



The Position of Private Lecturers in Higher Education in the Perspective of Labor Law

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ABSTRACT The working relationship in industrial relations is subject to labor laws. Permanent Lecturer status remains the same as permanent workers based on Time Indefinite (PKWTT). While Lecturer do not remain the same as contract workers based on Specific Time Work Agreement (PKWT). Law No. 14 of 2005 on Teachers and Lecturers do not regulate in detail the rights and obligations of faculty and private universities, particularly in the context of social welfare and lecturer. But PTS is obliged to provide welfare and social security, especially for tenured faculty. Disputes between faculty with PTS is that the settlement of industrial disputes based on law No. 2 of 2004 on Industrial Relations Dispute Settlement. Keywords: <i>Blended Learning, Learning Outcomes, Science.</i>			

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INTRODUCTION

Every citizen has the right to work according to his talents, skills and abilities. The Constitution of the Republic of Indonesia (UUDNRI 1945) - guarantees 'every citizen has the right to work and a life worthy of humanity' (Drennan & Ross, 2019). The industrial sector spurs employment, but on the other hand, without knowledge and education, the existing workforce is not skilled. Education requires teachers and lecturers to transform knowledge to students (students) and or students. Its role is of course significant for the nation and state, in educating the nation's children and being able to live a decent life according to their skills.

Lecturer activities in carrying out their professional duties as professional teachers are bound by a working relationship with universities (Aurambout dkk., 2019; Azuma dkk., 2020; Bertrand dkk., 2018). The working relationship is that everyone who is bound in an employment relationship has the right to receive fair and proper compensation and treatment, this is called fair employment conditions.

The working relationship between lecturers and education providers, in this case Private Higher Education (PTS) in a number of cases turned out to be (*das sein*) not going well, for example there were lecturers who received demotion from lecturers who remained contract lecturers, there were lecturers who experienced unilateral termination of employment (PHK) and so on (Ahsan, 2020; Davidescu dkk., 2020). This means that a dispute occurred between the two parties and in fact the existing law became a compromise point to mediate the conflict.

Based on observations of several cases, disputes often occur beginning with unilateral Termination of Employment (PHK). In other words, since the beginning of the agreement between the PTS and the Lecturer, it is possible that it was not regulated in detail so that it contains legal and fairness uncertainties and eventually leads to a lawsuit at the Industrial Relations Court (PHI). This study will at least describe more clearly the position of lecturers in PTS from the perspective of Labor law (Caruana dkk., 2021; Flanagan, 2019; Ma, 2019). Labor law here means Law No. 13 of 2002 as an umbrella act in the field of employment, so that lecturers and PTS can understand their respective positions so that they can avoid disputes that arise in the future.

RESEARCH METHODOLOGY

The method used in this study is a normative juridical research method with a case approach (Peter Mahmud Marzuki, 2015), and the legal materials explored are primary legal materials in the form of the 1945 Constitution, Law No. 13 of 2003 concerning Manpower and Law No. 2 of 2004 Concerning Industrial Relations Disputes. The secondary legal materials consist of books, journals, theses, dissertations, and research results. Meanwhile, tertiary legal materials come from general dictionaries, legal dictionaries and encyclopedias. (Soerjono Soekanto and Sri Mamudji, 1985),

RESULT AND DISCUSSION

According to Article 1 number 4 of Law Number 14 of 2005, lecturers are professional educators and scientists with the main task of transforming (Li dkk., 2020; Triana dkk., 2019), developing and disseminating science, technology and art through education, research and community service. Higher education is a place where lecturers work as professional educators. Higher education is divided into 2 (two) types, namely State Universities (PTN) and Private Universities (PTS). (Abdullah Sulaeman, 2008). Private Higher Education (PTS) is carried out by private universities. Private universities are the efforts of the people who directly manage and administer formal education. (Fuad Ihsan, 2008). Tertiary institution is a unit of higher education as the provider of higher education in the form of academies, polytechnics, high schools, institutes and universities.' (Abdullah Sulaeman, 2008).

