



The Concept of Regulation of Legal Protection of Labor in Indonesia (Review of the Problems and Forms of Protection)

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Abstract

This article discusses the history of employment in Indonesia, starting from slavery to the era of globalization. The 1945 Constitution of the Republic of Indonesia affirms that work and a decent life are constitutional rights for all Indonesians, and the government has an obligation to provide protection for these rights. The government has implemented various legal instruments related to labor issues, whose material coverage almost covers all aspects of labor issues. This article uses a normative research method with a statutory approach. The series of labor protection that must be implemented by every entrepreneur or company includes the maintenance and improvement of welfare through social security of labor that is general and based on joint efforts, kinship, and cooperation. This article asserts that the protection of workers/laborers should be made a top priority to realize the welfare of all the people of Indonesia mentally and spiritually, or in terms of the greatest prosperity of the people of Indonesia.

Keywords: *Employment in Indonesia; Constitution of 1945; Labor Protection*

Introduction

In various literature that discusses the problem of employment in Indonesia, the history of the work of a person. Often starting with, slavery, a term that is actually more accurately said to be a status than to express it as a type of work Bond. Furthermore, various terms are also known as laborers, servants, peluluran, rodi, koeli (porters), to workers/labor, to employees and employees.

The picture of employment in Indonesia continues when the Constitution of the Republic of Indonesia 1945 in Article 27 paragraph (2), asserts that work and a decent life is a constitutional right for all Indonesian people. The logical consequence of this affirmation is the birth of the obligation of the state to provide the widest possible facilities and opportunities for all people to be able to get a job while making the job as something worthy of humanity. Thus, violation of the basic rights protected by the Constitution is a violation of human rights.

In essence, the assertion of the right to work and employment on the one hand is an effort made by the government to reduce the problems that occur in the field of employment in general. In addition, the labor history of pre-Independence Indonesia shows the dark side of labor / workers who almost lost their human rights, while at the same time the demand for human rights (workers) has become an international issue, which implies the necessity for the government to not only assert the form of rights in labor sector, but at the same time provide protection for these rights.

Since Indonesia's independence, the government has implemented various legal instruments related to labor issues, whose material coverage almost covers all aspects of labor issues. There are several laws that specifically contain issues of rights, obligations and positions of related parties in labor, for example the law. No. 23 of 1948 on Labor Supervision, Law No. 21 of 1954 on Labor Agreements and Law No. 22 of 1957 on the settlement of labor disputes.

Furthermore, Indonesia is entering an era of globalization, which in turn requires changes in all fields. No exception is the field of employment. The implications can be seen in two things, first; the existence of job opportunities that are wide open for job seekers, especially to fill job opportunities abroad, second; the increasing competition in the domestic job market against the invasion of foreign workers entering Indonesia. Then, on the side of Labor democratization gave birth to Labor awareness of their rights that must be fulfilled without discrimination. Meanwhile, the era of political decentralization was marked by the increasing role of government (interference) in the field of Labor.

The role of the government will be increasingly visible when the pattern of worker-entrepreneur relations turns into industrial relations that not only involve workers and employers but confirms the position of the government as a third party. Because as adherents of the "welfare state" (*welfare state*), there is no reason for the state/government not to enter all lines of life of its citizens, with the main goal is to realize the welfare of all the people of Indonesia, mentally and spiritually, or in terms of the greatest prosperity of the people of Indonesia.

The form of government intervention in this field is emphasized by the birth of labor legislation and political policies, especially in the field of legislation and its Implementing Regulations. Recorded law No. 21 of 2000 on trade unions / Labor and regulations under it.- Act No. 13 of 2003 on Employment, Law No. 2 of 2004 on the settlement of industrial relations disputes. UU No. 3 of 1992 on Labor Social Security (JAMSOSTEK) law No. 1 of 1970 on Occupational Safety. UU No. 7 of 1981 on WajIB Employment Report in the company. Other regulations are lower regulations with the law. Is a series of regulations that were born related to labor/labor issues in Indonesia.

The existence of a series of regulations as mentioned above, in addition to being an answer to the obligation of the government to provide services in general, also aims to further maximize and optimize labor relations involving workers, employers and the government. Furthermore, this can be interpreted as a form of protection against the parties, especially workers/laborers from possible neglect and violation of their constitutional rights. Because in the socio-economic field, the position of workers / workers is always under the employer / employer.

In detail, the protection guarantees provided include freedom for workers to improve their living standards both personally and their families, preventing the reduction or loss of income and purchasing power, especially for workers/workers, and protection against loss of work and income due to work accidents or due to illness, or due to death.

