

Due to the Legal Default in the Unwritten Work Agreement for Transport Drivers

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Abstract: Transportation is a very important and strategic means. The role of transportation, where community activities always use transportation while not all people have transportation so that public transportation is provided to support community activities. City transportation is used as one type of business in the city of Kupang because of the business of transporting people and goods. Angkot entrepreneurs provide job opportunities for job seekers who have expertise in operating vehicles, especially cars, for that employers need workers in this case drivers (drivers in Kupang terms). Before hiring drivers, of course, there must be an agreement between the two parties, if there is an agreement, there will be a working relationship between the two parties. This research has been taking place from September 2021 to December 2021 in Oebobo District and Kelapa Lima District, Kupang City. This research is classified as empirical research, the aspects that will be examined in this study include: transportation entrepreneurs and transportation drivers, sampling using the side quota method, which is determined by 10 transportation entrepreneurs and 20 transportation drivers, so the number of samples is 30 people, the type of data used is qualitative data, the data source is primary data secondary data. Data collection techniques using observation and interviews. The research data collected were analyzed descriptively qualitatively. The results obtained: (1) With the existence of entrepreneurs, the wheels of the country's economy can run well, so entrepreneurs must be able to continue to run their business by employing workers in its implementation. This relationship is called a working relationship. This employment relationship must be in accordance with the contents of the agreement and the sound of the labor law, an employment relationship based on an employment agreement. In the implementation of this work agreement, there are two types of agreements, namely written and oral agreements. In the statutory provisions it is called a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT), some of the things that distinguish them are regarding duties, the rights of employers to workers and workers' rights to employers. Especially in the matter of default in the work agreement between the transport entrepreneur and the driver, the agreement must use an agreement in the form of a written agreement. Because if only verbally, there will be various risks that are potentially faced by entrepreneurs and drivers, (2) When a transport entrepreneur employs a driver, there is the possibility of a dispute or difference of opinion. Regardless of the possibility of that happening or not, of course, it is better to anticipate it with a dispute resolution clause. This is so that the method and place for resolving disputes between entrepreneurs and drivers becomes clear. Settlement that has been through deliberation and does not reach an agreement, it can be determined whether the next settlement is through the Arbitration mechanism or the Industrial Relations Court

Keywords: Default, Employment Agreement, Unwritten

Introduction

Transportation is a very important and strategic means. For the community, transportation is the lifeblood of everyday life and is one of the basic needs. Almost everyone needs transportation every day to meet their economic, educational, health and socio-cultural needs. It is also transportation that allows the movement of producer goods to consumers so that various needs such as food, clothing and housing are met. The importance of transportation is reflected in the increasing need for transportation services for the mobility of people and goods, besides that transportation also plays a role as a supporter, driver and driver for regional growth in an effort to increase and equitable development and its results.

Realizing the importance of the role of transportation, where community activities always use transportation while not all people have transportation so that public transportation is provided to support community activities. Public transportation commonly used by the community is trains, buses, public transportation and others.

In the city of Kupang, public transportation is one of the most popular types of public transportation. Because in addition to being safe, fast, organized and smooth, the cost can also be affordable by the city community. City transportation is used as an opportunity for entrepreneurs to seek profit and become employment opportunities for job seekers who have expertise in operating vehicles, especially cars.

Before hiring drivers, of course, there must be an agreement between the two parties, if there is an agreement, there will be a working relationship between the two parties. Judging from the nature of the

agreement, the agreement is distinguished into an unwritten agreement (oral) and a written agreement. From the existing form of agreement, both parties are free to choose which form of agreement will be used. But sometimes the agreement is made unilaterally and the other party just chooses to accept or refuse. If you accept, you will continue with a work relationship, but if you refuse, then of course there will be no working relationship.

Problem Formulation

The problem to be studied is how the responsibilities of the parties in the work agreement between the vehicle owner and the transport driver are and how to resolve the problem in the event of a default ?

Research Methods

This research has been taking place since September 2021-December 2021 in Oebobo District and Kelapa Lima District, Kupang City.

This research is classified as empirical research, namely to find out and obtain data related to unwritten work agreements between transportation entrepreneurs and transportation drivers.

Aspects that will be examined in this study include: transportation entrepreneurs and transportation drivers.

The sampling technique uses the side quota method, which is determined by 10 transportation entrepreneurs and 20 transportation drivers, so that the number of samples is 30 people.

The type of data used is qualitative data, namely data collected in the form of statements. Sources of data are primary data, namely data obtained directly from respondents and secondary data, namely data obtained from documents or archives from the Department of Transportation.

