



LEGAL PROTECTION FOR COMPANY INTERNSHIP PARTICIPANTS WHO DO NOT OBTAIN THEIR RIGHTS

Khayatudin.¹ Rifqi Arroiquil Haq.²

Faculty of Law Kadiri Islamic University

Jl.Sersan Suharmaji Street, Manisrenggo, Number. 38 Kediri

Email: khayatudin@uniska-kediri.ac.id

ABSTRACT

This research examines legal protection for company interns who do not receive their rights. The purpose of this research is to analyze what types of legal protection can be obtained for interns when their rights cannot be fulfilled by the company, as well as to analyze the legal consequences that must be held accountable by companies that have been found to have violated the rights of interns. In completing this research the author used normative research methods. The results of the research show that the regulations governing the rights of apprenticeship participants are very clearly regulated in the laws in force in Indonesia, namely in Law no. 13 of 2003 concerning Employment and Regulation of the Minister of Manpower No. 6 of 2020 concerning the Implementation of Domestic Apprenticeships. However, in reality, in the field, many apprentices and companies do not clearly understand and implement these regulations, which is what causes many cases of exploitation and abuse against apprentices. One of the cases that is the source of the author's research is in Decision Number: 111/Pdt.Sus-PHI/2019/PN.JKT.PST. Apart from regarding the rights of apprentices, the results of the research also show that companies must bear the legal and social impacts that they have to face when they are found unable to fulfill and violate the rights of apprentices. These legal and social impacts include sanctions based on applicable law, cancellation of apprenticeship agreements, threats to the company's reputation and prohibitions on participating in apprenticeship programs held by the government.

Keywords: Legal Protection. Apprenticeship Participants' Rights. Company.

1. Introduction

Apprenticeship is one way to develop the hard skills and soft skills of the apprentice. Typically apprenticeship participants are students from vocational high schools, final year students and fresh graduates from universities. Apprenticeship is a program created to prepare prospective workers through job training for apprentices which is carried out directly under the auspices of a company/company or agency that has previously agreed to collaborate with universities to implement apprenticeship programs.

¹ **Submission:** 4 February 2024 | **Review-1:** 4 February 2024 | **Review-2:** 4 February 2024
Copyediting: 7 February 2024 | **Production:** 7 February 2024

Interns will receive direct direction and guidance from a mentor who is a professional worker from a company or internship placement agency. Apprenticeship programs are usually carried out over a fairly long period of time according to the duration of the internship stated in an internship agreement letter. This is done with the aim that apprentices can carry out work and skills according to what is needed by the user.

Several companies hold apprenticeship programs to obtain workers who have basic qualifications and skills to support the company's operations. Meanwhile, for apprentices, the apprenticeship program is an opportunity for them to develop soft skills and hard skills that they did not get while studying at college. This provides an opportunity for companies administering apprenticeship programs to use this to exploit apprentices in their companies. With the promise that after the internship program ends, the interns will be appointed as permanent employees at the company. However, in reality this may not necessarily be possible. Internship experience at a company will only be an important point that is taken into consideration by the company in the employee recruitment process.

The reality in the field is that many apprentices are pressured and forced to do work and tasks that have no interest in increasing the apprentice's experience and skills in their scientific field. Apart from that, several companies in Indonesia often still implement apprenticeship programs without being based on a clear and binding apprenticeship agreement. In fact, clauses regarding the rights and obligations of the apprentice and the organizer of the internship program must be stated clearly in the internship agreement letter, so that if a dispute occurs, the internship agreement letter will play a very important role in determining the validity of the implementation of the internship program.

The apprenticeship agreement letter should specifically contain important clauses such as the place of internship, time period, rights and obligations of the company, rights and obligations of apprentices, amount of pocket money and so on, as stated in articles 13 and 14 of the Regulation of

the Minister of Manpower Number 6 of 2020 concerning the Implementation of Domestic Apprenticeships.

The position between apprentices and mentors and employees in apprenticeships is usually the same, but the rights and obligations must be different. These rights and obligations are usually stated in an apprenticeship agreement between the apprentice and the apprenticeship program organizer. Apart from that, the rights and obligations of apprentices are also contained in Law Number 13 of 2003 concerning Employment and Minister of Manpower Regulation Number 6 of 2020.