The series of protections mentioned above, is part of a series of legal protections for workers/laborers. The form of labor protection that must be implemented by every entrepreneur or company that hires people to work for the company, which is related to the maintenance and improvement of welfare in the purpose of being held in the form of General Labor social Security to be

implemented or basic, based on joint efforts, kinship and mutual assistance as listed in the the soul and spirit of Pancasila and the 1945 Constitution.

Research Methods

This research is categorized into the type of normative law research if it is based on the issue and / or theme raised as the research topic. The research approach used is philosophical and analytical, which is research that focuses on a rational view, critical analytical and philosophical, and ends with a conclusion that aims to produce new findings as an answer to the main problem that has been set. And will be analyzed by deskriptif analytical descriptive method, namely by describing the applicable legislation related to the theory of law and positive law enforcement practices related to the problem.

Discussion

A. Employment Issues

Labor issues throughout its history as if never finished, and always related to the problems of protection, wages, welfare, justice, disputes and settlement, coaching and supervision and regulatory issues that regulate the field of Labor. Adrian identifies these things as a result of government weaknesses in implementing laws, even tend to occur irregularities, including coordination problems and inter-agency work that has not been optimal.

In simple terms, the so-called labor problems in Indonesia (initially) occurred around the relationship between workers and employers. However, in further developments developed about the unequal labor relations between employers and workers in the making of labor agreements. Not only is it not balanced in making agreements, but the climate of increasingly fierce business competition that causes companies to make cost of production efficiency (*cost of production*), which has an impact on labor demands on workers/labor (sometimes leading to extortion), or in the form of work restrictions to termination of employment (layoffs). Furthermore, labor disputes do not only involve 2 parties (workers and employers), but also involve other parties, including the government or other bodies/institutions appointed or established by the government. In this case, the problem of Labor Relations is increasingly complex, covering aspects of the industry as a whole, so that labor problems must be seen as industrial relations problems.

However, government interference in the field of Labor should not cause new problems, because in the course of labor history, government intervention has become a much-needed thing. For example, the (legal) protection of workers/workers, whose approach was born precisely as a result of the development of the doctrine of *Laissez Faire* out of control in the Middle Ages. Philosophically, this doctrine carries a capitalist liberal understanding (economic liberalization) which requires that the government does not interfere in economic/industrial relations. The negative effects that then appear are, inhuman treatment of workers, the occurrence of industrial competition that tends to be unhealthy, and can only be stopped by stronger employers.

B. Labor Law Protection

Legal protection is the protection of dignity and dignity, as well as the recognition of human rights owned by the subjects of law based on the provisions of the law of arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. In Indonesia, the protection of the law in question is always based on Pancasila as the foundation of idiil, although the concept of its formulation

uses the thoughts of the Western world whose emphasis on the concept rests on the protection of human rights. Thus, in simple terms the concept of legal protection of workers in Indonesia still rests on the protection of the dignity and dignity of workers, as well as their human rights, both individually and as “workers”.

Aspects of protection against workers include two basic things, namely protection from the power of employers and protection from government action. Legal protection from the power of the employer / employer is carried out if the legislation in the field of labor that requires or forces the employer to act as in the legislation is really implemented by all parties, because the enforceability of the law cannot be measured only juridically, but measured sociologically and philosophically.

Worker protection is expressly regulated under Article 5 of Law No. 13 of 2003 concerning manpower. The article states that every worker has the right and equal opportunity to obtain decent work and livelihood regardless of gender, ethnicity, race, religion, and political stream in accordance with the interests and capabilities of the worker concerned, including equal treatment of persons with disabilities. Furthermore, Article 6 requires employers to provide the rights and obligations of workers/laborers regardless of gender, ethnicity, race, religion, color, and political stream,

In detail, other rights that are also regulated under the labor law are contained in the following articles :

1. Article 11, contains the right to acquire and develop competencies
2. Article 12 paragraph (3), contains the right to participate (get) training
3. Article 31, *jo*; Article 88, States the right to choose the type of work and obtain penghasailan, both at home and abroad
4. Article 86 paragraph (1), States the right to health and safety
5. Article 99 paragraph (1), stipulates the right of workers and their families to obtain Social Security labor (jamsostek)
6. Article 104 paragraph (1), the right for workers to engage (form or become a member) in a trade union/labor.

