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THE PRIVITY OF CONTRACT AND BINDING STRENGTH OF A COLLECTIVE AGREEMENT FROM THE RESULT OF A COLLECTIVE BARGAINING PROCESS OF A TRADE/LABOR UNION IN A CORPORATION

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Abstract

This study aimed at finding out whether a Collective Labor Agreement (CLA) in a corporation is valid to all workers/labor union members/unions involved or not involved in the negotiation process of the CLA, whether it is binding to workers/labors who are not the members of the union/any union in a corporation where the CLA was made, and is not contradict with the privity of contract of the collective agreement as regulated in Article 1315 and Article 1340 of the Civil Code. The method used in this study was normative legal method which the research was conducted by reviewing applicable or applied legislation concerning the problem, especially those relating to the correlation of article 1315 and article 1340 of the Civil Code about the privity of contract of the agreement and the binding strength of the collective bargaining agreement made by one of trade unions or labor unions in a corporation. The result of this research was that the principle of the privity of contract and the principle of agreement for the third party/derden beding cannot be applied in the making of CLA which is one of the means of the labor/industrial relations, based on the content of its rules, which is in the classification of public law is a priori forcing because of the huge interest of the state/government from regulating the Collective Labor Agreement. CLA made by an employer with a union/trade union within a corporation will be legally binding to all workers/labors in the corporation, even it is legally binding to workers/labors who are not members of any trade union because the CLA is not an objective, but a reflection of the aspiration of all workers in protecting the normative rights of the interest outlined in the CLA.

INTRODUCTION

The right of workers to form trade union members is a juridical consequence of Indonesia as a member of the International Labor Organization (ILO) Convention No. 87 on Freedom of Association, Indonesia has ratified the ILO Convention through Presidential Decree No. 83 of 1998, the ratification implies A firm foundation for the democratization of the workers' movement, in line with demands for reform in all areas of Indonesia's activities.

As one of the reform measures in the field of industrial relations and in line with the ratification of the ILO convention, on August 4, 2000, Indonesia enacted Law 21/2000, trade union/labor union is an organization established by, from and for workers in within or outside

the enterprise, state or personal, independent, open, independent and democratic and accountable to fight for, defend and protect the rights and interests of the workers, or to improve the welfare of workers and their families, according to Article 1 Paragraph (3) of Law Number 13 Year 2003 concerning Manpower (UUK), workers/labors are "any person who works by receiving wages or other forms of remuneration" due to employment, the definition of of employment according to Article 1 Paragraph (15) of the Labor Law "the relationship between the employer and the worker/laborer based on the employment agreement, which has Elements of work, wages, and orders".

The definition of an employment agreement pursuant to Article 1 paragraph (14) of the UUK "agreement between workers and employers or employers which contains the terms of employment, rights and obligations of the parties", whereas according to Suwarto the employment agreement: "The employment agreement is an agreement made between the individual worker and the employer, which essentially contains the rights and obligations of each party, which are oral or written form, both for non-specific time (PKWTT: the researcher) as well as or for a certain time (PKWT: the researcher)" (Suwarto, 2003: 42).

The definition of the employment agreement as described above is an individual work agreement of an individual, that is, the employment agreement is only individually binding on the part of the worker/laborer making the employment agreement with the corporation, while the other worker who is not a party to the employment agreement Non-binding, meaning that such individual employment agreement applies the privity of contract of the agreement as regulated in Article 1315 and Article 1340 of the Civil Code.

Collective Agreement/Labor Agreement, binding agreements of companies and to all workers/labors in one corporation, the agreement is: Corporation Regulation (*Peraturan Perusahaan*/PP), Collective Work Agreement (*Kesepakatan Kerja Bersama*/KKB)/Collective Work Agreement of Collective Labor Agreement (CLA), in scientific journals This limiting the researcher only discusses CLA.

The Labor Agreement/Working Agreement or term used in the Labor Law is a Collective Labor Agreement (CLA) in the English language known as Collective Arbeids Overemkoms (CAO), this agreement Known in the treasury of Indonesian law under the provisions of the Civil Code (Lalu Husni, 2003: 65). Article 1 number 21 UUK: "CLAs are agreements on the outcome of negotiations between trade unions/labor unions or some unions/labor unions that are registered with agencies responsible for employment with employers or some employers which contain the terms of employment of rights and obligations of both parties".

Based on Article 1 number 21 of the UUK, one of the functions of trade unions/labor unions is to negotiate with employers or some employers in making CLA. Trade unions/labor unions or some trade unions/labor unions that can negotiate in the making of CLA are those that have been recorded at the agency responsible for manpower, so the process of making the CLA contains the element of workers' participation.

So far, CLA is regulated by Law no. 21 of 1954 on the Labor Agreement between Trade Unions and Employers, which is further stipulated by Government Regulation no. 49 of 1954 on How to Make and Arrange Labor Agreement, then set forth in Article 116 s.d. Article 135 of Law Number 13 Year 2003 concerning Manpower and also regulated in Regulation of the Minister of Manpower No. 28 of 2014 concerning Procedures for the Establishment and Ratification of Corporate Paragraphs and the Establishment and Registration of Collective Labor Agreements (Permenaker 28/2014).

In line with Law 21/2000, basically Law no. 21 Year 1954 and Article 116 s.d. Article 135 of the Manpower Act and of the Minister of Manpower Decree No. 28/2014, where all the laws and regulations described above accommodate a union/labor union system which means that in one corporation can stand more than one trade union/labor union conditions This compound, raises the problem of trade unions/labor unions in which one corporation is entitled to negotiate with the employer in the establishment of CLA? Is the collective bargaining agreement with which only one union/labor union is legally binding on a trade union that is not involved in negotiating the collective bargaining process with the employer? The next question is whether the CLA is legally binding on workers/labors who are not members of any union/trade union within the same corporation? The questions are answered by Article 15 of the Ministerial Decree 28/2014, stipulating that "in one corporation only 1 (one) CLA is applicable for all workers in the corporation concerned either for workers with Working Time
Status (PKWT) or Non-Specific Time Working Agreement (PKWTT)".

