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## RESEARCH ARTICLE

### ESSENCE OF JUSTICE IN NEGOTIATIONS COLLECTIVE LABOUR AGREEMENT (CLA) BETWEEN THE UNION OF EMPLOYEES AND THE COMPANY

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#### Abstract

Workers / laborers is a partner of businessmen were very important in the production process in order to improve the welfare of workers / laborers and their families, ensure continuity of the company. In this connection, trade unions / labor unions is a means to fight for the interests of workers / laborers and creating harmonious industrial relations, dynamic, and equitable. Therefore, workers / laborers and trade unions / labor unions should have a sense of responsibility for the survival of the company and vice versa employers must treat workers / laborers as a partner in accordance with human dignity.

CLA is a term that refers to an agreement that the manufacturing is done by negotiation / bargaining between unions / labor unions by employers. But usually, if the workers / laborers know that the company has the ability to deliver more, workers / laborers do not want to be associated with problems outside the company where workers / laborers. Likewise, if the company had difficulty, usually workers / laborers do not want their rights reduced or impressed not want to know the difficulties the company.

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## INTRODUCTION

Collective Labor Agreement (hereinafter referred to as CLA or in Indonesia PKB) pursuant to Article 1 paragraph 21 of Law Number 13 Year 2003 on Manpower is "*perjanjian yang merupakan hasil perundingan antara serikat pekerja/ serikat buruh atau beberapa serikat pekerja/ serikat buruh yang tercatat pada instansi yang bertanggung jawab di bidang ketenagakerjaan dengan pengusaha, atau beberapa pengusaha atau perkumpulan pengusaha yang memuat syarat-syarat kerja, hak dan kewajiban kedua belah pihak.*" ("agreement is the result of negotiations between the union / labor union or unions / labor unions recorded on the agencies responsible in the field of employment with the employer, or several employers or employer associations that includes working conditions, rights and obligations of both sides parties").

The goal made the CLA is to provide and improve working conditions in the company, increasing the excitement and tranquility to work and improve labor productivity which ultimately can improve the lives of workers and their families.

CLA manufacturing requirements which are negotiated union / labor union recorded on the responsible government agency in the field of employment with the employer or multiple employers, based on the good faith and willingness of both sides, done by deliberation and consensus and the duration of negotiations is set by agreement and poured in order talks

CLA is expected to contain the values of justice, that is fair to workers / laborers and fair for entrepreneurs (there is a balance between the desire of workers / laborers and employers desire). In addition, CLA is intended to create a harmonious industrial relations between workers / laborers with employers.

Workers / laborers and employers basically need each other. Workers / laborers require employers to earn income, while employers require workers / laborers to carry out the activities of the company

CLA has been signed by both parties, should ideally be legislation for workers / labor union and employers (*pacta sunt servanda*). Workers / laborers is a partner of businessmen were very important in the production process in order to improve the welfare of workers / laborers and their families, ensure continuity of the company. In this connection, trade unions / labor unions is a means to fight for the interests of workers / laborers and creating harmonious industrial relations, dynamic, and equitable. Therefore, workers / laborers and trade unions / labor unions should have a sense of responsibility for the survival of the company and vice versa employers must treat workers / laborers as a partner in accordance with human dignity.

CLA is a term that refers to an agreement that the manufacturing is done by negotiation / bargaining between unions / labor unions by employers. But usually, if the workers / laborers know that the company has the ability to deliver more, workers / laborers do not want to be associated with problems outside the company where workers / laborers. Likewise, if the company had difficulty, usually workers / laborers do not want their rights reduced or impressed not want to know the difficulties the company.

Under these conditions, based on the experience of researchers as PKB negotiating team in East Kalimantan PT Fertilizer can be an impediment to completing the process of making the CLA. For example, there is a solution by CLA takes a relatively long time. In fact, the - IV CLA (2009-2012) at PT Pupuk Kaltim in East Kalimantan reached 18 months. This is presumably due to a conflict of interest between the parties to negotiate.

