

Legal Analysis of the Fulfillment of Workers' Rights and Obligations Without an Employment Contract in Sole Proprietorships Based on the Employment Law (Case Study in Pekanbaru City in 2024)

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ABSTRACT

An oral employment agreement is an employment relationship made without the signing of an employment agreement. An oral employment agreement is sufficient with a statement that is mutually agreed upon by both parties and should be witnessed by at least two witnesses. Of the various existing regulations, there is no prohibition on the practice of oral employment agreements as long as the valid conditions of the agreement stated in Article 1601 (a) of the Civil Code are met. In the world of business, an oral employment agreement can be a practical option that remains valid and binding.

The main problem in this research is how to analyze the legal aspects of the fulfillment of workers' rights and obligations without an employment contract in a sole proprietorship, and what are the obstacles and barriers in the implementation of the fulfillment of workers' rights and obligations without an employment contract in a sole proprietorship based on the Employment Law.

The research method, based on the type and nature of the research, is empirical law, namely observational research using a survey. It is descriptive in nature, namely describing the legal analysis of the fulfillment of workers' rights and obligations without an employment contract in individual trading businesses based on the Employment Law, with data and data sources consisting of primary legal materials and secondary legal materials.

The results of this research and discussion address two issues: employment law and employment contracts. Although employment relationships without written contracts are common in sole proprietorships, this does not diminish employers' obligation to continue to fulfill workers' rights as stipulated in the Job Creation Law, particularly those related to social protection and worker welfare.

Keywords: Rights and Obligations, Labor, Workers/Laborers, Business Enterprise

1. Introduction

Every worker has the same rights and opportunities to obtain work and a decent living without distinction of gender, ethnicity, race, religion and political sect according to the interests and abilities of the worker concerned, including equal treatment for people with disabilities.¹ These rights arise because of the employment relationship between workers and the company and the government is present to provide a legal basis for regulating all matters related to employment.

¹ Hardijan Rusli, *Hukum Ketenagakerjaan Berdasarkan Undang-Undang No 13/2003 Tentang Ketenagakerjaan Dan Peraturan Terkait Lainnya* (Ghalia Indonesia, 2004).

An employment relationship is a relationship between a worker and an employer that occurs after an employment agreement. The Employment Law states that "an employment relationship occurs because of an employment agreement, that an employment relationship as a new form of legal relationship is born or created after an employment agreement between a worker and an employer. Employment law is the entire collection of legal rules or regulations regarding employment relationships that result in a person being personally placed under the orders of another person and the living conditions of the person directly involved and related to the employment relationship."²

According to Iman Soepomo in his book, an employment agreement is an agreement in which one party, the worker (laborer), binds himself to work by receiving wages from another party, namely the employer (entrepreneur), and the employer (entrepreneur) results in himself employing the worker (laborer) by paying wages.³ An employment agreement creates what is called an employment relationship, namely a relationship between the worker and the employer that occurs after the employment agreement is made. The Employment Law states that "an employment relationship occurs because of an employment agreement, that an employment relationship as a form of legal relationship is born or created after the employment agreement between the worker and the employer. The substance of the employment agreement made must not conflict with the existing employee agreement or collective labor agreement (KKB), likewise with the employer's regulations, the substance must not conflict with the employment agreement or collective labor agreement (KKB)."⁴ This means that in an employment relationship there are several things, namely the employer's rights (the employer has a higher portion than the employee), the employer's obligations (paying wages and the object of the agreement is work).⁵

Essentially, a company's process for hiring workers is based on agreements made in written or verbal agreements. Based on these agreements, the employment relationship between the company and the worker creates rights and obligations between the two parties. Examples of workers' rights include the right to wages, equal employment opportunities, training, job placement, appropriate working hours, health and welfare at work, leave, and the right to join a union. However, employment relationships based on verbal agreements often create legal problems, as workers are unaware of the status of their employment relationship with their employer. As a result, workers are often unclear about their rights as workers.

An oral employment agreement is an employment relationship made without the signing of an employment agreement. An oral employment agreement is sufficient with a statement that is mutually agreed upon by both parties and should be witnessed by at least two witnesses. From the various existing regulations, there is no prohibition

² Abdul Khakim, *Hukum Ketenagakerjaan Indonesia* (PT. Citra Aditya Bakti, 2014).