Based on the content of the Articles of the labor law, the scope of protection of workers includes :

1. basic rights of workers / laborers to negotiate with employers;
2. Occupational Safety and health;
3. Special protection for women, children and disabled workers; and
4. Perlindungan protection of wages, welfare, and social security of Labor

C. Types of Work Protection

According to Bakers, as a whole, the protection of workers/labor is the norms of public law aimed at regulating the state of labor in enterprises. Also included are all public law norms that affect and threaten, Occupational Health Security and the welfare of workers/workers in carrying out work. The scope of the regulation includes two aspects, namely:

1. Material Aspect.

These aspects generally include job security and physical care

2. Immaterial Aspect

Immaterial aspects include working time and improving the physical and physical development of workers

AdAalso provides legal protection for workers according to Imam Soepomo covering 5 areas, namely;

1. Recruitment / placement of manpower
2. Working relationship
3. Occupational health
4. Job security, and
5. Social security workers,

While in another agreement Imam soepomo classifies work Protection into 3 types of protection, namely, economic protection, social protection and technical protection.

1. Economic Protection

Economic protection is sometimes referred to as Social Security which is the protection of workers/laborers related to their income. This protection includes efforts made to provide sufficient income for the living needs of workers and their families. Including employee protection when working against his will.

With regard to income-related protection, the basic issue is about employee benefits obtained by workers who are termed wages. The problem of wages is a classic problem in the field of employment from time immemorial. Because it is difficult to bring together 2 parties that each have different interests. Therefore, in the framework of providing protection economically, the need for rules on wages becomes absolute.

As is known, that the economic status of employers is above workers, especially if drawn into the scope of the company, then what happens is the status of superiors and subordinates. Therefore, this relationship tends to put the workers as objects, or in terms of Labor Rajagukguk considered as external factors that are equal to the customer suppliers or customers buyers and not internal factors as an integral part. Thus what may occur is the determination of wages based on the wishes of the owner of the company by ignoring the fulfillment of the rights of workers to live in a qualified manner.

In this side, the government has an interest in harmonizing the form of decent wages, by setting rules on wages through PP No. 8 of 1981 on wages, then Article 1 item 30 of the UUK which confirms that wages are workers ' rights. In addition, the concept of employment includes "by receiving wages" as one element of its definition, which is also followed by rules on minimum wage standards (UMP, UMR). Thus, the neglect of workers ' wages can be categorized as a serious violation, because this means a violation of Human Rights.

Meanwhile, oneof theresponsibilities and obligations of the state to provide socio-economic protection to the community including workers is realized in the form of maintainingengyelenggaraan social security programs. The implementation of Social Security is organized by PT Jamsostek whose scope is not only economic protection, but also social/health protection.

In essence, the labor soisal guarantee program is intended to provide certainty about the ongoing flow of family income receipts that are partially lost. In addition, the Labor Social Security program has several aspects, among others :

- a. Provide basic protection to meet the minimum living needs for the workforce and their families.
- b. It is a tribute to the workforce that educates the independence of workers so that workers do not have to ask for the mercy of others if in the employment relationship there are risks such as work accidents, illness, old age and others.

Today, based on Law No. 24 of 2011 on the Social Security Administration Agency (BPJS), which consists of BPJS Health and BPJS employment. Article 62 paragraph (1), determines that PT Jamsostek turns into BPJS Ketenagakerjaan and starts operating (no later than) on July 1, 2015 based on Article 64 of the BPJS law. The programs organized by BPJS Ketenagakerjaan include guarantees related to the field of employment, namely;

- a. the risk of accidents at work;
- b. old-age security;
- c. retirement security; and
- d. the guarantee of death.

Based on paparan di the above exposure can be concluded, that the social security of Labor is a protection for labor in the form of compensation in the form of money (work accident insurance, death, and old age savings), and health insurance kesehatan and health maintenance insurance.

2. Protection Occupational Health Protection

The protection of safety and health of the workforce is contained simultaneously in Article 86 paragraph (1) of Law No. 13 of 2003 concerning manpower, it is stated that every worker / laborer has the right to obtain protection for Occupational Safety and health, morality, and decency, as well as treatment in accordance with human dignity and values religious values.

As for Occupational Health, it is defined as any effort and effort or rule that aims to protect workers from actions and conditions that can interfere with physical, psychological health and (violating the norms of) morality in an employment relationship. Occupational Health is intended as labor protection in the form of occupational health insurance, and freedom of association and protection of the right to organize. Occupational health as stated above includes a type of social protection because the provisions regarding occupational health are related to social society, namely rules that intend to impose restrictions on the power of employers to treat workers/workers "at will " without regard to applicable norms, not looking at workers / workers as God's people have rights.

