

## Legal Protection of Workers' Rights by the Job Creation Law

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### Abstract

This research aims to determine the legal protection of workers' rights, based on the Job Creation Law and the legal protection of the rights of workers of retirement age who remain employed. Can contribute thoughts both theoretically and practically to law in Indonesia. The research method used is normative juridical with primary, secondary, and tertiary law. Conclusion Constitutionally legal protection for workers is contained in Article 27 paragraph (2), Article 28D paragraph (1) and paragraph (2), Article 28H paragraph (3), and Article 28I (2) of the 1945 Constitution of the Republic of Indonesia. Legal protection of workers also in the International Covenant on Civil and Political Rights, as well as on Economic, Social and Cultural Rights, while from the perspective of the Job Creation Law, legal protection for workers is reflected in strategic policies in the employment sector, which protect and promote the welfare of workers. Second, the absence of strict regulations regarding the retirement age limit in the Job Creation Law has an impact on the rights of workers who are still employed at retirement age. There is no legal protection for those who are still employed at retirement age. What is stated in the Employment Agreement does not fulfill the principle of freedom of contract and the principle of complete balance between Workers and Employers according to the agreement.

Keywords: Legal Protection, Workers' Rights, Job Creation

### A. Introduction

State protection in the field of labor mentioned above essentially creates a just and prosperous society materially and spiritually within the framework of the Unitary State of the Republic of Indonesia. If it is related to the country's goals, the state should also ensure the welfare of society, this can be measured by the level of active workers in this country. If humans as workers or laborers can be interpreted as the process of carrying out the production of a company, then by the words of Article 27 paragraph 2 of the 1945 Constitution, that is, every citizen has the right to work that is worthy of humanity.

The state also regulates legal protection for workers. This protection is the fulfillment of basic rights inherent in and protected by the constitution as regulated in Article 27 paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution, which 3 states that "The economy is

structured as a joint family effort". Protection of workers is intended to guarantee workers' rights and equality of opportunity and treatment without discrimination of any kind to realize the welfare of workers and their families while still paying attention to developments in the business world and the interests of employers.

However, it is important to remember that the basis on which workers carry out their work is an agreement. As stated in Article 1313 of the Criminal Code, it is "an act by which one or more people bind themselves to one or more other people". The agreement that is made then applies as a law for the parties who are binding each other, and results in the emergence of a relationship between the two parties. 2 The dimension of industrial relations has three dimensions, namely the dimension of work relations, the dimension of trade unions, and the dimension of industrial conflict and its resolution.

This legal protection is carried out while taking into account the progress of the business world and the interests of entrepreneurs. Protection for workers is intended to ensure that workers become more humanized. Workers have the opportunity to carry out various social duties and obligations and can develop their potential so that in turn they can improve their quality of life and therefore live a decent life as human beings. To be successful in protecting workers requires comprehensive, integrated, and continuous planning and implementation. Entrepreneurs and workers/laborers are part of the subject of employment law which is the main driving force for an economy in a country that needs each other, therefore regulations are needed that regulate the legal relationship between entrepreneurs and workers/laborers.

## **B. Research Methods**

This research is normative legal research, namely a legal activity to discover legal rules, legal principles, and legal doctrines to answer the legal issues being studied.

### **1. Data Source**

The sources of legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials, namely as follows:

- a. Primary legal materials (Primary resources or authoritative records) are binding materials in the form of 48 statutory regulations, namely the 1945 Constitution.
- b. Secondary legal materials (Secondary resource or not authoritative) are legal materials obtained from literature studies, consisting of books, articles, papers, and journals related to the problem being researched.
- c. Tertiary legal materials (tertiary resources) are legal materials that support primary legal materials and secondary legal materials by providing insight and understanding of other legal materials.

### **2. Collection Technique**

Legal Materials: Literary study is an effort to collect legal materials by reading and studying, recording, and copying materials in the form of books, statutory regulations, research reports, decision letters, and other literature related to the problems discussed in practice. with the legal issues above.

