

The Regulation Of Restrictions On Workers / Labourers Having Marriage In The Same Workplace

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ABSTRACT

The purpose of this study was to determine the regulation of restrictions on workers/laborers to marry in one office as regulated in the Decision of the Constitutional Court Number 13/PUU-XV/2017. The method used in this research is normative research and the type of approach used is the law approach, conceptual approach, and case approach. The technique of analyzing legal materials in this study uses a systematic interpretation method. The results of the study show that the provisions of Article 153 paragraph 1 letter f explain that employers are prohibited from terminating employment because the worker/ laborer has blood ties and/or marital ties with other workers/ laborers in the same company unless it has been stipulated in a work agreement, regulations company, or collective work agreement." The limitation of the right to marry in one office is based on a work agreement which is the desire of both parties. Meanwhile, the workers are citizens whose constitutional rights are protected to have a family without being limited by certain parties. This is intended to provide a guarantee of the protection of the constitutional rights of citizens to continue to marry with office colleagues without being limited by work agreements that are far from the spirit of fulfilling workers' rights as citizens. ah exists by considering which aspects will arise between the benefit and the various parties, namely the company/office, employees, and also the general public.

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I. INTRODUCTION

A. Background

Constitutional Court Decision Number 13/PUU-XV/2017 states the phrase “unless it has been stipulated in a work agreement, company regulation, or collective work agreement” in Article 153 Paragraph 1 letter f contradicts the 1945 Constitution and has no binding legal force. With the decision of the Constitutional Court, a company cannot establish rules that prohibit employees from marrying their officemates. In considering his decision, Judge MK Aswanto stated that a company cannot make the marriage bond between workers or workers in one company unable to be used as a basis for layoffs. The Court considers that the regulation is not in line with the norms in Article 28D paragraph 2 1945 Constitution, Article 38 paragraph 1 and verse 2 Law 39/1999 and Article 6 paragraph 1 International Covenant on Economic, Social, and Cultural Rights. The rules made at least provide a sense of justice for the target who implements the rules themselves, especially in the law it is known that there is a principle of expediency, legal certainty. Until this provides a significant legal purpose in the form of legal certainty and usefulness compared to ordinary law revision methods.¹

In consideration, the Constitutional Court stated that the limitation of marriage among employees in the same company did not meet the requirements for respecting the rights and freedoms of a person. On the other hand, the Constitutional Court considered that no other person's rights or freedoms were disturbed by blood ties or marital ties. Likewise, there are no moral norms, religious values, security, and public order in a democratic society which is disturbed by the fact that workers or laborers in one company have marital ties. Following Article 28J paragraph 2 In the 1945 Constitution, restrictions on human rights can only be carried out with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill just demands following considerations of morality, religious values, security, and public order in a society. democratic. In addition, the Court also believes that the reasons used by the Indonesian Employers' Association (APINDO) and PT. PLN to apply the rules limiting marriage between people is irrelevant. In their statement, APINDO and PLN stated that Article 153 paragraph 1 letter f of the Manpower Law aims to prevent negative things that occur in the company environment and to build good, professional, and fair working conditions, as well as prevent potential conflicts of interest in making decisions within the company. Regarding this matter, the Court believes that such reasons do not

¹Abdul Hakim Siagian, (2021). Omnibus Law in the Perspective of Constitutionality and Legal Policy. Journal of Law Review. 3 (1), 93

meet the requirements for constitutional restrictions as contained in Article 28J paragraph 2 1945 Constitution.

Concerns about negative things in the company environment and potential conflicts of interest in making decisions within the company can be prevented by formulating strict company regulations to enable the building of employee integrity so that good, professional, and fair working conditions are realized.²

Prospective researchers consider that the Constitutional Court's decision to allow office marriages needs to be reviewed legally, especially concerning human rights values as stated in Article 28 of the 1945 Constitution and the strength of agreements that have been made by companies and workers/laborers as determined by Article 1320 of the Civil Code. The author argues that in reality a person who will be appointed as a worker/laborer in a company, that person must sign a work agreement which juridically refers to Article 1320 of the Civil Code which stipulates four conditions for the validity of an agreement, namely:

- a. Agree on those who bind themselves;
- b. The ability to make an engagement;
- c. A certain thing;
- d. A permissible reason.

The agreement made must refer to Article 1320 of the Civil Code as described above. In other words, if an agreement has been approved, a person who is appointed as a worker/laborer must comply with the contents of the agreement, including not marrying another worker/laborer in the same company. The hope is first, that there will be no conflict of interest that interferes with the company's secrets because the company's affairs do not become the subject of family discussion and vice versa. Second, it is hoped that the agreement will prevent the provision of double benefits which will cause social jealousy to other workers/laborers.

