
JURIDICAL PROTECTION FOR INTERNSHIP PARTICIPANTS WHO FAIL TO OBTAIN THEIR LEGAL RIGHTS

Khayatudin,¹ Rifqi Arroiquil Haq,²

Universitas Islam Kediri

Jl. Sergeant Suharmaji Number. 38, Manisrenggo, City of Kediri, Kediri, East
Java 64128. Indonesia

Email: khayatudin@uniska-kediri.ac.id

ABSTRACT

The apprenticeship program is a form of job training prepared for students or prospective workers in preparation for entering the world of work. Some of the rights of apprentices are not the same and must be distinguished from permanent workers in a company, this needs to be done to avoid exploitation and arbitrariness against apprentices. The purpose of this study is to analyze what types of legal protection can be obtained for apprentices when their rights cannot be fulfilled by the company, as well as to analyze the legal consequences that must be accounted for by companies that have been caught violating the rights of apprentices. In completing this research the author used normative research methods. The results of the research show that the regulations governing the rights of apprentices have been very clearly regulated in the applicable laws in Indonesia, namely in Law No. 13 of 2003 concerning Manpower and Minister of Manpower Regulation No. 6 of 2020 concerning the Implementation of Domestic Apprenticeship. However, in reality in the field, many apprentices and companies do not clearly understand and apply these regulations, which is what causes many cases of exploitation and arbitrariness 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. In addition to the rights of apprentices, the results of the study also show that companies must bear the legal and social impacts when they are found to be unable to fulfill and violate the rights of apprentices. The legal and social impacts include sanctions under applicable laws, cancellation of the apprenticeship agreement letter, threat to the company's reputation and prohibition to participate in apprenticeship programs held by the government.

Keywords: Legal Protection. Rights_of_Apprenticeship_Participants. Company.

1. Introduction

Internships constitute one of the means to develop both hard skills and soft skills of interns. Generally, internship participants consist of students from vocational high schools, final-year university students, and fresh graduates from higher education institutions. An internship is a program designed to prepare prospective workers through job training for interns,

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which is implemented directly under the auspices of a corporation/company or institution that has previously agreed to cooperate with a higher education institution in conducting the internship program.² Interns receive direct guidance and supervision from mentors who are professional employees of the company or institution where the internship is carried out. Internship programs are usually conducted over a relatively long period in accordance with the duration stipulated in an internship agreement. This is intended to enable interns to perform work and acquire skills in accordance with the needs of the user.

Some companies hold internship programs to recruit workers with the qualifications and basic skills to support their operations. For the interns, internship programs provide an opportunity to develop soft and hard skills they lacked during their studies. This presents an opportunity for companies hosting internship programs to exploit the interns within their companies.³ In reality, however, such promises are not necessarily fulfilled. Internship experience within a company merely becomes an important point that serves as one of the considerations for companies in the employee recruitment process.

In practice, many interns are pressured and forced to perform work and tasks that have no relevance to enhancing their experience and skills in their respective fields of study. In addition, several companies in Indonesia often still implement internship programs without being based on clear and binding internship agreements. In fact, clauses concerning the rights and obligations of both interns and internship program organizers must be clearly stipulated in the internship agreement, so that in the event of a dispute, the internship agreement plays a crucial role in assessing the legality of the implementation of the internship program.

² Fasta Umbara Azied, "Sistem Magang Berdasarkan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Studi Kasus Pt. Ni", (Jakarta, repository.uinjkt.ac.id, 2022) Hal 1.

³ Safina Callistamalva Arindrajaya, Devy Setiyani, Aris Prio Agus Santoso, *Efektivitas Implementasi Peraturan Menteri Ketenagakerjaan Republik Indonesia Nomor 6 Tahun 2020 Terhadap Hak Mahasiswa Sebagai Peserta Pemagangan* (Indonesia Law Reform Journal, 2021) Hlm 3

An internship agreement should specifically contain important clauses such as the place of internship implementation, duration, rights and obligations of the company, rights and obligations of internship participants, the amount of allowance, and other related matters, as stipulated in Articles 13 and 14 of the Regulation of the Minister of Manpower Number 6 of 2020 concerning the Implementation of Domestic Internship Programs.

The position of interns in relation to mentors or employees within the internship program is generally equated; however, their rights and obligations must be different. Such rights and obligations are usually stipulated in an internship agreement between the intern and the organizer of the internship program. In addition, the rights and obligations of interns are also regulated in Law Number 13 of 2003 concerning Manpower and the Regulation of the Minister of Manpower Number 6 of 2020.

