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Legal Findings on the Status of Doctors' Employment Relationships in Private Hospitals Based on Supreme Court Decisions

Faisal Rizza^{1*}, Mudiana Permata Sari²

^{1,2} Program Studi Relasi Industri, Politeknik Ketenagakerjaan, Indonesia

*Corresponding Author: mmutiara260@gmail.com

Abstract: Basically, a written cooperation agreement is important to bind one party to another. In practice, there are still those who do not use a written cooperation agreement in the implementation of cooperation such as the case of a doctor who does not have a cooperation agreement in any form so that if one party terminates cooperation without notice, then there is no basis that can be accounted for. Therefore, the Supreme Court in considering a fair decision decided to make an updated legal discovery regarding the status of employment relations that must be made in writing so that when a dispute arises it can be accounted for before the eyes of the law. It can be concluded that it is important for judges when deciding a case to take into account the laws that apply in society, and every decision must be made based on applicable law and the principle of justice.

Keywords: Co-operation Agreement, Doctor, Supreme Court Decision

INTRODUCTION

When Supreme Court judges conduct *legal rechtsvinding* or discovery by applying legal reasoning methods is an important stage in decisions in the context of the judicial world. This stage is important because it ensures that the judge's decision in a case or case is based on adequate legal reasoning and consideration, so as to provide justice for the disputing parties through court channels (Apippudin, 2019). The decision produced by the Supreme Court judge as Law In Action is considered appropriate if the decision becomes a new legal discovery in Indonesia.

Legal findings made by judges show an important role in the implementation of the legal system in Indonesia. This is because, because judges are basically law enforcers and justice who are obliged to explore, follow, and also understand the legal values that apply in society. Unfortunately, there are still many Indonesians who only know unwritten laws such as customary law. This is where the function of judges as formulators and inventors of legal values that are recognized in the community. Thus, judges are expected to be able to make decisions that are in line with the community's justice aspirations. In essence, this is the essence of legal discovery that is applied to overcome concrete legal problems in the midst of society (Shobirin, 2018).

One of the legal problems that occur in the midst of society today, especially in the world of employment, is the status of employment relations. At first, Indonesia only recognized one type of employment relationship, namely the general employment relationship. This employment relationship according to Law Number 13 of 2003 concerning Manpower Article 1 number 15 is that the employment relationship can be said when fulfilling elements of work, wages, and orders based on work agreements between employers and workers / laborers (Nabiyla Risfa Izzat, 2021). According to *the International Labour Organization*(ILO), this general employment relationship has three main characteristics, namely full-time employment, permanent employment, and work based on an employment agreement (International Labour Organization, 2015). However, due to changes in labor conditions in various parts of the world, resulting in a new type of employment relationship that is often referred to as *a non-standard form of employment* or uncommon employment relationship (Champeau, Arsac, Pineau, & Denyset, 2016). This uncommon employment relationship is then divided into four categories, namely a) *Temporary employment*; b) *Multi-party employment relationship*; c) *Part time and on-call work*; and d) *Disguised employment/dependent self-employment*. (International Labour Organization, 2015).

In Indonesia, workers who have unusual employment relationships are often classified as informal workers (Midayati, N, 2018). In some situations, this type of informal work can adapt to changes that occur in the Indonesian job market. On the contrary, there are various challenges that arise especially related to worker protection. Most informal workers often experience termination of employment due to not having a clear employment agreement. In fact, based on Article 1313 of the Civil Code states that an act in which one or more people bind themselves to one or more other people must have an agreement. One such agreement is a partnership agreement.

A partnership agreement is one of the agreements arising from the principle of freedom of contract. The legal principle of freedom of contract includes the principle that occupies a central position in an agreement and has a strong influence on the contractual relationship of the parties. In Indonesia, partnerships have been regulated through Government Regulation Number 44 of 1997 concerning Partnerships. The regulation includes provisions regarding the objectives, patterns, rights, and obligations of the parties involved in the partnership agreement, as well as the procedures for the partnership agreement mechanism. With this regulation, it is hoped that business actors can have a clear basis for carrying out partnership cooperation, so as to prevent potential losses for other business parties (Cinde Semara Dahayu, 2020).

