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THE ABSOLUTE COMPETENCE OF COURTS TO ADJUDICATE POST-EMPLOYMENT NON-COMPETE CLAUSES (A STUDY OF JUDGMENT NUMBER 41/PDT/2020/PT.DPS)

Nafa Nur Faiza[1], Ahmad Nailul Author[2]
[1]Faculty of Law, Universitas Negeri Surabaya, Indonesia
nafa.22265@mhs.unesa.ac.id

Abstract

A non-compete clause is a provision in an employment agreement that restricts an employee from working for or operating a business similar to that of the employer after the employment relationship ends. While intended to protect the employer's business interests, the application of such a clause potentially limits the employee's right to employment and raises issues regarding the absolute jurisdiction of judicial bodies in resolving related disputes. This study aims to analyze the absolute jurisdiction of judicial bodies to adjudicate matters concerning non-compete clauses under prevailing laws and regulations, as well as to analyze the measures taken by employees and employers to uphold their respective rights when such clauses are present. This is a normative legal study employing statutory, conceptual, and case-based approaches. The legal materials utilized comprising primary, secondary, and tertiary sources were analyzed using a prescriptive method. The findings indicate that conflicts arising from the breach of a non-compete clause essentially constitute a violation of rights, as they stem from the implementation of an employment agreement. Consequently, pursuant to Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, the absolute jurisdiction to hear and adjudicate such cases lies with the Industrial Relations Court. Furthermore, balancing the rights of employees and employers regarding non-compete clauses requires drafting proportional provisions specifically by defining reasonable timeframes, geographical areas, and scopes of work and providing compensation to the employee for the duration the clause remains in effect. Such arrangements are essential to ensure legal certainty, protect the employer's business interests, and safeguard the employee's right to work and a decent livelihood

Keywords : Non-compete clause, Industrial Relations Court, industrial relations dispute.

INTRODUCTION

The employment relationship between a worker and an employer is based on an employment agreement that establishes rights and obligations for both parties. In practice, this relationship does not always proceed harmoniously due to conflicting interests, imbalances in bargaining power, and differing interpretations of legal provisions (Husni, 2020). Such conditions can give rise to industrial relations disputes which, under Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI), encompass disputes over rights, interests, and termination of employment, as well as disputes between trade unions within a single company. These disputes are resolved through bipartite mechanisms, mediation, conciliation, or arbitration; if a resolution is not reached, the matter may proceed to the Industrial Relations Court (PHI) (Karsona et al., 2020). The high volume of industrial relations cases indicates that this remains a significant issue in Indonesian employment practice. According to data from the Ministry of Manpower of the Republic of Indonesia, 2,304 industrial relations dispute cases were recorded between January and September 2025, comprising:

Table 1.1 Number of Industrial Relations Dispute Cases January to September 2025

Type of Research	Number of Disputes
Dispute PHK	1.644
Dispute Over Rights	585
Conflict of Interest	73
Disputes Between Labor Unions	2

Source: One Data of the Ministry of Manpower of the Republic of Indonesia 2025

Based on the data, various types of industrial relations disputes were recorded in Indonesia between January and September 2025. Disputes regarding termination of employment accounted for the highest number of cases (1,644), followed by disputes over rights (585 cases). Meanwhile, there were 73 recorded cases of disputes over interests, and only two cases of disputes between labor unions (Ministry of Manpower of the Republic of Indonesia, 2025). These data indicate that termination disputes and rights disputes are the most prevalent types of disputes compared to the other two categories.

Labor disputes can also intersect with civil law, particularly when the conflict concerns the content and implementation of employment contracts. One issue of particular interest is the inclusion of non-competition clauses, which restrict workers from engaging in employment or business activities within the same sector after the employment relationship has ended (Ismail & Kamil, 2025). Such clauses can serve to protect company interests—specifically regarding the use of customer data, marketing strategies, or trade secrets by former employees. However, these restrictions may potentially conflict with a worker's right to employment and a decent livelihood, as guaranteed under Article 27, Paragraph (2) and Article 28D, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Nanda Novia Putri et al., 2024).

