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THE LEGAL PROTECTION FOR APPRENTICES IN INDONESIA

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ABSTRACT:

This study observes about the legal protection for apprentice in the country. This research uses normative juridical method. The result of the study shows that an apprenticeship is categorized into the dispute of interest. In the aspect of apprenticeship, several legal remedies are known if a dispute arises: through litigation or non-litigation which are detailed as Meditation (Peace), Bipartite Negotiation Institution, Conciliation, Arbitration, and through the Industrial Relations Court. To provide a normative study of legal protection for apprentice in the country, identify legal loophole in the legislation, and discover what legal remedy that apprentices can do if their rights are violated by the employer. The recipient company often uses the "nescience" of apprentices to work in equal portions as well as a long period of time just like the permanent employees. However, the wages are not proportional with the work delegated to the apprentices.

Keywords: Apprenticeship within the country, Participant Status of the apprenticeship within the country, Legal Remedy.

INTRODUCTION

Apprenticeship as a process of learning and practicing to be a qualified worker can be likened to the pre-work period. The apprentices are quite right if they are referred to as pre-workers because they may be workers in the same company or indeed do not meet the criteria to work in that company according

to the company management. Thereby, they can be workers in other companies or self-employed through self-employment. Afterward, the apprentices must also conduct several functions and obligations which are almost the same as the workers in the company concerned. In most countries, the standard (or core) model of employment relations (ie full-time work under an open employment contract) receives the largest work agreements and social security (Paul and Alberto, 2017). Internships as an element of learning and training are needed. Legal arrangements, enforced and arranged to support it. Internships have been around for a long time as a learning tool for independence, work and entrepreneurship in the future, mostly for the informal sector (Robinson and Sylvester, 2018).

Basically, working and getting a compensation as well as decent living are the constitutional rights of citizens in which the existence of these rights are guaranteed by the State through the 1945 Constitution of the Republic of Indonesia as stipulated in Article 27 (2), Article 28D (2), and Article 28I (1). Therefore, if someone violates these provisions, it is necessary to question the nationalism level and nationality spirit because that person has directly violated the constitution. Those rights are stated further by Act No. 39 of 1999 regarding Human Rights article 9 paragraph (1) which states, "Everyone has a right to live, and maintain life as well as improve their standard of living".

The apprenticeship which categorized into the discipline of labor law also has a relevant legal umbrella to its parent, especially in the field of work relation which actually does not yet have a legal entity. Besides of the Manpower Act, the provisions in the Civil Code Book III Chapter 7A and the other provisions in that book are still relevant to the labor issue (Ramli, 2020).

Normatively, the existence of apprenticeship has been regulated in the Act No. 13 of 2013 regarding Manpower and the technical regulations, namely Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number PER.22 / MEN / IX / 2009 regarding the Implementation of Domestic Apprenticeship (referred to as "The Ministry of Manpower and Transmigration of the Republic of Indonesia").

Although the regulations and legal umbrella of apprenticeship are pretty wide if observed from many perspectives, however, in its application often exists many violations towards the existence of that apprenticeship itself, especially the apprentice participants (referred to as apprentices). A concrete example that can be traced is the apprenticeship case in a motorcycle spare parts shop which lies on the Decision Number 04 / G / 2013 / PHI.JBI in Jambi City. The workers at that shop are given wages under the appropriateness of agreement and not raised to be a worker until they are dismissed from that business. Another current example is the violation case of apprenticeship by PT Pelindo in which there is a dismissal of workers unilaterally by the company. This dismissal was conducted since April 2016 and has dismissed at least more than 224 workers – among them all are the apprentices and more tragically there is

one of them who has been doing an apprenticeship for more or less 6 years in this "red plate" company.

This study aims to provide normative study of the legal protection for domestic apprentices, identify legal loophole in the legislation, and discover what legal remedy that apprentices can do if their rights are violated by the employer.

This study is also expected to be able to provide a juridical review to the public, especially the apprentices and workers about the existence of domestic apprentices in terms of labor law.

RESEARCH METHOD

This legal research is a juridical-normative legal research used for thesis at the Faculty of Law, Universitas Airlangga. The typologies of this research are Doctrinal Research, Theoretical Research, and Reform-Oriented Research (Marzuki, 2010). The doctrinal research in this study is conducted to provide and produce a systematic explanation of the legal rules which are governing the human rights, administrative law, government law, especially regarding the concept of domestic apprenticeship in the Act of Manpower and Domestic Apprenticeship.

The Existence of Apprenticeship in Legal Perspective

Indonesia, as a law state (Rechstaat) as well as adheres to the Rule of Law principle, has formed several laws and regulations governing the existence of apprenticeship within the country namely Act No. 13 of 2003 regarding Labor (referred to as "Labor Act") and the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number PER.22 / MEN / IX / 2009 regarding the Implementation of Domestic Apprenticeship (referred to as "Ministry of Manpower and Transmigration of the Republic of Indonesia").