Based on Article 15 of Permenaker 28/2014, it can implicitly imply that the CLA in one corporation applies to all workers/labor union members/unions involved or not involved in the negotiation process of the CLA agreement even binding to workers who are not members of the union Any worker/labor union in a corporation where the CLA is created, the next question is whether the provision is not contrary to the privity of contractas provided for in Article 1315 and Article 1340 of the Civil Code which states that in general no one can bind on his own behalf Or request for a pledge other than for himself, and a third party not affiliated with the treaty obtaining any profit or loss from the treaty he made.

RESEARCH METHODS

The methods used in the preparation of this study were mentioned as follows:

1. Approach Method

The approach method used in the study/research is normative juridical, that is studying and reviewing the principles of law, especially positive law rules derived from the existing literature materials of legislation, and the provisions related primarily correlation Article 1315 and article 1340 of the Civil Code concerning the privity of contractwith the binding force of collective bargaining agreements only by one union/trade union of more than one union/trade union within a corporation. In this study also includes attempts to discover in concreto law whose purpose is to find the appropriate law and which will be applied in a problem especially in the study (Soemitro, 1990: 22).

2. Research Specification

The research is descriptive analysis, which provides a comprehensive and systematic description of the correlation of article 1315 and article 1340 of the Civil Code concerning the privity of contractwith the binding force of the collective bargaining agreement of one union/trade union from more than one union/labor union In one corporation. The general description is analyzed by starting from the legislation, the opinions of experts, aiming to find and get answers to the subject matter that will be discussed further.

3. Data Source

To obtain data that support this research, the data source is obtained through library research, by collecting and studying secondary data relating to correlation of article 1315 and article 1340 Civil Code concerning privity of contract of agreement with binding force of CLA result of one union negotiation Workers/labor unions from more than one union/trade union within a corporation. Secondary data used as main data source in this research consist of:

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a. Primary Legal Material

The primary legal materials relating to this research include the 1945 Constitution, the Civil Code, Law 21/2000, UUK, Law no. 21 of 1954 on Labor Agreements between Trade Unions and Employers, Government Regulation no. 49 of 1954 on How to Create and Arrange the Labor Agreement, Permenaker 28/2014 and other legislation relating to the issues studied.

b. Secondary Law Material

Secondary legal materials include scientific papers from experts relating to the issues studied or related to primary legal materials, including literature, papers, scientific journals, and research results. c. Tertiary Law Material

Tertiary legal materials include material that supports primary legal materials and secondary legal materials such as legal dictionaries, language dictionaries, articles on newspapers/newspapers, magazines and the internet.

DISCUSSION Labor Unions and Industrial Relations

The development of industrial relations as part of the employment development should be directed to continue to realize harmonious, dynamic, and equitable industrial relations. Therefore, recognition and respect for human rights as set forth in MPR Decree Number XVII/MPR/1998 must be realized, One form is by the formation of trade unions/labor unions.

Unions/labor unions regulated in Law 21/2000 is one means of industrial relations in addition to the welfare of its members functioning to organize in an association of industrial relations in order to create industrial peace, namely a dynamic condition in the working relationship in the corporation In which there are 3 (three) important elements: Rights and obligations are guaranteed and implemented; Where disputes arise can be resolved internally; Strike and lockout need not be used to impose the will, because the disputes have been resolved properly (Suwarto, 2003: 14).

Workers have equality before the law, have the right to obtain decent employment and livelihood as human beings, the right to express opinions, the right to assemble within an organization, as well as the right to establish and become or are not a member of a union/union Labors, the rights set forth above are the workers' basic rights guaranteed by Article 28 of the 1945 Constitution (UUD 45) "freedom of association and assembly, expulsion of thought with oral and written and so forth constituted by the law" the right In accordance with International Labor Organization (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organize, and ILO Convention No. 98 concerning the Eligibility of Rather than the Right to Conflict and To Bargain Together, Indonesia has ratified the ILO And implement Article 28 of the 1945 Constitution, one of them through Law 21/2000.

1. The definition of Trade Union/Labor Union.

The definition of trade union/labor union is set forth in Article 1 paragraph (1) of Law 21/2000, trade unions/labor unions are: "Organizations established by, from and for workers (labors: the researchers) inside or outside the enterprise, state or private property, which are unrestricted, open, independent and democratic and accountable for the struggle, defense and protection of rights and The interests of workers, as well as to improve the welfare of workers and their families. The term worker/laborer, refers to any person who works for a wage or other form of income".

A trade union is an organization established by, from and for workers inside or outside the enterprise, state or personal, unrestricted, open, independent and democratic and

accountable for struggling, defending and protecting the rights of workers, Rights and interests of workers/labors, as well as to improve the welfare of workers/labors and their families (Wilthagen, 2002). The term workers/labors refers to any person who works for other wages or income forms and Article 1 paragraph (1) of Law 21/2000 provides the meaning of trade union/union: "Organizations formed from, by and for workers/labors both outside and outside the corporation, which are free, open, independent, democratic and accountable to fight for, defend and protect the rights and interests of workers and improve the welfare of workers/Labor and his family".