Conflicts of interest occur, such as the excessive demands that can interfere with the survival of the company which in turn could threaten the welfare of the workers / laborers themselves. In the implementation of CLA negotiations, both sides usually always carry interest and have a different viewpoint. Employers sought wherever possible to make savings in providing compensation and benefits to workers / laborers. On the other hand, workers / laborers who represented Union / Labor Union want an increase as much as possible compensation and benefits for the workers / laborers

Allegations of factors interests of the employers and the trade unions / labor or suspected or alleged lack of balance there is injustice, makes the process of implementation of the CLA negotiations be long, so the impact is not economical and effective. Conditions were not effective negotiations can have an impact on the emergence of a working relationship that is not conducive. In fact, the main goals and objectives of the negotiations CLA is not consummated. Conditions such as that which can hamper the goal of the Union / Labor Union in an effort to improve the life of members and their families. Non-fulfillment of the purpose of the Workers Union / Labour through CLA negotiations could result in labor disputes in the company. Various forms, type or nature of industrial relations disputes or disputes basically very realized by both parties. Industrial relations disputes or disputes potentially detrimental to all parties, both workers / laborers, employers and government.

Considering the conditions and problems that occur in the process of implementation of the CLA negotiations, if it is associated with the mandate of the Law of the Republic of Indonesia Number 13 of 2003 on Labour, can be expected in the absence of balance or are suspected interests of both parties that it is possible there is injustice. On the other hand, in the CLA negotiations, the interests of both parties became dominant, as in the discussion of CLA negotiations, it always happens deadlock (dead lock) when discussing the clauses relating to the welfare of workers / laborers. Party vice-workers / laborers trying to improve the welfare of workers / laborers can be accepted by employers. While employers are more likely to survive or respond with low bargaining price.

Conflict of interests allegedly also caused a lot of demands implementation of the minimum wage sector of the district / city (UMSK). In some conflict of interest that occurs when there is an increase in fuel prices. So that the worker / laborer demands adjustment (equal treatment) increase in welfare in the form of increase in transport allowance and meal allowance.

Various factors affect the process of negotiations through the establishment of CLA must be understood by both parties. Because of its requirements for larger parties of the negotiation positions are in the weaker position. Therefore, there should be an attempt to analyze the factors which may provide additional influence better and right. Conjecture or possibility against these factors are:

- a. How big is the two sides need each other;
- b. How big is the two sides trust each other;
- c. How big is the two sides respect each other;
- d. How big is the two sides have a sense of togetherness;

Based on the background of the above this proposal discussion attempted step concretize problems in the formulation of the problem as follows: ***“In What extent the Essence Of Justice In Negotiations Collective Labour Agreement (CLA) Between The Union Of Employees And The Company?”***

## **B. The Concept of Justice**

Justice always be problems in life together. He questioned as closely linked to the rights and obligations that must be owned by everyone. People will spontaneously protested that their rights are trimmed and acquire something that does not correspond to what he should be able to. On the contrary, people feel treated fairly if he receives in accordance with their rights.

Problem of justice rooted in the scarcity of resources experienced by humans. Items needed by humans are finite while human needs are infinite. For goods that are available indefinitely, people do not need to discuss the issue of justice because people can pick it up at will. The new issue of justice or injustice irrelevant discussed if there is not enough goods for everyone who wants it. Because scarcity is a common phenomenon that is always behind the reality of human life, property or ownership of goods can never be separated from justice.

People often connect justice with the same ideology same average taste. It is fair that the amount of donations received by the A equal to the contribution to the B. However, the definition of justice only on the economic aspects of the distribution similarity tendency to marginalize and ignore certain community groups. The disabled, for example, they will not be helped only with the same business opportunities for everyone. Justice must also consider aspects of the natural inequality in se exist at all. Justice should consider the potential resources which, if developed to the maximum will contribute to improving the quality of life together.

Starting point talks about justice is to give each person what they are entitled. Protest over the injustice happens because people feel their rights are ignored. People always demand what they are entitled. If someone gets something in accordance with the rights of people feel treated fairly. Otherwise people feel unfairly treated if their rights sabotaged and treated arbitrarily.