Based on the definition above, universities are obliged to provide compensation or salaries to lecturers and other income. PTS lecturer salaries are determined by each PTS, while PTN lecturer salaries with PNS status are determined by the government. In contrast

to civil servants who are subject to employment law, PTS lecturers can be legally grouped into the scope of current labor law.

When a person becomes a PTS lecturer, to mark the occurrence of a working relationship, there must be 3 (three) determining elements, namely the existence of work to be done, orders and wages. Without one of these three elements, there is no working relationship. (Koeshartono, M.F Sellyana and Juaedi, 2005). In relation to the form of the work agreement, the form should be free, meaning that the agreement can be made orally or in writing. Work agreements made in writing guarantee legal certainty. In terms of the validity period, work agreements are divided into work agreements for a certain time and work agreements for an unspecified time. Taking into account the method and capacity of the parties involved in an agreement as well as the binding power of the work agreement, work agreements are divided into individual work agreements and collective work agreements (Arts & Fleming, 2018; Ashford dkk., 2020; Bai dkk., 2020). The work agreement is evidence of a legal bond that regulates and gives birth to rights and obligations. The work agreement is something concrete and real. (Adrian Sutedi, 2009: A. Ridwan Halim and Sri Subiandini Gultom, 2005).

Lecturer status can be divided into 2 (two), namely permanent lecturers and non-permanent lecturers. Permanent lecturers are lecturers who work full time with the status of permanent teaching staff at certain higher education units. Conversely, non-permanent lecturers are lecturers who work part-time with the status of non-permanent teaching staff in certain higher education units (Dong dkk., 2021; Martén dkk., 2019; Raaphorst & Loyens, 2020). The two lecturer statuses indicate that the lecturer's working relationship with PTS is permanent or fixed and a certain time or not fixed. A permanent employment relationship is based on a work agreement for an indefinite period of time, while a non-permanent employment relationship is based on a work agreement for a specified time.

In addition to the status of permanent lecturers and non-permanent lecturers, with the same nature, lecturers consist of: **Regular lecturer**, Ordinary lecturers are lecturers who are appointed and placed as permanent staff at a particular tertiary institution. **Excellent lecturer**, Extraordinary lecturers are lecturers who are not permanent staff at the tertiary institution concerned. Foreign meghal isten. **Guest lecturer**, A guest lecturer is someone who is invited to teach at a university for a certain period of time.

The employment relationship can be based on a work agreement for a certain time or a work agreement for an unspecified time. All business sectors can use work agreements for an unspecified time, but not all jobs can use work agreements for a certain time. Certain time work agreements can only be based on a period of time or the completion of a certain job. Below are certain types and nature of work that will be completed within a certain time, namely: Work that is completed once or is temporary in nature, Work that is estimated to be completed in not too long time and no longer than 3 years, Seasonal work, Work related to new products, new activities or additional products that are still in trial or exploration.

A relationship is referred to as a working relationship if there are 3 (three) elements, namely: Work, Wages and Command. The duties of lecturers at PTS have fulfilled the elements of the work relationship above with jobs, wages and orders. Teaching is the task and work of educators (lecturers), attendance in carrying out the teaching and learning process on campus is work performance carried out because of orders and because there are jobs and orders, lecturers are entitled to wages (Anoum dkk., 2022; Gabriela dkk., 2022; Qureshi dkk., 2022). In this connection PTS is required to pay lecturer salaries. The amount of the lecturer's salary is determined by PTS in the work agreement or collective bargaining agreement. Most are determined by PTS because their bargaining position is not yet strong and there are also no specific rules governing how much the basic salary for lecturers is, while the UMR/UMP applies to workers. To get around this, the Government issued regulations for lecturer certification (serdos) such as teacher certification.

