

RESEARCH ARTICLE

Legal Protection For Labours According To Indonesian Laws



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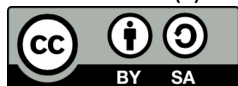
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Abstract

In this modern era, many new companies are emerging and requiring a lot of labours to operate to earn profit which can give positive influences on the involved parties or the national economy. Yet, among those labours, many of them don't understand or even know that they have rights and obligations that become their legal protection which have been regulated by the laws. For that reason, the writers wrote this article in order to make labours know and understand about things which become legal protections for labours. This research is descriptive analytical research and was conducted by using normative juridical approach. The writers collected primary and secondary data which are relevant to the problems. The writers were using labours' law in Indonesia which are Law No. 13/2003 concerning employment which regulate everything about labours and Law No. 2/2004 concerning Industrial Relations Dispute Settlement which contains a procedure in a case where the labour's rights are not fulfilled and ignored by the employer which can create conflicts between the labours and their employer.

Keywords: *Legal Protection, Labours, Companies*

1. INTRODUCTION

There is a quote says “*ubi societas ibi ius*” which means where there is a society, there is law. Every nation and state have their own laws which are established by the government or the society that have to be obeyed by the government and society without looking at their faction, race, and tribe. Article 1 Paragraph 3 of The Constitution of the Republic of Indonesia 1945 explains that Indonesia is a rule of law country. It is obvious that Indonesia is a rule of law country (*rechstaat*), not a country of power (*machstaat*). In a rule of law country, there are laws which protect the human rights. Human rights are the main requirement and normative in a rule of law country for people of Indonesia (Sadi, 2020).

Eventhough the concept of state law that was embraced in law system at various countries has different characteristics, but the truth is they have the same purpose which to protect their citizens from arbitrary measure by the ruler or the other citizen. Definition of all state law models have ideas of human rights and human dignity (dignity of man) protection. This idea is a universal idea, owned by every human being whenever and wherever they were. To realize that law shall made as a way of life in social, nation, and state (Bambang, 2016).

Addressing about limitation of the definition of law, even until now the experts has not found a normative limitation and meet every person satisfaction about law, it was caused of law itself that has its different form and various aspect. A Dutch law experts, J. Van Kan, explained Law as an overall terms of life, coersive, that protect people’s prominence in society. Another idea was put forward by E. Utrecht who claim that *Law is a set of regulation that has orders and prohibitions in it, that arrange life order in social and shall be obeyed by every individual in society since violation against way of life can cause several acts from state government of instituion*. Therefore, it can be said that legal norm is one of many

behavioral guidelines besides religious norm, courtesy, and decency (Reyfel, 2019).

Pancasila as National Principle of Indonesia is a thought that contains fundamental value in human relations and portrayed normative principle as working relationship adhesive base, specifically between the entrepreneur with worker, nature, state, and God. Practicing Pancasila's value will create a harmonic and prosperous relations and also the balance of rights and responsibilities, specifically work relation between entrepreneur and worker and that's why honesty value, transparency, fair and balance principle, and also sense of family and mutual cooperation need to be implanted, so those values will live and grow sustainably (Djoko, 2007).

The creation of laws undergoes some stages which are regulated by other laws. The stages are planning, preparation, discussion, legalization, and finalization stage. The stage of laws creation was done by the authorized parties which are Regional People's Representative Assembly (DPR) and government (President). In preparation and discussion stages, people from the society may contribute and even give advice, spoken and written. In this case, the role of society is very important to give their aspiration, both individually and collectively, so that the law which is being created will be responsive or according to the aspiration of the society because a good law is a law which lives along with the society (Charda, 2015).

People have to work and have a work for a living in order to fulfill their own needs. A work requires labours as there is feedback for both of which a work need labours to operate and labours need a work to earn money. Labour is an important aspect in production in any country. Without any labours, natural and capital production factor cannot be utilized perfectly. Labour is a person in their working age (Prajnaparamita, 2018).