³ Imam Soepomo, *Pengatur Hukum Perburuhan* (Djambatan, 1983).

⁴ Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia* (PT. Raja Grafindo Persada, 2000).

⁵ M. Nurachmad, *Tanya Jawab Hak-Hak Tenaga Kerja Kontrak (Outsourcing)* (Transmedia Pustaka, 2009).

on the practice of oral employment agreements as long as the valid conditions for the agreement as stated in Article 1601 (a) of the Civil Code are met, namely:⁶

1. The word "work" exists;
2. The wages given;
3. Orders carried out by the employer.

In a sole proprietorship (sole proprietorship), which is a business owned and operated by a single person or family, the business owner is fully responsible for all aspects of the business, from capital and management to production and marketing to risk. Furthermore, they are entitled to all profits generated without having to share them with anyone else.

This type of business is typically micro or small-scale, has limited capital, uses simple technology, produces a limited number of goods or services, and employs a small workforce. Examples include furniture makers, woodworkers, home designers, street vendors, motorcycle taxi drivers, tailors, food stalls, grocery stores, meatball stalls, and so on. This unequal status is due to the fact that workers rely solely on their inherent strength to carry out their work. Furthermore, employers often view workers as objects in the employment relationship. Workers are seen as external factors in the production process, and some even consider employers to be *herr in haus* (as in, "this is my house, I can use it for whatever I want"). This means that the employer is the owner of the company, so every activity depends on the employer's wishes.⁷ This was also stated by H. P. Rajagukguk that workers are seen as objects. Workers are considered as external factors that have the same status as supplier customers or buyer customers who function to support the continuity of the company and are not internal factors as an inseparable part or as a constitutive element that makes the company.⁸

Therefore, in practice, researchers have found that workers/laborers, based on verbal employment agreements between workers/laborers and employers, do not detail their rights and obligations as stipulated by law. These verbal agreements only discuss the salary or wages received and a general overview of the type of work to be performed. Based on the above description, the researcher is interested in conducting this research.

2. Research Method

This research is an empirical law, namely observational research using a survey method. Observational research is data collection conducted by the author through direct observation of the research object through interviews with related parties.⁹ When viewed from its nature, this research is descriptive because the author wants to describe precisely the characteristics of an individual, a condition or a particular group

⁶ Aprilia Amalia, 'Analisis Yuridis Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang Ketenagakerjaan Dan Hukum Perjanjian', *USU Law Journal*, 5.1 (2017).

⁷ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Sinar Grafika, 2006).

⁸ H. P. Rajagukguk, *Peran Serta Pekerja Dalam Pengelolaan Perusahaan (Co-Determination)*, 2000.

⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Raja Grafindo Persada, 1986).

of symptoms to determine whether or not there is a relationship between a symptom and other symptoms in society with the aim of strengthening hypotheses, so that it can help in strengthening old theories, or within the framework of compiling new theories.¹⁰

The primary data sources in this study were interviews conducted through dialogue with respondents or sources identified by the author. Secondary data were obtained from laws and regulations, reading books and guidebooks, and other sources in the form of written materials, letters, or reports that were compiled into lists or published in books and related to this research.

3. Result and Discussion

3.1. Legal Analysis of the Fulfillment of Workers' Rights and Obligations Without an Employment Contract in Sole Proprietorships Based on the Employment Law (Case Study in Pekanbaru City in 2024)

An agreement can be made orally and in writing. Oral agreements are generally widely used among the community, for example in buying and selling, renting, etc. An oral agreement will become valid if the rights and obligations of the parties have been fulfilled. Meanwhile, written agreements generally relate to businesses with more complex legal relationships, and usually use authentic deeds or private deeds, and use the title of the agreement.¹¹ In making employment agreements, employers are given the freedom to determine the form of the employment agreement. This is explained in Article 53 Paragraph (1) of Law No. 13 of 2003 concerning Employment, which provides employers and workers with the opportunity to determine the type of employment agreement, whether verbally or in writing.

In the world of work, the relationship between workers and employers should be regulated clearly and transparently, so that the rights and obligations of both can be fulfilled fairly and in accordance with applicable laws to ensure that workers receive their rights, such as decent wages, adequate social security, reasonable leave rights, and protection of occupational safety and health in accordance with standards set by the state.

