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Employment Agreement in the Civil Code BW and KHES: Concept, Arrangements, and Contract Format

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Abstract
An employment agreement is a fundamental form of contract in civil law, both regulated by the Civil Code (KUHPerdata) and the Sharia Economic Law Code (KHES). Drafting a sound and comprehensive contract is crucial to prevent potential future disputes and provide legal certainty for all parties involved. In this study, the researcher used two approaches: normative juridical. This approach serves to inventory applicable laws and regulations and various relevant legal theories. Drafting a written employment agreement is crucial, encompassing essential elements such as the identities of the parties, job descriptions, remuneration, and the implementation period. This step aims to ensure legal certainty and minimize the possibility of future disputes. Employment agreements, whether drafted based on the provisions of Law Number 13 of 2003 or the sharia principles in the KHES, play a significant role in creating fair, transparent, and regulatory-compliant employment relationships. Furthermore, the application of Sharia principles such as fairness, honesty, and the prohibition of usury in employment contracts will further strengthen harmonious relations between employees and employers in the modern business context. Therefore, it is crucial for all parties involved to pay close attention to these aspects to foster a working relationship based on trust, fairness, and compliance with applicable laws.

I. INTRODUCTION

An employment agreement is a fundamental form of contract in civil law, both in the Civil Code (KUHPerdata) and the Sharia Economic Law Code (KHES). The basic concept of this agreement is the relationship between an employer and an employee, where one party promises to perform a job, while the other party promises to provide compensation for the work performed. In this context, an employment agreement serves not only as a tool to create a legal relationship, but also as a means to protect the rights of each party in a business transaction.

In the Civil Code, regulations regarding employment agreements are clearly defined in Articles 1601a to 1601n. These articles outline various aspects related to the obligations and rights of employers and employees. For example, employers are required to provide information necessary for the performance of the work, while employees are required to perform their work properly and on time. These obligations create a balance in the employment relationship, which is essential to ensure that both parties can fulfill their expectations and responsibilities.

On the other hand, KHES provides an approach that prioritizes the principles of justice and ethics in employment relationships. Within the Sharia framework, employment agreements must be free from elements of usury (riba) and gharar (uncertainty), which can often lead to future disputes. KHES emphasizes the importance of a clear agreement between both parties, where all terms and conditions must be agreed to without coercion. Furthermore, the dispute resolution mechanism stipulated in KHES emphasizes deliberation and consensus, reflecting collective values within society.

The contract format for an employment agreement also has elements that must be considered to ensure the contract is valid and legally binding. Important elements in the contract include the identity of the parties, job description, agreed upon compensation, implementation period, and other terms and conditions deemed necessary. Drafting a good and complete contract is crucial to avoid potential future disputes and provide legal

certainty for all parties involved. Article of the Civil Code provides in-depth information on the concept, regulations, and contract format in employment agreements, legal practitioners and business actors can be better prepared to face challenges that may arise. This is crucial to ensure that the established working relationship is not only productive but also based on the principles of fairness and legal compliance.

II. RESEARCH METHODS

In this study, the researcher used two approaches: a normative and a juridical approach. The normative approach is used to inventory applicable laws and regulations and specific legal theories. It analyzes the rights and obligations of each party in an employment agreement under the Civil Code and the Special Economic Zone, and identifies the differences in the regulations in the two legal systems.

III. RESULTS AND DISCUSSION

A. Concept of Employment Agreement

According to Sudikno Mertokusumo, an agreement is a legal subject involving two or more parties, based on mutual agreement to create certain legal consequences (Sudikno, 2007). In Article 1313 of the Civil Code, an agreement is defined as an act in which one or more people bind themselves to one or more other people. This definition has a broad and general meaning and scope.

In Dutch, an employment agreement is known as "Arbeidsovereenkomst," which literally means work agreement (Febri, 2018). According to Article 1601a of the Civil Code, an employment agreement is defined as an agreement in which one party, namely the worker, commits to carry out work under the direction of the other party, namely the employer, for a certain period of time and in return for wages. Law Number 13 of 2003 also states that an employment agreement is an agreement between a worker or laborer and an entrepreneur or employer, which includes the terms of employment as well as the rights and obligations of each party.

Prof. Subekti, SH in his work on various types of agreements, emphasized that an employment agreement is an agreement between a worker and an employer which is characterized by the existence of a certain wage or salary, and explains the employment relationship in which the employer has the right to give instructions which must be followed by the worker (Subekti, 2009).