Legally, the regulations governing the rights and obligations of apprenticeship program participants are clear and strong. It's just that enforcement and supervision in the field is still not carried out well. Some companies still often implement apprenticeship programs without being based on the regulations governing apprenticeship programs currently in force in Indonesia. From the background above, the author conducted research with the title "Legal Protection for Apprenticeship Participants Who Do Not Obtain Their Rights in Indonesia", by raising issues 1. What are the types of legal protection for apprenticeship participants whose rights have been violated by the company?, 2. What are the legal and social consequences for companies that violate the rights of apprentice participants?

The aim of this research is to analyze what types of legal protection do apprenticeship participants receive whose rights are violated by the company? Previous research includes: 1. Internship System Based on Law Number 13 of 2003 concerning Employment Case Study PT. NI, by Fasta Umbara Azied. Problem: Is the implementation of the internship program at PT.NI in accordance with Law Number 13 of 2003 concerning Employment? What are the government's efforts to protect interns at companies in Indonesia? 2. Legal Protection Relating to the Fulfillment of Rights in the Internship Program, by Sania Arifatus Saida. The problem is, does the internship program organized by Campuspedia in its agreement and implementation implement the

provisions of statutory regulations? What is the form of legal protection in fulfilling the rights and obligations of Campuspedia intern participants?

2. Reseach Method

The type of research used is the Normative Legal Research method. Normative legal research methods have the meaning of a research method that is based on statutory rules both seen in the hierarchy of legislation (vertical) and in relation to the similarity of legislation (horizontal). Meanwhile, the approach method uses a normative juridical approach based on main legal materials. The approach is carried out by studying theories, principles, concepts from laws and regulations related to this research issue. Apart from that, this approach will also use literature study, namely by reviewing several books, statutory regulations and several other documents that are related to the legal issues in this research.

Meanwhile, sources of legal materials for this research use primary, secondary and tertiary legal materials. Primary legal materials are the main source of legal materials in this research. As a source of authoritative legal materials, namely legal materials that have the power of authority. Namely Law Number 13 of 2003 concerning Employment, Regulation of the Minister of Manpower Number 6 of 2020 concerning the Implementation of Domestic Apprenticeships and the Decision of the Industrial Relations Court at the Jakarta District Court Number: 111/Pdt.Sus-PHI/2019/PN.JKT.PST.

Secondary legal materials are sources of legal materials that can provide an overview and explanation of primary legal materials. Secondary legal materials in this research are legal books, legal journals and legal scientific works. Tertiary legal materials have a role as a source of legal materials that can share explanations and instructions for primary and secondary legal materials. Some of the tertiary legal materials that will be used include articles, legal dictionaries and Indonesian dictionaries.

The technique for collecting legal materials is carried out by means of library research, namely searching for various literature, legislation, journals and articles and other works related to the apprenticeship system.

Inductive research analysis, namely the thought process of drawing conclusions from a general legal issue from various cases that have a specific nature. This will be followed by looking for facts, looking for cause and effect relationships.

3. Results and Discussion

3.1. Types of Legal Protection for Apprenticeship Participants in Indonesia

Legal protection is a guarantee related to human rights that have been taken by other people. This protection is sought by the community so that they can fully enjoy their rights and have legal protection.

In this case, legal protection for the rights of apprenticeship participants must be guaranteed in the legal regulations currently in force in Indonesia. The certainty of legal protection is necessary to guarantee the rights of apprenticeship participants, as well as to prevent the possibility of exploitation by companies or agencies providing apprenticeships.

There are several regulations that regulate the system for implementing apprenticeship programs in Indonesia. In this case, the author in his primary legal source takes the subject matter from two regulations, namely Law Number 13 of 2003 concerning Manpower and Minister of Manpower Regulation Number 6 of 2020.

Some legal protections for the rights of apprenticeship participants are based on the regulations above, namely:

3.1.1. Legal Protection for Apprenticeship Participants Based on Law Number 13 of 2003 concerning Employment

Law Number 13 of 2003 explains that the aim of implementing the apprenticeship program is for job training and improving

competitive skills needed to prepare for the world of work in the future. Article 1 paragraph (11) of the Manpower Law explains that apprenticeship is part of a job training system which is carried out in a coordinated manner between training at a training institution and working directly under the guidance and direction of a mentor or professional worker who meets the requirements related to the production of products or services in a company/agency to obtain certain competencies or skills from prospective workers. Of course, in implementing an apprenticeship there are several things that are regulated, for example the rights, obligations and responsibilities that must be complied with by both the apprentices and the company organizing the apprenticeship program.