As stated in Article 54 and Article 56 paragraph (1) of Law No. 13 of 2003 concerning Manpower, namely that work agreements made in writing must contain clear conditions regarding the rights and obligations of the parties to avoid problems and disputes arising in the future and to provide clarity between employers and workers.

On the other hand, employers also need to run their businesses efficiently without neglecting their obligation to fulfill workers' rights in accordance with existing

¹⁰ Sulaiman Holid, *Pengantar Metodologi Penelitian Dasar* (ELKAP, 2007).

¹¹ Ariani F. S. R., Sitompul, & I. G. A. A, 'Kekuatan Mengikat Perjanjian Yang Dibuat Secara Lisan', *Kertha Semaya: Jurnal Ilmu Hukum*, 2.5 (2012).

regulations. Without clear regulations, employment relationships can become ambiguous, potentially leading to unfairness that harms one party, especially workers, who are often more vulnerable in such situations. This ambiguity can lead to disputes or violations of workers' rights that should be protected. However, in reality, it is common to find situations where employment relationships continue despite the absence of a written employment contract as a formal basis. This phenomenon is more common in sole proprietorships or other small businesses, where employers feel that creating a formal employment contract is unnecessary or too complicated. In these types of businesses, employment relationships often do not require written documents, relying more on direct communication, mutual trust, and shared understanding. While these relationships may appear more flexible and less structured, this does not mean that workers' rights are not recognized or ignored.

Based on an interview conducted by the author with the Mediator of the Pekanbaru City Manpower Office, Mr. Seno Teguh Prasetyo, it was stated that even though the employment relationship does not have a written contract, workers still have the right to be protected legally if their rights are violated. Indonesian labor law ensures equal protection for workers, whether they have a written employment contract or not, as long as there is evidence showing that the employment relationship is valid, such as workers who continue to work and receive compensation for their work.¹² Even in the absence of a written contract, the basic principles of employment law remain in effect, and workers can claim their rights through existing legal channels. Therefore, even in sole proprietorships or small businesses that do not use written employment contracts, harmonious and fair employment relationships can still be created, where both parties employer and employee can fulfill their obligations and rights in accordance with applicable law, without having to rely on a written contract as the sole legal basis. The legal remedies that workers with unwritten employment contracts can take in the event of an employment dispute are as follows:

1. Through bipartite negotiations between the employee and the employer.
2. Through tripartite negotiations, which are divided into mediation, conciliation, and arbitration.
3. Through court proceedings.

The Employment Law itself classifies employment agreements into two types: Fixed-Term Employment Agreements (PKWT) and Indefinite-Term Employment Agreements (PKWTT). A PKWT is an employment agreement between an employee and an employer for a specific period of time or for a specific job, while a PKWTT is an employment agreement between an employee and an employer for a permanent employment relationship. Because it is considered highly effective for employers, the PKWT system is more frequently used by companies. Employers who employ many employees must provide various welfare benefits such as health care benefits, termination benefits (PHK), work appreciation benefits, and so on. In other words,

¹² 'Wawancara Penulis Dengan Mediator Dinas Tenaga Kerja Kota Pekanbaru Bersama Bapak Seno Teguh Prasetyo'.

employing employees with PKWT (Fixed-Term Employment Contract) will reduce costs. A worker's status in an employment relationship is important for a worker to know, because a worker's status in an employment relationship greatly determines their rights and obligations within that employment relationship. The rights of a worker with PKWT status are certainly different from those of a worker with PKWTT status.