According to Article 1 paragraph (2) and paragraph (3) of Law 21/2000 trade unions/labor unions may be established inside or outside the enterprise. "Unions/labor unions in companies are unions/labor unions established by workers in one corporation or in some enterprises and unions/labor unions outside the corporation are trade unions established by workers Who does not work in the corporation".

The writing of this scientific journal will only cover trade unions established by workers in one or more companies and workers working in a corporation. The union members within the corporation are workers/labors working in a corporation or more, while union members outside the corporation who are not employed in a corporation or self-employed, such as minibus or motorbike freight drivers, in this scholarly journal Of trade/labor unions whose members are workers/labors working in a state-owned, private, legal entity and non-legal entity (Visser, 2001).

2. Legal Basis, Principles, Nature, and Purposes of Trade Unions

Trade unions/labor unions should be based on Pancasila as the basis of the state and the 1945 Constitution as the Constitution of the Unitary State of the Republic of Indonesia, trade/labor unions, has principles, traits and objectives:

a. Free, that is, as an organization in exercising its rights and obligations, trade unions, not under other influences and pressures;
b. Open is that unions/labor unions, in accepting members by not distinguishing political, religious, ethnic, and gender streams;
c. Independent is that in establishing, running, and developing an organization determined by its own power is not controlled by others outside the organization;
d. Democratic is that in the formation of the organization, the election of administrators, fighting for and exercising the rights and obligations of the organization is done in accordance with the principles of democracy;
e. Responsible is that in achieving the objectives and exercising their rights and obligations, the union/trade union is accountable to members, the public and the state;
f. Improve welfare and protection for workers/labors and their families;
g. Unions/labor unions shall not restrict themselves to particular groups of workers;
h. Be free, open and responsible to defend, defend and protect the rights and interests of workers and improve the welfare of workers and their families.

3. Union /Trade Union Membership (Article 12 s/d Article 17 of Law 21/2000):

a. Unions/labor unions, should be open to receive members regardless of political, religious, religious, and gender;

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b. Trade unions are established to promote the welfare and protection of workers and their families;
c. Unions/labor unions shall not restrict themselves to particular groups of workers;
d. Membership of trade/labor unions shall be regulated in their articles of association and by-laws;
e. A worker/laborer may not be a member of more than one trade union in one corporation, in the case of a worker/labor union in a corporation apparently recorded on more than one trade union/trade union, concerned shall state in writing a union the worker/labor union he chooses, in his written declaration, the worker/laborer may declare that the person in question does not choose among the existing trade unions/unions;
f. Workers/labors who occupy certain positions within a corporation and occupation cause a conflict of interest between the employers and workers/labors, may not be a union official/union in the corporation concerned. Certain positions referred to in this article, such as human resource managers, financial managers, or personnel managers as agreed in collective bargaining agreements;
g. Workers/labors may cease to be members of a trade/labor union with a written statement;
h. Workers may be dismissed from trade unions/labor unions in accordance with the provisions of the articles of association and/or by-laws of the trade union/union concerned;
i. Workers/labors, either as administrators or as members of a union/terminated trade/work union referred to in paragraphs (1) and (2) shall remain liable for the unfilled obligations of trade unions, the responsibilities in paragraph This includes all unfinished obligations by the board and/or members of the trade union/union concerned including liability to a third party.

4. Rights and Duties of Trade Unions (Articles 25 and 26 of Law 21/2000):
   a. Enter into collective labor agreements with employers;
   b. Representing workers/labors in resolving industrial disputes;
   c. Representing the workers/labors in the labor union;
   d. Establishing an institution or engaging in activities related to improving workers' welfare, such as establishing cooperatives, foundations or other forms of business;
   e. To engage in other activities in the field of employment that are not contrary to applicable legislation;
   f. Trade unions/labor unions may affiliate and/or cooperate with international trade unions and/or other international organizations provided they do not conflict with applicable laws and regulations.

The Law of The Indonesia National Agreement

1. The definition and the basis of the Law of the Covenant

The Civil Code regulates contracts/agreements in Book III on Alliances (verbintenissen) Article 1233 - Article 1864. In the Indonesian legal literature there are several terms for translating "verbintenis" and "overeenkomst", among others Subekti and

agreement Is overeenkomst, Utrecht uses the term belly for verbintenis and the agreement for overeenkomst; And Achmad Ichsan translate verbintenis with agreement and overeenkomst with approval (Seriawan, 1978: 1).

Based on the description for the verbintenis are known three Indonesian terms, namely the engagement, the stomach, and the agreement, while for overeenkomst used two terms of agreement and agreement, the term overeenkomst which according to the Indonesian term is agreement and agreement, based on one of the principles of the agreement as concluded In Article 1338 Paragraph (1) of the Civil Code on the principle of freedom of contract and also based on the verb overeenkomst itself is overeenkomen which means agree and agree. Given the two terms of translation for the overeenkomst, it is not necessary to make a problem, because an agreement is also called an agreement, in which two parties agree to do something, so it can be said that the two meanings have the same meaning (Subekti, 1972: 1). The definition of the attachment can be seen Hoffman definition as citation by R. Setiawan (1978: 2) stating that: "Engagement is a legal relationship between a limited number of legal subjects, in which case a person or persons thereof (the debtor or the creditor) commit themselves to behave in certain ways against the other, who is entitled to such an attitude".

Then Pitlo states that an engagement is a legal relationship between two or more persons on the basis of which one party has the right (creditor) and the other party is liable (debtor) for any achievement (Suryodiningrat, 1985: 14). Unlike an engagement whose formulation is not provided for in the Act, the meaning of the agreement is set forth in Article 1313 of the Civil Code: "Treaty is an act whereby one or more persons commit themselves to one or more persons", the covenant notion pursuant to R.Setiawan, is " Is a legal act, in which one or more persons bind themselves to one or more persons ". While Subekti, giving the the definition of of the covenant is, "an event in which a person agreements to another or where the two men agreement to do something" (Subekti, 1972: 1).