There are many literatures discuss about the problem of labour in Indonesia. A history about employment in

Indonesia often began with slavery, a term which is more accurate to describe a status rather than a term of profession. After that, there are *buruh*, *hamba*, *peluluran*, *rodi*, *koeli*, *pekerja*, *karyawan*, and *pegawai*. Description of labours in Indonesia continued in article 20 paragraph 2 of The Constitution of the Republic of Indonesia 1945 which explains that job and proper living is a constitutional right for all people of Indonesia. The logical consequence of this explanation is the obligation of the government to provide facilities and opportunities widely for all people of Indonesia so that they can have a job and make that job something humane for humanity. Therefore, violation toward basic rights which is protected by the constitution is a violation toward human rights (Kahfi, 2016).

Labours (human resources) is a very influential aspect toward economy development in the world. Labours cannot be separated from development, life, and is the main pillar of economy in a country, along with natural resources and technology. In developing country, the number of unemployment is far higher than the number released by the government. This happens because the size of informal sectors is big enough as a working space for the uneducated labours. Those informal sectors are considered the safety valve for the unemployment (Arliman, 2017).

The role of labours in national development increases along with the various challenges and risks. Therefore, labours need to be given protections, care, and prosperity so that they be able to increase national productivity. The participation of the labours requires the increment of human resource quality in the execution of national development, either as the executant or the purpose of national development. The development of labours has purposes to increase national productivity and society prosperity. Therefore, labours should be empowered so they be able to be more capable, more skillful, and more qualified in executing national development and can compete in global era. Ability, skill, and proficiency of labours need to be

raised through planning and employment program, including training, internship, and placement service for labours (Charda, 2015).

Based on the explanation above, the writers will discuss the focus of this article by analyzing the policies related to the legal protection for labours according to Indonesian laws.

2. METHOD

This research is descriptive analytical research by using normative juridical approach which is connected to legal theories and principles of law through applicable laws and regulations. This research is also strengthened by literature and field studies, and collection of primary and secondary data related to the researched problem.

3. RESULT AND DISCUSSION

Legal protection is a protection of human dignities and recognition toward human rights which are possessed by legal subject based on the law provision from the authorized or as a collection of policies which can protect something from other things. In Indonesia, legal protection is based on Pancasila as the ideal foundation, although the concept used is based on western ideas of which the concept focused on protecting human rights. Therefore, the concept of legal protection for labours in Indonesia focuses on protection of the labours' dignities along with their human rights, either they as an individual or they as a "labour" (Kahfi, 2016).

Abdul Kharim formulates the definition of labor law from these elements, such as (Agusmidah, 2010):

- 1) Set of rules both in written or unwritten form;
- 2) Regulate about work relation event between worker and entrepreneur/boss;
- 3) The existence of person who worked under another person, and got wages as retribution;

- 4) Regulate the protection of worker/labor, such as: health problem, menstruation, pregnant, give birth, the existence of labor organizations, etc.

Basic law gives the equal position for all persons. This applies to any person who works for other party's business, either private business or state-owned business. This is stated on article 28I of The Constitution of the Republic of Indonesia 1945 which says that every person has right to be free from any form of discriminative behavior. Even that article also gives a protection for those of labours from discrimination. This statement affirms that an employer has the obligation to treat their labours fairly and in proportion with the principle of balance of interests. In this position, labours as a business partner, not as a threat to the corporation. The law as the guidelines of behavior should represent the aspect of balance between individual, society, and national interests, other than for promoting the creation of orderliness, legal certainty, and the equality in the law and justice (Arliman, 2017).

Labor law were born related with Industry Revolution that happened in English in 19th century. At the time change the relations between boss and worker in production process. Production process was easier to obtain because was helped with steam engines. Mechanization that happened cause impact to small companies, many factories that hire worker, unhealthy condition of factory and dangerous to children and women that worked there. These are the behind of existence of labor law (Marsen, 2006).

Labor law or labor is a functional law. At first it was coming from civil law because work relation was from employment agreement, where that agreement was coming from contract law (civil law). The imbalance of labor and employer position require the state to actively carry out legal protection through the mechanism of legislation. The intervene of state in labor law make that regulation included in administrative law scope. The probabilities of violation in fundamental rights of freedom and living rights can cause

criminal penalty in violation of worker's fundamental rights (Asri, 2012).