Health maintenance insurance is a guarantee as an effort to overcome and prevent health problems that require examination, treatment, and/or care including pregnancy and childbirth. Health maintenance is also intended to increase labor productivity so that it can carry out its duties as well as possible and is a health effort in the field of healing. Because healing efforts require funds that are not small and burdensome if charged to individuals, it is appropriate to try to overcome the ability of the community through the social Security program labor. That workers in national development are increasing, with the risks and responsibilities and challenges they face. Therefore, it is necessary for them to be given protection, maintenance, and improvement of their welfare so as to create a sense of security at work. Because of its nature to hold a " limitation " of the provisions of social protection in law No. 13 of 2003, Chapter X Article 68 onwards is "coercive", not regulating. Due to the coercive nature of the provisions of Social Protection Law No. 13 of 2003, the framers of the law considered it necessary to clarify that this provision relating to social protection constitutes a "common law" (*Publiek-rechtelijk*) with criminal sanctions. This is due to the following reasons :

- a. The rules contained in it are not intended to protect the interests of a person, but are rules of society.
- b. Pekerja/buruh Indonesian workers generally do not have the understanding or ability to protect their own rights.

Occupational health means protecting or safeguarding workers / laborers from events / circumstances of Labor Relations that harm their health and morality in terms of workers/workers doing

their jobs. The emphasis "in an employment relationship" indicates that all workers who do not have an employment relationship with employers do not receive Social Protection as determined in Chapter X of Law No. 13 of 2003. Thus, the objectives of the Occupational Safety and health regulations are:

- a. Protect workers from the risk of accidents.
- b. Improve the health status of workers/laborers.
- c. So that workers / laborers and people around them are assured of safety.
- d. Maintain production resources maintained and used safely and efficiently.

Occupational Safety and health must be implemented and implemented in every workplace. Elements of the workplace there are 3 (three), namely:

- a. The existence of a business, both economically and socially.
- b. There is a source of danger.
- c. The presence of labor working in it, both constantly and at any time

3. Protection Technical Work Safety

Occupational Safety is defined as all rules and efforts aimed at providing technical protection for workers from occupational risks related to the use of tools/machines, materials (hazardous/toxic materials), types of work, location, time, and workplace conditions during the work period. Included in this protection is the availability of supporting facilities and infrastructure as a precautionary measure in the event of a work accident.

Work accidents as described Berdasarkan law No. 1 of 1970 concerning Keselamatan Ksafety work, is an unforeseen and unwanted event, which disrupts the regulated process of an activity and can cause losses to both human and property victims. While according to law No. 3 of 1992 on Social Security, "work accidents are accidents that occur in connection with the employment relationship, including diseases arising from the employment relationship, as well as accidents that occur on the way from home to work, and return home through the usual or reasonable path traversed.

Based on the above understanding, the scope of technical protection is very wide, because it is closely related to the Prevention of work accidents, while the range of understanding of work accidents includes everything that arises and occurs while a worker is in an employment relationship including the return and departure of a worker from/to work.

The main purpose of this form of protection is the realization of safety throughout the work relationship, which in turn will create a feeling of security and comfort for workers to carry out their duties/work optimally, without fear or worry of accidents. Even if it already happens, handling can be done immediately.

In contrast to other work Protection which is generally determined for the benefit of workers/workers only, this work safety not only provides protection to workers/workers, but to employers and the government.

- a. For workers/laborers, the guarantee of Occupational Safety Protection will lead to a peaceful working atmosphere so that workers / laborers can focus their attention on their work as much as possible without worrying at any time about being hit by a work accident.
- b. For employers, the existence of occupational safety arrangements within the company will be able to reduce the occurrence of accidents that can result in employers having to provide social security.

- c. For the government (and the community), with the existence and observance of occupational safety regulations, then what the government plans to prosper the community will be achieved by increasing the company's production both quality and quantity.

This protection not only provides a sense of security and comfort for workers/laborers to carry out their duties optimally, but also reduces the occurrence of accidents that can harm employers and affect the government's goals for the welfare of society through increased production of the company. This article shows that the protection of Occupational Safety is a common interest for all parties to the employment relationship, and it is important that all parties adhere to and comply with it in order to achieve the desired goals.

Conclusion

It can be concluded that legal protection is a human right that includes the rights of individuals and groups, including the rights of workers in their position as subjects of law. As workers, they have rights related to their status and position, such as the right to decent work, income, health, safety, and the right to organize. The government has established laws and regulations that provide enforcement of these rights and guarantees the protection of workers' rights through social security programs such as Social Security employment and health (PT Jamsostek/BPJS) as well as other regulations governing wages, working hours, leave/holidays, workers' organizations/work, and so on. These protections are essential to safeguard workers' rights and provide legal certainty in the exercise of these rights.