### **3. Data Analysis**

All data in writing this proposal was analyzed qualitatively. This qualitative analysis will be presented in the form of a systematic description by explaining the relationship between various types of data. Next, all data will be selected and processed, then analyzed descriptively, so that it can reveal a clear and systematic picture of the facts that occurred.

## C. Results and Discussion

### 1. Legal Protection of the Rights of Retirement Age Workers in the Perspective of Legislation.

Article 151 paragraph (3) of the 2003 Manpower Law regulates that in the event of Termination of Employment Relations (PHK), employers can only terminate employment relations with workers after obtaining a determination from the Industrial Relations Dispute Settlement Institution. However, this determination is not necessary, for example, if the worker/laborer reaches retirement age, it is regulated in the work agreement, company regulations, collective work agreement, or statutory regulations.

Article 50 of the 2003 Manpower Law states that employment relations occur because of the existence of a work agreement between the entrepreneur and the worker/laborer. So, if a company decides to employ employees who have reached retirement age, it must be based on the agreement of both parties. Based on Law Number 13 of 2003 concerning Employment, Article 154 letter c, it is stated that provisions regarding the retirement age limit are stipulated in the Employment Agreement (PK), Company Regulations (PP) or Collective Labor Agreement (PKB) or Legislation relating to the retirement period.

So, the Employment Law does not specify the retirement age limit in detail but rather is stipulated in work agreements, company regulations, collective work agreements, or statutory regulations. The Labor Law regarding pensions was previously regulated in the provisions of Article 167 paragraph (1), while in the Job Creation Law, this provision was deleted. The retirement age limit is only determined if it has been previously regulated in the Employment Agreement, Company Regulations, Collective Labor Agreement, or other statutory regulations relating to retirement.

Law Number 40 of 2004 concerning the National Social Security system in more detail, the implementation of which is outlined in PP Number 45 of 2015 concerning the Implementation of Pension Security Programs, is a regulation made by the government to maintain a decent standard of living for workers/laborers to be able to receive income after workers are entering retirement age. Government Regulation Number 45 of 2015 in Chapter III Pension Benefits Part Two Article 15 paragraph (4) states that if the Participant has reached Retirement Age but the person concerned is still employed, the Participant can choose to receive Pension benefits when they reach Retirement Age or when they stop working with a maximum provision of 3 (three) years after Retirement Age. Through this regulation, it is hoped that workers/laborers will receive adequate wages or pension funds to fulfill their lives after no longer working.

In detail, the provisions governing the retirement age for workers are outlined in PP Number 45 of 2015 Part Two Retirement Age Article 15 paragraphs 1 to 4, as follows: (1) The retirement age is set at 56 (fifty-six) years. (2) Starting January 1, 2019, the retirement age will be 57 (fifty-seven) years (3) The retirement age as intended in paragraph (2) will then increase by 1 (one) year for every 3 (three) years following until reaching the retirement age of 65 (sixty-five) years. (4) If a participant has reached retirement age but the person concerned is still employed, the participant can choose to receive pension benefits when they reach retirement age or when they stop working, provided that it is no later than 3 (three) years after retirement age.

The employment agreement is an important factor in the employment relationship, because the employment agreement regulates the rights and obligations of the parties, in this case, the company and the worker. With a work agreement, the company and workers are bound by rules that must be fulfilled and obeyed, so that this can minimize each party cheating the other party, which of course can result in losses for one of the parties. Considering the importance of work agreements, it is appropriate for each party to pay attention to each rule stated in the work agreement.

However, on the other hand, regulations regarding the retirement age limit are not found in

the provisions of the Law on Employment as amended by the Job Creation Law, the regulation on the retirement age limit contained in PP 45 of 2015, also does not answer the problems that occur in the field, as stated contained in the provisions of Article 15 of the PP, which reads, if the participant has entered retirement age but the person concerned is still employed, the participant can choose to receive pension benefits when they reach retirement age or when they stop working with a maximum of 3 (three) ) years after retirement age. This provision only regulates that in the case of workers who have reached retirement age but are still employed, the person concerned can choose whether to receive pension benefits immediately or later after stopping work, where the time to "stop working" only refers to the Work Agreement made by the worker and the employer. So there are two regulatory standards relating to retirement age which give rise to multiple interpretations, first, the retirement age according to the provisions of PP 45 of 2015 or second, the time limit for stopping work according to the Employment Agreement.