Justice should be seen as giving sufficient opportunity to everyone for the sake of self-development. The emphasis is not equal opportunity but sufficient opportunity for all citizens to be able to develop and empower themselves. Justice allowed the origin of inequality that benefits the most disadvantaged groups. With a brilliant talent and intelligence should be given space to maximize his ability and actualize it home with it, people who are disabled and disadvantaged can obtain the benefits in improved quality of life.

In relation to the distribution of primary goods, justice emphasizes sharing social goods are the same but allow conditional inequality. It is a requirement if the inequality that gives the advantage to everyone to evoke a variety of energy and talent socially beneficial, then inequality is accepted. Therefore, justice must be understood as giving the same opportunities both in the distribution of primary goods as well as in the attempt. Provision of equal opportunities like this will enable everyone to maximize all of its potential. However, the concept of justice is to allow the origin of inequality oriented qualitative improvement of one's life, especially the poor and weak. Justice really happen if can lift the quality of life of the poor and destitute better direction, because they are often the victims and casualties of development.

The concept of justice which was built by John Rawls emphasizes fundamental alignments on ensuring a minimum level of social and economic needs of all members of society. This is not achieved by demanding the sacrifice of more than rich people or groups who are ahead socially and economically. Differences in income and welfare continues to be recognized. Alignments to people who are not fortunate not require any similarities in the welfare of the people who are lucky. John Rawls simply asserts that inequality in income and well-being is only allowed as far as benefits received by the lucky group contributed to the improvement of the disadvantaged groups.

Justice as fairness requires reciprocal advantages. That means an advantage for one party does not bring harm to the other party. Everyone is required to provide a favorable contribution of others, forming a circle of mutually beneficial cooperation. Talks on cooperation that is reciprocity, lead John Rawls in talks about intergenerational equity. Here, John Rawls asserts that the contribution of intergenerational justice is not achieved by giving more weight to every generation. Intergenerational fair contribution achieved by requiring each generation to participate in creating a society that is organized, which is a dream of all members of society. John Rawls described this way: "Each generation must not only retains the advantages of culture and civilization and confirming institutions fair, which has been formed but in this time span he also had to set aside the amount of the corresponding real capital accumulation." Thus, the obligation saving into a strap that strengthens welfare of previous generations with generations later. In order to save this obligation does not become a burden to every generation, the real capital accumulation saved it must be considered rationally.

John Rawls emphasizes that the intergenerational equity issue could not be solved by using the doctrine of utility. Doctrine utility can direct and impose sacrifices over generations for the benefit of destitute better for the next generation. Impose certain generation to bear the loss or misery for the sake of greater benefits for later generations is a form of injustice. Rawls asserts that intergenerational equity problem can only be solved by using the doctrine of contracts made in the perspective of the original position. In the original position, people do not know where it comes from generations, how civilization form, it includes the rich or the poor. Their ignorance of

anything is totally completely. In the original position, the principle of equality, rationality, and accepted the principle of freedom as a condition that must be satisfied all parties involved in order to save a fair criteria may be accepted as a fair criterion. With such a spirit, each generation setting aside some real capital by the same amount. They believe that later generations will also do the same thing as those made by their predecessors. Thus, the principle of a fair saving will evolve from natural consciousness to maintain a fair institutions.

Fair saving principle does not in itself reflect the basic principles of justice as fairness. The principle of mutual benefit is the core of the conception of justice as fairness, cannot be met. This is because the initial generation is only burdened with the responsibility for saving for future generations. They do not benefit from the reciprocal of the load they carry. Furthermore, John Rawls says that human development is a kind of chronological unfairness, because they were the next life will benefit from the efforts of their predecessors without paying the same price. Here, John Rawls position as the first generation in the spirit as the 'father' who are willing to shoulder the burden in order to prepare a better living conditions for their children. In the spirit of the father, must save up for the next generation is seen as a natural obligation and is not seen as a burden. Save for John Rawls does not tend to accumulate because of the abundance of capital. Saving understood as a condition that allows the availability of the same quality of life from generation to generation. From this description it can be concluded overall that John Rawls's theory of justice is built on the basis of the thesis outlined in the two principles of justice. The principle of justice for John Rawls is not just limited to the issue of equal rights but also about giving adequate opportunities for everyone to develop themselves and to maximize its potential. For John Rawls, justice is not achieved by eliminating the differences. He asserted that the inequality in the distribution can be justified in so far as they benefit the most disadvantaged socio-economically.