These two expectations can support work professionalism which is the company's goal to build a culture and work spirit as has been implemented so far. However, the decision of the Constitutional Court has annulled this matter which causes workers/laborers to marry in the same office as a form of respect for human rights. Even though the decision of the Constitutional Court greatly disturbs the professionalism of the work expected by the company and will certainly deviate from the work agreement which the agreement between 2 (two) parties between the company and the worker/labor is valid. *Pacta Sunt*

²Christian Erdianto. Want to marry a coworker? MK Decides Not To Be Fired!, <http://nasional.kompas.com/read/2017/12/15/11524381/mau-nikahi-teman-sekantor-mk-decided-no-permissible-dipecat> (accessed January 10, 2018)

Servanda (agreements must be kept) is a legal principle which states that "every agreement becomes binding law for the parties to the agreement. For example, for someone who has bound himself into an agreement before the Constitutional Court's decision, then there is a possibility that the legality of the agreement is questioned. On the other hand, if the agreement existed before the Constitutional Court's decision, it is possible that the Constitutional Court's decision could cancel the agreement that was made by both parties, namely the company and the workers/labor.

B. Problem Formulation

In this paper, the author formulates problems related to setting restrictions on workers/laborers to marry in one office as regulated in the Constitutional Court Decision Number 13/PUU-XV/2017.

C. Research Methods

The type of research used in this research is normative which is focused on examining the application of the rules or norms in the applicable positive law, which is then linked to the central issue discussed in this study. The approach used in this research consists of a legal approach (statue approach) and a conceptual approach (conceptual approach) as well as a case approach. The technique of analyzing legal materials in this study uses a systematic interpretation method.³

II. DISCUSSION

ARRANGEMENTS OF RESTRICTIONS FOR WORKERS/LAWERS TO MARRY ONE OFFICE

According to Marriage Law No. 1 of 1974 as amended by Law no. 16 of 2019 concerning marriage is explained in article 2 paragraph 1: That marriage is legal if it is carried out according to the law of each religion and belief. Marriage, which is a citizen's right to form a legal family, is forced to contradict the company's desire to limit workers/labor/employees from marrying in one office for reasons of work professionalism. This is based on the provisions of Article 153 paragraph 1 letter f which explains that: "Entrepreneurs are prohibited from terminating employment because the worker/ laborer has blood ties and/or marital ties with other workers/ laborers in the same company unless it has been stipulated in the employment agreement. , company regulations,

The phrase "unless it has been regulated in a work agreement, company regulations, or collective labor agreement" is a loophole for companies to prohibit their employees from marrying their co-workers. Even if the employee still wants to get married, usually the company requires one person to resign

³ Peter Mahmud Marzuki, Legal Research, (Jakarta: Prenada Media Group, 2014), 93

from the company. The rules that state that between workers marry in the same company, then one of them must leave or even terminate the employment relationship as stipulated in the work agreement, company regulations, or collective work agreement, this is stated in Article 153 paragraph 1 letter f of the Manpower Act. The reasons prohibited by the law regarding termination of employment by employers, one of which is that employers are prohibited from terminating employment because the worker/ laborer has blood ties or marital ties with other workers/ laborers in the same company unless otherwise provided for in a work agreement, company regulations or collective work agreement. . So as long as the rules are in the work agreement, company regulations or collective work agreement, the workers/laborers are obliged to comply with these rules. Marriage is recommended because it is beneficial not only for oneself but also for the household, community, nation, and state. And don't be afraid or worried that with that marriage you will be bankrupt and poor or abandoned, State involvement, which is also one of the characters of the conflict phenomenon, means that without government intervention, problems will arise. So that this becomes the constitutional right of every Indonesian citizen.⁴

Another problem that can arise is that the pair of workers finally decides not to get married to stay in the company, then the two parties amicably separate it shouldn't be a problem, but it is also possible that they choose to live together without a marriage bond to avoid regulations. company. This is of course very contrary to the values of life adopted by the Indonesian people who still uphold the institution of marriage. The forms of restrictions on the prohibition of marriage in one office are: but it is also possible that they choose to live together without a marriage bond to avoid company regulations. This is of course very contrary to the values of life adopted by the Indonesian people who still uphold the institution of marriage. The forms of restrictions on the prohibition of marriage in one office are: but it is also possible that they choose to live together without a marriage bond to avoid company regulations. This is of course very contrary to the values of life adopted by the Indonesian people who still uphold the institution of marriage. The forms of restrictions on the prohibition of marriage in one office are:

a. Decree of the Board of Directors of Bank BTN Number 43/DIR/CMO/2011

The sound of the regulations that talk about this matter is contained in the board of directors' decree as outlined in the SE Directors' Decree: 43/DIR/CMO/2011, which was stipulated in Jakarta on November 28, 2011,