The existence of non-compete clauses also raises issues regarding the absolute competence of judicial bodies. Absolute competence determines which judicial forum has the authority to hear and adjudicate a case based on the nature of the dispute (Harahap, 2017). The matter becomes complex when a dispute arising from an employment relationship is brought before a District Court framed as an Unlawful Act (Act against the law or PMH), even though the substance of the dispute concerns a breach of an employment contract or a mandatory service agreement matters that are inherently related to industrial relations. Determining the appropriate forum is crucial because a case falling outside a court's absolute competence cannot be heard or adjudicated by that court (Adiasih & Sihombing, 2025).

This issue is illustrated in Denpasar High Court Decision Number 41/Pdt/2020/PT.Dps. The case originated from an employment relationship between CV Dwi Putu Kasirano and Shindy Setiawan, who had worked as a Sales Manager since February 2016. In October 2017, Shindy attended training in Italy, with all costs covered by the company. Consequently, the parties signed a Mandatory Training Service Agreement requiring Shindy to remain employed until October 12, 2022. The agreement stipulated that if the employee resigned before the mandatory service period expired, they were obliged to reimburse

accommodation costs amounting to IDR 50,000,000 and enter into a Non-Competition Agreement valid for two years following their resignation (Pamunngkas, 2009; Kasim, 2010).

Shindy subsequently resigned on January 16, 2019. The Plaintiff alleged that this action constituted an unlawful act PMH because it violated a service bond agreement and involved the alleged operation of a competing business and the misappropriation of the company's customer data. Based on these allegations, the Plaintiff sought damages totaling IDR 1,200,000,000, covering the reimbursement of accommodation costs, lost income, and non-material losses. The Defendant raised an objection regarding absolute competence, arguing that the dispute stemmed from an employment relationship and thus fell under the jurisdiction of the Industrial Relations Court rather than the District Court. The Defendant further contended that the substance of the case constituted a breach of contract rather than an unlawful act.

The Denpasar District Court declared the lawsuit inadmissible niet ontvankelijke verklaard on the grounds that the construction of the claim was unclear, a ruling that was subsequently upheld by the Denpasar High Court. This decision warrants analysis due to the issue of which forum holds jurisdiction to adjudicate disputes concerning non-compete clauses following the termination of an employment relationship. On one hand, the lawsuit was framed as an unlawful act and filed with the District Court; on the other, the legal relationship between the parties originated from an employment agreement or service bond.

Based on this issue, this study examines the absolute competence of judicial bodies to adjudicate disputes regarding non-compete clauses following the termination of employment agreements. It does so by analyzing relevant statutory provisions and the judicial reasoning found in Denpasar High Court Decision Number 41/Pdt/2020/PT.Dps. The study aims to address two questions: first, the absolute competence of judicial bodies to adjudicate non-compete clauses under prevailing laws and regulations; and second, the legal protection afforded to workers bound by non-compete clauses.

METHODS

This study is a normative legal research project employing the statute approach, case approach, and conceptual approach (Peter Mahmud Marzuki, 2021). The research focuses on analyzing non-competition clauses and the absolute competence of judicial bodies regarding disputes arising after the termination of employment relationships, specifically examining Court Decision Number 41/PDT/2020/PT.DPS.

The legal materials utilized consist of primary, secondary, and tertiary sources. Primary legal materials include the Indonesian Civil Code (KUHPerdata); Law Number 13 of 2003 concerning Manpower; Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement; Law Number 48 of 2009 concerning Judicial Power; Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts; Law Number 6 of 2023 concerning Job Creation; Government Regulation Number 35 of 2021; Government Regulation Number 12 of 2023; and Decree of the Minister of Manpower Number 15A/MEN/1994. Law Number 13 of 2003 and Law Number 2 of 2004 constitute the regulations relevant to manpower aspects and the settlement of industrial relations disputes.

Secondary legal materials comprise books, journals, legal doctrines, expert opinions, and jurisprudence, while tertiary legal materials consist of dictionaries, encyclopedias, and other legal reference sources (Muhaimin, 2020). Data collection was conducted through library research. Subsequently, the legal materials are analyzed systematically and prescriptively by examining, comparing, and assessing the alignment of legal provisions with issues regarding non-compete clauses and the absolute competence of judicial bodies, in order to reach a legal conclusion (Peter Mahmud Marzuki, 2021).

RESULTS AND DISCUSSION

1. The Industrial Relations Court Possessing Absolute Competence to Examine and Adjudicate Non-Compete Clauses Based on Applicable Laws and Regulations.