References

- Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004).
- Ady Purwoto, Rani Pajrin, et al. "Sistem Pemerintahan Indonesia." *Hukum Tata Negara: Konsep dan Teori*, vol. 7, PT Global Eksekutif Teknologi, 2023, pp. 131-150.
- Ady Thea DA, "Tiga Guru Besar ini Beri Masukan Soal Omnibus Law" <https://www.hukumonline.com/berita/baca/lt5e42837ad4b2a/tiga-guru-besar-ini-beri-masukan-soal-omnibus-law/>.
- Ahmad Redi, "Omnibus Law Diskursus Pengadopsiannya Kedalam Sistem Peraturan Perundang-Undangan Nasional", (Depok: Rajagrafindo Persada, 2020).
- Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan*, Jakarta: Sinar Grafika, 2018).
- Bagir Manan, *Teori dan Politik Konstitusi*, Cetakan Pertama, FH UII-Press, Yogyakarta, 2003.
- Bryan A. Garner, *Black Law Dictionary*, (USA: A Thomson Reuters Business, 2004). Lihat Juga Ahmad Redi, "Omnibus Law Diskursus Pengadopsiannya ke dalam Sistem Peraturan-undangan Nasional", (Depok: Raja Grafindo Persada, Cetakan ke-1, 2020).
- Chandra Gian Asmara, "Salah Ketik UU Cipta Kerja Jokowi Bikin Gempar RI" <https://www.cnbcindonesia.com/news/20201104091033-4-199132/salah-ketik-uu-cipta-kerja-jokowi-bikin-gempar-ri>.
- FNH, "Menimbang Konsep Omnibus Law bila Diterapkan di Indonesia" <https://www.hukumonline.com/berita/baca/lt58a6fc84b8ec3/menimbang-konsep-omnibus-law-bila-diterapkan-di-indonesia/>.

- Hendra Kurnia Putra, “*Omnibus Law Diskursus Pengadopsiannya ke dalam Sistem Perundang-undangan Nasional*”, (Depok: Raja Grafindo Persada, Cetakan ke-1, 2020).
- Hendra Kurnia Putra, “*Problematika Penerapan Omnibus Law dalam Pembentukan Undang-Undang dalam Sistem Peraturan Perundang-Undang di Indonesia*”, (Depok: Rajagrafindo Persada, 2020).
- Ishaq, *Metode Penelitian Hukum dan Penulisan Skripsi, Jurnal serta Disertasi*, (Bandung: Alfabeta, 2017).
- Jimly Asshidiqie, “*Omnibuslaw dan Penerapannya di Indonesia*”, (Jakarta: Konstitusi Press, Cetakan ke-3, 2021).
- Judicial Review UU Cipta Kerja” 3 November 2020, <https://news.detik.com/kolom/d-5239294/beberapa-kemungkinan-dalam-judicial-review-uu-cipta-kerja>.
- KSBI Ajukan Uji Materi UU Cipta Kerja ke Mahkamah Konstitusi”, 3 November 2020, <https://nasional.kompas.com/read/2020/11/14/12390541/ksbsi-ajukan-uji-materi-uu-cipta-kerja-ke-mahkamah-konstitusi?>.
- Lembaga Bantuan Hukum Konfederasi Serikat Buruh Seluruh Indonesia” (LBH KSBI), 6 November 2020. https://www.mkri.id/public/filesimpp/berkas_2833_2048%20%20Elly%20Rosita.pdf.
- Muhtar, Mohamad Hidayat, and Nur Mohamad Kasim. *Peraturan Daerah Syariah Dalam Sistem Hukum Indonesia*. Eureka Media Aksara, 3 Feb. 2023.
- Muhtar, Mohamad Hidayat, et al. "Analysis of the Function of Regional Apparatus to Realize Strong Food Reserves in the Era of Regional Autonomy." *Legal Brief*, vol. 11, no. 5, 24 Dec. 2022.
- Rika Anggraeni, “*Tuai Pro-Kontra, Apa itu Omnibus Law dan UU Cipta Kerja?*” <https://ekonomi.bisnis.com/read/20201006/9/1301136/tuai-pro-kontra-apa-itu-omnibus-law-dan-uu-cipta-kerja>.
- Soerjono Soekanto, dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2010).
- Soerjono Soekanto, *Metode Penelitian Hukum*, (Jakarta: UI Press, 2002).
- Wantu, F. M., Muhtar, M. H., Putri, V. S., Thalib, M. C., & Junus, N. (2023). EKSISTENSI MEDIASI SEBAGAI SALAH SATU BENTUK PENYELESAIAN SENGKETA LINGKUNGAN HIDUP PASCA BERLAKUNYA UNDANG-UNDANG CIPTA KERJA. *Bina Hukum Lingkungan*, 7(2).

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