In principle, an employment agreement can be formed either in writing or orally, in accordance with the provisions set out in Article 51 paragraph (1) of Law No. 13 of 2003. Therefore, the measurement of the legal force of an agreement does not depend on its form, whether written or oral, but rather on the fulfillment of the valid conditions of the agreement as regulated in Article 1320 of the Civil Code in conjunction with Article 52 of Law No. 13 of 2003.

Law No. 13 of 2003 distinguishes employment agreements into two types: Fixed Term Employment Agreements (PKWT) and Indefinite Term Employment Agreements (PKWTT). For PKWTT, the agreement can be made in written or oral form. However, Article 51 paragraph (2) of Law No. 13 of 2003 stipulates that PKWT must be prepared in writing to provide protection and certainty for workers or laborers. The provisions regarding PKWT that must be prepared in writing are also strengthened by Article 81 number 13 and Article 57 of Law No. 6 of 2023, which amends Article 57 of Law No. 13 of 2003. This emphasizes that PKWT must be written using Indonesian and Latin letters.

Thus, if there is a PKWT made verbally, then the agreement does not fulfill the provisions stipulated in Article 51 paragraph (2) of Law No. 13 of 2003 and Article 81 number 13 of Article 57 of Law No. 6 of 2023. By including the provisions of the work agreement in accordance with Article 81 number 13 and Article 57 of Law No. 6 of 2023, it is hoped that workers or laborers can obtain benefits and certainty in proving their rights when a dispute occurs. The elimination of the provisions of Article 59 paragraph (3) and (5) of Law No. 13 of 2003 concerning the extension of the PKWT period by Law No. 6 of 2023 does not eliminate the essence of the regulations regarding the renewal or extension of the PKWT period itself.

Article 1 number 14 of the Manpower Law states that an employment agreement is an agreement between a worker or laborer and an employer or employer, which contains the terms of employment, rights, and obligations of each party. On the other hand, Article 1 number 15 defines an employment

relationship as a relationship established between an employer and a worker or laborer based on an employment agreement, which has three main elements: work, wages, and orders. Based on this definition, we believe that the essential elements that need to be considered first are work, wages, and orders.

The employment clause should detail the type of work and job description to clearly define the employee's obligations under the contract. Furthermore, the wage clause should outline the components and amount of wages to ensure they do not fall below the statutory provisions. Furthermore, the payment mechanism and the consequences of late payment must also be carefully considered. The instruction clause in an employment relationship emphasizes the existence of two parties: the employer, who issues instructions, and the employee, who carries out those instructions.

In general, work agreements are drawn up based on several basic principles, namely:

1. An agreement that binds both parties;
2. The ability or capacity to carry out legal actions;
3. There is agreed work; and
4. The agreed work does not conflict with public order, morality, regulations or applicable laws.

If an employment agreement fails to meet the requirements outlined in the first and second points, it may be canceled. Conversely, if the agreement violates the provisions of the third and fourth points, it will be deemed null and void.

The capacity to enter into an agreement encompasses the capacity of the parties, both individuals and legal entities, to act as advocates for rights and obligations. The term "lawful cause" refers to matters not prohibited by law and not contrary to moral norms and public order. Several principles must be understood in an agreement, including:

a. The Principle of Freedom of Contract or Open System (Freedom of Contract). This principle emphasizes that every individual has the freedom to enter into agreements with anyone. In the context of employment agreements, the principle of freedom of contract is a key one.
b. The Consensual Principle or the Principle of Agreement. This principle encompasses the understanding that an agreement comes into existence when an agreement is reached between the parties involved. Therefore, the most important thing is the fulfillment of the agreement of those making the agreement.
c. The Principle of Completeness or Optimal System This principle states that if the parties to an agreement have different desires, they can override the provisions of the law. However, if there are provisions expressly written in the agreement, then those provisions will apply (Husni, 2000).

B. Provisions in the Civil Cod

In the Indonesian Civil Code (KUH Perdata), an agreement or consent is defined as an act in which one or more persons bind themselves to one or more persons. In Book III Chapter Two, the term agreement is explained with the same purpose, namely as an event in which one person promises to another party, or two people promise each other to do or not do something (Miru, 2008). Article 1313 of the Civil Code reaffirms that an agreement results in one person being bound to another person (Muljadi, 2014).

According to Gunawan Widjaja in his book on obligations arising from contracts, contracts can be viewed as one source of obligations. In other words, contracts create obligations that create obligations for one or more parties involved. These obligations are imposed on the debtor, thus giving the creditor the right to demand the performance of the obligations arising from the contract (Gunawan, 2014).

An agreement is an event in which one person promises to bind themselves to another person, containing previously agreed promises, in the form of rights and obligations inherent to the parties making it, either in written or verbal form. If the agreement is made in writing, this will guarantee more legal certainty (Subekti, 1987).