⁴ Nggilu, N., & Wantu, FM (2020). Treading the Constitutional Path Towards Zaken Cabinet: Efforts to Realize a Constitutional Quality Government. *Ocean Justice Journal of Law*, 15(1), 128

which is contained in the following points: 4.1.2 What is contained in point C reads "Family relations that are not allowed as referred to in this policy are family relationships between employees including husband and wife, brother and sister, father, mother, and children." The family relationship referred to by the policy is the relationship between husband and wife, the relationship between a brother and sister, and parents with their children, but this research only focuses on the prohibition of marital relations between employees. This regulation that does not allow the existence of a husband and wife bond in one agency is conveyed at the beginning of work.

b. Decree of the Board of Directors of Bank BRI NO.KEP.S.59.DIR.SDM/09/2003

The board of directors' rules regarding the prohibition of marriage for fellow BRI employees has been contained in the cooperation agreement which is located in article 38 letter S, and if any employee is married to a fellow employee, one of them must resign from BRI, as stated in NO.KEP.S.59.DIR.SDM/09/2003 article 2 paragraph 1 and article 4 paragraph 1 and 2. Meanwhile, if the regulation is confronted with Law Number 1 of 1974, then the rules of the board of directors must take precedence. According to the existing regulations at BRI regarding the prohibition of marriage for fellow employees, it is regulated in a cooperation agreement, while the regulation when viewed from Law Number 1 of 1974 is different because BRI applies the principle of *lex specialist derogate legi generalis* where the special regulation defeats the regulation. generally.⁵

Restrictions on the right to have a family and the right to work do not need to be done, if every individual working in a company has good morals and ethics, for that it is necessary to have individuals who work in a company. individuals who instill good ethics. Marriage among employees in a company is an advantage for the company because it can save the company's expenses in terms of bearing the health costs of the workers' families because if the husband and wife work in the same company, the company only bears 1 (one) worker and their family but the company has 2 (two) employees.) workers, where the husband or wife who bears the responsibility as registered with the company is compared to the husband who has a wife/housewife, the company only gets 1 (one) worker but the company still bears the wife and children of the worker.⁶

⁵ See, etheses.stainponorogo.ac.id, accessed on 27 November 2018

⁶ See Constitutional Court Decision Number 13/PUU-XV/2017, 6-8

Conceptually work as the basis of human dignity. Islam emphasizes the need for dignity, personal worth and dignity of every Muslim.⁷ Including the family, economic needs require each member of the family to work for a living so that the family is able to survive with mutual sufficiency through income in the work they do. On that basis, the family must have a set of rules that can foster a high awareness among family members of their respective rights and obligations. This is the basic capital in building a *sakinah*, happy, and prosperous family.⁸ In order to balance needs and income, the actions taken are at least able to plan household budgets, increase work morale, and increase income.⁹ What's more important is that awareness is currently one of the most efficient steps in doing business.¹⁰ Efforts that can be made for this are to bring legal decisions closer to the sense of justice experienced by the community so that the implementation of the law creates more order in the community itself.¹¹ The results of policies issued by the Government are solely derived from the wishes of the people.¹² Quoting as said by Fence M. Wantu in his Journal that The essence of justice is an assessment from one person to another, which is generally seen from the party receiving the treatment only.¹³ The government through laws has provided rules that should be carried out for the sake of justice based on God Almighty.¹⁴

Provide protection for basic rights or human dignity, especially for justice seekers.¹⁵ So that in modern times is an era where humans are required to

⁷ Ruqaiyah Waris Masqood, *Treasures in Islam*, (Jakarta: Lintas Pustaka, 2003), 63.

⁸ Zaitunah Subhan, *Al-Qur'an & Women Towards Gender Equality in Interpretation*, (Jakarta: Kencana, 2015), 127

⁹*Ibid.*, 134.

¹⁰ Mohamad Rivaldi Moha. (July, 2020). The Urgency of Registration of Electronic System Operators for E-Commerce Businesses. *Journal of Law Review* 2 (2), 115

¹¹ Abraham Ahmad. (2010). "Principles of Justice in Land Dispute Resolution for Development Interests." *Journal of Legality* 3 (2), 21

¹² Putri Handayani Nurdin. (July, 2019). Political Law Regulation of Political Education by Political Parties. *Journal of Law Review* 1 (2), 146

¹³ Fence M. Wantu, (June, 2013). Judge Constraints In Creating Legal Certainty, Justice, And Benefits In Civil Court. *Journal of the Legal Pulpit*. 25(2), 206

¹⁴ Fenty Puluhulawa, Lusiana M, Tujow, Sutrisno. (2020). Application of the Principles of Justice, Legal Certainty and Benefit in Judge's Decisions. *Gorontalo Law Review Journal*. 3, (2) October, 184