Legally, the regulations governing the rights and obligations of internship program participants are clear and robust. However, their enforcement and supervision in practice have not yet been properly implemented. Several companies still frequently carry out internship programs without adhering to the regulations governing internship programs currently in force in Indonesia. Based on the above background, the author conducts research entitled “Juridical Protection for Internship Participants who Fail to Obtain Their Legal”, by raising the following issues: (1) What types of legal protection are available for internship participants whose rights have been violated by companies? (2) What are the legal and social consequences for companies that violate the rights of internship participants?

The objectives of this research are: (1) to analyze the types of legal protection obtained by internship participants whose rights are violated by companies; and (2) to examine the legal and social consequences for which companies that violate the rights of internship participants must be held accountable.

This research provides two benefits, namely: (1) Theoretical Benefits, which include contributing to the development of legal scholarship for readers, academics, and legal experts. In addition, the results of this research are expected to provide academic contributions to labor and employment law, specifically concerning the internship system applicable in Indonesia. (2) Practical Benefits, whereby the findings of this study may be used as knowledge related to the internship system and legal protection for interns. Furthermore, this research aims to minimize the occurrence of exploitation and the non-fulfillment of interns' rights that should be obtained from companies or institutions organizing internship programs.

Previous studies include: (1) Internship System Based on Law Number 13 of 2003 concerning Manpower: A Case Study of PT NI, by Fasta Umbara Azied. The issues examined are whether the implementation of the internship program at PT NI complies with Law Number 13 of 2003 concerning Manpower, and how the government protects internship participants in companies in Indonesia. (2) Legal Protection Related to the Fulfillment of Rights in Internship Programs, by Sania Arifatus Saida. The issues examined include whether the internship program organized by Campuspedia, in its agreement and implementation, has applied the provisions of applicable laws and regulations, and the form of legal protection in fulfilling the rights and obligations of Campuspedia internship participants.

2. Reseach Method

The research employed in this study is Normative Legal Research. Normative legal research is defined as a research method based on statutory regulations, viewed both in terms of the hierarchy of legislation (vertical) and the equivalence or correlation among regulations at the same level (horizontal).⁴ The research approach applied is a normative juridical approach, which is based on primary legal materials. This approach is conducted by

⁴ Dr. Muhaimin, S.H., M.Hum, *Metode Penelitian Hukum* (Mataram : Mataram University Press, 2020) Hlm. 30

examining theories, principles, and concepts derived from statutory regulations relevant to the issues examined in this research. In addition, this approach also utilizes library research by reviewing books, statutory regulations, and other documents that are related to the legal issues addressed in this study.

The sources of legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials constitute the main sources of law in this research. As authoritative legal sources, they possess binding legal force. These include Law Number 13 of 2003 concerning Manpower, Regulation of the Minister of Manpower Number 6 of 2020 concerning the Implementation of Domestic Internship Programs, and the Decision of the Industrial Relations Court at the Central Jakarta District Court Number 111/Pdt.Sus-PHI/2019/PN.JKT.PST.

Secondary legal materials serve as sources that provide explanations and interpretations of primary legal materials.⁵ In this research, secondary legal materials consist of law books, legal journals, and scholarly legal works. Tertiary legal materials function as sources that provide guidance and clarification regarding primary and secondary legal materials.⁶ The tertiary legal materials used in this study include articles, legal dictionaries, and the Indonesian language dictionary.

The technique for collecting legal materials is conducted through library research, namely by identifying and examining various literature, statutory regulations, journals, articles, and other works related to the internship system. The data analysis is conducted using an inductive analytical method, which is a reasoning process to draw general legal conclusions from various specific cases. This process is followed by identifying facts and examining causal relationships.

⁵ Ibid. Hlm 68

⁶ Ibid. Hlm 69

3. Results and Discussion

3.1. Types of Legal Protection for Internship Participants in Indonesia

Legal protection constitutes a guarantee related to human rights that have been violated or deprived by other parties. Such protection is pursued by society to ensure that individuals are able to fully enjoy their rights, accompanied by the existence of legal safeguards.⁷

In this context, legal protection for the rights of internship participants must be guaranteed with legal certainty under the laws and regulations currently in force in Indonesia. The certainty of such legal protection is required to safeguard the rights of internship participants and to prevent the potential exploitation carried out by companies or institutions organizing internship programs.

There are several regulations governing the implementation of internship programs in Indonesia. In this regard, the author, in the primary legal sources, focuses on two main regulations, namely Law Number 13 of 2003 concerning Manpower and Regulation of the Minister of Manpower Number 6 of 2020.