The protection for labours can be divided into three categories, which are (Sadi, 2020):

- 1) Economic protection, in which labours earn enough income, including in case labours cannot work outside of their desire;
- 2) Social protection, in which labours get occupational health assurance, freedom of union, and protection of the right to organize;
- 3) Technical protection, in which labour get protection in the form of security and work safety.

In term of labor, the emerge of conflict between entrepreneur and company with the workers or labors usually originated because of dissatisfied from both parties. Entrepreneur and company gives policy from their consideration was already decent and would be accepted by the workers/labors, but on the other hand, the labors have their own consideration and different views, as a result policies that were given from the company become different or unfair for one worker to the other worker. The worker/labor who felt satisfied would still work passionately while the worker/labor who isn't satisfied will show the lack of passion when working so it will cause a conflict. This conflict also known as industrial dispute (Zaeni, 2008).

Phlipus M. Hadjon stated that there are two principles of legal protection for Indonesian people, especially for the labours, which are (Sadi, 2020):

- 1) Principle founding the legal protection for Indonesian people which is based on concept of acknowledgment to government behaviour is recognition and protection of human rights. The recognition of human dignities exists in the Pancasila which has been acknowledged as the foundation of the country, which means it recognize the desire of humans (labours) to live together in order to obtain the common welfare;

- 2) Rule of law country principle, that the government behaviour based on the harmonic relationship between government and the people in order to obtain harmony and balance in life.

This protection was meant to bring out certainty of worker rights that related to work norms such as work time, rest, paid leave. Protection as a form of acknowledging the worker rights as we know they must be treated humane with considering their physical limitations. Refers to previous implementation which was Undang-Undang No. 12 Tahun 1948 jo. Undang-Undang No.1 Tahun 1951 tentang Kerja that today was declared prevail by Undang-Undang No. 13 Tahun 2003, the topic about protection of work norms including child worker which in Undang-Undang No. 13 Tahun 2003 was declared that child is everyone whose age is under 18 (eighteen) years old, labor parties and women parties, entrepreneur were prohibited to hire pregnant women that can endanger their health and safety of their child and themselves according to doctor's statement (Najmi, 2018).

There are already many instruments/policies which give legal protection for labours in Indonesia, but the executions were deemed to be unable to give proper legal protection for the labours. The instruments/policies related to employment in Indonesia (Sadi, 2020):

- 1) Law No. 13/2003 concerning Manpower;
- 2) Law No. 2/2004 concerning Industrial Relations Disputes Settlement;
- 3) Law No. 21 of 2000 Concerning Trade Union/Labour Union;
- 4) Law No. 40/2004 concerning National Social Security System;
- 5) Law No. 39/2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad;
- 6) Law No. 21/2003 Undang-undang Nomor 21 Tahun 2003 concerning ratification ILO Convention No. 81 *Concerning Labour Inspection in Industry and Commerce*;

- 7) Law No. 1/2000 Undang-undang Nomor 1 Tahun 2000 concerning ratification ILO Convention No. 182 *Concerning the Prohibition and Immediate Action for Elimination of the Worst Forms of Child Labour*;
- 8) Law No. 21/1999 concerning ratification ILO Convention No. 111 *Concerning Discrimination in Respect of Labour and Occupation* Law No. 20/1999 concerning ratification ILO convention No. 138 *concerning Minimum Age for Admission to Labour*;
- 9) Law No. 19/1999 concerning ratification ILO Convention No. 105 *Concerning the Abolition of Forced Labour*;
- 10) Government regulations No. 46/2015 concerning Implementation of the Old Age Security Program;
- 11) Government regulations No. 45/2015 concerning Implementation of the Pension Guarantee Program;
- 12) Government regulations No. 44/2015 concerning Implementation of the Employment Security and Death Benefit Program;
- 13) Government regulations No. 4/2015 concerning Implementation of Supervision of the Placement and Protection of Indonesian Migrant Workers Abroad;
- 14) Presidential Regulation No. 72/2014 concerning Employment of Foreign Workers and Implementation of Education and Training for Companion Workers;
- 15) Presidential Regulation No. 111/2013 concerning Changes to Presidential Regulation No. 12/2013 concerning Health insurance;
- 16) Presidential Regulation No. 21/2010 concerning Labor Inspection;
- 17) Presidential Regulation No. 81/2006 concerning National Agency for Placement and Protection of Workers;
- 18) Presidential Regulation No. 64/2011 concerning Health and Psychological Examination of Prospective Indonesian Migrant Workers;

- 19) Presidential Regulation No. 45/2013 concerning Coordination of Indonesian Migrant Workers Repatriation;
- 20) Presidential Regulation No. 12/2013 concerning Health Insurance.