A non-compete clause is a provision within an employment contract that restricts an employee's activities after the employment relationship has ended. Its enforceability is grounded in the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code provided it meets the requirements for a valid agreement under Article 1320 of the Civil Code and does not violate the requirement for a lawful cause under Article 1337 of the Civil Code. Because such a clause is included in an employment contract, its enforcement is subject not only to civil law but must also be viewed through the lens of labor law (Febrianti et al., 2022). This raises the question of whether a dispute regarding a non-compete clause constitutes an industrial relations dispute falling under the jurisdiction of the Industrial Relations Court (PHI) or a civil dispute falling under the jurisdiction of the District Court (PN) (Husni, 2020).

This issue is illustrated in the Denpasar High Court Decision Number 41/Pdt/2020/PT.Dps. The case involved Hendro Siswanto as the Plaintiff and Shindy Setiawan as the Defendant, who was employed as the Bali Branch Manager for CV Dwi Putu Kasirano. In October 2017, the Defendant participated in training and an event in Italy, with all costs covered by the company. Prior to the training, the parties signed a Training Service Bond Agreement (Number 021/PDTB-HRD/X-2017), which obligated the Defendant to remain employed until October 12, 2022. The agreement stipulated that if the Defendant resigned before the bond period expired, they were required to reimburse accommodation costs amounting to IDR 50,000,000 and agree to execute and abide by a Non-Competition Agreement for a period of two years following their resignation.

On January 16, 2019, the Defendant resigned and subsequently took a job with a company operating in the same line of business. The Plaintiff filed a lawsuit with the Denpasar District Court based on an Unlawful Act (PMH), claiming damages in the amount of Rp1,200,000,000. These damages comprise the reimbursement of accommodation costs amounting to Rp50,000,000, losses due to reduced income amounting to Rp1,000,000,000, and other losses as alleged in the complaint.

The Defendant raised several defenses, namely an objection regarding absolute competence (jurisdiction), an objection regarding a vague claim obscuur libel, and an argument that the non-compete clause was null and void by law because it restricted the constitutional right to work and earn a decent income. The Defendant argued that the substance of the dispute concerned industrial relations and a breach of the employment agreement, and thus should be heard by the Industrial Relations Court (PHI) rather than the District Court (PN). The Defendant also contended that the lawsuit should more appropriately be framed as a breach of contract wanprestasi, given that it stemmed from a violation of an agreement. Through Interlocutory Decision Number 629/Pdt.G/2019/PN.Dps, the Denpasar District Court rejected the objection regarding absolute competence and ordered the case to proceed. In its final judgment, the Denpasar District Court declared the lawsuit inadmissible niet ontvankelijke verklaard because the framing of the claim was deemed vague. The court held that the facts presented pointed more toward a breach of the Service Bond Agreement than an unlawful act PMH. This decision was subsequently upheld by the Denpasar High Court in Decision Number 41/Pdt/2020/PT.Dps. The High Court affirmed that the District Court's reasoning regarding both absolute competence and the lack of clarity in the lawsuit was correct and legally sound.

These considerations demonstrate that the panel of judges viewed the framing of the lawsuit as the basis for determining the appropriate court forum. The Plaintiff invoked Article 1365 of the Indonesian Civil Code, arguing that the Defendant's action of working for a similar company after resigning constituted an unlawful act that caused financial loss to the company. However, in substance, the subject of the dispute originated from the Training Service Bond Agreement entered into while the employment relationship was still active. That agreement stipulated an obligation to remain employed until October 12, 2022, a requirement to reimburse training costs amounting to IDR 50,000,000, and an obligation to adhere to a non-compete clause for two years following resignation. Consequently, the disputed rights and obligations were directly linked to the employment relationship.

Based on Article 1 point 2 of the Industrial Relations Dispute Settlement Law (UU PPHI), a dispute over rights is a dispute arising from the non-fulfillment of rights due to differences in the implementation or interpretation of provisions within laws and regulations, employment contracts, company regulations, or collective labor agreements. Thus, although the Plaintiff frames the claim based on an unlawful act PMH, the substance of the dispute in the case at hand reveals issues concerning the implementation of rights and obligations derived from the agreement within the employment relationship.

