN PRO BONO LEGAL ASSISTANCE IN ACCORDANCE WITH ARTICLE 22 PARAGRAPH 1 OF LAW 18 OF 2003."..... 183**
Moh. Riefqi Saputra, Ahmad, Auliya Khasanofa
- » **THE POLITICS OF CRIMINAL LAW POLITICS IN THE IMPLEMENTATION OF NARCOTICS ABUSERS IN ARTICLE 54 BASED ON UU NO 35 OF 2009 CONCERNING NARCOTICS 192**
Novriyadi, Auliya Khasanofa, Ahmad
- » **KEDUDUKAN TIM KREATIF WALIKOTA UNTUK PERCEPATAN PEMBANGUNAN (STUDI KASUS DI KOTA PANGKALPINANG) 202**
Aldy Kurniawan, Ahmad, Auliya Khasanofa
- » **RELATIONS OF AUTHORITY BETWEEN THE GOVERNMENT AND THE VILLAGE GOVERNMENT FOR VILLAGE**

DEVELOPMENT218

Asep Nurman Jaenudin, Ahmad, Tri Indra Cahya Permana

- » **COLLECTIVE LABOR AGREEMENT (CLA) AS AN ACCUMULATION OF ACHIEVEMENTS AFTER THE ENACTMENT OF LAW NO. 6 OF 2023 CONCERNING THE STIPULATION OF GOVERNMENT REGULATIONS IN LIEU OF LAW NO. 2 OF 2022 CONCERNING JOB CREATION BECOMES LAW (CASE STUDY OF PT. ISTEM).....240**

Purwanto, Ahmad, Gamal Abdul Nasir

- » **POLICY REGULATION OF CRIMINAL ACTIONS IN THE EMPLOYMENT FIELD IN LAW NO. 6 OF 2023 CONCERNING ESTABLISHMENT OF PERPPU NO. 2 OF 2022 CONCERNING JOB CREATION INTO AN LAW.....256**

Trisnur Priyanto, Dr. Ahmad, SH., MH., Dr. Gamal Abdul Nasir, SH., M.Kn

- » **RULE OF REASON AGAINST DELAY NOTIFICATION OF SHARE ACQUISITION (CASE STUDY: DECISION ON CASE NUMBER 12/KPPU-M/2022)266**

Indri Pratiwi Siregar, Franky Ariyadi, dan Ahmad

COLLECTIVE LABOR AGREEMENT (CLA) AS AN ACCUMULATION OF ACHIEVEMENTS AFTER THE ENACTMENT OF LAW NO. 6 OF 2023 CONCERNING THE STIPULATION OF GOVERNMENT REGULATIONS IN LIEU OF LAW NO. 2 OF 2022 CONCERNING JOB CREATION BECOMES LAW (CASE STUDY OF PT. ISTEM)

Purwanto, Ahmad, Gamal Abdul Nasir

Master Law

Instroduction

Each country will continue to develop, make changes and developments. Changes from a country affect all matters related, both related to parties within the country or parties outside the country. In realizing development and development, it is necessary to have a planned and systematic effort. Lhis is done by parties who have responsibility, and are directly or indirectly related to the State. (Soepomo, 2001).

In the development process of a country, labor has an important role. Law No. 13 of 2003 concerning Manpower, among others, states that:

1. That national development is carried out in the context of the development of the Indonesian people as a whole and the development of the Indonesian people as a whole in order to create a society that is prosperous, just, prosperous, equitable, both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia;
2. Whereas in the implementation of national development, manpower has a very important role and position as the actor and objective of development;
3. Whereas in accordance with the role and position of the workforce, it is necessary to develop manpower to improve the quality of the workforce and their participation in development as well as to increase the protection of the workforce and their families in accordance with human dignity;
- fi. Whereas 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 while taking into account developments in the progress of the business world.