John Rawls to justify his theory by bringing the perpetrators of the contract to be in the original position. In the original position, the contractor hide behind the veil of ignorance. Behind the veil of ignorance, they formulated the principles of justice are accepted as beneficial to all parties. For that, they should not have actual knowledge such as those included in the generation of which, including the rich or the poor, civilization forward or backward. In short, in the original position, they are in total ignorance completely so that it can receive the conception of justice that is neutral. To ensure fairness as fairness, in the original position, the offender receives a contract principle of equality, freedom and rationality. These principles are useful to ensure that the criteria are fair in choosing the principles of justice.

In order to create a sense of justice from generation to generation, John Rawls put forward the principle of a fair saving. Here, it requires that each generation set aside a portion of the existing real capital to maintain the quality of life for generations to come. Intergenerational saving obligation is not seen as a burden because of the habit of saving is seen as a natural obligation and each generation will always receive the same thing from the previous generation, except for the first generation. The first generation, in the spirit of the father, will save capital for the welfare of their children. In the perspective of John Rawls, the principle of intergenerational saving is not seen as a burden so that the question of justice becomes irrelevant to talk about.

### **C. Justice in the Employment Agreement**

If using Article 1313 of the Civil Code, definitions treaty is an act whereby one or more committed themselves to the others to implement something. Terms of validity of an agreement, then the preparation must qualify the material (Article 52, 55, 58, 59, and 60 of Law of the Republic of Indonesia Number 13 of 2003). Under the provisions of Article 52 paragraph (1) of the Law of the Republic of Indonesia Number 13 Year 2003 materially labor agreement is made on the basis of:

- a. The agreement of both parties;
- b. The ability or competence to take legal actions;
- c. The object of the agreement; and
- d. Object the agreement is not contrary to public order, morality, and the legislation in force.

Basic letters a and b are subjective terms, whereas basic letters c and d is the objective requirement, then the agreement can be canceled. That is, one party (incompetent) have the right to request that the agreement be canceled by a judge. Then, if an agreement was not eligible objective, the agreement was null and void. That is, from the beginning there was never any agreement deemed or engagements, so that the parties have no basis to sue each other in court.

According to Article 1 point 20 of Law of the Republic of Indonesia Number 13 of 2003 on Labour, stated, CLA is an agreement that is the result of negotiations between the union / labor union or unions / labor unions registered at the agency responsible for labor affairs with employers, or several employers or employer associations that includes working conditions, rights and obligations of both parties (Article 1 number 21 of the Law of the

Republic of Indonesia Number 13 of 2003). Another understanding collective labor agreement (CLA) according to the Department of Labor of the Republic of Indonesia (1996/1997: 2) is the agreement which was organized by unions / union or unions / labor unions were registered with the Ministry of Labor with employers - businessman, entrepreneur associations are legal entities that are generally or solely contains requirements that must be considered in the employment agreement.

Based on the above, it means that the manufacture of the company regulations and the CLA is very different process. If the company regulations only made unilaterally by employers, is being made by the employer CLA joint union / labor union, which is actually a representation of the employees / workers / laborers in the enterprise. Politically, the actual existence of company regulations are intended to facilitate and encourage the making of PKB in each company. In fact, Article 111 paragraph (4) of the Law of the Republic of Indonesia Number 13 of 2003 established that: "During the validity period of the regulations of the company, if the union / labor union in the company requires the manufacture of CLA negotiations, the employer shall serve". The placement of words in this article shall mean the rights of trade unions / labor unions when negotiating the manufacture of the desired CLA. As a result, employers are not legally allowed to refuse.

According to Thomas Hobbes, human life before the country are in a state of nature is not at all a safe and prosperous state, but otherwise natural state is a state of chaos, without law, without government and without social bonds between individuals in it. This condition is often referred to as *homo homini lupus* (man one becomes a wolf for another man) and also often called the term *bellum omnium contra omnes* (all against all).