Data collection techniques use observation, namely direct observation of the object of research, interviews using questionnaires, namely a list of questions that are circulated to respondents to be filled in, literature study, namely the study of theories and literature relevant to the research topic.

Data Processing Techniques:

Editing is a data processing technique intended to tabulate or select research data collected in order to obtain valid data, coding is systematically compiling all data obtained from the field.

Data Analysis Techniques begins with the collection of research data collected and analyzed descriptively qualitatively.

Discussion

Responsibilities of the Parties in the Employment Agreement

The employment agreement is the basis for the parties to carry out their obligations and maintain their respective rights in an industrial relations interaction. The work agreement regulates several things, including the amount of salary, working conditions, responsibilities and so on. Generally, we know that the employment agreement is made in written form. The form clearly contains the rights and obligations as well as the signatures of each party. However, it is not uncommon for us to find that companies and employees do not make and sign work agreements

Terms and forms of work agreements Regulations on industrial relations which specifically regulate the form of employment relationships and work agreements are contained in Law no. 13 of 2003 concerning Manpower. Several provisions of the law were later amended by Law no. 11 of 2020 concerning Job Creation.

According to Articles 51 and 52 of the UUK, work agreements can be made in writing or verbally. The employment agreement (written or oral) must be made based on:

- Both side agreement
- Ability or ability to carry out legal actions
- There is an agreed job
- The agreed work does not conflict with public order, decency, and applicable laws and regulations

If the work agreement is made without an agreement or one/both parties are not legally competent, it can be canceled. Even the work agreement is automatically null and void if it does not include the work or the work is contrary to order, decency and legislation

With regard to the technicalities of making work agreements, labor regulations regulate the conditions that must be met in order for work agreements to be recognized as valid according to law. The terms of the work agreement are the agreement of the parties, being able or capable of carrying out legal actions, the existence of the work being agreed upon, and the work not contradicting public order, decency, and statutory regulations. However, it should be noted that in the labor regulations, it is also explicitly regulated that work agreements can

be made in written or oral form. Based on these provisions, it is simply known that the work agreement can be in the form of an oral agreement or not made in the form of a signed agreement. Even though the interaction between company employees is not made in the form of a written work agreement, if the elements of the employment relationship have been met, then the interaction is included in the industrial relations frame. However, the logical consequence of an agreement made in writing or unwritten has an impact on the form of the work agreement. Is the working relationship a form of a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT). In connection with the two forms of work agreements, it is important to note that one of the main differences is the making of a PKWT (Specific Time Work Agreement) both in Law no. 13 of 2003 as well as in Law no. 11 of 2020, must be made in writing. Meanwhile, there is no obligation to make a PKWTT in writing. This also means that the PKWTT (Indefinite Time Work Agreement) can be made verbally or not in writing.

The work agreement between the transportation entrepreneur and the transportation driver includes a work agreement for a certain time work agreement, because the agreement cannot be held for permanent work. Where the work agreement between the transportation entrepreneur and the driver will end when the driver is no longer operating his vehicle for the transportation process or in other words the nature or activity of his work will be completed within a certain time.

The verbal employment agreement is legally valid. However, it is difficult if it is needed in proof at the time of dispute resolution. If there is a written work agreement, the agreement can be seen as well as a reference if there are differences of opinion. Employers as employers and drivers as employees can monitor each other whether the elements in the agreement have been fulfilled or not. If it is made in writing, the judge is also easy to judge whether the agreement is valid or not based on the legal terms of the agreement as regulated in Article 1320 of the Civil Code.

Settlement Efforts in the Event of Default

Employment agreements between transport entrepreneurs and transport drivers are often found in an unwritten or verbal form. An agreement that is made in an unwritten or oral form is an agreement that is difficult to prove, so it is not uncommon for this form of agreement to result in the transfer of responsibility and default in the field.

The transfer of responsibility and default can occur because the unwritten or verbal work agreement does not contain the rights and obligations of the parties in detail, this results in weakness in proving what in the event of a dispute, and if there is a transfer of responsibility, the party who is harmed is the transport driver.

This is not in line with the principle of freedom of contract which is defined as the principle that everyone is free to enter into any kind of agreement, whether the agreement has been regulated by law or has not been regulated by law. This is stated in Article 1338 paragraph 1 of the Civil Code which reads: "all agreements made legally apply as law for those who make them".