If you look at Law Number 14 of 2005 concerning Teachers and Lecturers it regulates the rights and obligations of PTN and PTS lecturers, but this law does not specifically regulate the rights of PTS lecturers (Kartel dkk., 2022; Keshav dkk., 2022). Law Number 14 of 2005 regulates more the rights of lecturers. In this law there are no detailed and specific provisions governing forms of compensation that can improve the welfare of PTS lecturers. The following are several provisions in Law Number 14 of 2005 relating to the economic rights of PTS lecturers, namely: The right to earn income above the minimum necessities of life and guarantees of welfare (Article 51 paragraph 1). Professional allowances, functional allowances, special allowances, honorary allowances and the contents of additional benefits with the principle of reward based on merit (Article 52 paragraph 2 in conjunction with Article 53 paragraph 1). The right to workers' social security (Article 58).

Even though the agreement is structured to guarantee the implementation of rights and obligations, it is not uncommon to find a denial of the agreement. In other words, potential work agreements lead to disputes. Disputes require resolution, including disputes between lecturers and PTS. Conflict in work relations is something that cannot be avoided, someone who is working is not always free from fears of termination of employment (PHK). Termination of employment is one of industrial relations disputes (Dewi S dkk., 2022; Firman dkk., 2022; Hikmah dkk., 2022), Termination of Employment will become a conflict if it is carried out contrary to law. (Yeltriana, 2018: Healthy Damanik, 2004).). For certain reasons, PTS can end the lecturer's working relationship, otherwise the lecturer has the right to end the working relationship with PTS. The dismissal of PTN lecturers with PNS status refers to the law that applies to PNS, while the dismissal of PTS lecturers is adjusted to the applicable laws. If PTS lecturers are dismissed by the government either as lecturers or as civil servants, PTN lecturer.

Case Example 1. Non-permanent lecturer layoffs

The College of Law (STIH) Manokwari accepted Sukardi, SH, M.Hum as an extraordinary lecturer or non-permanent lecturer on the basis of an application letter. The appointment as a lecturer was carried out in 2005, then on November 20 2006, STIH issued a letter returning Sukardi, SH, M.Hum to the Manokwari Police Unit.

Since then, Sukardi is no longer a lecturer at STIH. He explained that teaching as a lecturer is a personal matter, and has nothing to do with the police service. For this dismissal, Sukardi filed a lawsuit through the PHI with the following demands: Granted all of the Plaintiff's claims, Declare that the Defendant has committed an act that is contrary to the Labor Law, then it is qualified as an Unlawful Act, Ordered Defendant I and Defendant II to jointly pay:

Material loss of Rp. 6,001,200 (six million one thousand two hundred rupiah), with details as follows: Severance pay of Rp. 3,984,000 (three million nine hundred eighty four thousand rupiah), Medical/housing compensation of Rp. 592,200 (five hundred ninety two thousand and two hundred rupiah), The remaining wages if there is anything that has not been completed is Rp. 1,425,000 (one million four hundred twenty five thousand rupiah), The Plaintiff's salary and allowances amounted to Rp. 15,792,000 (fifteen million seven hundred and ninety-two thousand rupiah);

An immaterial loss of Rp. 100,000,000 (one hundred million rupiah); Ordering the Defendants to recover the Plaintiff's good name or identity through print and electronic media, because the Plaintiffs are in the right legal position, Rejected the application for dismissal submitted by Defendant I and canceled the letter of termination issued by Defendant I because it was contrary to applicable labor law, Punish Defendant I and Defendant II to pay all costs incurred in this case; or if the Panel of Judges is of a different opinion, request the fairest possible decision (ex aquo et bono).

Regarding this demand, STIH stated that Sukardi had no right to severance pay because he was only a non-permanent lecturer (honorary lecturer) who incidentally was a member of the National Police. In Decision No. 03/G/2007/PHI.Mkw dated 3 July 2007, PHI Manokwari decided as follows: In Exception:

-Rejects the exceptions of the Defendants to the Convention in their entirety. In the subject matter: Granted the plaintiff's lawsuit in part, Declare that Defendant I of the Convention and Defendant II of the Convention have committed acts against the law, Ordered Defendant I of the Convention and Defendant II of the Convention to jointly pay the remaining outstanding wages of Rp. 1,425,000 (one million four hundred and twenty five thousand rupiah) to the Convention Plaintiffs, Stating the dismissal letter issued by T
IN RECONVENTION:

Granted the lawsuit of Plaintiff I Reconvention in part and rejected the lawsuit of Plaintiff II Reconvention in its entirety, Stating that the Covenant Defendant is a worker for a certain time, Declare that the Covenant Defendant is not entitled to severance pay and medical/housing compensation, Declare that the Counterclaim Defendant is not entitled to immaterial compensation, Rejecting Plaintiff I Reconvention's lawsuit in addition to the rest; In Conventions and Reconventions:

Charge case costs to the state which is budgeted at Rp. 231,000 (two hundred thirty one thousand rupiah), Meanwhile, at the cassation level, the appeal from the Manokwari Higher Education Foundation was declared unacceptable. The Supreme Court considers that the appeal has exceeded the time limit determined by law.

Case Example 2 Permanent lecturer layoffs

Andang Handaka Setyadi (Lecturer of the Faculty of Civil Engineering) filed a lawsuit against Parahyangan Catholic University. Where the plaintiff has a working relationship since 1992 at Parahyangan Catholic University with a working period of 15 years and 2 months with permanent worker status based on the Unspecified Time Work Agreement (PKWTT) system. In July 2007 the contract was not renewed by the UNPAR foundation as Defendant I and the employment relationship was terminated without granting the plaintiff's normative rights based on the provisions of the applicable laws and regulations (Demina dkk., 2022; Ilham dkk., 2022; Safitri dkk., 2022), including severance pay which is the normative right of permanent workers. The plaintiff's rights as permanent workers, in the form of monthly salary, THR, loyalty pay, severance pay (in the event of layoffs) and so on, have not been paid since July 2007 (after layoffs). The plaintiff objected to the University's position in dismissing him as a permanent lecturer due to reasons to fulfill the Kopertis quota and an objection to the status of an Extraordinary Lecturer, because he had been appointed as a Permanent Lecturer. The plaintiff objected to the compensation given to him because the plaintiff felt that the compensation he provided was not in accordance with the provisions of Law Number 13 of 2003 concerning Manpower, because there was no common ground of thought, the plaintiff considered an Industrial Relations Dispute had occurred.

The emergence of this Industrial Relations Dispute began with a letter from the Dean of the Faculty of Civil Engineering UNPAR No.III/AU/FT/2007-05/308.1 dated May 31 2007 in response to the issuance of Law Number 14 of 2005 concerning Teachers and Lecturers regarding Article 46 paragraph (2) (Minimum Academic Qualification). The plaintiff is of the opinion that the minimum academic qualifications in no way eliminate and or eliminate the normative rights of workers as permanent lecturers.

So in it the Supreme Court of the Republic of Indonesia Number: 048 PK/Pdt.Sus/2010) stated that a work agreement for a certain time is an agreement carried out for an agreed period of time and has been regulated in Law Number 13 of 2003 concerning Manpower. Regarding the PKWT period, it is regulated in Article 59 paragraph (3) of the Manpower Act. In making a certain work agreement, the maximum time limit that can be agreed upon is 2 years and can be extended or renewed only once for a certain matter (Hartini dkk., 2022; Najeed dkk., 2022; Nopiana dkk., 2022). Such extensions can only be made for the same period of time, provided that the total time in a particular work agreement cannot exceed 3 years. However, due to urgent reasons for certain types of work, with the permission of the Minister of Manpower, these provisions are waived.

Extension is continuing the employment relationship after the PKWT ends without any termination of employment. While renewal is making a new relationship after the first PKWT ends through termination of employment with a grace period of 30 days (Dianovi dkk., 2022). With the expiration of the agreed upon PKWT, the employment relationship automatically ends by law. Judging from the cases above, the workers/lecturers have worked beyond the working period (PKWT) stipulated in the Manpower Act. This has

violated Article 59 of the Manpower Act, namely the working period that exceeds the provisions of the Act.

The judge saw that the work agreement for a certain time of the workers/lecturers was null and void and turned into a work agreement for an indefinite time where the workers were no longer contract employees but became permanent workers. This can be seen from Article 59 paragraph 7, where a work agreement for a certain time does not fulfill the provisions referred to in paragraph (1), paragraph (2), paragraph (4), paragraph (5), and paragraph (6) then for the sake of law become work agreements for an indefinite period of time and other matters that have not been regulated in this article will be further regulated by a Ministerial Decree.