2. Various agreements

The agreement as a source of engagement may be divided into the following types of agreements:

a. Unilateral approval and mutual agreement. Reciprocal approval is an agreement that creates a substantial obligation to both parties. Unilateral approval is consent, there is only obligation to one party only;
b. Free approval and approval of expenses. Approval of expenses is an agreement whereby one party's achievements are accomplished by the other. Between the two achievements there is a legal relationship with each other. Free consent is an agreement, in which one party benefits from the other for free;
c. Consensual, real and formal approval agreements. Consensus Approval is a consensus that occurs with an agreement. Then the real agreement is an agreement, where in addition to the necessary agreement also required the actual delivery of goods that become the object of the agreement, and the formal agreement is a contract other than the agreement is based, so for the validity of the agreement required certain formalities;
d. Named approval and unnamed consent. The terms of the named agreement or the named contract are translations of the terms "nominaat contract" (English), and "Benoemde (Dutch). The Benoemde Agreement shall be

treaties, whereby the law has been specifically regulated in Book III of the Civil Code of Chapter V up to Chapter XVIII plus the title VIIA, and in the Book of Commercial Law such as insurance approval (Mariam Darus Badrulzaman, 2001: 19-20). The definition of unconfirmed consent (onbenoemde overeenkomst) is an agreement not specifically regulated in law, but grows and develops in the economic activities of Indonesia. The number of this agreement is not limited to the name that is tailored to the needs of the parties that make it, and the birth of this agreement is based on the principle of freedom of contract as stipulated in Article 1338 paragraph (1) Civil Code.

3. The Principles of the Covenant Law

a. The definition of the Principle of Law

Definition of legal principle according to Bruggink (1996): "The principle of law is the basic thoughts, contained within and behind the legal system, each formulated in the rules of legislation and judgmental decisions, in respect of which the provisions And individual decisions can be seen as the translation".

The definition of the principle of law according to Satjipto Rahardjo (1998): "The principle of law as something that is considered by the legal community concerned as basic truth or fundamental truth, because through the principles of law that ethical and social considerations of society enter into the law. Thus, the principle of law becomes a kind of source to live its legal order with the ethical, moral, and social values of its people".

The function of the legal principle is to interpret the rules of law and also provide guidance for a behavior. The legal principle also explains and justifies the legal norms, in which it contains ideological values of legal order (R.J. Jue, 1980: 63). Smits (1995), gives his view that the principle of law has 3 (three) functions, namely: First, the principles of law provide the intertwining of the rules of the scattered laws; Second, legal principles can be used to find solutions to emerging problems and open areas of new problem coverage. From these two functions, a third function is derived, that principles in such matters can be used to "rewrite" existing legal teaching materials in such a way that a solution to new problems may arise.

Referring to the foregoing, it can be concluded that the legal principles aim to provide reasonable or appropriate directives (rechtmatig) in terms of using or applying the rules of law. The legal principle serves as a guide or orientation direc- tion based on which the law can be exercised. These legal principles will not only be useful as guidelines when dealing with difficult cases, but also in terms of applying the rules (Sisson and Marginson, 2002).

b. Principles of the Covenant Law

1. The principle of Consensualism

In the first covenant it must be based on the principle of consensualism, which can be regarded as an absolute requirement for modern covenant law and for the creation of legal certainty. In the Civil Code, the provisions of the law on which consensualism is based, namely Article 1320 of the Civil Code, and Article 1338 Paragraph (1) of the Civil Code. Article 1320 of the Civil Code states: "For the validity of an agreement, four conditions are required:) Agree to those who bind themselves; (2) The ability to make an agreement; (3) a certain thing; And (4) a lawful cause". Then Article 1338 Paragraph (1) of the Civil Code states that: "All legallymade agreements act as laws for those who make them." Referring to both articles, it can be concluded that to give birth to a contract is sufficient with the conclusion of an

has been and has been born at the moment of agreement reached.

With such consensual principle it is intended that if a contract is made, then the contract is valid and fully binding, without requiring any other conditions, such as a written requirement, unless the law otherwise requires. Taking it the principle of consensualism, which means "binding words" according to Eggens, is a moral requirement (*zakelijke eis*). It is said by the great professor of the Netherlands, that: "The principle of consensualism is a culmination of the increase in the dignity of the human being implicit in the proverbial "*een man een man, een woord eenwoord*", which means that by putting trust in his words, the person of his dignity is increased to the utmost as a human being" (Van der Meer, 2003).

When observed, the opinion of Eggens which requires the person to hold his speech can be understood, because if one wants to gain trust, then that person must be trustworthy of his words, and the law that has the duty to organize order and uphold justice in society, puts the principle of consensualism to achieve certainty The law (Madsen, 2003). The principle of consensualism concluded from Article 1320 of the Civil Code and Article 1338 Paragraph (1) of the Civil Code has been a universal principle, even in the French Civil Code, agreeing that both parties not only legitimate contracts, but for example in the sale and purchase agreement Transfer the property rights of the seller's goods to the buyer. The same thing as in the French Civil Code, applies also in the Civil Code of Japan and the Civil and Commercial Code of Thailand.

2. Principles of the Agreement Personality

Then, if the above consensual principle, connected with the provisions of Article 1315 and Article 1340 of the Civil Code known as the privity of contract principle, then an agreement agreed by the parties shall be valid only between the parties that make it, Not related to the agreement shall have no gain or loss from the agreement made by such parties (Johannes Ibrahim, 2003: 103).