Thereby, the involved parties on the domestic apprenticeship must obey both of those rules. Besides of the two rules, the term of apprenticeship is also mentioned in several regulations, such as Government Regulation No. 31 of 2006 regarding the National Job Training System in Article 9 section (3) and section (4); Minister of Manpower and Transmigration of the Republic of Indonesia Regulation No. 6 of 2012 regarding Funding of Job Training System; and Decree of the Minister of Finance of the Republic of Indonesia Number: 770 / Kmk.04 / 1990 regarding Treatment of Income Taxes on Employee Training Costs, Merchandise and Student Scholarships (using the term apprenticeship).

The Regional Government as the authority, whether in the region levels at the Provincial or Regency/City, can regulate the apprenticeship aspect through regional regulations although they are already regulated on the national scale regulations. It can be conducted by the concerned Regional Government due to the authority has been mandated by the 1945 Constitution of the Republic of Indonesia Article 18, Article 18a, and Article 18b as well as regulated more

detail in the Act No. 23 of 2014 about the Regional Government. The form legal product which can be made by the Regional Government is the Regional Rule in the Provincial or City/Regency level. This rule is classified in the seventh and eight levels of the regulation legislation hierarchy as regulated in Article 7 of Act 11 of 2012 regarding the Formation of Regulation Legislation.

The apprenticeship agreement is made by many parties. Thereby, the concerned parties themselves are the ones who have an obligation to conduct it. The parties that exchanged agreement had actually made act for themselves. This has been regulated in the Article 1338 section (1) BW which states, "All the agreements which are made in accordance with the act, then applicable as the act for those who arrange them". This is called as the Principle of *Pacta Sunt Servanda*. The effect is the Apprenticeship Agreement binds the parties like an act. In fact, the Apprenticeship Agreement is only applicable for the parties concerned, and does not provide any advantage nor disadvantage for the third party which in this case is not agreed or regulated in that Apprenticeship Agreement.

The Status of Apprenticeship in Indonesia

Although the aspect of Apprenticeship is categorized into the discipline of Labor Law, the parties of apprenticeship are different from those generally known in the labor law. This is because in the labor law especially in a company, there are two major parties: worker and employer. The definition itself has also been regulated clearly in Article 1 of the Manpower Act. According to Article 1 section (3), worker is anyone who works by receiving wages or rewards in other forms. Meanwhile, employer is: a.) an individual, association, or legal entity which operates a self-owned company; b.) an individual, association, or legal entity which independently operates a company that is not his/her own; c.) an individual, association, or legal entity residing in Indonesia to represent the referred company in letters a and b which is domiciled in the outside of the Indonesian territory.

Although identical with the worker, however the purpose of apprentices needs to be delved more and it resulted in the intention to learn not just to work. If the existence of apprentice is forced to be equalized with the worker, this will burden the apprentices themselves because their rights and obligations are different as regulated by law, especially regarding the working and apprenticeship hours as well as work and learning objects. From this explanation, it can be drawn a fact that the apprentices are not a worker, but their existence cannot be separated from the labor aspect because of the industrial relation in the form of apprenticeship relation between employers and apprentices.

If in reality turns out that the apprentice has worked at the company for more than a year and also no new apprenticeship agreement as regulated in Article 7 section 5 of the Apprenticeship Ministerial Regulation, hence, the apprenticeship status (in the 13th month) automatically becomes a worker (employee) at the company based on Article 22 section 3 of the Manpower

Act which states, "The apprenticeship that is conducted not through an apprenticeship agreement – as referred to in paragraph (1) – is considered invalid and the participant's status shifts to the worker/laborer of the company concerned". Thereby, the inherent new right and obligation are able to be used by the workers in general which have been regulated in the Labor Act or Company Regulations, such as the leave right, the association right, and the right to receive a decent salary.

Basically, the Government through the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia does not explicitly divide the domestic apprenticeship in it. However, the government implicitly divides that domestic apprenticeship into two types, namely pure apprenticeship and cooperative apprenticeship.

The pure apprenticeship is an apprenticeship which is conducted by an individual company without asking for help from the Education and Skills Institution (LPK)/the other training unit because the company already has a training unit. In this kind of apprenticeship, a company opens its own apprenticeship vacancy or in other words looking for the prospective apprentices itself; arranges its own apprenticeship programs – such as the theory and practice which refer to the National Work Competency Standard of Indonesia (SKKNI) and International Standard; and/or Special Standards; as well as conducts an apprenticeship evaluation.

