

MEASURING THE VALIDITY OF UNILATERAL NON-COMPETITION CLAUSES IN EMPLOYMENT AGREEMENTS: A CIVIL AND EMPLOYMENT LAW PERSPECTIVE

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Abstract

This article examines the non-competition clause in employment agreements, particularly in the context of industrial inequality and the protection of workers' constitutional rights. Through a normative juridical approach and analysis of the Central Jakarta Court of International Relations (PHI) Decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst. This article shows that non-competition clauses that are not proportionately arranged and without proper compensation can be declared null and void because they violate the principle of balance and the principle of the right to work. The ruling marks a paradigm shift in the court from a formalistic to a substantial approach in assessing employment contracts. The findings in this article also underscore the importance of regulatory reform and legal education for workers, in order to prevent exploitative clauses in employment agreements. This article recommends that treaty law in the context of employment should always be subject to the principles of substantive justice and protection of the weak.

Keywords: non-competition clauses, employment agreements, the principle of balance, the right to employment, contractual inequality

Introduction

A work agreement is a form of legal agreement that is born from the relationship between an employer and a worker in the context of employment. As a type of agreement in civil law, an employment agreement is subject to the general principles of contract law, such as freedom of contract, consensualism, and *pacta sunt servanda*. However, the characteristics of the relationship between employers and workers that are asymmetrical in power require the presence of additional principles in the form of protection for the weak, in this case workers.

In the practice of industrial relations in Indonesia, it is not uncommon to find clauses that are unilaterally drafted by employers, without adequate negotiation space for the employer. One form of clause that has attracted a lot of controversy is the non-competition clause, which is a provision that restricts workers from working or doing business in the same field after the end of the employment relationship. The clause, although intended to protect the employer's business interests, has the potential to limit the constitutional right of workers to obtain decent work and livelihood as guaranteed in Article 28D paragraph (2) of the 1945 Constitution, and is contrary to the principle of balance in contracting.

The non-competition clause became the object of juridical testing in the Decision of the Industrial Relations Court (PHI) at the Central Jakarta District Court No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst. In the case, the panel of judges declared the prohibition of competition clause null and void because it was considered contrary to the

provisions of the applicable laws, including Law No. 13 of 2003 concerning Manpower, Law No. 39 of 1999 concerning Human Rights, as well as the principles of fairness in contract law. This ruling is interesting to be studied in depth in the perspective of the principles of freedom of contract and the principle of balance, which are the foundations of the contract law system in Indonesia.

Several prior studies have addressed the imbalance in employment relationships and the application of unfair clauses in employment agreements. Siregar and Sutedi (2020) examined the prevalence of unilateral clauses in employment contracts that are often drafted without negotiation, concluding that such clauses frequently violate the principle of contractual fairness. Similarly, Prakoso (2021) investigated non-competition clauses in employment contracts, arguing that these provisions potentially infringe upon the constitutional right of workers to access decent livelihoods after termination of employment. These studies highlight the need for stronger legal scrutiny and regulation of restrictive clauses in employment relationships. The novelty of this research lies in its juridical analysis of the Industrial Relations Court (PHI) decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst as a landmark ruling that limits the enforceability of non-competition clauses, while also examining how the principles of freedom of contract and contractual balance are applied to protect workers' rights in Indonesia's employment law system.

The objective of this study is to examine the legal validity of non-competition clauses in employment agreements under the principles of freedom of contract and contractual balance in Indonesian contract law. It also seeks to assess how such clauses affect the constitutional rights of workers to secure decent employment after the end of the employment relationship. The theoretical significance of this research lies in its contribution to developing a fair and balanced employment contract doctrine. Practically, the findings aim to provide legal recommendations for lawmakers, judges, and practitioners to better evaluate the legality of restrictive clauses and ensure the protection of workers' fundamental rights in contract drafting and industrial dispute resolution.

