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INTRODUCING JUSTICE START UP IN LABOR LEGAL CONTEXT

Rifka Yudhi¹

Abstract

After graduating from college, almost all fresh graduates usually experience a dilemma caused by the limitations or suitability of their competencies and opportunities, coupled with the presence of the Covid-19 pandemic. The common opportunities chosen by fresh graduates include waiting for the momentum of the CPNS test, selecting BUMN employees, becoming private employees, and continuing their studies to the S2 level. However, this is not the case for Start Up which is barely even an option. The results of the discussion show that: (1) The increasing number of internet users in Indonesia, aspects of cost flexibility and ease of place, and starting to replace certain jobs either by applications or robots, should be able to be glimpsed by the younger generation who have lots of ideas and creativity in their fields to start a business up; (2) The start-up that is initiated must be fair and at least meet 3 (three) criteria: (i) the work relationship is based on a work agreement; (ii) The substance of the work agreement must include the type of work agreement, when it starts and ends, whether there is a probation period, work / tasks to be performed and responsibilities, the position given (if any), the amount of wages, facilities available, and rights. and other obligations, including when the employment relationship ends; (iii) efforts will be made to make efforts to meet decent living standards. work / tasks to be performed and responsibilities, the position given (if any), the amount of wages, facilities available, and rights. and other obligations, including when the employment relationship ends; (iii) efforts will be made to make efforts to meet decent living standards.

Keywords: *Start Up, Fresh Graduate, Employment Agreement, Labor Law*

I. INTRODUCTION

One of the four promises of independence which is at the same time a national goal is contained in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, namely advancing public welfare, in which it contains the meaning of duties, obligations as well as responsibility that the effort to manifest the general welfare of all Indonesian people rests on the shoulders of the state. One of the concrete efforts that can be made is through the

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policy of providing employment, especially for citizens who are in the category of the labor force. However, the availability of employment is closely related to the output produced by tertiary institutions, where some of the workforce itself are university graduates. It becomes a big question mark whether college graduates have the readiness to enter the world of work or are experiencing a dilemma due to limitations or suitability of competencies and opportunities.

The dilemma has not yet been answered, we are all shocked by the pandemic that has hit almost all countries in the world. Where this virus began and was detected in Wuhan, China, in December 2019 and began to spread to various parts of the world including Indonesia. On February 11, 2020 the World Health Organization (WHO) named the new virus as Severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2) and the name of the disease was called Coronavirus disease 2019 (COVID-19) (WHO, 2020).² In its development as of January 21, 2021, positive confirmed patients recorded since the first case to date, reached 951,651 positive cases, of which 772,790 people were declared cured, and 27,203 people died.³

The number of people infected and the number of people who have died due to Covid-19 in fact continues to increase. Now the mortality rate of people affected by Covid-19 in Indonesia is one of the highest in the world.⁴ With the increasing number of patients caused by Covid-19, the government then issued a number of policies to be able to overcome it, one of which was by socializing the social distancing movement or the community calling it "at home." This aims to reduce or even break the Covid-19 chain, where everyone must maintain a safe distance of at least 2 meters, and not make direct contact with other people.

In addition, the government has also made various efforts, including by issuing Government Regulation Number 21 of 2020 concerning the PSBB (Large-Scale Social Restrictions) policy which is the government's strategy to prevent the virus from spreading. PSBB does not completely limit all community activities, these restrictions only apply to certain activities in an area that is suspected of being infected with Covid-19.

The general condition that occurs in all countries, even in developed countries, is an imbalance in the ratio of health workers, medical facilities, and materials needed. It is necessary to realize that Covid-19, with its devastating impact and high level of distribution, has meant that no country is ready for the reality of the current pandemic.⁵

² Syeikha Nabilla Setiawan and Nunung Nurwati, *Dampak Covid-19 terhadap Tenaga Kerja di Indonesia*, dalam <https://www.researchgate.net/publication/340925534>, diakses Senin, 20 Juli 2020, Pukul 10.30 WIB.

³ <https://covid19.go.id/>, diakses 21 Januari 2021 pukul 21.00 WIB.

⁴ Rio Christiawan, 2020, *Politik Hukum Kontemporer: Covid dan Normal Baru Hukum*, Depok: MuraiKencana, p. 3

⁵ *Ibid*, p. 7.

The derivative impact of the pandemic storm, many schools and colleges were closed by the government by imposing learning and working at home, limiting religious activities, limiting transportation modes, limiting activities in public places and leaving workplaces and other activities off. With the Covid-19 pandemic, it is also inevitable that companies reduce the number of workers, resulting in Termination of Employment (PHK). Many companies also took extreme steps to maintain their business existence with the aim of reducing losses due to Covid-19.