Some international conventions related to employment had been ratified by Indonesian government, such as:

- 1) Convention No. 29 concerning Forced labor;
- 2) Convention No. 98 concerning Applicability of the Fundamentals of the Right to Organize and Collective Bargaining;
- 3) Convention No. 100 concerning Equivalent Remuneration;
- 4) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize;
- 5) Convention No. 105 concerning Abolition of Forced Labor;
- 6) Convention No. 111 concerning Discrimination in Employment and Occupation;
- 7) Convention No. 138 concerning Minimum Age to be allowed to Work, and
- 8) Law No. 5/1998 concerning Ratification Convention Oppose Torture and Other Cruel, Inhuman or Degrading Treatments.

The ratification of international conventions related to employment in Indonesia confirms that employments problems are actually universal human problems (Judge, 2012).

The development of employment has to factor on philosophy foundation, which is Pancasila, constitutional juridic foundation, which is The Constitution of the Republic of Indonesia 1945 as the basic laws, and operational juridic foundation, which are policies/laws related to the employment aspect as the basic laws. The other important factor is the sociological foundation, which is in accordance to the norms and culture in the society so it

can accommodate every society's life's reality, which means the development of employment are implemented in purpose to develop the human wholly and to develop the society entirely. Therefore, the development of employment is implemented to realize the prosperous, impartial, and equal Indonesian humans and society, both in material and spiritual aspect (Sadi, 2020).

Employment regulation enforce these juridic principles (Fuady, 2016):

- 1) Proper foundation, principle, and purpose of development of employment.
- 2) Equal opportunity and treatment.
- 3) Planning and employment information as the basis to set policies.
- 4) Industrial relationship development in accordance to Pancasila values.
- 5) Institutional and industrial relationship mediums development, such as tripartite institution, bipartite institution, collective work agreement, etc.
- 6) Labour protection.
- 7) Work training.
- 8) Labour assignment service.
- 9) Labour development and protection.
- 10) Employment monitoring.

Tamara Lothian stated that until now, labour problems are heavily affected by world economy, which influence the direction of labour laws that create two types of labour laws, which are contractualist type and corporatist type. Corporatist type in labour laws was implemented through legislative policy practice in form of devising regulations/laws as government attempt to perform national law development. This reinforces the justification that Indonesian legal system which has already existed since the independence is using concordance principle from the Dutch legal system which follows Continental Europe legal system (Civil Law) (Charada, 2015).

Dr. Payaman Simanjuntak defines that labours or *tenaga kerja* are the people who are already employed and the unemployed, where *buruh/pekerja* are people who works and receives wages or other form of reward. In other words, *buruh/pekerja* is labour who is bounded by a work contract (Prajnaparamita, 2018).

According to Law No. 13/2003 concerning Employment article 1 paragraph 3, *buruh/pekerja* are people who works and receive wages or other form of reward. According to Kamus Besar Bahasa Indonesia, *buruh* are people who work for other people to receive wages, while *karyawan* are people who work in an institution (office, corporation, etc.) and receive a salary (wages). The development of labours law in Indonesia, the term *buruh* is strived to be replaced with *pekerja* because *buruh* is not suitable with the national personality. The term *buruh* tend to refer to the oppressed class and always be under a *majikan*. The term *pekerja* was juridically founded in Law No. 25/1997 concerning Employment (Prajnaparamita, 2018).

The term of wages or *upah* was based on ILO Convention about Protection of Wage. Indonesia references it with some adjustments. The definition of wages according to Government regulations No. 8 /1981 concerning Wage Protection (as was changed with Government regulations No. 78/2015 concerning Remuneration) is a payment as a reward from an employer to the employee for a job or service which has been or will be done, in a form of money according to an agreement or laws, and is paid based on a work agreement between the employer and the employee, including incentives for the employee or their family (Fathammubina, 2018).