## **2. Protection of the urgency of regulating the rights of workers of retirement age who remain employed.**

The statutory regulations governing workers of retirement age who remain employed are contained in Government Regulation Number 45 of 2015, specifically in Article 15 paragraph (4), which 111 regulates that if the participant has entered retirement age but the person concerned remains employed, the participant can choose to receive pension benefits when they reach retirement age or when they stop working with a maximum of 3 (three) years after retirement age, apart from that the provisions of Article 1 point 15 of Government Regulation Number 45 of 2015 also explain that: "Retirement age is the age at which participants can start receiving retirement benefits."

The provisions of Article 15 paragraph (4) PP 45 of 2015 only regulate that in the case of workers who have reached retirement age but are still employed, the person concerned can choose whether to receive pension benefits immediately or later after stopping work, where the time to "stop working" only refers to the Agreement. Work created by workers and entrepreneurs. Meanwhile, for the rest, the provisions governing the rights of workers who remain employed at Retirement Age are not regulated. This means that workers who work extra time beyond retirement age are no different from workers who have not yet reached retirement age. This is because the pension mechanism in the Manpower Law is not strictly regulated so irregularities occur which are wrapped up in the Work Agreement which seems to have become a "legitimate" agreement between workers and employers, but the Work Agreement made between Workers and Employers is very difficult. found in a balanced position. Entrepreneurs are always placed in a position that has more bargaining value, so they tend to set policies toward workers by their business interests.

The company has established a standard form of employment agreement for workers who will work in its place. Where appropriate, employment agreements must be drawn up concerning the principle of freedom of contract. The principle of freedom of contract is not applied in standard agreements. In a standard agreement, there are only two freedoms, namely the freedom to make or not make an agreement and the freedom to choose with whom to agree. Three other elements of freedom, namely the freedom to determine the content of the agreement, the freedom to determine the form of the agreement, and the freedom to determine the method of agreeing, practically do not exist or are not implemented in standard agreements. Even though the elements of the principle of freedom of contract are not all implemented in standard agreements, materially juridically, the agreement is still valid if there is acceptance from the party concerned.

In general, the principle of balance is not applied in standard agreements. The arrangement of the rights and obligations of the parties in a standard agreement does not reflect the principle of balance in contract law. The use of standard agreements has resulted in differences in the position of the parties in the agreement, namely that there are parties who have a more dominant position and there are parties who have a weaker position. This is not by the principle of balance which requires a balanced arrangement of the rights and obligations of the parties in the agreement. The

principle of balance in standard agreements is not applied, as can be seen from the inclusion of 113 standard clauses (exoneration clauses) in the relevant agreement.

The inclusion of standard clauses in a standard agreement is one of the conditions that indicate ignoring or violating the principle of balance. Another condition is that the content, form, and method of closing the agreement are determined by the party in a stronger position in the form of standardized forms. As a result, the party in a weak position has no bargaining position at all regarding the content, form, and method of closing the agreement. Paying attention to the descriptions above, regarding Employment Agreements that do not at all reflect the principles of freedom and balance as required by contract law, Government intervention must intervene in the form of regulations to provide legal protection for workers' rights, especially for those who still employed at retirement age where these workers should have enjoyed their old age together with their loved ones.