Unfortunately, the regulation cannot be implemented properly as in the case experienced by a doctor who collaborates with a hospital. The relationship between the two is equal and is not a relationship between superiors and subordinates but is a "Business Partner" or Partnership Agreement. However, the implementation of the partnership agreement does not use a cooperation agreement either in writing or orally so in this case the supreme court judge in his decision ruled that the agreement did not include a partnership agreement but an indefinite time work agreement (PKWTT). It can be concluded that there has been a shift in the status of the employment relationship which was previously a Work Partner to a Permanent Worker. This is the legal finding (*rechtsvinding*) related to the employment relationship status of doctors in private hospitals.

Various studies that have been conducted by several researchers related to employment relationship status seem to focus more often on one employment agreement. In addition, no one has ever analyzed related to a completely different shift in employment relationship status such as a Partner changing to a Permanent Worker. This kind of research needs to be done because it can provide the latest legal findings for the legal system in Indonesia related to employment relationship status. In addition, it can be a cornerstone in providing protection

for parties involved in partnership agreements. Therefore, the purpose of this study is to analyze how there can be a shift in the employment relationship between partners and permanent workers and the rights that need to be obtained by the parties. The case occurred to one of the doctors at a private hospital who experienced a termination of employment which then the judge decided on a new legal discovery of the case. The formulation of the problem in this writing is:

1. How is the Industrial Relations Verdict Analysis Regarding the Employment Relationship Status of Doctors in Private Hospitals?
2. What is the analysis of the judge's consideration of the decision of the judge of the Industrial Relations Court?
3. How is the conformity of the a quo Ruling to the Laws and Regulations and the Theory of Legal Certainty?

DISCUSSION

Industrial Relations Court Ruling Regarding the Status of Employment of Doctors in Private Hospitals

The panel of judges of the Industrial Relations Court considered the sitting of a Doctor (hereinafter referred to as the plaintiff) against PT. A (hereinafter referred to as the defendant) has registered his lawsuit by the plaintiff in the clerkship of the Industrial Relations Court in District Court X on June 7, 2022.

The chronology of the case that occurred began with the termination of the employment relationship between the plaintiff and the defendant for efficiency reasons and the defendant had not paid compensation for the termination of the employment relationship. Initially, the plaintiff started working with the Defendant from 2007 to 2019 with a position as an Anesthesiologist and received a salary of Rp 35,000,000. Furthermore, in 2020 to 2022, the plaintiff was employed as a Part-Time Worker (*part time*). The Plaintiff feels that the Defendant has unilaterally terminated employment because the termination did not follow the provisions of Law Number 13 of 2003 Article 155 paragraph 1 which states that "***Termination of Employment without determination as referred to in article 151 paragraph 3 is null and void***". The determination in question is the determination of the Industrial Relations Dispute Resolution Institute. Therefore, the plaintiff demands the defendant to pay compensation of IDR 925,750,000 with details of severance pay 2 x 9 months wages; Award Money 1 x 5 Months Wage; and reimbursement money. In addition, the plaintiff also asked the defendant to pay 6 months of processing money because the defendant did not pay the plaintiff's wages from December 20219 to May 2022. This lawsuit follows SEMA number 3 of 2015 Formulation of the Civil Chamber (Special Civil) Industrial Relations Disputes Process Wages About the Limitation of the Length of Process Wages, namely After the Constitutional Court Decision No.37 / PUU-IX / 2011 related to process wages.

Based on the plaintiff's claim, the defendant gave an answer called exception. In its exception, the defendant explained that the plaintiff's claim was unjustified. The defendant clarifies and affirms that the plaintiff is only a Medical Services Partner of the defendant not as an employee of the defendant because the plaintiff is not included in the company's structural register. Furthermore, in 2020 to 2022, the defendant explained that the employment relationship status changed to *part time* because the defendant company carried out accreditation from the Accreditation Agency. It was found that the partners had to have proof of a cooperation agreement, so the defendant made a cooperation agreement with the plaintiff. Where the agreement is used as evidence of findings and submitted to the Accreditation Institution. The agreement has also been agreed by both parties without any coercion from anywhere.

