

Protection of Workers Rights Employment Copyrights and Laws

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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. This research method uses normative juridical matters such as primary, secondary, and tertiary legal materials. The conclusion is that constitutional 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. Concerning legal protection for workers work in International Covenants on Civil and Political Rights, as well as on Economic, Social and Cultural Rights. In the Job Creation Law, legal protection for workers is reflected in strategic policies in the employment sector, namely protecting and promoting 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, so there is no legal protection for those who are still employed at retirement age. As stated in the standard Employment Agreement, it does not fulfill the principle of freedom of contract and the principle of complete balance between Workers and Employers by the legal provisions of the agreement.

Keywords: Worker Protection, Regulations, 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 it is by the words of Article 27 paragraph 2 of the 1945 Constitution, namely "Every citizen has the right to work

that is worthy of humanity.

The basis for workers doing 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. In this section, these three dimensions will be described from a neoliberal, Marxian, and Pancasila perspective referring to Salomon

So humans as workers must receive protection, prosperity and calm, security in carrying out work relationships because humans face uncertainty, whether uncertainty that is speculative in nature or pure uncertainty that always causes losses. Therefore, to guarantee all of this, various regulations regarding social security for workers were formed.

The thing that needs to be provided in social security is workers because workers are the backbone of the company and have an important role in the company. Without workers, the company can't run and participate in development. Realizing the importance of workers for employers, government, and society, it is necessary to think about how workers can maintain safety while carrying out their work. Likewise, it is necessary to ensure workers' calm and health so that they can pay as much attention to what they encounter at work as possible so that vigilance in carrying out the work is guaranteed. These ideas constitute a worker protection program, which in daily practice is useful for maintaining company activity and stability.

Legal protection for workers is an embodiment of the basic rights inherent in and protected by the Constitution. Protection for workers in the world of work is aimed at guaranteeing workers' rights and guaranteeing equality of opportunity and treatment without any discrimination to realize the welfare of workers and their families. 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 get the opportunity to carry out various social duties and obligations and can develop their potential so that in turn they can improve the quality of life and therefore can live a decent life as a human being. 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 collection technique

In collecting the data used in this research in the form of primary legal materials, secondary legal materials, and tertiary legal materials, namely:

- a. Primary (Primary resource or authoritative records) binding materials in the form of regulations 48 laws, namely the 1945 Constitution, Law Number 3 of 1992 concerning social security for workers, Law Number 11 of 1992 concerning Pension Funds, Law Number 13 of 2003 concerning Employment, Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, Law Number 11 of 2020 concerning job creation, Government Regulation Number 45 of 2015 concerning the Implementation of the Pension Guarantee Program, Decree Minister of Manpower of the Republic of

- Indonesia Number: Kep-150/Men/2020 concerning Settlement of termination of employment and determination of severance pay, gratuity and anti-loss pay in companies.
- b. Secondary (Secondary resource or not authoritative) is legal material obtained from a literature study, which consists of books, articles, papers, and journals related to the problem being researched.
 - c. Tertiary (tertiary resources) are legal materials that support primary legal materials and secondary legal materials by providing insight and understanding of other legal materials. Tertiary legal materials in this writing are sourced from the internet, print media, and mass media

2. Data analysis

All data in writing this proposal were 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. Retirement Age 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/laborers 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, Law 108 Manpower does not specify the retirement age limit in detail but rather is stipulated in the work agreement, company regulations, collective work agreement, 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, its implementation is outlined in PP Number 45 of 2015 concerning the Implementation of Pension Security Programs, which 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 stated in PP Number

45 of 2015 Part Two Retirement Age Article 15 paragraphs 1 to 4, as follows:

- a. The retirement age is set at 56 (fifty-six) years.
- b. Starting January 1, 2019, the retirement age will be 57 (fifty-seven) years
- c. The retirement age as referred to in paragraph (2) is then increased by 1 (one) year for every 3 (three) years until reaching the retirement age of 65 (sixty-five) years.
- d. 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, 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. The Urgency of Regulating the Rights of Retirement Age Workers 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 regulates that if the participant has entered retirement age but the person concerned remains employed, the participant can choose to receive pension benefits when you reach retirement age or when you stop working, provided that it is no later than 3 (three) years after retirement age, apart from that, the provisions of Article 1 number 15 of Government Regulation Number 45 of 2015 also explain that: "Retirement age is the age when 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 in fact irregularities occur that 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. In short, almost all companies have established a standard form of employment agreement for workers who will work in their 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 standard clauses (exoneration clauses) in the relevant agreements.

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 to have resigned and does not receive severance pay.

Apart from the fact that there is no regulation regarding the retirement age limit for workers/laborers in Law Number 13 of 2003 concerning Manpower, companies can also lay off workers who are considered to have reached 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/laborers 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. This legal protection can be carried out by routinely monitoring workers and companies, and imposing heavy sanctions on companies if they are found to be breaking the rules or violating workers' rights. The government's current efforts to protect workers/laborers legally are the government's ideals in providing welfare for workers. If we 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 Suggestions

1. Conclusion

From the results of the discussion that the author has described, several things can be concluded from Daantanra, namely 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 work can also be found in the International Covenant on Civil and Political Rights (Sipol) and Economic, Social and Cultural Rights (Ekososbud). Meanwhile, from the perspective of the Job Creation Law, legal protection for workers is reflected in the strategic policy of the employment sector, namely protecting and striving for the welfare of the workforce.
- b. Commitment to promote and protect workers' rights is not limited to just 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 a statutory regulation can only be guaranteed by monitoring and enforcing the law.

2. Suggestion

As the end of writing this thesis, the author conveys Some suggestions include the following:

- a. For the government, to ensure 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 agreement. standard work which like it or not binds 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 companies to be committed to promoting and protecting workers' rights, it is not enough just to prepare 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 really 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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