With regard to the above, based on the observations of the ILO (International Labor Organization), the current full and partial quarantine measures have affected nearly 2.7 billion workers, representing about 81 percent of the world's workforce. Meanwhile, the United Nations Department of Economic and Social Affairs found that millions of workers are at risk of losing their jobs when nearly 100 countries close their national borders, meaning the global economy is 0.9% by the end of 2020, or even higher if the government fails to provide support. income and help increase consumer spending. When the service sector, especially Industry that involves physical interactions such as retail trade, reactions, hospitality and transportation for the most part such industries account for more than a quarter of all jobs in these countries. When a business loses income, unemployment tends to rise sharply, which will shift wider supply and demand-side shocks to the economy.⁶

In Indonesia, the COVID-19 pandemic has a negative impact on the economy which simultaneously contributes to the increase in unemployment. The National Development Planning Agency (Bappenas) estimates that the Open Unemployment Rate in 2020 will reach 8.1% to 9.2% and the unemployment rate is estimated to increase by 4 to 5.5 million people.⁷The derivative implication caused by the lack of job opportunities in turn requires fresh graduates to face a dilemma of choice. On the one hand, he is faced with the limitations or mismatches of individual competencies, and at the same time the challenges of the world of work are increasingly complicated, especially in the new normal era.

The reality of this dilemma in turn presents opportunities and various alternative choices, whether they then take the CPNS test, select BUMN employees, or courageously determine their attitude to start a Start Up business. However, the basic problem is not about the choice to start a Start Up itself, but about how to build a just Start Up. This question does not present itself, but arises because there are so many MSMEs (Micro, Small and Medium Enterprises) in the form of Start Ups that have not fulfilled the rights of workers regarding wages, payment times,

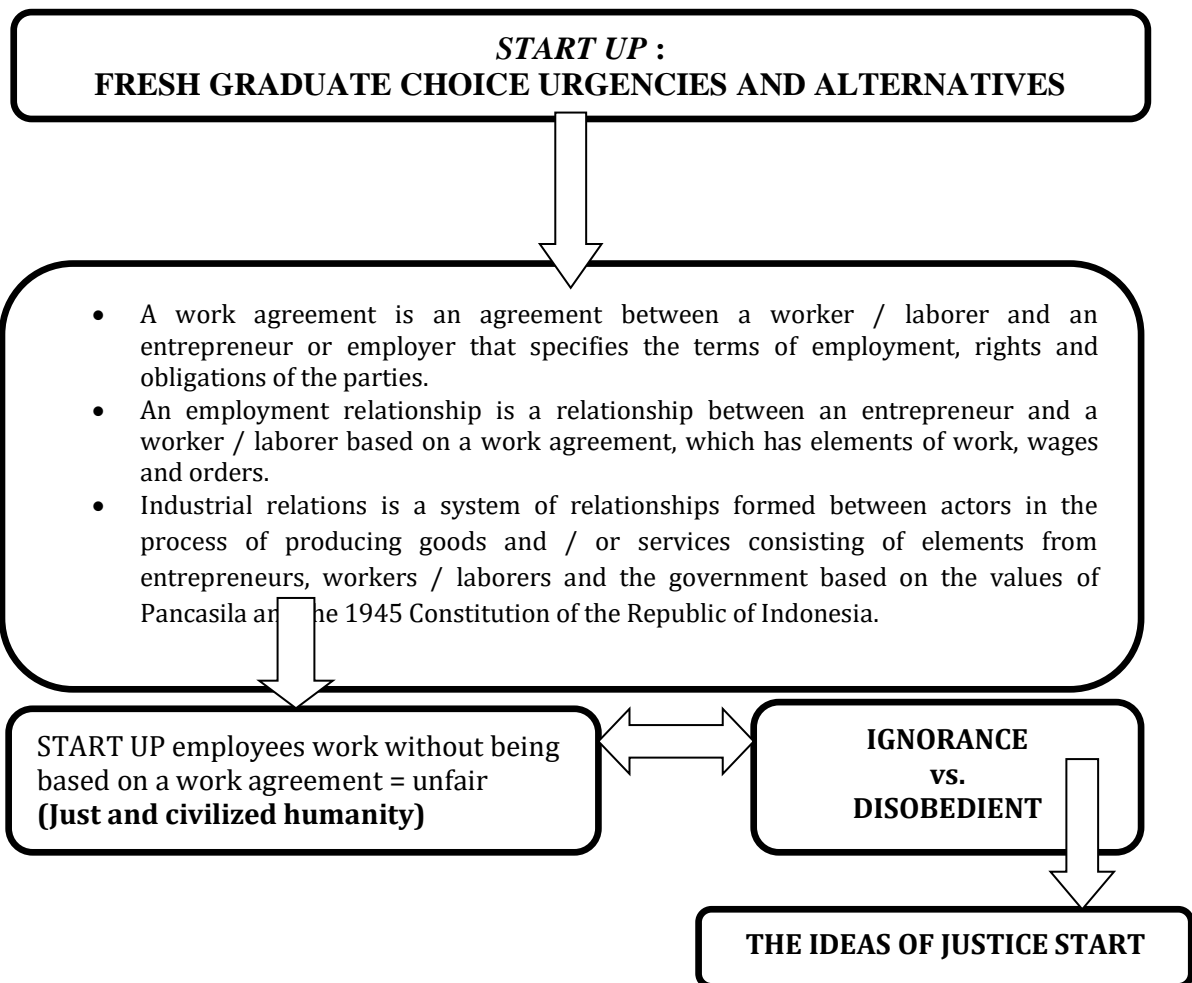
⁶ Syeikha Nabila dan Nunung Nurwati, *op.cit.*