Research analysis suggests that the determination of absolute competence should not rely solely on the label or legal grounds cited in the lawsuit, but rather on the substance of the legal relationship forming the subject of the dispute. If the disputed rights and obligations arise from an employment relationship, the case falls within the realm of industrial relations disputes and is subject to the jurisdiction of the Industrial Relations Court (PHI). Conversely, if the legal relationship stands independently and no longer bears a connection to the employment relationship, it may fall under the jurisdiction of the District Court (PN) (Adiasih & Sihombing, 2025). Therefore, regarding Case Number 41/Pdt/2020/PT.Dps, since the non-compete clause was part of a mandatory training service agreement within the employment relationship, the dispute is more appropriately categorized as an industrial relations dispute falling under the jurisdiction of the PHI.

2. Worker and Employer Efforts to Fulfill Rights If There is a Non-Competition Clause

Non-compete clauses essentially serve a legitimate purpose: protecting a company's business interests against the misuse of information acquired by employees during the employment relationship (Ismail & Kamil, 2025). Employees in certain positions may have access to trade secrets, customer data, marketing strategies, production methods, and even business development plans. Consequently, such clauses can be used to prevent former employees from moving to a competitor or establishing a similar business by leveraging the company's information. This protection aligns with Law Number 30 of 2000 concerning Trade Secrets, which safeguards technological and/or business information that is not publicly known, possesses economic value, and is kept confidential (Nanda Novia Putri et al., 2024).

However, the protection of company interests must be balanced against the rights of employees. Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees citizens the right to work and a decent livelihood, while Article 28D paragraph (2) guarantees every person the right to work and to receive fair and proper remuneration and treatment within the employment relationship. Furthermore, Article 38 paragraph (2) of Law Number 39 of 1999 concerning Human Rights grants every individual the right to freely choose their preferred occupation and to obtain fair employment conditions. Therefore, non-compete clauses must not be applied disproportionately to the extent that they deprive employees of the opportunity to secure employment after the employment relationship has ended.

Agusmidah explains that the purpose of a non-compete clause is to protect an employer's legitimate interests such as trade secrets, business information, and client relationships as well as the company's investment in employee education and training. However, such restrictions must not deprive workers of the opportunity to secure employment (Agusmidah, 2010). Consequently, non-compete clauses must adhere to the principle of proportionality, meaning restrictions should only apply to the extent necessary to safeguard the employer's interests. Clauses involving excessively long durations, overly broad geographical scopes, or prohibitions covering entire fields of work risk conflicting with workers' constitutional rights (Ismail & Kamil, 2025).

The absence of specific regulations regarding non-compete clauses in Indonesian positive law means that their assessment relies on Articles 1320, 1337, and 1338 of the Indonesian Civil Code (KUHPerdata), alongside provisions concerning workers' constitutional rights. Employment agreements must satisfy the requirements for contractual validity and respect the principle of balance within the employment relationship (Febrianti et al., 2022). Unlike Indonesia, some countries have established clearer limitations. In the Netherlands, for instance, Article 653 of Book 7 of the Civil Code Burgerlijk Wetboek stipulates that non-compete clauses must be in writing and agreed upon only with adult employees; furthermore, for fixed-term contracts, the clause must be accompanied by a written justification citing compelling business or operational interests. Courts also have the authority to void a clause in whole or in part if it imposes a disproportionate disadvantage on the employee.

In France, the ruling by the Cour de cassation (Social Chamber) on July 10, 2002 (Case No. 00-45.135), established four cumulative conditions for non-competition clauses: they must protect the company's legitimate interests; be proportionally limited in terms of time and geography; take into account the specific nature of the employee's work; and include financial compensation. Conversely, Indonesian law does not yet specifically regulate the enforceability of non-competition clauses or the obligation to provide compensation. This situation reveals a legal gap that can create uncertainty regarding the extent of an employer's authority to restrict an employee after the employment relationship has ended.

One form of applicable legal protection is to limit such clauses proportionally based on duration, geographical area, and the type of work. Companies should restrict employees only from work that directly poses a risk of competition against legitimate business interests. Furthermore, providing compensation for the duration of the clause could offer a more balanced form of protection for the employee, even though current Indonesian law does not explicitly mandate such compensation. This is particularly important for employees with specialized skills who cannot easily transition to other sectors on short notice (Ismail & Kamil, 2025).