Based on the results of the interview conducted by the author with the Mediator of the Pekanbaru City Manpower Office, it was recorded that throughout 2024 there were 1,905 (one thousand nine hundred and five) workers registered as part of the PKWT and PKWTT in the Pekanbaru City Manpower Office, of which 1,858 people were recorded for PKWT and 47 people for PKWTT. He further stated that if workers and employers have reached a mutual agreement regarding the rights and obligations of the parties, but during the implementation a problem arises, then the parties can hold a consensus to seek a mutual agreement regarding the resolution, but if no agreement is found, then the injured parties can report to the supervisory department or to the civil realm in particular. Workers who work without an employment contract or written agreement receive the same protection as workers who have a written agreement, both in terms of rights, maternity/Eid leave, health insurance, and so on without any exceptions.¹³ Based on the results of the research conducted by the author and interviews with related parties, in practice the three trading businesses that were the object of the author's research have similarities in fulfilling workers' rights, namely:

1. Workers receive a fair wage commensurate with their work;
2. Workers can apply for cash advances when in urgent need of money, which will be deducted from their paychecks, as agreed between the worker and the employer;
3. Workers receive leave for illness or maternity leave;
4. Workers work according to their expertise;
5. Workers work without discrimination based on race, religion, ethnicity, or language;
6. Workers receive collective leave for holidays, as previously agreed upon between the worker and the employer;
7. Workers are permitted to be late, but only with a clear reason and for urgent/important matters;
8. Workers are given permission to go to the hospital for medical treatment if a family member is sick and contacts them during work hours;
9. Some workers are provided with accommodation and private vehicles to facilitate their work;
10. Workers receive a holiday bonus (THR) on every major holiday if they have worked for approximately six months;
11. Workers receive overtime pay if they work outside of normal working hours;
12. Employers provide incentives if sales exceed targets, such as giving each worker

¹³ 'Wawancara Penulis Dengan Mediator Dinas Tenaga Kerja Kota Pekanbaru Bersama Bapak Seno Teguh Prasetyo'.

ten (10) kg of rice or cash;

13. On some occasions, workers receive Eid gifts in the form of new clothes or prayer equipment.

Based on the above, even without a written employment contract, it is certain that the main rights of workers have been fulfilled. However, there is one worker's right that has not been fulfilled by employers, namely regarding health insurance or BPJS and BPJS Employment. Article 93 Paragraph (2) states that workers have the right to social security, which must be provided by employers. This social security includes various programs such as health insurance, work accident insurance, old age insurance, and pension insurance, which must be registered by employers even if there is no formal employment contract.

3.2. Obstacles and Barriers to the Fulfillment of Workers' Rights and Obligations Without an Employment Contract in Sole Proprietorships Based on the Employment Law (Case Study in Pekanbaru City in 2024)

In practice, many entrepreneurs who run sole proprietorships do not create written employment contracts with their workers. Even without written contracts, workers' rights and obligations must still be protected by Indonesian law, particularly the Manpower Law and the Job Creation Law. Interviews conducted with workers in the research area revealed that workers did not object to the lack of written employment agreements. However, employers also fulfill workers' rights and obligations, even if they are only verbal agreements. Despite existing regulations, various challenges and obstacles often arise in their implementation.

Regarding the fulfillment of workers' rights and obligations without a written employment contract in sole proprietorships, various obstacles and barriers arise from both employers and workers, despite clear legal provisions in the Job Creation Law (Law No. 11 of 2020). Several key factors hindering the implementation of these rights and obligations include a lack of understanding of legal obligations, limited employer resources, weak oversight, and reliance on informal employment relationships.

The following are several things that cause obstacles and barriers to the implementation of the fulfillment of workers' rights and obligations without an employment contract in sole proprietorships:

- 1) Lack of Understanding of Legal Obligations

Entrepreneurs who own small businesses, such as stalls or shops, are unaware and do not understand that they must create written contracts for their workers. Often, entrepreneurs, who run sole proprietorships, do not fully understand their obligations under applicable regulations, such as the Job Creation Law. This lack of understanding also often leads to the neglect of basic workers' rights, such as work-related accident insurance, old-age security, or death insurance. This clearly contradicts Article 93 of the Job Creation Law, which

requires every employer to provide protection to workers, even without a written contract. Because there is no contract, employers feel no need to formally document these obligations, even though workers' rights must still be fulfilled.

2) Limited Entrepreneur Resources

Another frequently encountered issue is the limited resources of sole proprietorships, particularly regarding the costs of registering workers with the Social Security Agency (BPJS Ketenagakerjaan). Many small businesses perceive the obligation to enroll workers in social security programs or provide other workers' rights as a significant financial burden. They argue that their businesses are small and have limited profit margins, making the additional costs of this obligation difficult to meet. This leads employers to neglect the obligation to enroll workers in social security programs.