The provision of Article 1315 of the Civil Code reads as follows: "Generally no one can bind himself on his own behalf or ask for a agreement to be made for himself", furthermore, the provision of Article 1340 of the Civil Code states that: "A covenant only Apply between the parties that make it. An agreement cannot bring harm to third parties, nor can third parties benefit from it, other than those provided for in Article 1317".

The word "binding" which in Dutch is called "*zich verbinden*" refers to the ability to assume duties or to undertake to do something, whereas what is meant by "Request a agreement" which in Dutch is called "*bedingen*" rights or to obtain something from an agreement (Grijpstra, 1999). Several provisions of the law governing the privity of contract of the treaty, specifically Article 1340 Civil Code mention that the privity of contract of the agreement can be ruled out by the agreement of a third party called "derden beding" as regulated in Article 1317 and Article 1318 Civil Code, which reads as The following.

Article 1317 Civil Code: "(1) Again it is also permissible to require that a agreement be made for the benefit of a third party, if a pledge made by a person for himself, or a gift he makes to another person, contains such a agreement; (2) Anyone who has committed such a thing shall not withdraw, if the third party has declared the will to use it".

Then, Article 1318 of the Civil Code reads as follows: "If a person asks to be agreementd a thing, it is deemed that it is for the heirs and the persons who have the right thereof, unless expressly or inferred from the nature of the covenant, that is not the case". Compared with Article 1317 of the Civil Code, Article 1318 of the Civil Code is a principle which widens the principle of contractual personality, where if a person makes a contract, the

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agreement is not only for himself but for his heirs and the persons with whom it undertakes Agreement, unless expressly stated in the agreement is not the case.

3. The principle of Freedom of Contract

Later, the law of the treaty was based on the principle of freedom of contract as concluded in Article 1338 Paragraph (1) of the Civil Code, which states that: "All legally-made agreements shall be valid as laws for those who make them". Through this principle of freedom of contract, the parties have the freedom to make contracts and arrange their own forms and contents of the contract to be made, as long as the contract meets the requirements of a contract/agreement as provided for in Article 1320 Civil Code as follows: (1) The parties agree form (3) The contents of the contract are clear, that is at least clear about the type and amount to be the object of the contract. (4) The contents and form of the contract are not contrary to the rules of the legislation, Public order, and morals and carried out in good faith as mentioned in Article 1338 paragraph (3) of the Civil Code.

Based on the above, the the definition of of this contracting principle is not in the sense of absolute freedom, because in that freedom there are various restrictions, among others by law, public order and morality (Article 1320 paragraph (4): The researcher), as Friedman (1960: 369) that freedom of contract is still considered an essential aspect of individual freedom, but no longer has an absolute value like a century ago.

4. Good Faith Principle

Furthermore, in the framework of the execution of the covenant, the role of good faith (te goeder trouw) has a very important meaning, as Subekti states, that good faith is a most important joint in the treaty law. In the Law is not explained what is meant by good faith, except in Article 1338 paragraph (3) Civil Code, stated that: "The agreement must be implemented in good faith". In fact the goodwill mentioned in Dutch with te goeder trouw, which is often also translated with honesty, can be distinguished on 2 (two) kinds, namely: (1) good faith at the time will enter into agreement; And (2) Good faith in the exercise of the rights and obligations arising out of the agreement.

Good faith at the time of entering into a contract is nothing but an estimate in the heart of the concerned that the conditions required to enter into a legally valid contract are fulfilled. Good faith in carrying out the rights and obligations arising out of a covenant lies with the human heart, but in the execution of the treaty must heed the norms of propriety and justice, by abstaining from actions which may cause harm to the parties other (Wirjono Prodjodikoro, 1979: 56). The covenant is done in good faith or not, it will be reflected in the concrete actions of the person who executes the agreement, so that even if good faith in the execution of the covenant lies in the subjective heart of the human being, it can also be measured objectively. Unlike most Indonesian jurist the researchers who have always considered good faith to be subjective, the Dutch jurists, among others, Hofmann and Volmaar consider that in addition to a subjective sense of subjective intent, there is also an objective goodwill called the propriety (Billikheid redelijkheid).

5. The principle of Pakta Sunt Servanda

Then, the final principle known in Book III of the Civil Code, is the principle of Pacta Sunt Servanda as a very basic principle of agreement derived from the old rule in Roman/Latin law which is a reference that every agreement must be truly fulfilled. If it refers to the notion of engagement as a legal relationship between two or more persons in which the first party is entitled to achievement while the other party is obliged to fulfill the achievement, then an agreement as a source of engagement, has two attributes, namely legal rights and obligations. The legal obligation is to commit oneself to do something to another party, while the so-called

right or benefit is a demand to implement something that is agreed upon in the agreement. Therefore, in any agreement, each party must keep its agreement to carry out its obligations and respect the rights of others.

Grotius (1964) sought the basis of that consensus in natural law by saying that "the agreement is binding" (*pacta sunt servanda*), and "we must fulfill our agreement" (*promissorum implendorum obligati*). Furthermore, according to Grotius, the principle of pacta sunt servanda arises from the premise that contracts in nature and have become binding on two grounds. The first reason is the simplicity that people have to interact and cooperate with others, which means the people must trust each other, which in turn will provide honesty and loyalty. The second reason is that every individual has a right, in which the most fundamental right is a transferable property. If an individual has the right to relinquish his property, then there is no reason why that person should be prevented from releasing his rights as through contract.