Several provisions related to apprenticeship programs that must be understood by apprenticeship participants and companies/entrepreneurs, based on Article 22 of Law Number 13 of 2003 concerning Employment, namely:

- (1). Apprenticeship is carried out based on an apprenticeship agreement that has been made in writing between the apprentice and the employer/entrepreneur.
- (2). The rights and obligations between the apprentice and the employer/entrepreneur must be stated in the written apprenticeship agreement.
- (3). The status of apprentices can become permanent workers/laborers in a company if the apprenticeship program that has been carried out is carried out without a written apprenticeship agreement.

Article 29 of Law Number 13 of 2003 concerning Employment determines that protection for apprenticeship participants can be implemented if there are clear regulations regarding the rights and obligations of apprenticeship participants and employers/entrepreneurs. Regarding the rights of apprentices, they have the right to receive pocket money and adequate accommodation. Apart from that, they also have the right to receive

or be registered in an employment insurance program which includes protection related to work accidents, health insurance and in the event of death. The premium for employment insurance coverage must be paid by the employer/employer. Intern participants also have the right to receive accommodation related to work health and safety, participate in certification, receive recognition of skills or competencies from the company, and receive a certificate when they have passed.

Apart from the things above, a written apprenticeship agreement must also exist. The apprentice and the company must create and approve an apprenticeship agreement to guarantee that the parties will carry out the contents of the agreement and not harm each other.

The existence of an internship agreement letter is very important for the sustainability of the internship program. However, because the majority of apprenticeship participants are students who are not yet old enough to make an agreement (not yet 21 years old in the Criminal Code) then to make an agreement the student must be represented by the agency or the internship supervisor from the respective agency as the person in charge.

In reality, in the field, it is found that several apprenticeship programs organized by several agencies and companies in Indonesia do not implement the provisions contained in the Employment Law. This is the cause of exploitation by companies or agencies towards apprenticeship participants.

3.1.2. Legal Protection for Apprenticeship Participants Based on Minister of Manpower Regulation Number 6 of 2020 concerning the Implementation of Domestic Apprenticeships

Minister of Manpower Regulation Number 6 of 2020 is a derivative of Law Number 13 of 2003 concerning Manpower which provides more detailed regulations regarding standard guidelines for implementing apprenticeship programs in Indonesia. Some of the guidelines contained in these regulations include apprenticeship requirements, implementation and evaluation of the implementation of the apprenticeship program. Minister of Manpower Regulation No.6 of 2020 also contains regulations regarding the rights and obligations of apprenticeship program participants and companies administering apprenticeship programs.

Article 1 paragraph (1) Minister of Manpower Regulation No. 6 of 2020 explains that what is meant by apprenticeship is part of a job training system which is held jointly between training at training institutions, by working directly under the direction and guidance of mentors or professional workers in the process of creating products or services in industry, to acquire skills. or certain skills.

Apprenticeship contracts or agreements have a very important role in implementing the apprenticeship program. An apprenticeship contract is like a legal framework in which there are legal facts. This fact is demonstrated by the binding force of the agreement, namely as its own law for those who make the agreement "Pacta Sunt Survanda". An apprenticeship agreement must be made in writing between the apprentice and the company organizing the apprenticeship. The apprenticeship agreement must also be submitted and ratified by the Manpower Service where the company is domiciled. The apprenticeship program agreement letter should at least clearly state:

- a. Identity and personal data of apprenticeship participants and representatives of the apprenticeship organizing company
- b. Several rights and obligations of apprentice participants
- c. Rights and Obligations of the company/agency organizing the apprenticeship program
- d. The objectives of implementing the apprenticeship program
- e. Duration of implementation of the apprenticeship program
- f. Working days and hours
- g. Benefits of apprentice participants
- h. Implementation of apprenticeship evaluations
- i. Dispute resolution

The apprenticeship agreement is a derivative of agreements in general. Apprenticeship agreements are included in the category of anonymous agreements (innominaat) which are regulated in article 1319 BW, whether or not the apprenticeship agreement is valid also follows the validity of the provisions of the agreement in general, as determined in article 1320 BW, namely:

- (1). Agreement between the parties who have bound themselves
- (2). Legal capacity to make agreements
- (3). A certain object
- (4). Permissible causes

The regulations regarding the conditions for the validity of an agreement in Article 1320 BW are cumulative, meaning that these conditions must be implemented by all parties who enter into an agreement. The first and second conditions in article 1320 BW are subjective conditions, meaning that if they are not fulfilled then the agreement can be cancelled, while for the third and fourth conditions if they cannot be fulfilled then the agreement is null and void.