⁷ *Bagaimana Pandemi Covid-19 Memengaruhi Angka Pengangguran RI*, Tirto.id, diakses pada Kamis 21 Januari 2021, pukul 21.20 WIB.

and working hours. This fact is not surprising, because there are quite a number of Start Ups who have not made a Work Agreement which is the basis of the beginning of an employment relationship. Based on this description, the focus in this article is why Start Up is an alternative choice for Fresh Graduate and how to initiate a just start-up in the context of labor law?

II. DISCUSSION

Theoretical framework



Start Up: The urgency and alternative choice of Fresh Graduate

The term startup comes from English which means "The act or process of starting a process or machine; a new organization or business venture "or" the act or process to start a process, a new organization or business venture ". The term startup was popularized in Silicon Valley. Silicon Valley is synonymous with

technology, especially with ICT. So it is not surprising that the term startup is better known for the ICT sector.⁸

Startup It's not basically a business of "writing code" for other companies, be it a consultant, contract programmer, or freelance. On the other hand, a startup is not an IT consulting company that has a codebase or an application by doing special customization for each client. Startups are also not departments or divisions of a company that are specifically assigned to behave like startups in building something different.

Startup usually consists of one to eight people, most of whom are developers who come together to create a codebase or applications whose benefits they offer to the world. Codebase or application can be accessed via the web, run on a Windows PC, Linux or Mac, and can also be run on smartphones such as BlackBerry, Android, iPhone, Nokia, and others. Funding for startups is initially through self-funding (swadaya) and is used as initial capital, which then does not rule out the possibility of obtaining financial assistance from family, friends or even venture capital and angel investors.⁹ In its development until 2021, the term startup then moves out of the field of mobile and internet technology and reaches other aspects that are fundamentally startup businesses, although it cannot be denied that digital platforms have always been a bridge in reaching access to the desired market.

Basically it is very easy to set up a company. There are hundreds, if not more, of companies appearing every day in Indonesia and the world. The biggest challenge felt by these companies is how to appear to the surface or in other words to be recognized by the market as a usable product or service. There are many ways that startups do to gain market recognition and acceptance and are recognized by many parties. Usually these startups are dealing with a very large number of other players and also with an already established product or company, thus making startups have to work harder and smarter to introduce themselves to the market. Efforts can be made for free through media coverage or through social networks such as Twitter, Facebook and Instagram or also by paying a fee to rent advertising media. Basically there is money or not, these startups are dealing with a crowded or saturated market, whether it's full of old and established companies or emerging companies.¹⁰

In line with this, the world of work is a metaphor of the wilderness for fresh graduates. After graduating from college, there are indeed a variety of choices that are common for fresh graduates, including taking the CPNS test, selecting for TNI-POLRI career officer candidates, participating in the selection of BUMN / BUMD

⁸ Purnama Alamsyah, 2011, Reportase Start Up Indonesia 2010, Jakarta: Lembaga Ilmu Pengetahuan Indonesia, p. 2

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 3.

employees, applying for jobs in the private sector and not a few who then continue their studies at undergraduate level either through scholarships or non-scholarships. However, this is not the case for startups that seem to be a last resort, a backup option or even not an option.