The next kind of domestic apprenticeship is the association apprenticeship. The association apprenticeship is an apprenticeship which is conducted by a company with the Education and Skills Institution (LPK) as regulated in Article 2 section (2) of the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia. In this kind of apprenticeship, an employer is also able to cooperate with the other training unit. The existence of this type is motivated by the employers who do not have a training unit in their companies so that they need the other agency to support the company's good intention in training the prospective worker. Besides of that, the apprentices are not only from the companies, but also from the Education and Skills Institution LPK students as regulated in Article 3 of the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia.

The Legal Protection for Apprentices

The apprenticeship essentially must be conducted with full responsibility either by the apprenticeship organizer or the apprentices. Not fulfilling the stated promise will make the dignity of human being will fall into contempt (Isnaeni, 2016). Basically, the apprentices receive several rights as regulated in Article 15 of the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia, which are obtaining occupational safety and health facilities during the apprenticeship; obtaining allowance and/or transport money; obtaining protection in the form of collateral work and death insurance; and obtaining apprenticeship certificate if

passed. Those four things are cumulative in which they must be fulfilled by all employers without exception.

The same thing is also regulated in the East Java Regional Regulation on Manpower, namely Article 13 which basically states that the apprentices have those four rights. However if analyzed further, there are also some rights contained in the legislation. These are the right of good treatment, the right of allowance and/or transport money, the right of evaluation, and the right of certificate. Juridically, the problems in the field of employment are not limited to the matters as mentioned in the previous discussion. The reason is that the majority of dispute must be originated from the violation or deviation towards a law rule. The apprenticeship activity which constitutes industrial relation is certainly inseparable from the labor field in which still related to the problems in that employment sector. In this case, the Manpower Act has regulated several forms of sanctions contained in there.

Practically, the existence of labor dispute, specifically in the apprenticeship field, is caused by the differences of the apprenticeship initial aim with the application itself. This is because the position of the apprentices is one level below the company. Thereby in the majority of apprenticeship cases, a person who becomes the apprentice is more disadvantaged. According to the Act No. 39/1999 regarding Indonesian human rights, a protection is a defense towards human rights. This is because every human has the same right and obligation, hence, they will also have the same right to protection (Prakoso and Setyaningati, 2018).

In principle, the apprenticeship agreement is made on the basis of the principle of freedom of contract which means the parties are free to determine the contents of the agreement including the chosen remedies if there is a dispute later on. In the aspect of labor law, there are known several legal remedies if the dispute arises: through litigation (*in/by court dispute settlement*) or non-litigation (*out of court dispute settlement*) which are detailed to be Mediation (Peace), Bipartite and Tripartite Negotiating Institutions, Conciliation, Arbitration, and through the Court. In the first way, the judicial institution as a state court is authorized to exercise judicial authority in receiving, examining, and deciding cases or legal disputes that are submitted in there. Meanwhile on the second way, the dispute resolution is conducted outside the court based on the choice and agreement of the parties as a form of actualizing the community role to resolve the dispute more cooperatively (Wibowo, 2005). Among the several alternative selections, the parties in apprenticeship can choose one or more of them with the applicable provision.

The government which practically consists of many government institutions, actually has a certain government agency which is in charge of conducting the Apprenticeship Oversight. These institutions are the Ministry of Manpower and Transmigration as well as the Manpower Agency in province and Regency/City based on Article 24 section (1) of the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia. This

observation activity is conducted on the program, training and apprenticeship supervisor, facility, and the apprenticeship system and method.

The observation is conducted in stages and started from the City/Regency, followed by the Provincial level, and finally is at the Notional one. The regional observation in which at the City/Regency and Province must be reported to the Minister as regulated in the Article 179 section (1) of the Manpower Act.

Besides of the explained observation on the above, that activity can be conducted directly and immediately during the apprenticeship. It means during the apprenticeship, hence, the observation will follow as well. What makes the difference this kind of observation with the explained one on the above is this observation is conducted by the instructor or the experienced worker. Thereby, based on both of the instruction and guidance, the unwanted occurrences can be avoided and the apprenticeship can be proceed as it should as regulated by the applicable law. The existence of this kind of observation lies on the apprenticeship definition itself which is regulated by the Manpower Act and Apprenticeship Regulation.

CONCLUSION

If observed from several legislations, the status of apprentice cannot be equated with the status of worker due to the intention and aim differences. The apprentice has the aim to learn and study. Whereas the worker has the aim to work and earn a living for life. Therefore, both have the different rights and obligations. The disputes in the apprenticeship field are categorized into the disputes of interest. In the aspect of apprenticeship, there are known several legal remedies if a dispute arises: through litigation (*in/by court dispute settlement*) or non-litigation (*out of court dispute settlement*) which detailed into Mediation (Peace), Bipartite and Tripartite Negotiating Institutions, Conciliation, Arbitration, and through the Industrial Relations Court.

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