Furthermore, regarding the time period for implementing the apprenticeship. Article 5 paragraph (1) Minister of Manpower Regulation No. 6 of 2020 explains that the maximum period for implementing an apprenticeship program is 1 (one) year. This means that apprentice participants can carry out apprenticeship activities in less than one year. The duration of the implementation time is considered sufficient for apprentices to learn and be able to obtain certain knowledge and competencies from the internship site.

After the apprenticeship period has ended, the apprenticeship participant has been declared to have passed and has been declared to have fulfilled the competency qualifications regulated by the company, then the company organizing the apprenticeship must provide a certificate to the apprenticeship participant, which can be used to apply for jobs.

Another thing that is needed to ensure certainty of rights and prevent abuse by companies is the establishment of an apprenticeship network.

The functions of the apprenticeship network include:

- a. Provide sources of information to prospective apprentices about available internship opportunities.
- b. Simplify the selection and selection process for apprentices.
- c. Become a means of communication between interns and the company.
- d. Access to learning materials, resources, and opportunities to share experiences between interns.
- e. Help interns build a broad professional network.

3.2. Legal and Social Consequences for Companies that Violate the Rights of Apprenticeship Participants

Apprenticeship is a learning process outside of subjects/lectures carried out with the aim of acquiring and mastering a competency with the direction and guidance of a mentor or professional worker in a particular field of work. In accordance with the existing regulations in Article 10 paragraph (1) Minister of Manpower Regulation No. 6 of 2020, it is stated that the implementation of apprenticeships is carried out on the basis of an Apprenticeship Agreement.

The legal consequences if the company violates the rights of apprenticeship participants are as follows:

3.2.1. Administrative Sanctions in Accordance with the Laws and Regulations Applicable in Indonesia

Administrative sanctions can be imposed on companies that violate the rights of interns. In this case it can be seen in the applicable legislation, namely Law no. 13 of 2003 concerning Manpower and Minister of Manpower Regulation Number 6 of 2020. These two regulations do not specifically explain the resolution of apprenticeship disputes.

Apprenticeship disputes have similar resolution processes to industrial relations disputes for workers/laborers. In this case, when the rights of the apprenticeship participants cannot be fulfilled by the company organizing the apprenticeship, the flow of dispute resolution is the same as for rights disputes in industrial relations disputes, namely Bipartite Negotiations Tripartite Negotiations Lawsuits to the Industrial Relations Court.

a. Bipartite Negotiations

Bipartite negotiations are deliberations that can be carried out by entrepreneurs/a combination of entrepreneurs and workers/unions in one company who are in dispute. Bipartite negotiations must be completed

within 30 days, if during that time one of the parties refuses to discuss or an agreement is not reached during the negotiations, then the implementation of the bipartite negotiations is deemed to have failed.

If an agreement has been reached in negotiations, a joint agreement will be formed which will be approved and ratified by signature by each party. Then, the parties must implement the contents of the agreement because the agreement that has been made in this bipartite deliberation is binding and becomes a regulation for the parties who have made it. Then, after making the collective agreement, it must be submitted to the Industrial Relations Court or to the Industrial Relations Court in the District Court in the local area. The company and the labor union enter into a collective agreement.

b. Tripartite Negotiations

Tripartite negotiations are deliberations between workers/laborers and companies/entrepreneurs carried out by involving a third party who has the role of facilitator. The implementation of tripartite deliberations can be carried out through several channels, namely Mediation, Conciliation and Arbitration. However, because the apprenticeship dispute regarding the non-fulfillment of the apprentice's rights has become a rights dispute, tripartite negotiations that can only be reached through mediation can be achieved.

Mediation is carried out by negotiation. If an agreement has been successfully reached during the deliberations, a joint agreement must be formed which must be signed by the parties and implemented in the presence of a

mediator. Then the collective agreement must be submitted and ratified to the Industrial Relations Court at the District Court where the implementation of the collective agreement was made. This needs to be done so that the agreement obtains a deed of proof of agreement that is strong and valid before the law. If the mediation does not reach an agreement, the mediator will provide a written letter of recommendation/recommendation, the parties are also required to provide answers to the recommendation. Answers can be in the form of agreeing or disagreeing with the recommendations given by the mediator.

c. Lawsuit to the Industrial Relations Court

This lawsuit can be taken to the Industrial Relations Court if efforts at tripartite deliberation through mediation have failed. To file a lawsuit, it is mandatory to submit it to the Industrial Relations Court at the District Court where the worker works. The judge at the court will examine the case before deciding on the dispute that has been submitted.