Wage law shall regulate generally based on wage function that can ensure worker and their family's sustainability, so it can give motivation to increase the production and worker productivity. Wage protection regulation was given to overall wage payment based on work performance, not affected by allowances that has no

relation with work performance. The right to get wage for worker/labor emerge when there is a work relation between worker/labor and entrepreneur and ended when that work relation was finished. Entrepreneur in setting wage shall contain no discrimination between men worker and women worker in a work that has a same value (Adrian, 2009).

Article 88 Law Number 13/2003 About Labours, explained that:

- (1) Every worker/labor has rights to get income to make a worth living for humane.
- (2) To realize income to make a worth living for humane as meant in paragraph (1), government establish regulations of wage that protect worker/labor.
- (3) Regulations of wage that protect worker/labor as meant in paragraph (2) such as:
 - a. minimum wage;
 - b. overtime pay;
 - c. absence to go to work wage;
 - d. absence to go to work due to activities outside work wage;
 - e. wage to obtain rest from work time rights;
 - f. form and method of wage payment;
 - g. fines and deductions;
 - h. things that can be calculated with wages;
 - i. proportional pay structure and scale;
 - j. wages for severance pay; and
 - k. wage for income tax calculation.
- (4) Government establishes minimum wages as meant in paragraph (3) letter a based on work living for humane and with considering the productivity and economic growth.

Wages is one of the most important aspects in labour protections. It is clearly stated in chapter 88 paragraph 1 of Law No. 13/2003 that every labour has the right to receive income that properly fulfill their living as a human being. According to article 1 paragraph 30 of Law No. 13/2003, wages is the labour's right which is received and is paid in

the form of money as a reward from the employer to the employees which has been determined and paid in accordance with the employment agreement or laws, including incentives for the employees and their family for a job or service which has been or will be done (Suhartoyo, 2019).

In Islamic perspective, about labor law and wages was included in study of *Ijarah*. *Ijarah* is a lease activity where labor problem was leasing in service matters. About wages is one of “*Rukun*” that must be existed in *ijarah* activities. Wages guaranteed and become a reward, as regulated in state law. Every labor law in Islamic perspective, always dynamic eventhough based on evidence of Qur’an also Prophet Hadith, so it can be said that Islamic Law always follow the development and also law expansion tat happened, and always ensure continuity and welfare of Labor (Nur, 2018).

In article 86 paragraph 1 letter (a) Law No. 13/2003, occupational health is one of the labours’ right, so the employers have to implement it in the company management system systematically and integratedly. The implementation of occupational health is intended to protect the labours to realize the optimal productivity, to prevent accidents and illnesses due to work, to handle dangers in working space, to promote healthiness, treatment, and rehabilitation. Therefore, the purpose of implementing occupational health is to protect labours from the risks of work accidents; to assure labours’ health and their surroundings; and to maintain productivity and utilize it safely and has beneficial values (Suhartoyo, 2019).

The amandment of articles in Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan that rated as problematic was needed to create conducive investment climate, in this era Indonesia need foreign investor to invest in term of create job fields so it will decrease number of unemployment that still high (Lalu, 2014).

The main purpose of the protection is to realize occupational safety during working contract which further create safe and comfortable feeling for labours to do their task/job optimally, without feeling afraid of work accident happening. In case of a work accident happened, it can be handled and resolved immediately (Kahfi, 2016).

4. CONCLUSION

Legal protection is a human right as the subject of the law, including a labour who has rights and obligations as a labour. Therefore, government established many policies/ law/ regulations about labours/employment and regulate their execution to realize prosperity for labours which can improve national development which has positive effects for all sides. There are many laws regarding legal protection for labours in Indonesia which can be seen/read by labours for them to know and understand the rights and obligations they can get as a labour. One of them is Law No. 13/2003 concerning Employment.

5. DECLARATION OF CONFLICTING INTERESTS

None

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When public service jobs are outsourced or privatised, and when the alternative to a job on the corporate sector's terms becomes no job at all, competition in the labour market disappears, allowing wage and job conditions across the board to be driven down.

Sally McManus, *On Fairness*