The rights of workers/laborers of retirement age are better protected, it is necessary to strengthen the regulations in Law Number 13 of 2003 concerning Employment regarding the retirement age limit for workers/laborers. The retirement age limit needs to be set clearly so that workers are better protected. If the retirement age limit is set clearly with the minimum and maximum limits, then this will provide legal protection for workers who will apply for a pension from the company. Because in cases that often occur in the field, many workers/laborers are not permitted or permitted to retire, even though the age of the worker/laborer has exceeded the retirement age limit and is no longer able to work. If the worker/laborer is forced to retire, the company considers the worker/laborer to have resigned and will not receive severance pay.

The retirement age limit for workers/laborers in Law Number 13 of 2003 concerning Employment, companies can also terminate employment (PHK) for workers/laborers who are considered to have entered retirement age. The retirement age referred to here is based on a work agreement or collective work agreement which of course in practice is more profitable for the company. Because there are no guarantees and legal certainty regarding minimum and maximum age limits. Manpower development as an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, is carried out in the framework of the complete development of Indonesian people and the development of Indonesian society as a whole to increase the honor, dignity, and self-esteem of the workforce and create a prosperous, just, society. prosperous and equitable, both materially and spiritually.

Workers are often considered slaves/servants. The welfare of the Indonesian people is the responsibility of the government as mandated in Pancasila and the 1945 Constitution, namely realizing social justice for all Indonesian people. Apart from that, it is necessary to carry out supervision by the relevant technical service, in this case, the employment service which has the main task and supervisory function for workers/laborers and companies. Supervision in the context of legal protection for workers has been carried out, but to date, this protection has not been effective and has not provided a sense of protection for workers/laborers.

This is due to the omissions made by the relevant government agencies when there are problems related to workers/laborers, they reason because the number of supervisors and those being supervised is not comparable. Legal protection from the government is very important to ensure legal certainty and provide a sense of security to workers/laborers. This legal protection can be carried out by routinely monitoring workers/laborers and companies, and imposing heavy sanctions on companies if they are found to be breaking the rules or violating the rights of workers/laborers. The government's current efforts to protect workers/laborers legally are the government's ideals in providing welfare for workers. If you look at the last 3-4 years, there have been at least nine laws and regulations that have been issued by the government to protect workers' rights.

#### **D. Conclusion**

From the results of the discussion that the author has described, several things can be



concluded as follows:

- a. Constitutionally, legal protection for workers is contained in Article 27 paragraph (2), Article 28D paragraph (1) and paragraph (2), Article 28H paragraph (3), and Article 28I (2) of the 1945 Constitution of the Republic of Indonesia, apart from that, legal protection for workers We can also find work in the International Covenants on Civil and Political Rights (Sipol) and on Economic, Social and Cultural Rights (Ekososbud). Meanwhile, from the perspective of the Job Creation Law, legal protection for workers is reflected in the strategic policies of the employment sector, namely protecting and striving for the welfare of the workforce.
- b. The absence of strict regulations regarding the retirement age limit in the Job Creation Law has an impact on the rights of workers who are still employed at retirement age so there is no legal protection for those who are still employed at retirement age. As stated in standard Employment Agreements, they tend not to fulfill the principle of freedom of contract and the principle of complete balance between Workers and Employers by the legal provisions of the agreement.

### E. Suggestion

At the end of writing this thesis, the author conveys several suggestions including the following:

- a. For legislators to guarantee certainty regarding legal protection for workers regarding the retirement age limit, strict regulations are needed which are outlined in the provisions of statutory regulations, so that the determination of the retirement age limit is not immediately left to the company mechanism which is ultimately outlined in the form of an employment agreement. which are standards that, whether they like it or not, bind workers. Standard employment agreements tend to ignore the principles of contract law, especially the principle of balance, where workers do not have a choice in determining the contents of the agreement, on the other hand, it is the entrepreneurs who have a high bargaining value and are always oriented towards the interests of their company.
- b. For workers, the commitment to promote and protect workers' rights is not just limited to drafting regulations, but what is much more important than that is how these regulations are implemented. So, in this case, the role of the government is needed, which carries out the main tasks and functions in the field of employment, to carry out active supervision of companies, because the effectiveness of the existence of statutory provisions can only be guaranteed by monitoring and enforcing the law.

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