3.2.2. Cancellation of Apprenticeship Agreement/Contract

Based on the chronology of case Decision Number: 111/Pdt.Sus-PHI/2019/PN.JKT.PST, the Apprenticeship Agreement/Contract can play a vital role in the implementation of an apprenticeship program. An apprenticeship contract can be null and void if it is proven in negotiations or a trial that it does not comply with applicable regulations, namely Law no. 13 of 2003 concerning Employment, and Minister of Manpower Regulation No. 6 of 2020 concerning the Implementation of Domestic Apprenticeships.

If the company violates the internship agreement or is unable to carry out the agreed obligations, the intern or the authorized party can cancel the internship contract. This means that the company cannot retain the intern and may have to compensate or pay sanctions in accordance with the contract rules or applicable laws and regulations.

3.2.3. Threat to Company Reputation

The company's reputation can be threatened if the company is proven to be violating the rights and exploiting interns. Currently, social media can be a boomerang, increasing or decreasing the reputation of a company. When interns are found to have had their rights violated, the intern can share their experiences via social media. Many of them complain that they do not get the rights they should get according to the law. The public can assess the company and this will greatly influence the sustainability of a company.

3.2.4. Prohibition on Participating in Apprenticeship Programs

The government, through the Ministry of Education and Culture, has issued an Independent Campus curriculum policy. Several programs on the Merdeka Campus are very popular with students. One of them is the Certified Independent Study and Internship (MSIB) program. The MSIB program has many benefits for students, such as providing a lot of work experience from studying in the workplace or industry so that they will gain hard skills such as problem solving, analytical skills, and various kinds of skills and soft skills such as professional ethics, communication, cooperation, responsibility, and so forth.

Apart from students, companies that become partners also get many benefits. Companies can select interns from an early age who will be ready to work with talents that match the company's criteria, thereby reducing initial recruitment and training costs.

Companies that are proven to have violated the rights of apprentices are prohibited from participating in the apprenticeship program. This can be an obstacle for companies to recruit apprentices or can even hinder the recruitment of permanent employees in the future, and will have a negative impact on the operations and continuity of the company concerned.

4. Conclusion

Legal protection for the rights of apprenticeship participants must be guaranteed in applicable law in Indonesia. namely Law Number 13 of 2003 concerning Employment and Regulation of the Minister of Manpower Number 6 of 2020 concerning the Implementation of Domestic Apprenticeships. The Apprenticeship Agreement/Contract must explain in detail the rights and obligations of the parties. The existence of an internship agreement letter has a very important influence on the continuity of the implementation of the internship program. Minister of Manpower Regulation Number 6 of 2020 is a derivative of Law Number 13 of 2003 concerning Manpower which regulates in more detail the standard guidelines for implementing apprenticeship programs in Indonesia. Several guidelines contained in the regulation include apprenticeship requirements, implementation and evaluation of the implementation of the apprenticeship program. Article 5 paragraph Permenaker No. 6 of 2020 explains that the maximum period for implementing an apprenticeship program is 1 year. After the internship period ends and the apprentice is declared to have passed, the company must provide a certificate to the apprentice. There are several legal and social consequences if a company is found to be violating the rights of apprentices. In accordance with the provisions contained in Article 10

paragraph (1) Minister of Manpower Regulation No. 6 of 2020, it is stated that an apprenticeship agreement is a strong legal basis for the implementation of an apprenticeship program, if it turns out that the apprenticeship carried out in a company is carried out without the making of an Apprenticeship Agreement/Contract, then the apprentice's status can become a Worker/Labourer at that company.

The government can impose administrative sanctions on companies that violate the rights of apprentices. Apprentices or through their representatives can also file rights disputes through Bipartite, Tripartite negotiations, or direct lawsuits to the Industrial Relations Court. Apart from that, it will have a negative impact on the company's image and will possibly hinder the company's business continuity. Lastly, the company will also be threatened with not being able to recruit any more interns and this will even affect the interest of job seekers in applying to the company. This will have a negative impact on the human resources that support the company's business.

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