In employment there are three parties who have an interest. Employers, government and workers/labourers each have different interests. Basically, in the employment relationship there is a relationship between workers/laborers and employers and the government. In this working relationship, the parties need each other, because entrepreneurs cannot work alone in running

a business, and workers/laborers also need jobs. Entrepreneurs want to get profits in every business, workers/laborers need income from work that has been completed. The parties enter into a working relationship based on a work agreement either in writing or verbally. (Halim, 2000)

The success of a company is very dependent on its workers, the relationship between the company and these workers need each other, on the one hand workers need companies for where they work, on the other hand companies also need workers as a resource to deliver the company to achieve its goals. There is a need for manpower development to improve the quality of workers, and increase the protection of labor rights. Juridically-normatively guaranteeing the protection of labor rights has been regulated in laws and regulations both at the level of the constitution, laws and implementing regulations (Fahrojih, 2016). This is also a form of legitimacy that Indonesia is a state of law, not a state of power, as mandated by the Indonesian constitution Article 1 paragraph 3 of the 1955 Constitution of the Republic of Indonesia. (Kansil, 2015)

The constitution in Indonesia has guaranteed all forms of protection for workers/laborers, legal protection for these workers as a form of fulfilling basic rights that are inherent and must be protected by the constitution, this is as regulated in Article 27 paragraph (2) of the 1955 Constitution which explains that "Every citizen has the right to work and a decent living for humanity", and Article 28D paragraph (2) also states that "everyone has the right to work and receive fair and proper compensation and treatment in work relations".

The rules above are certainly not enough to accommodate problems within a company, especially regarding the rights of workers. It can be said that between companies and workers, a special legislation is needed to regulate the rights and obligations

of the parties. Rules regarding the relationship between employers and workers were previously regulated in the Manpower Act (hereinafter referred to as UUK).

As the times progressed, UUK was revised and changed to Law number 11 of 2020 concerning Job Creation (hereinafter referred to as UUCK). UUCK is also known as Omnibus law. UUCK was presented to answer the overlapping of existing rules. Furthermore, on December 30, 2022, President Joko Widodo issued Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Perppu Cipta Kerja). The Job Creation Law or Law Number 11 of 2020 concerning Job Creation (UU Ciptaker) law in Indonesia that was passed on 5 October 2020 by the Indonesian Parliament and promulgated on 2 November 2020 with the aim of creating jobs and increasing foreign and domestic investment by reducing regulatory requirements for business licenses and land acquisition.

However, in its implementation, the Job Creation Law has drawn criticism because it is feared that it will benefit company owners, capitalists, investors, and harm workers' rights and increase deforestation in Indonesia by reducing environmental protection. The series of demonstrations to reject this law are still ongoing and demand that this law be repealed. Even though it has been passed by the DPR, there are defects in the legislative process in the form of changes to the material content of the law, especially regarding the Collective Labor Agreement (PKB).

The rules regarding Collective Labor Agreements or worker contracts are contained in Articles 56 to 59 of the Job Creation Perppu. Regarding contracts, the Job Creation Perppu does not change the existing provisions in the Job Creation Law where neither of them limits the term of the Collective Labor Agreement as previously regulated by the Manpower Law. Based on Article 59

Paragraph 1 of the Job Creation Law, Collective Labor Agreements can only be made for certain jobs which, according to the type and nature or activities of the work, will be completed within a certain time, namely:

1. Work that is done once or is temporary in nature
2. The work is expected to be completed in the not too distant future
3. Seasonal work
- fi. Work related to new products, new activities, or additional products that are still in trial or exploration; or work whose type and nature or activities are not fixed.

In order for the relationship between the parties of the company and the workers to run well, it is necessary to have a company regulation that must be obeyed by the parties within the scope of the company. But the company regulations do not guarantee calm and smooth relations between the workers and the company, because company regulations are made and issued by the company itself, so they are still subjective. Therefore, the Company Regulations must be upgraded to a Collective Labor Agreement, in which in the Collective Labor Agreement both the company and workers are involved in the drafting process. It is hoped that with the existence of a collective labor agreement, workers can work in peace because they feel they are treated well with good working terms and conditions, welfare for workers and their families, which in turn can increase productivity, achievement and work efficiency.

Based on Article 59 Paragraph 1 of the Job Creation Law, Collective Labor Agreements cannot be held for permanent jobs. Rules regarding the types and nature of work that can use this Collective Labor Agreement have added to the existing provisions

in Law Number 13 of 2003 concerning Manpower. Lo note, the last point in 59 paragraph 1 was previously not in the Labor Law. Article 59 of the Job Creation Perppu has also abolished the provisions regarding the time limit for contract workers as previously regulated in the Manpower Law. Based on the Labor Law, companies can only enter into agreements

Discussion

Position of the Collective Labor Agreement (PKB) After the enactment of Law No. 6 of 2023 Concerning Job Creation

PKB can only be negotiated and drafted by a union that is supported by the majority of workers in the company concerned. Thus the parties or subjects that make the PKB are from the workers'/ workers' side represented by a trade/labor union or several trade/labour unions in the company and the entrepreneur or entrepreneur association. The purpose of this representation is so that workers have a stronger position in negotiating with employers because workers' union officials are generally chosen by people who are able to fight for the rights and interests of their members.