3) Weak Supervision

Another significant obstacle is the lack of effective oversight of the implementation of these legal obligations. Sole proprietorships, often owned by individuals or small groups, are often not closely monitored by authorities. This lack of oversight from the Manpower Office or related institutions has led many entrepreneurs to fear defaulting on their obligations, as there are no immediate consequences or pressing sanctions. This contradicts Article 104 of the Job Creation Law, which stipulates administrative sanctions for entrepreneurs who fail to fulfill their obligations, such as warnings, fines, or even business license revocation.

4) Problem Solving Becomes Difficult Without Contracts Dependence on Formal Employment Relationships

One of the main characteristics of sole proprietorships is that the working relationship tends to be more informal and relies more on direct communication between the employer and employee. In many cases, the employer and employee work on a basis of mutual trust, without a binding written employment contract. While this more flexible working relationship can foster closeness between the two parties, it can also create uncertainty in terms of protecting workers' rights.

Without a clear employment contract, workers often do not know for sure what rights they should receive, especially in terms of benefits, social security, and other obligations. Even if workers experience a work accident or lose their job, they have difficulty claiming their rights because there is no document that clearly states what the employer's obligations are. Article 81 Paragraph (1) of the Job Creation Law states that workers' rights must still be fulfilled, even without a written contract, but without a clear agreement, problems like this often become disputes that are difficult to resolve.

5) Internal Factors of the Worker

That in the results of interviews with the Owner of Sifa Profil Pekanbaru (Mrs. Siti Asiah), Resto Madras (Mr. Iqbal), Bintang Lima Pekanbaru (Mrs. Rekha), most of them explained that there were several workers who did not want to register their BPJS with the relevant agency because the workers did not want their salaries deducted, even though the entrepreneur (the employer) had explained the intention of registering their BPJS employment for the benefit of the worker but the worker still did not want to. This means that the worker himself also has a different view from the employer. Or for other reasons.¹⁴

4. Conclusion

Fulfilling workers' rights and obligations in sole proprietorships without a written employment contract is a complex issue, despite clear regulations in the Job Creation Law. There are several important points to understand in this context.

Although employment relationships without written contracts are often found in sole proprietorships, this does not reduce the employer's obligation to continue to fulfill workers' rights in accordance with the provisions stipulated in the Job Creation Law, especially those related to social protection and worker welfare. Article 81 Paragraph (1) of the Job Creation Law emphasizes that employers are obliged to provide protection to workers even if there is no written employment contract. This protection includes the provision of social security, the right to decent wages, and other rights that are the employer's obligations.

However, in practice, various obstacles hinder the fulfillment of these obligations. Many employers struggle to fulfill these obligations, particularly regarding employee registration with BPJS Ketenagakerjaan and other social security programs. This is often due to employers' lack of understanding of their obligations and the limited resources of small and medium-sized enterprises.

Furthermore, oversight of the implementation of these obligations is also crucial. Article 104 of the Job Creation Law stipulates administrative sanctions for employers who fail to fulfill their obligations, such as warnings or fines. However, oversight of small businesses is often weak in the field. Therefore, stricter legal enforcement and tighter government oversight are essential for effective protection of workers' rights.

Thus, although the Job Creation Law provides clear regulations regarding the protection of workers' rights, gaps remain in its implementation. Therefore, it is crucial to raise employers' awareness of their obligations and strengthen oversight to ensure workers' rights are protected, particularly in the sole proprietorship sector, which is characterized by more flexible employment relationships.

Overall, the obstacles to fulfilling workers' rights and obligations without employment contracts in sole proprietorships are closely related to employers' lack of

¹⁴ 'Wawancara Penuksi Dengan Owner Sifa Profil Pekanbaru (Ibu Siti Asiah), Resto Madras (Bapak Iqbal), Bintang Lima Pekanbaru (Ibu Rekha)'.

understanding of legal obligations, limited resources, weak oversight, and informal employment relationships. Although the Job Creation Law stipulates employers' obligations to protect workers, implementation of these obligations in the field remains hampered by these various factors. Therefore, increasing employers' awareness of workers' rights and obligations, as well as more effective government oversight, is crucial to ensuring the protection of workers' rights in the sole proprietorship sector.

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