In an employment agreement, the terms and conditions include the rights and obligations of the employer and the worker/laborer, the start and validity period of the agreement, the place and date of the agreement, and the signatures of the parties. If an agreement is made without fulfilling the first and second provisions of the Civil Code

and the Manpower Law, then the agreement can be canceled, meaning it is still valid as long as there is no request for cancellation from the party making the agreement. Conversely, the legal consequences of an agreement that does not comply with the third and fourth provisions of the Civil Code and the Manpower Law will make the agreement null and void. An agreement that is void by law is considered invalid from the start, and the judge has the authority to declare the cancellation of the agreement even if there is no request from either party, so that it is absolutely void (Soedharyo, 2008).

Disputes can arise due to various factors, including differences in interpretation regarding how to implement the clauses of the agreement, as well as regarding the content of the provisions contained in the agreement itself, or even due to other reasons (Soemartono, 2006). In principle, every contract agreed to by the parties must be implemented in good faith and voluntarily. However, in practice, breaches of contract often occur.

Dispute resolution methods can be divided into two categories: litigation (court) and alternative dispute resolution. Court settlement is a method of resolving disputes that involves a court decision, and the decision is binding on all parties. On the other hand, alternative dispute resolution (ADR) involves a dispute resolution institution that uses procedures agreed upon by the parties, taking place outside the courts, using methods such as consultation, negotiation, mediation, conciliation, or expert assessment.

Following are some forms of dispute resolution:

1. Litigation, This process involves a legal suit that ritualizes the dispute, where the parties are presented with two conflicting choices by a decision maker.
2. Arbitration is the settlement of civil disputes outside of a public court, based on an arbitration agreement drawn up in writing by the disputing parties.
3. Mediation, this method is carried out voluntarily, confidentially, and is usually cooperative, without any element of coercion in it.
4. Mediation-arbitration, This is a variation of mediation, where the dispute is first resolved through a mediation process, and if there are still unresolved issues, it is continued with arbitration.
5. Conciliation, In conciliation, the dispute resolution process is carried out by a commission, and the decision made by the commission is not binding on the parties, so they have the right to accept or reject the results of the decision.
6. Private Judge (Private Judge) The examination of a particular issue or the entire dispute before a private judge, referee, or magistrate must be conducted based on an appointment agreed upon by both parties. The private judge or referee is responsible for hearing and deciding some or all of the issues in a civil lawsuit.

   Following the individual trial, the referee or judge will submit a written report of their findings and legal conclusions to the appointed court. These findings constitute the considerations or decision of the appointed court, unlike an arbitration award, in which the parties retain their full right to pursue legal action.

   This procedure provides flexibility in timing and selecting the decision-maker, and allows the parties to determine whether to apply evidentiary and procedural rules, including whether the entire process will be recorded. Unlike an arbitrator, a private judge is required to apply substantive reasoning as if the dispute were litigated.
7. A mini-trial is a more structured negotiation-based process, typically involving a non-binding exchange of information. It takes place before a panel of the parties, sometimes involving a neutral advisor who performs various functions. After the mini-trial, representatives from each party may consult with the neutral advisor regarding the outcome of the trial. If the case remains unresolved, the parties are free to pursue other dispute resolution processes, including litigation. The general consensus is that this entire process takes place in confidence.
8. A summary jury trial is a short jury trial involving brief presentations from attorneys regarding a civil case. The jury, selected in the same manner as in a formal trial, is asked to render a non-binding

decision. The process combines opening and closing arguments with a review of the expected evidence. Typically lasting one day, this procedure is designed for complex civil cases that can typically take a week to a month.

Representatives with the authority to resolve the case are expected to be present at the hearing. After the non-binding verdict is rendered, the parties and their counsel will have the opportunity to question the jury about the reasons for their decision. It is hoped that settlement negotiations can then begin.

9. Neutral Expert Fact-finding is the appointment of a neutral expert by the parties to make binding or non-binding findings of fact, or even to provide binding guidance. This appointment occurs before the litigation process begins. Once a dispute has entered the litigation stage, a neutral expert appointed by the court or the parties can help them reevaluate the estimated possible outcome and bridge any differences between them.
10. Early Neutral Evaluation is an evaluation process conducted by a neutral third party to help the parties understand the strengths and weaknesses of their positions in a dispute, thus encouraging a faster and more efficient resolution. This process helps identify key issues and provides the parties with a clearer picture of the potential outcome if the matter is pursued in court. This program aims to reduce costs and obstacles in the litigation process. In this program, a competent, neutral, and experienced legal practitioner will assist the parties and their counsel prior to the preliminary hearing. This legal practitioner will analyze the crucial issues in dispute, understand their needs in the preliminary hearing, and evaluate each party's strengths and weaknesses, as well as the overall merits of the case. In an objective manner, the evaluator will provide an honest evaluation and help the disputing parties formulate a plan regarding the necessary information and lead the preliminary hearing. The goal of all this is to expedite the process of serious negotiations (Setiawan, 1978).