Furthermore, the defendant asserted that from 2007 to 2022 the plaintiff collaborated with the defendant as an independent practitioner to carry out medical services under Anesthesiology, with medical service rates in accordance with the number of patients handled by the Plaintiff. Therefore, the defendant categorically refuses, if the defendant provides wages of Rp 35,000,000 every month and this has been proven by the defendant in the evidence presented in the trial. In addition, the defendant also firmly rejected the reason for termination of employment due to efficiency on the grounds that PT A was in need of more human resources because from 2018 to 2021 PT A increased hospital capacity and services by starting the physical construction of the building and adding company facilities and infrastructure. So that the reason for efficiency cannot be justified and also the defendant is unlikely to issue a Termination Letter because the plaintiff is not a permanent employee of PT. A, but instead using the Director's Decree regarding the termination of cooperation. In addition, the defendant also brought two witnesses to strengthen the reasons given.

Based on the chronology submitted, the legal consideration of the panel of judges is to use Law Number 13 of 2003 concerning employment because the case a quo occurred before the issuance of Law Number 11 of 2020 concerning Job Creation and refers to the principle of legality of the Panel of Judges. Before further, the panel of judges first considers the legal relationship and/or employment relationship that occurs between the Plaintiff and the Defendant in a quo case.

Employment relations based on Article 1 Number 15 of Law Number 13 of 2003 explain that "*Employment Relations is a relationship between employers and workers / laborers based on work agreements that have elements of work, wages, and orders*".

Based on the evidence of the Hospital Director's Decree, there has been a termination of cooperation carried out by the defendant against the plaintiff. In addition, based on the evidence and also the testimony of witnesses, the panel of judges concluded that between the plaintiff and the defendant there had been a legal relationship in the form of cooperation in the field of health services where the plaintiff was the party who provided health services, while the defendant as the party who used health services by paying fees to the plaintiff for each month. The legal relationship in question is not an employment relationship as Article 1 Number 15 of Law Number 13 of 2003, but a legal relationship in the form of a cooperative relationship.

Based on the evidence of the Cooperation Agreement between Private Hospitals and Part-Time Partner Specialists, in which the substation stated that the plaintiff was willing to work as a doctor according to the agreed schedule, while the Defendant was willing to provide fees to the plaintiff based on bills that had been collected from patients handled by the plaintiff. Therefore, the panel of judges decided to reject the plaintiff's claim in its entirety and the lawsuit in the case a quo worth Rp 150,000,000 and sentenced the plaintiff to pay all costs incurred in this case in the amount of Rp 660,000 based on Article 58 of Law Number 2 of 2004.

Legal Considerations of the Supreme Court Regarding the Decision of the Judge of the Industrial Relations Court

The Supreme Court took consideration of the use of law by previous courts, particularly in Industrial Relations Court Decisions. Supreme Court judges evaluate how the law is applied (*judex juris*) in such decisions. The evaluation is based on an analysis of legal facts conducted by previous courts in examining legal events or facts.

In the Supreme Court Decision regarding the status of employment relationship between the Doctor (hereinafter referred to as the Cassation Applicant) and the Hospital (hereinafter referred to as the Cassation Respondent) there are several facts that can be legally proven. First, the cassation applicant asked the Supreme Court Judge to declare the

termination of employment because the defendant/respondent of cassation carried out the efficiency of Article 164 paragraph (3). Second, punish the defendant/cassation respondent to pay compensation of Rp 925,750,000. Third, cancel the Decision of the Industrial Relations Court.

Based on the grounds of cassation and counter-memory of cassation, the Supreme Court held that the Industrial Relations Court had misapplied the law. In essence, the defendant/respondent of cassation acknowledges and confirms that the Plaintiff/Cassation Applicant has collaborated with the defendant company from 2007 to 2022 as an anesthesiologist to provide medical services in the field of anesthesiology to patients. In the mediation process, before the mediator the defendant/cassation respondent has also admitted and confirmed, that the Plaintiff/Cassation Applicant has worked in the company of the defendant/cassation respondent as a permanent worker from 2007 to 2019 and earned a monthly wage of Rp35,000,000. The argument is based on the advice of the mediator on the part of the employer.