Several forms of legal protection for the rights of internship participants based on the aforementioned regulations include the following:

3.1.1. Legal Protection for Internship Participants Based on Law Number 13 of 2003 Concerning Manpower

Law Number 13 of 2003 explains that the purpose of implementing internship programs is to provide job training and to enhance the skills and competencies required as preparation for entering the workforce in the future. Article 1 paragraph (11) of the Manpower Law defines internships as part of a job training system that is organized in a coordinated manner between training at a training institution and direct work under the guidance and supervision of mentors or qualified professional workers related to

⁷Satjipto Rahardjo, Ilmu Hukum, Bandung : PT. Citra Aditya Bakti, 2000, hlm. 54.

the production of goods or services within a company or institution, with the aim of obtaining certain competencies or skills for prospective workers.

In the implementation of internship programs, there are several aspects that must be regulated, such as the rights, obligations, and responsibilities that must be complied with by both internship participants and companies organizing internship programs. Several provisions related to internship programs that must be understood by internship participants and companies/employers, as stipulated in Article 22 of Law Number 13 of 2003 concerning Manpower, include the following:

- (1). Internships must be conducted based on a written internship agreement made between the intern and the employer/company.
- (2). The rights and obligations of both the intern and the employer/company must be stipulated in the written internship agreement.
- (3). The status of an intern may become that of a permanent worker/employee within a company if the internship program is carried out without a written internship agreement.

Article 29 of Law Number 13 of 2003 concerning Manpower stipulates that the protection of internship participants can be ensured through the existence of clear regulations governing the rights and obligations of both interns and employers/companies. With regard to interns' rights, they are entitled to receive an allowance and adequate accommodation. In addition, interns are entitled to be registered in employment social security programs, which provide protection related to work accidents, health insurance, and death benefits. The premiums for such employment insurance must be paid by the employer/company. Interns are also

entitled to occupational health and safety facilities, participation in certification programs, recognition of skills or competencies by the company, and the issuance of a certificate upon successful completion of the internship.

In addition to the above matters, a written internship agreement must also exist. Internship participants and companies are required to create and agree upon an internship agreement to ensure that both parties carry out the contents of the agreement and do not cause harm to one another.⁸

The existence of an internship agreement is crucial for the continuity of the internship program. However, considering that most internship participants are students who have not yet reached the legal age to enter into an agreement (not yet 21 years old under the Civil Code), any agreement entered into by students must be represented by the institution or internship supervisor from their respective institutions as the responsible party.⁹

In practice, it is found that several internship programs organized by institutions or companies in Indonesia do not comply with the provisions stipulated in the Manpower Law. This non-compliance has contributed to the occurrence of exploitation by companies or institutions against internship participants.

3.1.2. Legal Protection for Internship Participants Based on Regulation of the Minister of Manpower Number 6 of 2020 Concerning the Implementation of Domestic Internship Programs

Regulation of the Minister of Manpower Number 6 of 2020 is a derivative regulation of Law Number 13 of 2003 concerning

⁸Mila Wijayanti, Sugeng, Sri Wahyuni "Penyelesaian Sengketa Hak-Hak Peserta Magang Melalui Jalur Non Litigasi",Widya Pranata Hukum,2023,Hlm. 9

⁹ Abi Hasan, Siti Hajati Hoesin,"Analisa hukum terhadap pelaksanaan program pemagangan Kampus Merdeka oleh Kementerian Pendidikan, Kebudayaan, Riset dan Teknologi",Pakuan Law Review,2022,Hlm. 7

Manpower, which provides more detailed provisions regarding the standard guidelines for the implementation of internship programs in Indonesia. These guidelines include internship requirements, implementation, and evaluation of internship programs. This regulation also contains provisions governing the rights and obligations of internship participants and companies organizing internship programs.

Article 1 paragraph (1) of Regulation of the Minister of Manpower Number 6 of 2020 defines an internship as part of a job training system jointly organized between training at a training institution and direct work under the guidance and supervision of mentors or professional workers in the process of producing goods or services in industry, with the aim of obtaining certain skills or competencies.

Internship contracts or agreements play a very important role in the implementation of internship programs. An internship agreement serves as a legal framework containing legal facts, as evidenced by the binding force of the agreement, which functions as law for the parties who enter into it (*pacta sunt servanda*).¹⁰ An internship agreement must be made in writing between the intern and the company organizing the internship program, and such agreement must be reported to and ratified by the local Manpower Office where the company is domiciled.¹¹ An internship agreement must at least clearly stipulate the following:

- (1). Identity and personal data of the internship participant and the representative of the organizing company;
- (2). Rights and obligations of internship participants;

¹⁰Sri Wahyuni, et al., *Hukum Perikatan*, Depok: Rajawali Pers, 2021, hlm. 24.