Yet if you look at history, when gasoline-powered cars replaced horse-drawn carriages at the beginning of the 20th century, the world slowly saw the fading of woodworking and horse farms. The horse-drawn carriage turned into a gasoline-driven iron cart. At the same time, auto repair shops, insurance service companies, and gas stations are present in human life. Likewise with the nature of work — from previously very close to nature and without machines, without pollution, without courses, turning into highly mechanical, polluted, skills-based courses. All over the world, humans are witnessing a transition: an agro-livestock society to an industrial and service society.¹¹

Rhenald Kasali said that we are all facing the same problem: being shackled by old mindsets making it difficult to accept new facts and methods. We deny the digital world (deception) so that when we all have to fight against these invisible opponents, we become even more incapable of seeing. As a result, we fell into disruption. We face internal opponents who refuse, even though innovation has started from within. We get upset when we have to deal with ourselves as competitors.¹²

In line with the above, the number of internet users in Indonesia in 2016 reached 132 million out of a total of 250 million Indonesians. Utilization which is currently not maximized is only used on social media and has not been utilized as a potential or online business opportunity. In the world level or order of internet users, Indonesia is in the 6th position in the world and it is predicted that it will increase seeing the development and increase of users every year.¹³

In terms of the capital aspect, individuals can invest their capital flexibly. Apart from that, the place aspect, both in terms of production and sales, does not require much space. Simply load *display* Photos of the products offered complete with the pricelist.¹⁴

These advantages should be able to be seen by young people who have a lot of ideas and creativity in their fields. Another aspect, namely the product, in the development of the digital world today, various types of start-ups emerge with difficult competition. Ideas and creativity for these products must be able to attract consumers who expect convenience and fast-paced service. For example, the Go-Jek application that appeared in Indonesia a few years ago was able to win the

¹¹ Rhenald Kasali, 2017, *Disruption*, Jakarta: Gramedia Pustaka Utama, hlm. vii.

¹² *Ibid.*, p. xi - xii.

¹³ Aryan Eka Prasetya Nugraha dan Novika Wahyuhastuti, 2017, *Start Up Digital Bisnis: Sebagai Solusi Penggerak Wirausaha Muda*, Jurnal Nusantara Aplikasi Manajemen Bisnis Mei 2017, p. 3

¹⁴ *Ibid.*

hearts of Indonesian consumers and promote a more modern conventional motorcycle taxi transportation mode. The ease in the Go-Jek application is shown by the ability to quickly service consumers who need a motorcycle taxi with a short time and the location of the consumer.¹⁵

According to the author, startups are the last choice or not at all due to the unconsciousness of many people, especially the younger generation, that the world is changing so rapidly. When many jobs can then be replaced by applications, for example taxation applications or legal aid, this reality should be more aware of millennials and generation Z. But on the other hand, it cannot be denied that the old mindset problem still shackles our society in such a way.

On the other hand, learning from history, when gasoline-powered cars replaced horse-drawn carriages in the early 20th century, the world is slowly seeing the decline of woodworking and horse farms. Horse carts turned into iron carts with gasoline drinking engines is an indisputable fact of history. Not to mention the impact on workers where technology is one step ahead, making many types of work lost as seen in the emergence of certain applications such as tax applications, payroll applications, health applications, legal aid applications and other technological advances.

Therefore, it is this conscious effort to change the mindset that deserves the attention of the government and local governments through the education sector and other related sectors in an effort to realize general welfare as mandated by the constitution, as well as to raise awareness of the younger generation about the urgency of start ups as an alternative option in realizing one form. the independence of the nation's economy as well as a solution to providing employment opportunities, especially for citizens who fall into the category of the workforce.

Initiating a Just Start Up in the Context of Labor Law

According to Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises, Article 6 paragraphs 1, 2, and 3 provides the following criteria for micro, small and medium enterprises:

(1) Criteria for Micro Enterprises:

- a. has a net assets of not more than Rp.50,000,000.00 (fifty million rupiah), excluding land and buildings for business premises; or
- b. has an annual sales revenue of not more than Rp. 300,000,000.00 (three hundred million rupiah).

¹⁵ *Ibid.*, p. 4.

(2) Small Business Criteria:

- a. has a net assets of more than Rp.50,000,000.00 (fifty million rupiah) up to a maximum of Rp. 500,000,000.00 (five hundred million rupiah) excluding land and buildings for business premises; or
- b. has annual sales revenue of more than Rp. 300,000,000.00 (three hundred million rupiah) up to a maximum of Rp. 2,500,000,000.00 (two billion and five hundred million rupiah).