¹⁵ Dian Ekawaty Ismail. (2009). Efforts to Protect the Rights of Suspects/Defendants Through Pretrial Mechanisms in Gorontalo City. *Journal of the Legal Pulpit*. 21 (1) February, 85

develop themselves.¹⁶ Legal protection has the meaning as protection by using legal means or protection provided by law, shown to certain interests, namely by converting the interests that need to be protected into a legal right.¹⁷ In the law of "rights" is also called subjective law. Subjective law is an active aspect of the legal relationship provided by objective law, in this case subjective law is norms.¹⁸

The researcher argues that in reality someone who will be appointed as a worker/laborer in a company, that person must sign a work agreement which legally refers to Article 1320 of the Civil Code which regulates four conditions for the validity of an agreement, namely:

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These two expectations can support work professionalism which is the company's goal to build a culture and work spirit as has been implemented so far. However, the decision of the Constitutional Court has annulled this matter which causes workers/laborers to marry in the same office as a form of respect for human rights. Even though the decision of the Constitutional Court greatly disturbs the professionalism of the work expected by the company and will certainly deviate from the work agreement which in fact the agreement between 2 (two) parties between the company and the worker/labor is valid. *Pacta Sunt*

¹⁶ Daffodil, Dolot Alhasni. (2020) Determination of Legal Protection for Neighboring Right Holders. *Journal of Law Review* 2 (1), 67

¹⁷ Condro S. Riyadi, Mutia CH. Thalib, (2017), Guaranteed Legal Protection Against Occupational Health and Safety for Construction Workers. 13(2), 80

¹⁸ Heru Suyanto and Andriyanto Adhi Nugroho, (2016), Legal Protection of Outsourcing Workers' Rights Based on the Principle of Justice. *Juridical Journal*. 3 (2), 4

Servanda (agreements must be kept) is a legal principle which states that "every agreement becomes binding law for the parties to the agreement. For example, someone who has bound himself into an agreement before the Constitutional Court's decision, then there is a possibility that the legality of the agreement is questioned. On the other hand, if the agreement existed before the Constitutional Court's decision, it is possible that the Constitutional Court's decision could cancel the agreement that was made by both parties, namely the company and the workers/labor.

The ban on marrying in one office was sued by PLN employees who felt that their constitutional rights were aggrieved by the existence of a company rule that forbade marriage in one office. PLN is one of the state-owned companies that prohibits its employees from marrying a coworker. This has an impact on all regions, including the Gorontalo branch of PLN, which prohibits employees from marrying in one office, so that the condition of employees of the Gorontalo branch of PLN feels that their rights have been cut off because if employees marry with workmates, they will be threatened with being laid off (Termination of Employment) by the company. This condition is not only felt by the employees/employees/laborers of the Gorontalo branch of PLN, This is also felt by employees/employees in banking, one of which is Bank of the Republic of Indonesia (BRI) which prohibits employees from marrying in the same office. Therefore, this limitation of rights is very contrary to the spirit of protecting and fulfilling human rights for citizens, especially BUMN employees/employees in the province of Gorontalo. The problems that are felt by all regions have prompted a judicial review of the Manpower Law which holds the rights of citizens to marry in one office hostage. Cause too Human rights are part of the administration of justice within the framework of an independent judiciary.¹⁹ The right to life must be protected by the state, especially the rule of law.²⁰ Indonesia as one of the countries that puts forward the constitution in every aspect of the life of the nation and state.²¹ The inherited conditions are internalized into

¹⁹Nabih Amer. (2020). Analysis of the Dissolution of Social Organizations in the Perspective of the Rule of Law. *Legality Journal*. 13(1), 12

²⁰Lisnawaty Badu. (2012). Euthanasia and Human Rights. *Legality Journal*. 5(1), 1

²¹Fakhri Lutfianto Hapsoro. (July, 2020). *Interpretation of the Constitution in the Examination of Constitutionalities to Realize The Living Constitution*. *Journal of Law Review* 2 (2), 145

development programs (endogenous development).²². This pressure is a little more likely to cause a significant reaction to the existence of the community, so the government is careful in solving a problem that has to do with the community.²³

III. CLOSING

A. Conclusion

The provisions of Article 153 paragraph 1 letter f explain that Employers are prohibited from terminating employment because the worker/ laborer has blood ties and/or marital ties with other workers/ laborers in the same company unless it has been stipulated in a work agreement, company regulations, or agreement. work together." Restrictions on the right to marry in one office are based on a work agreement which is the desire of both parties. Meanwhile, workers are citizens whose constitutional rights are protected to start a family without being limited by certain parties. This is intended to guarantee the protection of the constitutional rights of citizens to continue to marry with colleagues at work without being limited by work agreements that are far from the spirit of fulfilling the rights of workers as citizens.

B. Suggestion

Legislators must be wise in making an existing regulation by considering which aspects will arise between the benefit and the various parties, namely companies/offices, employees, and also the general public.

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