¹¹Aep Risnandar, Sugeng Prayitno "*Analisis Yuridis Pemenuhan Hak dan Kewajiban Peserta Pemagangan berdasarkan Peraturan Menteri Tenaga Kerja Nomor 6 Tahun 2020 Tentang Penyelenggaraan Pemagangan di Dalam Negeri*", (*Jurnal Birokrasi & Pemerintahan Daerah* Vol. 5, 2023), Hlm. 57

- (3). Rights and obligations of the company or institution organizing the internship program;
- (4). The objectives of the internship program;
- (5). Duration of the internship program;
- (6). Working days and working hours;
- (7). Benefits received by internship participants;
- (8). Evaluation of the internship program;
- (9). Dispute resolution mechanisms.

An internship agreement is a derivative of agreements in general. Internship agreements fall under the category of unnamed contracts (*innominaat*) as regulated in Article 1319 of the Civil Code. The validity of an internship agreement is subject to the general requirements for the validity of agreements as stipulated in Article 1320 of the Civil Code, namely:

- (1). Agreement of the parties who bind themselves;
- (2). Legal capacity to enter into an agreement;
- (3). A specific object;
- (4). A lawful cause.

The requirements for the validity of agreements under Article 1320 of the Civil Code are cumulative in nature, meaning that all requirements must be fulfilled by the parties entering into an agreement. The first and second requirements are subjective requirements; if they are not fulfilled, the agreement may be annulled. Meanwhile, the third and fourth requirements are objective requirements; if they are not fulfilled, the agreement is null and void by operation of law.¹²

With regard to the duration of internships, Article 5 paragraph (1) of Regulation of the Minister of Manpower Number

¹²Nizam Zakka Arrizal, Lanny Ramli, Samuel Dharma Putra Nainggolan, Hezron Sabar Rotua Tinambunan, Jamalum Sinambela, "*Aspek Hukum Peserta Pemagangan Dalam Negeri Berdasarkan Pemenaker Nomor 6 Tahun 2020*", (Jurnal Hukum Bisnis, Vol.12, Nomor 1, 2023), Hlm 4

6 of 2020 stipulates that the maximum duration of an internship program is one year. This means that internship participants may undertake internships for less than one year.

Upon completion of the internship period, if the internship participant is declared to have passed and has met the competency standards stipulated by the company, the company organizing the internship program is required to issue a certificate to the internship participant, which may be used for employment applications.

Another measure required to ensure certainty of rights and to prevent arbitrary actions by companies is the establishment of an internship network.

The functions of such an internship network include:

- (1). Providing information to prospective interns regarding available internship opportunities;
- (2). Facilitating the selection and recruitment process of internship participants;
- (3). Serving as a communication platform between interns and companies;
- (4). Providing access to learning materials, resources, and opportunities to share experiences among interns;
- (5). Assisting interns in building broad professional networks.

3.2. Legal and Social Consequences for Companies That Violate the Rights of Internship Participants

Internships constitute a learning process outside formal academic courses, conducted with the aim of acquiring and mastering certain competencies under the guidance and supervision of mentors or professional workers in specific fields of work.¹³ In accordance with

¹³ Anwar Prabu Mangkunegara, “*Sumber Daya Manusia Perusahaan*”, Cetakan Kedua Belas, Bandung: Remaja Rosdakarya, hlm. 77.

Article 10 paragraph (1) of Regulation of the Minister of Manpower Number 6 of 2020, the implementation of internship programs must be based on an internship agreement.

The legal consequences for companies that violate the rights of internship participants are as follows:

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

Administrative sanctions may be imposed on companies that violate the rights of interns. This can be found in the applicable laws and regulations, namely Law Number 13 of 2003 concerning Manpower and Regulation of the Minister of Manpower Number 6 of 2020. However, both regulations do not specifically regulate the settlement of internship disputes.