Adagium *pakta sunt servanda* has a very big meaning since the XVI century, not only in private law but also in the field of constitutional law and international law. The application of the principle of pacta sunt servanda in an agreement was originally an enforceable church law. But under the influence of the moral theologians little by little has been developed, that unreached agreements with the appointment of oaths also have binding power. Thus the principle of pacta sunt servanda is accepted as a general principle in international trade and the agreement between states, as provided for in Article 26 of the Vienna Convention 1969 states that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith", which can be translated as: "each treaty is binding on the parties and must be executed in good faith" (Soedjono Dirdjosisworo, 2003: 104).

The principle of pakta sunt servanda is well known in both the continental and common law systems which supports the guarantee and certainty of trade and has been integrated into international law. Therefore, this adage can be viewed as part of customary law, whose application can be applied to private (private) as well as public (nation). This is in accordance with Hans Wehberg's opinion, which states that: "Adagium *pakta sunt servanda* as a common law principle encountered in all countries and will be applied equally, both in agreements between state and private companies. Because the life of the international community is not only based on the relationship between the state but also includes the relationship between the state and foreign companies".

Legal Classification

An attempt that can be made by people to try to understand the law is to make legal classifications using only the following measures: Legal sources; The territory or place of entry of the rule of law; The form of the rule of law; The nature of the rule of law; Time/time of law rule; The contents of the rule of law; Function/field of rule of law arrangement; Rule form (Gregory, 1959).

The size of legal classification that correlates with scientific journals, the classification of the law by using the content of the rule of law, which makes the classification of the rule of law into 2 (two) major classes, namely: Public Legal Rule, and Private Civil Law (civil).

Belleford divides legal rules into Public Law and Private Law as follows:

1. Public Law, are the legal rules governing the state of affairs, especially those concerning ways:
   a. Agencies/institutions of state institutions perform their duties and the researcherities;

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b. The realization of the legal relationship between government (state) and society;
c. The realization of legal relations between state institutions/government.

2. Private Law regulates public order concerning individual/individual interests of the citizens, especially in matters concerning: a. family relation;
   b. take care of personal wealth;
   c. relationships between individuals/individuals within the community;
   d. relationships that relate to members of society with government/state (which are domiciled as individuals).

Van Apeldoorn holds that what should be used as a measure to distinguish between public law and private law is "what interests are to be protected by a rule/rule of law" based on this measure then:

a. Public Law, is the rules of law that regulate the public interest (public);
b. Private Law, are the rules of law that regulate special interests.

Paul Scholten distinguishes between public law and private law based on what legal principles underlie each type of rule of law, with these criteria, then:

a. Private law, is the legal norms that deal with ordinary (common) legal problems faced by humans in their lives, so private law contains general principles;
b. Public Law, is a special law because it contains special principles to limit private power, although it does not abolish the private law.

Katz Harry and Keefe Jeffrey (1992) thinks that the difference between Public Law and Private Law is not the difference between Public Law and Private Law is not a fundamental or fundamental difference, the difference between the two is simply as follows: The rules of public law are a priori forcing, whereas the rule of private law does not a priori force, for the latter rule gives the freedom for the legal subjects to settle their relations of their law under the provisions of their own law. The main thing according to Katz Harry and Keefe Jeffrey determines whether rules fall into public law or private law, will depend on the size of the state/government interests that will be regulated and filled with the enforcement of a rule of law. Therefore, it can be concluded that the greater the state interest in the implementation of a rule of law, the greater the level of public law in a rule of law.

The Roman legal system draws a strict separation line between civil law and public law, public law regulating public interests, such as relations between citizens and the state. He deals with all matters relating to state affairs and how the state does its job. Civil law regulates all matters containing relations between fellow citizens, including agreements. Because Indonesia embraces the welfare state as stated in the 4th aline of the Preamble of the 1945 Constitution, where the task of the state is not only to carry out the government but to serve the welfare of the Indonesian people, the Indonesian state interferes a lot in the private life of fellow Indonesian citizens including in labor relations/Industrial, consequently a shift from the field of law that originally entered the field of civil law shifted to the field of public law, the example of labor law/industrial which originally entered in the field of civil law is now included in the field of public law, because the Collective Labor Agreement is part of labor law or As a means of industrial/labor relations, then collective bargaining agreements shall enter into the field of public law, whereas the law of treaties is governed in Book III of Alliance (van verbintenissen) Article 1233 - Article 1864 Civil Code enters in the field of civil law (Satjipto Rahardjo, 2000: 23).

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Collective Labor Agreement

1. The Definition and Legal Basis of Collective Labor Agreement (CLA)

Industrial relations are created from a working relationship, which is essentially individual. Work relationships always contain elements of work, orders, wages and time, while industrial relations are essentially collective. Therefore, the scope of industrial relations is a large number of workers/labors and in certain cases the representation of workers/labors by trade unions/labor unions (Summers, 1997).

The requirement to create a CLA in the corporation where the CLA will be created must have been established union/labor union that will act as the representative of workers/labors in the process of negotiating the making of CLA with the employer, so that CLA contents contain elements of participation and agreement of the workers/employers with employers or Ways to work together between workers and employers in estimating, determining the fate of the corporation at this time and in the future.

The provisions concerning CLA are regulated in Section Seventh, Articles 116 up to Article 135 of the Manpower Law, the definition of CLA pursuant to Article 1 paragraph (21) of the UUK: "Agreement which is the result of negotiation between trade union/labor union or some union/labor union recorded at institution responsible in employment field with employer, or some employer or association of employer which contains condition of work condition, rights and obligation of both parties".