Research Methods

This study adopts a doctrinal legal research design, focusing on the identification, interpretation, and systematic analysis of legal norms relevant to employment agreements—specifically the validity and implications of non-competition clauses. The research employs two primary approaches:

- 1) Statutory approach, which involves examining relevant legislation including the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), Law No. 13 of 2003 on Manpower, Law No. 39 of 1999 on Human Rights, and the 1945 Constitution of the Republic of Indonesia, particularly Article 28D(2) concerning the right to fair employment.
- 2) Case approach, which focuses on the Industrial Relations Court (PHI) Decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst as the main case study. This case was selected based on its legal significance as one of the few precedents in Indonesia that explicitly invalidated a non-competition clause in an employment contract on the grounds of violating workers' constitutional and statutory rights.

Legal materials were gathered through library research, encompassing both primary legal materials (statutes, court decisions, constitutional provisions) and secondary legal

materials (legal commentaries, journal articles, and expert opinions). Sources were accessed through academic databases, national legal repositories, and official court archives.

The collected data were analyzed using qualitative normative analysis. This method involves interpreting legal texts by applying legal dogmatics, logic, and deductive reasoning to assess the consistency and relevance of legal norms. The analysis was guided by the principle of balance in contractual relations and the constitutional rights of workers, with special emphasis on how judicial reasoning in the selected case reflects or departs from normative legal standards.

Results and Discussion

The Position of Non-Compete Clauses in Employment Agreement Law

The non-competition clause in the employment agreement is a form of restriction on the right of the worker to carry out or obtain employment in the same field after the termination of the employment relationship. Normatively, this clause can be considered valid if it meets the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, especially related to consensus, competence, certain objects, and *halal causa*. However, in the context of structurally unbalanced employment relations, the application of these clauses is often problematic in terms of substantive justice (Irianto & Wardani, 2023; Lestari et al., 2017; Purnamasari et al., 2023; Жұмаділова et al., 2022).

In Indonesian civil law doctrine, agreements that are contrary to propriety, decency, or public order can be declared null and void, even if agreed upon by the parties (Badrulzaman, 2000). A similar approach is also embraced by contemporary view of contract law, which rejects absolute formalism in assessing the validity of contracts. In this view, the freedom to contract must be subject to the principle of protection of weak parties and an examination of the fairness of the content of the contract (Diputra, 2019; Saputra, 2018; Viera Valencia & Garcia Giraldo, 2019).

Internationally, a similar approach has been developed. Freedom of contract is considered non-absolute and must take into account moral values and social justice in labor relations (Fried, 1981). In modern labor law, employment relations are seen as a form of relational contract that demands a balance between rights and obligations, not just a formal agreement (Collins, 2010). Even from a legal economy point of view, a non-competition clause can only be justified if it increases efficiency without disproportionately restricting labor mobility.

In industrial practice in Indonesia, non-competition clauses are still often included in employment agreements, even though court decisions such as PHI Central Jakarta No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst have declared such clauses null and void. There are at least four main reasons why the clause is still retained. First, this clause is strategically used as a form of deterrent to prevent workers from moving to competitors, although it is rarely brought to court (M&T Advisory, 2021). Second, the majority of workers do not have an adequate understanding of their legal position in the employment relationship, so they do not realize that the clause can be legally questionable. Third, the absence of an explicit prohibition in the Labor Law creates an interpretation gap that allows companies to insert the clause. Fourth, weak administrative supervision of the content of the employment contract caused many problematic clauses to escape correction from the beginning.

Thus, there is an inequality between juridical norms and *de facto* practices that allow non-compete clauses to continue to persist in the employment relations system in

Indonesia. Therefore, the judicial approach as in the PHI Jakarta decision needs to be strengthened through legislation and policies that explicitly set the parameters of the validity of the no-compete clause in the employment agreement, in line with the principles of justice and constitutional protection of the right to obtain employment.

Juridical Analysis of PHI Decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst

The Central Jakarta PHI Decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst is one of the important precedents in testing the validity of non-competition clauses in employment relations in Indonesia. In this case, the plaintiff—a former worker—was sued by the company for allegedly violating the non-competition clause contained in the employment agreement, which prohibits the former employee from working in the same field of business for two years after the employment relationship ends. After resigning, the plaintiff worked for a similar company, so the company demanded compensation of Rp200,000,000.