Internship disputes have similarities with industrial relations disputes involving workers/employees. The settlement mechanisms that may be pursued include the following: (1). Bipartite Negotiation, Interns or their representatives and the company organizing the internship program must conduct bipartite negotiations. Bipartite negotiation is a deliberation process conducted between employers or employer associations and workers or labor unions within a single company that is experiencing a dispute.¹⁴ Such negotiations must be completed within 30 days. If within this period one party refuses to negotiate or no agreement is reached, the bipartite negotiation is deemed unsuccessful. (2). Tripartite Negotiation, Tripartite negotiation is a deliberation process between workers/employees and employers/companies that involves

¹⁴ Hukum Online, “3 Mekanisme Penyelesaian Perselisihan Hubungan Industrial”, <https://www.hukumonline.com/klinik/a/3-mekanisme-penyelesaian-perselisihan-hubungan-industrial-lt4b82643d06be9/#!>, (20 Oktober 2022)

a third party acting as a facilitator. Tripartite negotiations may be conducted through mediation, conciliation, or arbitration mechanisms. (3). Lawsuit before the Industrial Relations Court. The parties may file a lawsuit with the Industrial Relations Court if tripartite negotiations through mediation fail. Such a lawsuit is submitted to the Industrial Relations Court at the District Court where the worker is employed.

3.2.2. Annulment of Internship Agreements or Contracts

Based on the chronology of cases reflected in Decision Number 111/Pdt.Sus-PHI/2019/PN.JKT.PST, internship agreements or contracts play a vital role in the implementation of internship programs. An internship contract may be declared null and void by operation of law if it is proven through negotiation or court proceedings that the agreement does not comply with the applicable laws and regulations in Indonesia, namely Law Number 13 of 2003 concerning Manpower and Regulation of the Minister of Manpower Number 6 of 2020 concerning the Implementation of Domestic Internship Programs.

This is consistent with Article 10 paragraphs (1), (2), and (3) of Regulation of the Minister of Manpower Number 6 of 2020, which stipulate that:

- (1). The implementation of internship programs must be based on an internship agreement;
- (2). Internship agreements must stipulate the rights and obligations of internship participants, the rights and obligations of companies, procedures for implementing internship programs, duration of internships, and the amount of allowance received by interns;

- (3). The status of an intern may change to that of a permanent employee if the internship program is conducted without an internship agreement.

3.2.3. Threats to Corporate Reputation

A company's reputation may be threatened if the company is found to have violated the rights of interns and engaged in exploitative practices. In the current era, social media may serve as a double-edged sword, capable of both enhancing and damaging a company's reputation. When interns experience violations of their rights, they may share their experiences through social media. Once such information goes viral, the company's reputation is placed at risk.

3.2.4. Prohibition from Participating in Internship Programs

Companies proven to have violated the rights of interns may be prohibited from participating in future internship programs, such as the Kampus Merdeka internship scheme. This may hinder companies from recruiting interns or even impede the recruitment of permanent employees in the future, and may also have a negative impact on the company's operations and business sustainability.

4. Conclusion

Legal protection for the rights of internship participants is stipulated in several regulations, including Law Number 13 of 2003 concerning Manpower and Regulation of the Minister of Manpower Number 6 of 2020 concerning the Implementation of Domestic Internship Programs. Internship agreements or contracts explicitly and comprehensively regulate the rights and obligations of the parties involved. The existence of an internship agreement plays a crucial role in ensuring the continuity and legality of the implementation of

internship programs. Regulation of the Minister of Manpower Number 6 of 2020, as a derivative of Law Number 13 of 2003 concerning Manpower, provides more detailed provisions regarding standard guidelines for the implementation of internship programs in Indonesia. These guidelines include internship requirements, implementation, and evaluation of internship programs. Article 5 of Regulation of the Minister of Manpower Number 6 of 2020 stipulates that the maximum duration of an internship program is one year. Upon completion of the internship period and once the internship participant is declared to have successfully passed, the company is obliged to issue a certificate to the internship participant.

Legal and social consequences await companies that are found to have violated the rights of internship participants. In accordance with the provisions set forth in Article 10 paragraph (1) of Regulation of the Minister of Manpower Number 6 of 2020, internship agreements serve as a strong legal basis for the implementation of internship programs. If an internship program conducted by a company is carried out without being based on a written internship agreement or contract, the status of the intern may be converted into that of a worker or employee within the company. The government may impose administrative sanctions on companies that violate the rights of interns. Internship participants, either directly or through their representatives, may also file claims for rights disputes through bipartite negotiations, tripartite negotiations, or by directly submitting a lawsuit to the Industrial Relations Court. In addition, public perception of the company may negatively affect its corporate image, which may subsequently hinder business sustainability. Furthermore, companies may be threatened with the inability to recruit internship participants in the future, and this condition may also reduce the interest of job seekers in applying to such companies. Ultimately, this will have a negative impact on the human resources that support the company's business operations.

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