C. Settings in KHES

According to Prof. Dr. HM Tahir Azhary, SH, Islamic contract law consists of a series of legal principles derived from the Qur'an, the Sunnah (Hadith), and Ijtihad (deliberation). This law regulates interactions between two or more people regarding objects that are permissible to be used as objects of transaction. He explained that the principles directly related to Islamic contract law are derived from the Qur'an and the hadith of the Prophet Muhammad (peace be upon him).

On the other hand, the principles of fiqh serve to provide an understanding of sharia through the ijtihad of scholars of various schools of thought. This reflects the "transcendental religious" nature of the rules governing Islamic Contract Law, which is a manifestation of the authority of Allah SWT, the All-Knowing God of all human behavior in their interactions with one another (Gemala, 2008). This exchange of contracts consists of two main types:

1. Exchange of Similar Goods

Exchange of Money for Money (Sharf): This type includes transactions such as addition, exchange, avoidance, transfer agreement, or sale and purchase. The legal basis that allows as-Sharf is found in the hadith of the Prophet SAW narrated by HR. Muslim. In the hadith, the Prophet SAW said: "Gold must be paid for gold, husk for husk, bur for bur, poetry for poetry, dates for dates, and salt for salt; all must be the same and paid in cash. If the types are different, you may trade as you wish, provided that payment is made in cash."

2. Exchange of Goods for Goods (Barter)

Islamic principles permit the exchange of goods, but its implementation must adhere to sharia principles. Otherwise, bartering involves riba in various forms. Numerous verses in the Quran and Hadith discuss riba, including Surah Ar-Rum 3:39, Surah An-Nisa 1:160-161, Surah Ali Imran 1:130, and Surah Al-Baqarah 2:278-279.

The scholars also explain that goods that fall into the ribawi category include:

1) Gold and silver, both in the form of money and other forms.
2) Staple food ingredients such as rice, wheat and corn, as well as additional food ingredients such as vegetables and fruit (Antonio, 2011).

Cooperation in Business Activities (Syirkah)

Syirkah linguistically means "al-ikhtilath" (Wawan, 2009) which means mixture or mixture. In terms of terms, syirkah refers to a mixture of one person's property with another person's property so that the two cannot be separated. In the Qur'an, there are words that describe cooperation and the potential for injustice in syirkah: "Indeed, He has done injustice to you by asking your goats to be added to His flock and most of the people who join together do injustice to each other, except those who believe and do righteous deeds; and these are very few" (QS. Shaad (38): 24)

Granting Trust in Business Activities

There are several forms of trust in business activities, including:

1. Wadi'ah (Deposit): Wadi'ah is something that is kept in a place that is not the owner as a form of security (Suhendi, 2008). In the Qur'an, it is stated: "If some of you trust each other, Therefore, whoever is trusted, let him fulfill his trust and fear Allah, his Lord" (QS. Al-Baqarah (2): 283) (Gemala, 2008).
2. Rahn (Collateral) refers to Ar-Rahn, which is the retention of a borrower's property as a form of collateral for his loan. Allah SWT says: "If you are on a journey and make transactions without cash and you cannot find a writer, then let there be collateral held by the person concerned" (QS. Al baqarah (2): 283) (Antonio, 2011).
3. Wakalah, or representation, according to the jurists, can be interpreted as the transfer of authority to another party to do something, where the recipient of the power of attorney becomes the substitute for the grantor of the power of attorney for a specified period of time. In the Qur'an, it is stated: "Make me the treasurer of the state (of Egypt); indeed, I am a man of knowledge and experience" (QS. Yusuf (12): 55)
4. Kafalah, or what is often known as liability, refers to the concept of guarantee, burden, and responsibility. In this context, the meaning and implementation of kafalah relates to who is responsible for the trust given. Ya'qub said, "I will not let him go with you until you give your strong promise in the name of Allah, that you will definitely return him to me, unless you are surrounded by the enemy." Saying this, Ya'qub added, "Allah is witness to what we say" (QS. Yusuf (12): 66)
5. Hiwalah (Debt Transfer) Hiwalah is a contract that allows the transfer of debt from one party to another. In this case, there are three parties involved: muhil or madin, namely the debtor; mihal or da'in, namely the party providing the debt; and muhal 'alaih, the party receiving the debt transfer can adhere to the legal basis of hiwalah permitted by the Prophet Muhammad SAW. This is in accordance with the hadith narrated by the majority of scholars, although there are variations in the pronunciation. In one hadith, it is said, "Delaying the payment of debt by a person who is able is an act of injustice. If one of you turns to someone who is able to pay the debt, then he should do so." In addition, there is a consensus of scholars (ijma) that states that the act of hilawah is permissible.
6. Al-Ariyah (Lending-Borrowing), Etymologically al-ariyah refers to something that is borrowed, then returned or circulated. The Qur'an states: "And hasten to help each other to do good and piety, but do not help each other in committing sins and transgressions. Fear Allah, for indeed His punishment is very severe" (QS. Al-Maidah (5): 2)\