#### **D. Pancasila Industrial Relations**

In a country that is building, where labor as human resources is one of the factors of the various components of the construction of one another which cannot be separated, but in reality should be recognized that labor is the most prominent component in a working environment, Employment development in Indonesia has been so long. In the course of these developments there is a portrait of how the dynamics of labor relations is a very complex working relationship. The possibilities that can occur from the employment relationship is unbalanced disputes can do the job. In the field of labor of disputes between employers and workers typically have capital base because their feelings were less satisfied. Employers give wisdom that he considered already good and will be accepted by the workers, but because the workers concerned have the judgment and the different views, the result of wisdom given by the entrepreneur becomes equal, workers who are satisfied will remain working with more passionate while for workers who are not satisfied will show a declining labor spirit to a dispute. In general, that is the main base of not satisfied it revolves around the issues of: a) wages; b) social security; c) the assignment of behavior that is sometimes felt less fit personality; d) working power and the ability to work in accordance with the perceived lack of work to be carried; e) the existence of a personal matter. Regarding the labor disputes have distinguished between disputes over rights (*rechtsgeschillen*) and disputes over interests (*belangengeschillen*).

Pancasila as state philosophy and ideal foundation Indonesian people in all aspects of national life, a reference to develop Industrial Relations, which is based on the overall principles of Pancasila are round and intact. This means that the principles of Pancasila should be used in relation to one another and should not accentuate that one more than the other. According to Burhanuddin Salam: the proclamation of Indonesian independence was a proclamation of independence, the Preamble to the Constitution of the Republic of Indonesia Year 1945 is the declaration of independence of the Republic of Indonesia. The proclamation of independence of Indonesia gave birth to the Preamble of the Constitution of the Republic of 1945, as a biological child that it contains noble ideals, declare of the soul / spirit of Pancasila as the culmination of the nation's commitment to independence. Think / thought the deepest of the Indonesian nation is considered, trusted and believed to be something (true norms, values) are the truest, fairest, wisest, kindest and most suitable for Indonesia.

Pancasila Industrial Relations is a system of relationships formed between the actors in the process of production of goods and services (labor, employers and government) based on values which is the manifestation of all the precepts of Pancasila and the Constitution of the Republic of Indonesia Year 1945, which grew and developed over national identity and national culture of Indonesia. In line with the above definition, the precepts of the underlying Pancasila. Pancasila Industrial Relations is a unity that is not biased split. Pancasila is one not more prominent role than the other precepts. In discussing a principle as a basis, should not be separated from other precepts, because Pancasila should be implemented and practiced unanimously and intact.

As a consequence of the dynamics of the community (among others due to the higher education level), all citizens are increasingly aware of the importance of the acquisition of rights and the importance of fulfillment of

obligations to the state and the government although symptoms generally show that usually the acquisition of rights is more prominent than the fulfillment of obligations<sup>1</sup>.

Industrial Relations as governance and social life in the workplace, which is established in an employment relationship. In the Constitution of the Republic of Indonesia Number 13 Year 2003 on Manpower is expressly stipulated in Article 1 number 15: "The working relationship is the relationship between employers and workers / laborers working under the agreement that has elements of employment, wages and command". Later Article 1 number 16: "Industrial relations is a system of relationships formed between the actors in the production process of goods or services from the elements consist of employers, workers / laborers and a government that is based on the values of Pancasila and the Constitution of the Republic Indonesia 1945".

In the labor system in Indonesia, we know the conception of the Pancasila Industrial relation, which concept as industrial relations based on the philosophy of Pancasila as the basis of all the basic of life of the nation. According Adrian Sutedi, Industrial relations of Pancasila is a system of relations which are formed only between the actors in the production process of goods and services which are based on values which is a manifestation of the overall precepts of Pancasila and the Constitution 1945, which grew and developed over national identity and national culture of Indonesia. This is the real meaning, that particular industrial relations between employers and workers, should be based on core values that are embedded in the philosophy of Pancasila. Thus, in running the industrial relations in our country, Pancasila should put above everything else, so that harmonization between the elements contained in industrial relations can walk hand in hand in achieving their respective goals.