In Case No. 41/Pdt/2020/PT.Dps, the defendant was a Branch Manager in Bali who had previously received company-funded training in Italy. This scenario demonstrates the existence of a protectable company interest, especially when the employee has access to business information. However, a two-year restriction must still be evaluated based on proportionality and its impact on the employee's ability to earn an income after resigning. Protection for the company should not devolve into a prohibition that excessively deprives the employee of the right to work.

If a worker considers a non-compete clause to violate their rights, resolution may be sought through the mechanisms established by the Industrial Relations Dispute Settlement Law (UU PPHI). The initial stage is bipartite negotiation, pursuant to Article 3 paragraph (1) of the Law. If an agreement is reached, it must be formalized in a Collective Agreement under Article 7 paragraph (1) and registered with the Industrial Relations Court (PHI) in accordance with Article 7 paragraph (2). Should bipartite negotiation fail, the dispute may be registered with

the relevant labor authority to proceed via mediation, conciliation, or arbitration, depending on the nature of the dispute (Karsona et al., 2020).

Consequently, legal protection for workers bound by non-compete clauses requires balancing the employer's legitimate interests against the worker's fundamental right to work. Such a clause may be justified provided it serves a legitimate purpose, is based on the mutual agreement of the parties, meets the legal requirements for a valid contract, and imposes restrictions that are reasonable and proportionate. Conversely, clauses that impose excessive restrictions regarding duration, geographical scope, or the field of work risk conflicting with workers' rights and the principles of legal protection within industrial relations.

CONCLUSION

When analyzing non-compete clauses in employment relationships, several aspects must be considered particularly those concerning the absolute competence of judicial bodies and legal protections for workers to ensure that the application of such clauses aligns with the substance of the legal relationship and applicable laws and regulations.

The absolute competence of judicial bodies to adjudicate disputes regarding non-compete clauses should be based on the substance of the disputed legal relationship, rather than the form of the lawsuit filed. This is because a non-compete clause forms part of an employment agreement governed by Law Number 13 of 2003 concerning Manpower, as well as Articles 1338 paragraph (1), 1320, 1337, and 1601x of the Indonesian Civil Code. Consequently, a breach of such a clause constitutes, in essence, a dispute over rights as defined in Article 1 point 2 of the Law on Industrial Relations Dispute Settlement (UU PPHI); therefore, pursuant to Article 56 of the UU PPHI, the authority to hear and decide the dispute lies with the Industrial Relations Court.

The fulfillment of the rights of both workers and employers regarding non-compete clauses must be balanced. Employers have the right to include non-compete clauses based on Article 1338 paragraph (1) of the Civil Code, while workers retain the right to work and a decent livelihood as guaranteed by Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In the event of a dispute, resolution is to be pursued in accordance with the UU PPHI. Furthermore, comparative legal analysis reveals that several countries regulate non-compete clauses more comprehensively through proportional restrictions and worker protections. Therefore, Indonesia needs to establish specific regulations regarding non-compete clauses to ensure legal certainty and a balance of protection for both workers and employers.

ADVICE

Based on these conclusions, several recommendations are proposed. First, regarding employers: employers should draft non-competition clauses that are clear, proportionate, and compliant with statutory provisions specifically Articles 1320, 1337, 1338 paragraph (1), and 1601x of the Indonesian Civil Code. Such clauses should aim solely to protect legitimate business interests, such as trade secrets and business information, without unduly restricting a worker's right to secure employment after the termination of the employment relationship. Second, regarding workers: workers should understand the content and legal consequences of non-competition clauses before signing employment agreements. If a clause imposes disproportionate restrictions or conflicts with workers' constitutional rights as guaranteed by Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as Article 38 paragraph (2) of Law Number 39 of 1999 concerning Human Rights workers may pursue industrial relations dispute resolution mechanisms in accordance with the Law on Industrial Relations Dispute Settlement (UU PPHI). Third, regarding judges:

judges should exercise greater diligence in determining absolute competence over disputes involving non-competition clauses by examining the source of the parties' rights and obligations. If a dispute arises from an employment agreement, judges should consider the provisions of the UU PPHI as the basis for determining the jurisdiction of the Industrial Relations Court; this ensures legal certainty, consistency in rulings, and balanced legal protection for both workers and employers.

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