(3) Medium Business Criteria:

- a. has net assets of more than Rp. 500,000,000.00 (five hundred million rupiah) up to a maximum of Rp.10,000,000,000.00 (ten billion rupiah) excluding land and buildings for business premises; or
- b. has annual sales revenue of more than Rp. 2,500,000,000.00 (two billion and five hundred million rupiah) up to a maximum of Rp. 50,000,000,000.00 (fifty billion rupiah).

Although later Article 6 paragraph 4 states that the criteria for micro, small, and medium enterprises whose nominal value can be changed according to economic development is regulated by a Presidential Regulation, these criteria can be used as general parameters in classifying the scope of business. The problem then is that the MSME sector is often not guided by the prevailing laws and regulations, especially the Manpower Law. This assumption is based on a number of facts that the work relationship is not based on a work agreement, but is only an agreement based on mutual trust between the owner (business owner) and the person employed.¹⁶

This fact is certainly very detrimental to the people who are employed because they do not know their explicit rights and obligations. The further implication is the arbitrariness of employers related to wages, namely delays and even non-existent payments, scheduling at will, and unilateral termination of employment. However, according to the authors, this fact occurs due to three factors, namely:

- (1) Business actors non-compliance with laws and regulations in the manpower sector. Usually, the business scope that has crawled up from the level of small businesses to micro businesses or from the micro to medium enterprises level undoubtedly already has an HRD (Human Resources Development) Division which should be guided by the prevailing laws and regulations;

¹⁶ The author's observations on 6 MSMEs in the Non-Formal Education Sector in the City of Bandar Lampung from 2015 to 2020.

- (2) The business actor's own ignorance regarding the laws and regulations in the manpower sector which usually occurs in business actors who have just started their business;
- (3) The ignorance of work recipients regarding the PKWT (Fixed Time Work Agreement) and PKWTT (Indefinite Time Work Agreement) mechanism. Recipients of work in this case certainly cannot be blamed for granted, remembering everyone's needs and needs for a job.

According to Law Number 13 of 2003 concerning Manpower, Article 54 paragraph (1) states that the work agreement is made at or before the recruitment of workers / labor. In essence, the work agreement contains, among other things: Type of work agreement (for example PKWT or PKWTT), when it starts (and ends), is there a probation period, the work / tasks to be carried out (in general) and responsibilities, the position given (if any)), the amount of wages, facilities available, and other rights and obligations, including when the employment relationship ends.¹⁷

So that when a worker / laborer accepts a job without being based on a work agreement, it is contrary to the constitution where every citizen has constitutional rights regarding workers that every citizen has the right to work and a decent living for humanity. Because without a work agreement, workers' rights are not clear and can be unilaterally dismissed at any time. Related In this case, a new idea is needed about how a just start-up model, especially those in the scope of micro, small and medium enterprises (MSMEs), so that in the future young entrepreneurs can play an important role in advancing general welfare through the provision of jobs through start-ups. According to the author, a Just start-up must at least contain the following criteria:

- 1) The employment relationship is based on an employment agreement
- 2) The substance of the Work Agreement must contain the type of work agreement (for example PKWT or PKWTT), when it starts (and ends), is there a probation period, the work / tasks to be carried out (in general) and responsibilities, the position given (if any) the amount of wages, facilities available, and other rights and obligations, including when the employment relationship ends;
- 3) Efforts are made to make the amount of wages meet the standardization of decent living, namely more than the cost of transportation, food and shelter for workers / workers.

¹⁷ Ike Farida, 2020, *Perjanjian Perburuhan: Perjanjian Kerja Waktu Tertentu dan Outsourcing*, Jakarta: Sinar Grafika, p. 53.

III. CONCLUSION

The increasing number of internet users in Indonesia, aspects of cost flexibility and ease of place in starting start-up businesses, and starting to replace certain jobs both by applications and robots, should be able to be seen by the younger generation who have lots of ideas and creativity in their fields to start a business. Start-ups that are initiated must be fair which at least contain 3 (three) criteria, among others: Employment Relationships are based on a Work Agreement; The substance of the work agreement must contain the type of work agreement, when it starts (and ends), whether there is a probation period, the work / tasks to be carried out (in general) and responsibilities, the position given (if any); the amount of wages, facilities available, and other rights and obligations, including when the employment relationship ends; and the amount of wages strived to meet the standardization of decent living according to the Regency / City where the Start Up location is located.

The government and local governments should pay more attention to human development in terms of community culture related to mindset changes which in essence must be directed as an effort to advance the general welfare. In addition, universities are required to carry out Community Service related to efforts to educate college fresh graduates and high school graduates to know and understand the urgency of a work agreement that there is no work relationship without being based on a work agreement.

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