The panel of judges in this decision considered that the prohibition of competition clause was contrary to the provisions of positive law and the basic principles of human rights. In his deliberations, the judge emphasized that the clause that unilaterally restricts the freedom to work after termination of employment violates the fundamental rights of workers. Juridically, the clause is not in line with Article 31 of Law No. 13 of 2003 concerning Manpower, which states that every worker has the right to obtain and choose a job. The clause is also considered to be contrary to Article 38 paragraph (2) of Law No. 39 of 1999 concerning Human Rights, which guarantees the right of everyone to freely choose work. In addition, the panel also referred to Article 28D paragraph (2) of the 1945 Constitution, which guarantees the right to work and fair treatment in employment relations.

This ruling is in line with the contemporary contract theory approach that rejects absolute formalism in the assessment of the validity of contractual clauses. Doctrinally, clauses that disproportionately restrict the basic rights of individuals can be classified as excessive or abusive clauses (Collins, 2010). Even in the approach of economic law, too broad restrictions on the freedom of labor mobility are actually considered to hinder the efficiency of the labor market (Posner, 2014). In the Indonesian context, agreements whose substance is contrary to propriety or public order can be declared invalid, even if agreed upon by the parties (Badrulzaman, 2000). In addition, the non-competition clause also has the potential to violate the objective requirements of the validity of the employment agreement as stipulated in Article 52 paragraph (1) and paragraph (3) of the Labor Law, because it is contrary to the rights of workers protected by the constitution.

This decision reflects a shift in the court's approach in assessing employment relationships as relational contracts, rather than ordinary transactional contracts. This means that the court not only focuses on the formalities (signatures and consent), but also assesses the substance of the contract—whether it is fair and proportionate. By canceling the non-competition clause in this case, the court showed a progressive attitude of judicial activism oriented towards the protection of workers' constitutional rights (Irgens-Jensen, 2023; Mahfuzzah et al., 2024).

Furthermore, this decision affirms that the non-competition clause in the employment relationship cannot be applied absolutely, unless it is drafted with reasonable, proportionate restrictions, limited in time and region, and accompanied by appropriate compensation to the worker. This is in line with legal practice in countries such as Germany and France, which require explicit scope and time restrictions, as well

as the provision of fair compensation to maintain the proportionality of employment contracts (Collins, 2010; M&T Advisory, 2021). Therefore, PHI Decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst is not only valid from a normative point of view, but also reflects the principle of dynamic and contextual contractual justice in industrial relations in Indonesia.

Relevance to the Principle of Balance and Freedom of Contract

The principle of freedom of contract in Indonesian civil law, as stated in Article 1338 of the Civil Code, is often positioned as an absolute principle that gives full autonomy to the parties in formulating the content of agreements. However, in the context of labor relations, the application of this principle absolutely ignores the socio-economic reality of inequality between workers and employers. Workers are not in an equal bargaining position—especially during the recruitment and contract signing process—so the freedom in question is often pseudo, even manipulative. When workers sign agreements, including non-competition clauses, what occurs is not free consent, but a form of coerced consent due to economic needs and structural pressures (Lestari et al., 2017; Sari et al., 2022).

In this situation, the principle of freedom of contract can actually be transformed into legitimacy for a form of contractual exploitation, which benefits the dominant party. This shows that this principle is not neutral, but can strengthen inequality if it is not balanced with other more progressive principles, namely the principle of balance and substantive justice. The principle of balance requires that the content of the agreement is not only formally valid, but also substantially fair, taking into account the factual conditions and power relations between the parties (Kurniawan & Arifin, 2022).

It is in this context that a non-competition clause that is unilateral, without a reasonable time limit, proportionate scope, or adequate compensation, is questionable. Such a clause clearly violates the logic of constitutional protection of the right to work, as well as creating a form of post-employment control that cannot be justified in a democratic legal regime that upholds human rights. This practice is also contrary to the doctrine of free will in contracts, which requires that contracts are born from equality and are not in situations of extreme economic stress (Aydinliyim, 2020; M&T Advisory, 2021).

Doctrinally, such an approach has long been criticized by modern contract law thinkers. Charles Fried emphasized that a valid contract must not only meet the formal aspect, but must also have moral and rational legitimacy, especially when it comes to basic human rights (Fried, 1981). Hugh Collins even further states that the state is obliged to intervene when contractual relations are used as an instrument of domination, especially in the context of employment relations, because otherwise, the contract becomes a vehicle for the reproduction of structural injustice (Collins, 2010).