The parties are allowed to regulate their own interests in the agreements they make, but in the principle of freedom of contract this does not mean that there are no limitations at all. The point is that a person's freedom in making the agreement is only to the extent that the agreement he makes does not conflict with decency, public order and the law as referred to in Article 1337 of the Civil Code.

The principle of freedom of contract relates to the contents of the agreement, including:

Freedom to determine "what" and with "with whom" the agreement was made. Agreements made in accordance with Article 1320 Paragraph (1) of the Civil Code have binding force. Thus, freedom of contract is one of the most important principles in the agreement. This freedom is a manifestation of free will, the radiance of human rights (A.Q. Syamsudin Meliala, 1985:18).

If the principle of freedom of contract is not fulfilled, the consequences are null and void and the judge or third party may not intervene to reduce or add to the contents of the agreement because the parties have complied with the provisions contained in Article 1320 Buerkelijk Wetboek (BW).

In the work agreement between the transportation entrepreneur and the driver, the principle of freedom of contract as intended should be prioritized, so that these two parties in social life have an important role because both parties are explicit so that if there is a dispute or achievement that is not in accordance with the agreement, then the parties have know what their rights and obligations are in dealing with this.

It's just that sometimes in practice one of the parties in a work agreement does not fulfill the promised performance so that according to law he is considered to have deviated from the agreement which will result in the emergence of a risk that causes doubts from the other party.

That is why, the law stipulates various sanctions that can be imposed on parties who have defaulted. However, sometimes problems or difficulties arise in determining when in fact one of the parties can be deemed to have defaulted.

Conclusion

The conclusion from the results of this study is:

1. With the existence of entrepreneurs, the wheels of the country's economy can run well, so entrepreneurs must be able to continue to run their business by employing workers in its implementation. This relationship is called a working relationship. This employment relationship must be in accordance with the contents of the agreement and the sound of the labor law, an employment relationship based on an employment agreement.
In the implementation of this work agreement, there are two types of agreements, namely written and oral agreements. In the statutory provisions it is called a Specific Time Work Agreement (PKWT) and an Indefinite Work Agreement (PKWTT), some of the things that distinguish them are regarding duties, the rights of employers to workers and workers' rights to employers. Especially in the matter of default in the work agreement between the transport entrepreneur and the driver, the agreement must use an agreement in the form of a written agreement. Because if only verbally, there will be various risks that are potentially faced by entrepreneurs and drivers.
2. When a transportation entrepreneur employs a driver, there is a possibility of a dispute or difference of opinion. Regardless of the possibility of that happening or not, of course, it is better to anticipate it with a dispute resolution clause. This is so that the method and place for resolving disputes between entrepreneurs and drivers becomes clear. Settlement that has been through deliberation and does not reach an agreement, it can be determined whether the next settlement is through the Arbitration mechanism or the Industrial Relations Court.

Suggestion:

- For entrepreneurs: training on making a work agreement is required.
- For the Government: special attention is needed in supervising the work agreement between the entrepreneur and the transport driver.
- For Researchers: further research is needed related to work agreements.

Bibliography

- [1]. Abdulkadir Muhammad, Commercial Transport Law, Citra Aditya Bakti, Bandung, 1994.
- [2]. Abbas Salim, Transportation Management, Rajawali Pers, Jakarta, 2008
- [3]. Ahmadi Miru, Contract Law Contract Design, Rajawali Pers, Jakarta, 2010
- [4]. Adi Rianto, Social and Legal Research Methodology, Granit, Jakarta, 2004
- [5]. H.M.N Purwosutjipto. Basic Understanding of Indonesian Commercial Law 5, Penerbit Djambatan, Jakarta, 2000.
- [6]. Hadi Sutrisno, Metodologi Research, Yayasan Penerbitan UGM, Yogyakarta, 1986.
- [7]. Istanto Sugeng, Low research, CV.Ganda, Yogyakarta, 2007.
- [8]. Raharjo Satjipto, Legal studies, Citra Aditya Bakti, Bandung, 1996.
- [9]. Rahayu Hartini, Transport Law, Universitas Muhammadiyah, Malang, 2007.
- [10]. R.Setiawan, Principles of the Law of Engagement, Bina Cipta, Bandung, 1979.
- [11]. R.Soetjo Prawirohamidjojo dan Martalena Pohan, Law of Obligations, Pt. Bina Ilmu Surabaya, 1984.
- [12]. Sunggono Bambang, Legal Research Methodology, Raja Grafindo Persada, Jakarta, 2006

Legislation:

Civil Code

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