2. The Process of Collective Labor Agreement (CLA).

Referring to the provisions of Article 116 UUK, the process of making CLA, is as follows:

a. CLA is made by a trade union/labor union or several workers/labor unions that have been registered with the agency responsible in the field of employment with employers or some employers;
b. The drafting of CLA is carried out by deliberation. In the event that the deliberations do not reach an agreement, the settlement is conducted through an industrial relations dispute resolution procedure;
c. CLAs must be made in writing with Latin letters and using the Indonesian language. In the case of a CLA made not in the Indonesian language, the collective labor agreement shall be translated in Indonesian by a sworn translator;
d. In 1 (one) corporation can only be made 1 (one) CLA which applies to all workers in corporation;
e. In the case that in one corporation there is only one trade union/labor union, the trade union/labor union is entitled to represent the worker/labor in negotiating the making of CLA with the employer if having more than 50% (fifty percent) member of the total worker/Labors in the corporation concerned;
f. In the case that in one corporation there is only one union/labor union as mentioned above, but does not have a membership of more than 50% (fifty percent) of the total number of workers in the enterprise, the union/labor union may represent the worker/Labors in negotiations with employers if the union/labor union concerned has been supported by more than 50% (fifty percent) of the total number of workers/labors in the corporation through voting, whose membership is evidenced by membership cards;
g. The voting is organized by a committee consisting of workers/labors representatives and trade union officials witnessed by officials responsible for employment and employers;

h. In the event that the above support is not achieved, the relevant trade union/labor union may re-submit the request to negotiate the CLA with the employer after exceeding the 6 (six) months since the voting takes place following the procedure referred to above;
i. In the case of one corporation there are more than 1 (one) trade union/labor union then the right to represent the workers/labors negotiates with the employer whose membership amounts more than 50% (fifty percent) of the total number of workers in the corporation;
j. In the event that the provisions referred to in letter h are not reached, meaning that there is no union whose membership exceeds 50% (fifty percent), the union/labor union may enter into a coalition so as to achieve a total of more than 50% (fifty percent) of the whole The number of workers/labors in the enterprise to represent in negotiations with employers;
k. If the provisions referred to in points 8 and 9 above are not met, then trade/labor unions form a negotiating team whose membership is proportionately determined based on the number of members of each trade union/trade union;
l. CLA shall enter into force on the day of signature unless otherwise specified in the
CLA;
m. CLA signed by the party making the CLA is subsequently registered by the employer at the agency responsible for the manpower field;
n. The provisions contained in the CLA which have been formed from the negotiations of trade unions/labor unions shall be carried out by the Employer, the union/labor union and the worker/laborer;
o. Employers and trade/labor unions shall notify the contents of the CLA or its amendments to all workers;
p. Employers must print and distribute a copy of the CLA to each worker/laborer at the expense of the corporation;
q. The validity period of CLA is no more than 2 (two) years. However, the CLA may be extended for a maximum period of 1 (one) year based on a written agreement between the employer and the union/labor union. Collective bargaining of the next CLA can commence at the earliest 3 (three) months before the expiration of the current collective bargaining agreement. In the event that the negotiation does not reach an agreement, then the current CLA will remain valid for a maximum of 1 (one) year.

Privity of Contract And Binding Strength of The Collective Work Agreement Made By A Labor Union

Corporation is any form of business incorporated or unlawful, owned by an individual, belonging to a partnership, or owned by a legal entity, whether private or state-owned, that employs workers/labors by paying wages or other forms of remuneration in which such enterprise may be made 1 (one) CLA applies to all workers in the corporation (Deaton and Beaumont, 1980).

The requirement to make the CLA in the corporation is required by the union/labor union as the representative of the worker/laborer who will negotiate with the employer in making the CLA, the union/labor union is formed by at least 10 (ten) workers/labors, so the process of making CLA Contains elements of workers' participation.

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However, in accordance with the provisions of Article 119 of the Manpower Act, it is stated that the union/labor union is entitled to represent the worker/labor in negotiating the establishment of CLA with the employer if it has more than 50% (fifty percent) of the total number of workers/concerned.

Based on the description, then within a corporation it is possible not all workers to become members of a Trade Union/Labor Union. In relation thereto, the later question arises: "Are workers/labors who are not members of a trade union/labor union bound to the contents of the CLA made by that one Union/Labor Union?".

If the question is examined from the perspective of private law, in particular Articles 1315 and Article 1340 of the Civil Code, known as the privity of contract, then an agreement agreed by the parties shall be valid only between the parties making it, the third party Which does not pertain to the treaty shall have no gain or loss from the agreement made by such parties. This means that the CLA is only binding on workers/labors who are members of trade unions/labor unions. Workers who are not members of a union/labor union are not bound by the content of the CLA.

However, the principle of the personality of the treaty may also be ruled out by the concept of a third party's agreement/derden beding, as mentioned in Articles 1317 and Article 1318 of the Civil Code, a agreement set forth in the agreement that a third party will benefit from the agreement made The parties. In fact, Article 1318 of the Civil Code extends further the principle of contractual personality, where it is mentioned that if a person agreements something then the agreement is not only for himself but for his heirs and the persons with whom it enters into an agreement. Except in the agreement it is not.

Through such a agreement to such third party, the CLA made by a trade union/labor union may also be applied to workers/labors who are not members of a trade union/labor union. The agreement for such third party shall come into force since there is an acceptance statement from a third party. This means that the workers '/ workers' attachment to the contents of the Collective Labor Agreement is a condition "after a statement of acceptance/approval from unattached workers or union members" which negotiates the establishment of CLA with employers.