Based on the provisions of Article 1 number 21 of Law no. 13/2003 concerning Manpower ("Law No. 13/2003") which was last updated with Law no. 11/2020 concerning Job Creation ("UU No. 11/2020"), the Collective Labor Agreement (PKB) is defined as

"Agreements which are the result of negotiations between a Worker/Labour Union or several Worker/Labour Unions registered with an agency responsible for manpower affairs, and an Entrepreneur or several Entrepreneurs or an association of Entrepreneurs that stipulates the terms of work, the rights and obligations of both parties."

In addition to the definition of entrepreneur, there is also the notion of Employer, namely individuals, entrepreneurs, legal entities or other entities that employ workers by paying wages or other forms of compensation. This definition of Employer is meant to avoid people who work for other parties who cannot be categorized as entrepreneurs, especially for workers in the informal sector. So it can be concluded that entrepreneurs are in the form of individuals, while some entrepreneurs are in the form of associations, then associations of entrepreneurs are in the form of legal entities.

According to Law No. 13 of 2003 and Law No. 11 of 2020 in the case that in one company there is only one trade union/ labor union, the worker has the right to represent workers in negotiations on making a PKB with the employer if it has more than 50% (fifty) members. percent) of the total number of workers in the company concerned (Article 19 paragraph (1)). In the event that in one company there is only one trade union as referred to in paragraph (1) but does not have members of more than 50% (fifty percent) of the total number of workers/laborers in the company, the trade union/labor union may represent the workers in negotiating with employers if the union concerned has the support of more than 50% (fifty percent) of the total number of workers/laborers in the enterprise through voting (Article 19 paragraph (2)).

In the event that the support referred to in paragraph (2) is not obtained, the trade union/labor union concerned may re-submit a request to negotiate the PKB with the employer after the 6 (six) month period has passed from the voting by following the original procedure.

In addition to ending labor agreements because the time has expired, labor agreements can also end at any time, that is,

there is the possibility of asking the court to declare the labor agreement terminated due to coercive reasons, namely if it is not considered it will result in a feeling of injustice. In the collective labor agreement between the Labor Union and PL. ISLEM, it has been agreed that the agreement is still valid until the agreed time, as well as the legal basis used in this agreement, both parties agree to use Law Number 6 of 2023 as a legal umbrella. What is, it can maintain all the values or normative Collective Labor Agreement by making changes and adding value based on the Job Creation Law on PL. ISLEM. This is because the Job Creation Law itself still recognizes the PKB that has been agreed upon by both parties.

Supporting and Inhibiting Factors in the Process of Compiling a Collective Labor Agreement (PKB) After Law No. 6 of 2023 concerning the Implementation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation became Law.

The effectiveness of the role of PL ISLEM's Federation of Indonesian Trade Unions (FSPI) in implementing the Collective Labor Agreement (PKB) at PL ISLEM can be identified through several factors. In order for the regulations contained in the Collective Labor Agreement (PKB) to really work, there are three factors that influence them, namely:

1. Legal Rules Or Regulations Itself

This means the extent to which the Collective Labor Agreement (PKB) is clear and synchronous. It clearly means that the Collective Labor Agreement (PKB) does not give rise to multiple interpretations so that it does not cause conflict because of its interpretation. Synchronous means both hierarchically and horizontally there is no conflict. Horizontally the Collective Labor

Agreement (PKB) between the All Indonesian Workers Union (FSPI) of the PL ISLEM Work Unit also had no conflict because during the negotiation period the creation of the Collective Labor Agreement (PKB) had gone through adjustments so that the Collective Labor Agreement (PKB) was not contrary to other regulations in the company.

2. Enforcing or Implementing Officers

The success of the implementation of the Collective Labor Agreement (PKB) is largely determined by the officers who enforce or apply the Collective Labor Agreement (PKB) itself. Officers who enforce the regulations contained in the Collective Labor Agreement (PKB) at PL ISLEM consist of two elements, namely:

- a. Elements of the Trade Union, represented by the management of the Trade Union, especially in the area of advocacy
- b. Entrepreneur elements, represented by personnel, especially the Human Resource Development (HRD) section

In carrying out supervision and also enforcing regulations that have been contained in the Collective Labor Agreement (PKB), the officers who are more active are officers from the entrepreneur element. Officers from the employer's element carry out supervision and also take first action against minor violations committed, while officers from the trade union element are more concerned with taking further action based on reports from officers from the employer's element. Follow-up action that is usually given is coaching so that no more violations occur. Meanwhile, for problems that are

considered to be serious, the resolution steps go directly to the bipartite realm.