In addition, the legal facts revealed in the trial are clearly known that from the beginning the Plaintiff/Cassation Applicant and the Cassation Defendant/Respondent did not have an employment agreement in any form and also did not have a part-time anesthesiologist cooperation agreement so that the legal implications were based on the provisions of Article 57 paragraph (2) and Article 59 paragraph (7) of Law Number 13 of 2003 concerning Manpower. It can be concluded that the employment relationship status between the Plaintiff/Cassation Applicant and the defendant/cassation respondent is legally bound by an Indefinite Time Work Agreement (PKWTT) or permanent worker from 2007 to 2020. Therefore, the Supreme Court in its decision granted the cassation application and overturned the previous Industrial Relations Court Decision.

Conformity of a Quo Decision to Laws and Regulations and Theory of Legal Certainty

Justice is also related to judicial power, because in a country that recognizes law as the foundation, judicial power becomes crucial as an institution that provides guidelines in strengthening and realizing positive legal content and provisions for judges when making decisions in court. Therefore, all legal norms created and promulgated by the state to protect public security and welfare and provide justice to the people, are closely related to judicial power where judges have the authority to give power to legal norms within the framework of laws and regulations (Samosir, 2019).

In this study, researchers adopted the theory of legal certainty. Legal certainty leads to efforts to achieve justice as the primary goal of law. One concrete form of legal certainty is law enforcement regardless of the social status of the perpetrator. This concept of legal certainty cannot be explained socially, but normatively. This means that legal certainty governs things that are logical and certain. This theory was first put forward by John Austin, who explained that the purpose of law is to protect human interests from anyone's interference. Human interests can only be protected through mutually agreed rules to govern their lives. The regulation must ensure equal rights among community members and be applied with justice (Muslihin, 2023).

Real legal certainty occurs when the implementation of a law is in line with existing legal principles and norms, this is in line with the Decision made by the Supreme Court so that it becomes a legal discovery about the status of employment relations between doctors and private hospitals. Legal findings arise due to a shift in the employment status of a doctor in a private hospital who apparently from the beginning of cooperation does not have an agreement in any form so that the agreement that is considered a partnership agreement does not apply in the eyes of the law. This is in accordance with Article 51 of Law Number 13 of 2003 concerning Manpower which states that the Work Agreement must be made in writing

or orally. An employment agreement made orally must also have a letter of appointment. In addition, based on article 1313 of the Civil Code which states that an agreement is an act by which one or more persons bind themselves to one or more other persons. A covenant is said to be valid if it consists of subjective conditions (agreement and competence) and objective conditions (a certain thing and lawful cause).

In practice, there are still those who do not use the cooperation agreement in writing in the implementation of partnership cooperation as in such cases. In such situations, partnership cooperation can still take place, but if there is a problem halfway between the parties involved in the partnership, and if one party terminates the cooperation without notice, then there is no basis that can be accounted for. Therefore, the Supreme Court in considering a fair decision decided to make an updated legal discovery regarding the status of employment relations that must be made in writing so that when a dispute arises it can be accounted for before the eyes of the law. It can be concluded that the Supreme Court Decision is in accordance with the Laws and Regulations and the Theory of Legal Certainty.

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Legal findings made by judges show an important role in the implementation of the legal system in Indonesia. This is because, because judges are basically law enforcers and justice who are obliged to explore, follow, and also understand the legal values that apply in society as well as the Supreme Court does in handling cases of employment relationship status between Doctors and Private Hospitals that do not have an employment agreement in any form so that when Doctors demand their rights there is no basis that can be accounted for by the House Private Pain. Thus, in order to decide a fair decision, the Supreme Court changed the cooperation relationship to an Indefinite Time Work Agreement (PKWTT), based on Article 57 paragraph (2) and Article 59 paragraph (7) of Law Number 13 of 2003 concerning Manpower.

The ruling is also in accordance with the theory of legal certainty proposed by John Austin. Legal certainty leads to efforts to achieve true justice when the implementation of a law is in line with existing legal principles and norms. It is very important for judges when deciding a case to take into account the laws that apply in society, and every decision must be made based on applicable law and the principle of justice. Therefore, the results of this study can be used as a reference for future research on the status of employment relations.

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