The relevance of the judgment in this context is that the court is beginning to shift from a formalistic approach to a contextual testing of the substance of the contract. The judge did not simply assess that the clause was formally agreed, but considered whether the clause was fair, proportionate, and did not violate the constitutional rights of workers. This ruling shows that the freedom to contract in employment relations cannot be used as an excuse to illegally limit the future of workers. Instead of reflecting autonomy, such contracts reveal a form of coercion disguised through legality.

Thus, freedom of contract must be interpreted critically, not as an absolute right, but as a principle that must be subject to the values of justice, equality, and social interests.

If not, then treaty law loses its function as a protector of justice, and instead becomes a tool for legalizing inequality. Therefore, the integration between the principle of freedom of contract and the principle of balance is not just a normative choice, but is a structural necessity in realizing a democratic and just legal system in industrial relations.

Implications for the Practice of Employment Agreements in Indonesia

The Central Jakarta PHI Decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst has significance not only casuistically, but also structurally on the practice of drafting employment agreements in Indonesia. In the absence of an explicit regulation on the validity of non-competition clauses in the Employment Law, this ruling affirms that the right to employment as a constitutional right cannot be defeated by unilateral will in a contract. This strengthens the position of workers in the face of contracts that are unilateral and substantially detrimental.

In practice, many employers still include non-compete clauses in employment agreements, even without restrictions on duration, region, or form of compensation. In fact, in the comparative legal system, such clauses are only allowed if they meet the proportionality test and are accompanied by appropriate compensation, as applied in German and French law (Collins, 2010). In the UK, non-competition clauses must pass the reasonableness test; if it is considered too broad, then it can be cancelled in its entirety (Deakin & Morris, 2012; M&T Advisory, 2021).

This ruling sends a message that the court can and should exercise a corrective function for excessive clauses in employment contracts, which are de facto used as a means of control over post-employment freedom (Badrulzaman, 2000). Clauses restricting workers' freedoms without equal reciprocity are contrary to the principle of substantive justice, and therefore can be invalidated by courts.

In addition, this ruling also shows the urgency of labor law reform, which explicitly regulates the legal requirements of the non-compete clause, including time limits, regions, and forms of compensation. The unclarity of current norms creates a gray zone that benefits employers and makes it difficult for workers to fight for their rights preventively (Nadiyya, 2021; Sutarko & Sudjana, 2018).

Furthermore, the implications of this ruling extend to the low aspect of workers' legal education, causing many workers to passively accept the contents of the employment contract, including clauses that can actually be sued. Without systematic efforts to strengthen workers' legal knowledge, the role of the courts will be limited to resolving cases on a case-by-case basis, without the power to change the broader structure of contractual inequality (Aydinliyim, 2020).

Thus, this ruling can be interpreted as the first step towards the repurification of the principle of freedom of contract in industrial relations as well as an affirmation that treaty law cannot be separated from the context of social relations and power structures, and that disproportionate non-competition clauses can be a form of domination wrapped in legality.

Conclusion

This study concludes that non-competition clauses in employment agreements reveal a critical legal and ethical tension between the principle of freedom of contract and the constitutional obligation to protect workers' rights. While such clauses may formally meet the validity requirements under Article 1320 of the Indonesian Civil Code, their practical application often contradicts the principles of justice, proportionality, and

worker protection, particularly when imposed unilaterally and without reasonable limits or compensation. The Central Jakarta Industrial Relations Court Decision No. 106/Pdt.Sus-PHI/2019/PN.Jkt.Pst serves as a pivotal legal precedent, demonstrating a shift toward a more substantive interpretation of contract fairness—one that actively addresses power imbalances in labor relations. The court's reasoning illustrates a necessary evolution in the judiciary's role: from merely applying the law formally to serving as a corrector of structural inequality and a protector of constitutional rights.

It is recommended that future studies examine the socio-economic impact of non-competition clauses on workers' career mobility and innovation in Indonesia. Additionally, interdisciplinary approaches involving labor economics, industrial psychology, and human rights law could further enrich the understanding of how to design employment contract frameworks that uphold both employer interests and worker dignity in a balanced and just manner.

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