D. Comparison of the Civil Code and KHES

1. Similarities between the Civil Code and the KHES

a) General Objectives Both the Civil Code and the KHES aim to regulate legal relations between individuals, protect the rights of the parties involved, and create legal certainty in transactions.
b) Counter-arrangement Both legal systems regulate counter-arrangement as a tool to reach agreement between the parties, although with different approaches.
c) Compliance with the Law Both the Civil Code and the KHES require the parties to comply with the applicable legal provisions, even though the legal sources used are different (Soekanto, 1986).

2. The difference between the Civil Code and the KHES

a) Philosophical Basis of the Civil Code: Refers to a more secular Western legal tradition, grounded in logic and rationality. KHES: Based on the principles of Islamic sharia, which prioritize moral and ethical values in every transaction.
b) Regulations on contracts Civil Code: Provides general provisions regarding contracts that are flexible and can be adjusted to the wishes of the parties. KHES: Regulates contracts with stricter provisions, especially in matters related to usury, (uncertainty), (gambling), gharar and maysir
c) Sanctions and Dispute Resolution Civil Code: Relies on the formal justice system for dispute resolution, with material sanctions (Sudikno, 2009). KHES: Encourages dispute resolution through mediation and deliberation, as well as sanctions that can be in the form of social or moral fines.

3. Legal Implications of Each System
   a) Legal Implications of the Civil Code: Secular civil law provides clear legal certainty for individuals and entities in conducting transactions. However, this approach is often considered to neglect moral and ethical aspects, which can lead to protracted disputes.
   b) Legal Implications of KHES Sharia economic law protects public interests and encourages ethical business practices. However, the implementation of KHES can face challenges in adapting to modern business practices and diverse understandings among the community (Munir, 2007).

E. Employment Agreement Contract Format

When drafting a work contract agreement, there are several important elements that must be considered to ensure the contract is valid, legally binding, and can avoid potential future disputes. These elements are as follows (Civil Code):

1. Identity of the Parties
   The contract must include the full identities of both parties, including names, addresses, and other contact information. This ensures that all parties involved in the contract can be clearly identified.
2. Job description
   A detailed description of the type of work to be performed must be included. This description should include the scope of work, technical specifications, and expected results.
3. Rewards
   Details regarding the amount of compensation workers will receive, as well as the method and timing of payment, must be clearly outlined. This is essential to avoid confusion or disputes later on.
4. Time period
   The Contract must specify the timeframe for the work, including start and finish dates. This provision is essential to ensure the work is completed on time.
5. Other Terms and Conditions
   This element includes additional provisions deemed necessary to regulate the employment relationship, such as additional rights and obligations, penalties for lateness, and provisions regarding dispute resolution.
6. Signatures of the Parties
   The contract must be signed by both parties as a form of agreement and acknowledgement of all terms and conditions contained therein. This signature is also essential to confirm the validity of the contract.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Employment agreements, whether drafted based on the provisions of Law Number 13 of 2003 or the sharia principles in the KHES, play a crucial role in creating fair, transparent, and regulatory-compliant employment relationships. A written employment agreement, complete with essential elements such as the parties' identities, job descriptions, remuneration, and implementation period, is a crucial step in ensuring legal certainty and avoiding future disputes. Furthermore, the application of sharia principles such as fairness, honesty, and the prohibition of usury in employment agreements will further strengthen harmonious relations between workers and employers in the modern business context. Therefore, it is crucial for the parties involved to pay close attention to these aspects to create an employment relationship based on

trust, fairness, and compliance with applicable law.

B. Suggestions

Although the author strives for perfection in compiling this journal, there are still many shortcomings that need to be addressed. This is due to the author's limited knowledge. Therefore, the author greatly appreciates constructive criticism and suggestions from readers as a basis for future evaluation. Thus, the author hopes to continue producing research and written works that benefit many people.

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