Pancasila is the purpose of industrial relations expands the ideals of the proclamation of independence of the Republic of Indonesia August 17, 1945 in the national development, come to realize a just and prosperous society based on Pancasila and the 1945 Constitution as well as participate in implementing world order based on freedom, lasting peace and social justice. The objectives are achieved through the creation of tranquility, peace, order, the excitement of work and productivity and improve the welfare of workers / laborers and rank in accordance with human dignity. The main objective to be achieved from industrial relations Pancasila is to build harmony between employers and workers so keep them away from hostilities. With the existence of this alignment, then between the parties is expected to respect each other and understand each other the rights and obligations of each. Meanwhile, according to FX Djumaldji and Wiwoho Soedjono, Pancasila Industrial Relations in industrial relations system is imbued with the five principles of Pancasila, which reads:

1. The labor relations based on the principle of Almighty God, which is a labor relations that recognizes and believes in working as a human devotion to God and fellow human beings.
2. A labor relations are based on a just and civilized humanity, does not consider labor merely as a factor of production, but as individuals with their dignity and status.
3. A labor relations which itself contains principles that can lead to the unity of Indonesia, does not distinguish between groups, differences in beliefs, politics, understand, flow, religion, race or sex.
4. A labor relations based on the principle of deliberation to reach consensus, trying to avoid differences and find similarities towards an agreement between workers and employers. In essence believe that any problems that arise, not solved by unilateral force.
5. A labor relations which lead to the creation of social justice for all Indonesian people, and to the entire nation, especially the results of efforts in the economic field should be enjoyed together in a harmonious, balanced and equitable. Harmonious and balanced in terms of adequate portion in accordance with the functions and achievements of the perpetrators.

Whereas D. Koeshartono and M.F. Shellyana Junaedi, provides elaboration of Pancasila Industrial Relations against the precepts contained in the Pancasila as follows:

#### 1. The belief in one God

Recognizes and believes that work is not only aimed to make a living, but also as a man devoted to his Lord, to fellow human beings, to the people of the nation and the state.

#### 2. Just and civilized humanity

The recognition that the worker is not just a factor of production only, but as individuals with their dignity and status. Therefore treatment of employers of workers not only in terms of production interests, but also in order to enhance human dignity.

<sup>1</sup> Zaeni Asyhadie, Hukum Kerja, Hukum Ketenagakerjaan Bidang Hubungan Kerja, op, cit, hal. 136

### 3. Unity of Indonesia

The relationship between workers and employers is not to conflicting interests, but they have a common interest, namely the progress of the company. Because the company forward, all parties can increase welfare and consolidate the unity of the perpetrators of the production process.

### 4. Democracy, led by the inner wisdom consultative / representative

Any disagreements between workers and employers should be resolved by way of deliberation to reach an agreement that is done amicably. Therefore the use of suppression actions and unilateral actions such as strikes, demonstrations, closing of companies (lock out) and so are not in accordance with the principles of Pancasila industrial relations.

### 5. Social justice for all Indonesian people

The presence of a balance between the rights and obligations of both parties in the company. The balance was achieved not based on the power balance (balance of power), but on the basis of fairness and propriety. In addition, industrial relations Pancasila also take the view that the results of companies that have been achieved by cooperation between workers and employers, enjoyed fair and equitable manner in accordance with their sacrifices.

The idea of developing the country's welfare system in Indonesia are more often negative than positive nuances. For example, we often hear that the state welfare system is wasteful approach, is not compatible with economic development, and creating dependency on the recipients (beneficiaries). As a result, not a few who think that the system has met his end, alias is no longer practiced in any country. Although this assumption is rarely accompanied by arguments and adequate research. many people become less interested in talking about, and moreover, take into account this approach.

### Closing

Implementation of the Collective Labor Agreement (CLA) between the United Employees with Company management ranging from CLA first valid until the last CLA applies not much there in terms of quantity issue violations. However, violation of the CLA also resulted in obstacles for working relationships between employees and management of the company. The problems that emerged during this quite resolved through bipartite forum. Where in the bipartite forum in their functions and roles to defend the interests of employees are also affected by conditions outside the company such as economic conditions and also the crisis that resulted accept policies issued by Company. Implementation of the role and function of the Collective Labour Agreement (CLA) should still be considered in determine policy or decision concerning the existence of employees while also consider the condition of the company.

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