3. Adequate Facilities

What is meant by adequate facilities here are supporting facilities and infrastructure to enable the implementation of the provisions contained in the Collective Labor Agreement (PKB). Facilities are physical facilities that function as supporting factors to expedite the process of implementing the provisions in the Collective Labor Agreement (PKB), while infrastructure are other supporting factors outside of physical facilities that also aim to expedite the process of implementing the Collective Labor Agreement (PKB). The All Indonesian Workers' Union (SPSI) PL ISLEM Work Unit, which in this writing is the object of research, has adequate facilities and infrastructure to be able to carry out the provisions contained in the Collective Labor Agreement (PKB).

In each process of implementing the role, it is possible for factors to arise that can hinder the implementation of the role. In the process of drafting the Collective Labor Agreement (PKB) the Workers' Union carries out the expectations and demands of employees regarding work conditions for the company, while the company is always in the opposite position to the employees. This is what creates obstacles for trade unions in the process of making collective labor agreements (PKB). Obstacles that are clearly visible are experienced by the Federation of Indonesian Trade Unions (FSPI) Work Unit PL. ISLEM in making the Collective Labor Agreement (PKB) is "the difficulty of adjusting the opinions of members" who must agree to the Collective Labor Agreement (PKB) at PL. ISLEM. Other obstacles experienced by PL ISLEM's Federation of Indonesian Trade Unions (FSPI) in implementing

the Collective Labor Agreement (PKB) were “funding”, “employee actions” and “Head Office Policy”. According to the management of the Workers’ Union, these three things are the inhibiting factors for the role of the Workers’ Union in the implementation of the Collective Labor Agreement (PKB) at PL. ISLEM.

Conclusion

Based on the explanations in the previous chapters and research in the field, data and information have been obtained that describe the implementation of the renewal of the Collective Labor Agreement (PKB) between SPA FSPI and PL ISLEM company management. So from the explanation above several conclusions were drawn, namely in the application of the Collective Labor Agreement that was mutually agreed upon with the PL ISLEM Workers Union in the course of changing Law 13 of 2003 concerning Manpower to becoming Law No.6 of 2023 concerning Government Regulations in Lieu of Law -Law No. 2 of 2022 concerning Job Creation to become this Law has various dynamic impacts. This is because in this new Law there have been several changes which normatively become an impairment as well as a form of protection. However, in this case, both parties, namely between the employer and the SPA FSPI, felt that they understood enough that all the values contained in the Collective Labor Agreement (PKB) were a form of accumulated achievements from previous binding agreements that were not automatically degraded. the enactment of the new Law, namely Law Number 6 of 2023 regarding the Stipulation of Government Regulations in lieu of Law Number 2 of 2022 concerning Job Creation,

In order for the regulations contained in the Collective Labor Agreement (PKB) to really work, there are four factors that influence them, namely the Legal Rules or the Regulations

themselves; Enforcing Or Implementing Officers; and Adequate Facilities. In each process of implementing the role, it is possible for factors to arise that can hinder the implementation of the role. In the process of drafting the Collective Labor Agreement (PKB) the Workers' Union carries out the expectations and demands of employees regarding work conditions for the company, while the company is always in the opposite position to the employees. This is what creates obstacles for trade unions in the process of making collective labor agreements (PKB). Obstacles that are clearly visible are experienced by the Federation of Indonesian Trade Unions (FSPI) Work Unit PL. ISLEM in making the Collective Labor Agreement (PKB) is "the difficulty of adjusting the opinions of members" who must agree to the Collective Labor Agreement (PKB) at PL. ISLEM. Other obstacles experienced by PL ISLEM's Federation of Indonesian Trade Unions (FSPI) in implementing the Collective Labor Agreement (PKB) were "funding", "employee actions" and "Head Office Policy". According to the management of the Workers' Union, these three things are the inhibiting factors for the role of the Workers' Union in the implementation of the Collective Labor Agreement (PKB) at PL. ISLEM.

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