In the considerations of the judges above, the judge's considerations aside from being focused on Article 59 also look at the Decree of the Minister of Manpower, PKWT in the ministerial decision is a work agreement between workers/laborers and employers to enter into a working relationship for a certain time or for certain workers. While PKWTT is a work agreement between workers/laborers and employers to establish a permanent working relationship. Based on these provisions, it is clear that PKWT cannot be held for permanent jobs. The categories of work that can be carried out with PKWT are contained in Articles 3 to 12. If you look at the position of workers/lecturers, they are permanent workers/lecturers. (Johannes Mangapul Turnip, 2018)

Analysis

The analysis of case 1 shows that the Manokwari College of Law (STIH) accepted Sukardi, SH, M.Hum as an extraordinary lecturer or non-permanent lecturer on the basis of an application letter. The appointment as a lecturer was carried out in 2005, then on November 20 2006, STIH issued a letter returning Sukardi, SH, M.Hum to the Manokwari Police Unit, this was the beginning of the dispute because STIH Manokwari lacked Law No. 13 of 2003 which explains what That is PKWT and PKWTT so that there is a misunderstanding between the two parties. If from the start that Mr. Sukardi < SH, MH as a non-permanent lecturer because he is a police officer, so his status is PKWT, so disputes do not occur, especially since he has just been on duty for several years, so there is an impression that STIH Manokwari is arbitrary. The claims of Sukardi, SH, MH regarding severance pay and others were also inconsistent, so the panel of judges did not fulfill them. Regarding the PKWT period, it is regulated in Article 59 paragraph (3) of the Manpower Act. In making a certain work agreement, the maximum time limit that can be agreed upon is 2 years and can be extended or renewed only once for a certain matter. Such extensions can only be made for the same period of time, provided that the total time in a particular work agreement cannot exceed 3 years (Amado-Alonso dkk., 2019; Rahmah dkk., 2022; Rohmalimna dkk., 2022). However, due to urgent reasons for certain types of work, with the permission of the Minister of Manpower, these provisions are waived. Based on the stipulation that S Sukardi < SH, MH did not receive severance pay and others, except that he only received compensation money for a month's salary.

In case 2, that UNPAR had no good faith towards Andang Handaka Setyadi (Lecturer of Civil Engineering Faculty) who had served for 15 years and 2 months that the

written agreement was PKWTT so there was no need to make a contract every year. This is a loophole for UNPAR to avoid paying severance pay and others when terminating employment or layoffs on the grounds that they do not meet the master's qualifications.

CONCLUSION

The position of lecturers in PTS from the perspective of labor law is part of industrial relations which is subject to labor law. The status of lecturers remains the same as permanent workers based on an Unspecified Time Work Agreement (PKWTT). Meanwhile, lecturers do not remain the same as contract workers based on a Specific Time Work Agreement (PKWT) in the Sukardi case. Law Number 14 of 2005 concerning Teachers and Lecturers does not regulate in detail the rights and obligations of lecturers and private universities, especially in the context of lecturers' welfare and social welfare. But PTS is obliged to provide welfare and social security, especially for permanent lecturers. Disputes between lecturers and PTS are industrial relations disputes so that the settlement is guided by Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

The Law on Teachers and Lecturers as well as the Law on the National Education System which do not regulate mechanisms and institutions authorized to resolve disputes between lecturers and their employers have shown the shortcomings and weaknesses of the laws themselves. The law on teachers and lecturers should also regulate matters relating to lecturers in private tertiary institutions as a whole because currently the law is more dominant in regulating matters relating to lecturers in civil servants. To prevent multiple interpretations, it is more appropriate if laws in the field of education strictly regulate the institution authorized to resolve disputes between PTS lecturers. This means that there must be harmonization of labor laws, the Law on Industrial Relations Disputes which must be elaborated in depth because the Job Creation Law is also in the stage of improvement due to the decision of the constitutional court.

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