Referring to the terms of the agreement of a third party requiring a third party acceptance/approval statement, for a private agreement on which the subject of the agreement is fairly between two parties, it can and is easy to do, but if it is applied In a corporate environment whose workforce reaches hundreds, thousands and even tens of thousands, the requirement for the application of the principle of agreement to a third party "derden beding" as the principle which breaches the principle of the personality of the treaty is unlikely to be applicable. In addition, the impossibility of applying the derden beding principle in the labor environment, since labor relations and CLA are one means of employment/industrial relations based on the content of its legal rules into the class of public law a priori is forcing because of the magnitude of state/government interests that will be regulated and filled with The enforcement of the rule of law in this case the CLA in order to guarantee the fulfillment of fundamental rights and protection of the workers/labors and at the same time can create conditions conducive to the development of business as one of the supporting economic development of the country.

Based on the objectives to be realized in the labor/industrial development, the contents of the Collective Bargaining Agreement made between one trade union and the employer a priori is forcing or legally binding on all workers regardless of whether the worker is a member Or non-trade/labor union members as long as the contents of the CBA reflect the aspirations

and aspirations of all parties involved in labor/industrial relations (workers, employers and government), and CLA is a tool for achieving the ultimate goal of industrial relations, namely prosperity All parties (enterprise productivity and workers' welfare). Therefore, if it examines the binding force of the CLA, it has a binding force that is of a plural nature, meaning that the establishment of a CLA creates legal consequences in the form of rights and obligations for all workers/labors working in the enterprise where the CLA is made, including causing legal consequences to the union/Other unions within the enterprise that do not engage in negotiations and/or do not become parties to the production of CLA.

The basis of the footing which became the basis of the application of the contents of CLA to all workers/labors, is inseparable from the concept of state administration of Indonesia as a unitary state with a system of government in the form of a democratic and constitutional republic. Meanwhile, the meaning and values contained in the definition of constitutional democracy explicit in the 1945 Constitution, is seen in the 1945 Constitution which embraces indirect democraty. The definition of indirect democraty, according to Sri Soemantri is a democracy where the implementation of people's sovereignty is not implemented by the people directly but through the institutions of popular representation, in which reflects the values of togetherness, freedom, and pluralistic. The implementation is implemented in the CLA which is made by the union/labor union acting as the representative of the workers/labors for and on behalf of the workers/labors who negotiate with the employer in one corporation in making the CLA (Sunaryati Hartono, 1991:1).

Then, given the usefulness of the objectives to be realized in the CLA to provide protection to the interests of all workers, the philosophical concepts of Jeremy Bentham on the theory of Ulitilitarianism, the theory of the legal objectives of Sunaryati Hartono and Supomo can be used as the basis of the binding force of the CLA on the entire workforce/Worker in a corporation regardless of whether the worker/laborer is a member or not a member of a trade union/trade union negotiating the making of a CLA with an employer (L.J. van Apeldoorn, 1983: 22).

Referring to Jeremy Bentham's theory of Ulitilarianism with, then the ultimate goal of law or legislation according to Satjipto Rahardjo, is serving the greatest happiness of the greatest number of people, while according to Sunaryati Hartono. "The law is not an objective, but a reflection of the aspirations of the people in the protection of the rights, the interests of individuals are poured in legal norms or legal rules which is a bridge that will bring all the people of Indonesia to the ideals that are aspired". Supomo says the purpose of the law is to regulate the social intercourse in a peaceful way by protecting certain human interests such as honor, freedom, soul, property, rights and others against those who harm it.

Based on the theory of the legal objectives of Sunaryati Hartono and Supomo described above CLA made by the employer with one union/labor union in a corporation will legally bind to all workers/labors in the corporation, regardless of whether the worker is a member or Not a member of a trade union/labor union negotiating the making of a CLA with an employer, even legally binding on a worker/laborer who is not a member of any trade union/labor union in the corporation, because the CLA is not an objective but a reflection of The aspirations of all workers/labors in the protection of normative rights, the interests of all workers/workers are set forth in the CLA, so that the CLA is a bridge that brings workers/labors to the common welfare, ie the productivity of the corporation correlates with the welfare of all workers, CLA can regulate industrial peace by protecting the normative rights and interests of the parties involved in industrial relations (employers, workers and government).

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CONCLUSION

The principle of the privity of contract as regulated in Article 1315 and Article 1340 of the Civil Code and the application of the principle of the agreement made to the third party/*derden beding* as regulated in Article 1317 and Article 1318 of the Civil Code based on the content of its legal rules shall fulfill the classification of private law (civil), not a priori forcing. Therefore the privity of contract and the principle of the agreement of a third party/*derden beding* cannot be applied in the making of CLA which is one of the means of the employment/industrial relationship based on the content of its legal rules into the class of public law is a priori forcing because of the huge of state/government interest in regulating the CLA, it is to ensure the fulfillment of the rights of workers/labors over their normative rights in an effort to create industrial harmonious relations (industrial peace) a condition of corporation productivity/profit correlated to the welfare of workers/labors in order to create a conducive development of the business world as one of the supporters in the development of the country's economy.

Based on the philosophical concepts of Jeremy Bentham on the theory of Ulitilitarianism, the theory of the legal objectives of Sunaryati Hartono and Supomo, the CLA made by the employer with one union/labor union in a corporation will legally bind to all workers in the corporation, labor is a member or non-member of a trade union/trade union negotiating the making of a CLA with an employer, even legally binding to workers/labors who are not members of any union/labor union in the corporation, because CLA is not an objective, but is a reflection of the aspirations of all workers in the protection of normative rights, the interests of all workers as outlined in the CLA, so that the CLA is a bridge that brings workers and employers to the common welfare, that is, the productivity of the corporation related to the welfare of all workers, so that CLA can regulate industrial peace in a manner that ensures the rights of workers over the normative rights and interests of the parties involved in industrial relations (employers, workers/labors, and government).

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