PalArch's Journal of Archaeology of Egypt / Egyptology

LEGAL PROTECTION FOR INDONESIAN WORKERS IN FOREIGN COMPANIES DURING THE IMPLEMENTATION OF MINIMUM WAGE SUSPENSION

Eka Prananda Aziz Parensa[1], *Lanny Ramli*[2]

[1,2]Department of Administrative Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

*Corresponding Author E-mail: [2]lanny.ramli@*fh*.unair.*ac.id*

Eka Prananda Aziz Parensa, Lanny Ramli. Legal Protection For Indonesian Workers In Foreign Companies During The Implementation Of Minimum Wage Suspension--Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(3), 1787-1793. ISSN 1567-214x

Keywords: Legal Protection, Workers, Minimum Wage

ABSTRACT

This study examines the legal protection of workers in foreign companies during the suspension of minimum wage inplementation. This study is done using case study and conceptual approach and examines the source of primary legal material through Law No. 13/2003 on Labor Law. The secondary data in used are library data, including books about employment, seminar papers and other data related to the problems in this study. To elaborate the importance of legal protection for Indonesian workers in foreign companies, and explain the responsibilities of foreign companies to workers who are in the treat of minimum wage suspension. Based on the Manpower Act there are a number of workers' rights that must be fulfilled by the company. Among them are the right to be equally treated without discrimination, the right to get job training, etc. While the responsibility of foreign companies to workers has been regulated in Article 88 of the Manpower Act Legal protection for workers in foreign companies is still lacking, therefore it is necessary to issue legal products in terms of worker protection.

INTRODUCTION

In order to support the country's economic development, there must be a fulfillment of the Citizens' Rights that is guaranteed by the Constitution. Therefore, it is clear that the citizens' right to get a job is crucial and has been clearly regulated in the Constitution. Regarding the regulation of this matter, Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia

(hereinafter referred to as the 1945 Constitution) have stated that every citizen has the right to work and a earn decent living. The right of citizens to get a decent job is regulated in Article 28D paragraph (2) of the 1945 Constitution which states that everyone has the right to work, get decent compensation, and to be treated fairly and properly in an employment. 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).

Work relations are relations between employers and workers based on work agreements, which have elements of work, wages, and orders as described in Article 1 Number 15 of the Manpower Act. The employment relationship exists because of an employment agreement involving the employer and the worker, as explained in Article 50 of the Manpower Act. The Employment Relations referred to in this is a work engagement that originates from the agreement given by the company and is not included in the scope of the employment agreement derived from the law (Rusli, 2003).

Anticipating wage problems and in order to protect workers' rights, the government issued regulations on wages. With the enactment of Government Regulation Number 25 of 2000 concerning Government Authority and Authority of the minimum wage that was originally determined by the central government through the Ministry of Manpower was transferred to the regional government at the provincial level, from then on the minimum nominal wage was determined by each province. Regulation on wages is then stipulated in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower Article 88 paragraph (1) states: every worker has the right to earn a decent income, Article 88 paragraph (2): To standardize an appropriate income as referred to in paragraph (1) the government establishes a wage policy that protects workers. The purpose of wage protection set by the government is to guarantee a steady source of income that guarantees the survival of workers and their families.

In addition, the provision of wages must also consider work performance, length of work and profits earned by the company. In addition, employers also have an obligation to pay decent wages on time to their workers. But in reality there are still many employers who pay their workers below the standard of the applicable statutory provisions. The workers assume that the work they have done is in accordance with what the employers want but they do not get a decent salary. This can lead to the workers and employers committing acts that are against the law. As the AEC (Asean Economic Community) expands, foreign and domestic companies will be able to compete freely, and this condition require the role of the government as a supervisor. This encourages the government to establish a

wage policy fairly while still taking into account the interests of each party, namely workers and employers.

The purpose of this study is to understand the importance of legal protection for Indonesian workers in foreign companies. The foreign companies are expected to understand their responsibility towards workers who are in threat of the suspension of minimum wages.

This study is also expected to be able to provide knowledge in the field of manpower especially for workers in foreign companies in Indonesia, as well as to know the legal protection for workers.

RESEARCH METHODS

The approach to the problem used by the author in this study is case study, i.e. an approach to a problem based on an existing case which is then linked to the legislation in force in the implementation of the City Minimum Wage. In addition, the type of problem approach used is the conceptual approach done by discussing the opinions of experts or scholars as a supporting foundation sourced from various literature on employment and protection towards workers in foreign companies in the suspension period of the imposition of city minimum wage.

Employment Relationship and Sanctions Towards Wage Suspension

Basically, the employment relationship shows the position of the two parties that establish cooperation, as explained in Article 1 Number 15 of the Manpower Act, it is stated that employment relationship is a relationship between employers and workers based on a work agreement on elements of work, wages, and orders. This has been clearly based on the existing provisions in Article 50 of the Manpower Law which states that an employment relationship is created as the aftermath of an employment agreement involving employers with workers. The employment relationship referred to by the Manpower Act is a work bond that originates from an agreement and does not include work ties that are related to the law (Rusli, 2003).

All forms of provisions contained in the work agreement are mandatory to be obeyed and carried out by each party involved in the agreement. This causes the parties who are involved cannot deviate from the legislation regarding Labor. But when the Manpower Act does not have rules on a matter but it is regulated in treaty law, then it can be enforced in treaty law. However, if the Manpower Law regulates this matter, then the provision is strong and must be complied with. In Article 1 Number 4 of the Manpower Law states that the employment agreement is an agreement between the worker and the employer which contains terms of work, rights, and obligations of the parties.

The obligations of the parties must be mutually fulfilled in this regard, both the obligations of employers towards workers and vice versa and the obligations of

workers towards employers. The obligation of the worker to the employer is to carry out the work in accordance with the instructions given by the entrepreneur and pay penalties if an error occurs in which case the amount of the loss has been calculated, this is a form of employee responsibility for work that has been given to him which is usually given a written agreement beforehand. Whereas employers' obligations to workers is to fulfill the rights of workers by providing wages in accordance with established regulations.

However, companies often postpone wages to workers, resulting in losses on the part of employees. Labor arrangements must be arranged in such a way as to preserve basic rights and protections for workers that are beneficial to maintaining the current conduciveness of the business world, along with the large number of government legal products that often have a negative impact on workers; or in other words, it often seems that current regulations only concern employers. Meanwhile, what has been regulated in the Minister of Manpower Procedure for Minimum Wage Suspension has clearly explained the procedure for the suspension of the minimum wage as mentioned in Article 90 of the Manpower Act.

If the company is going to suspense the wage, there is a negotiating procedure between workers and employers that has been regulated in Article 3 of the Ministry of Manpower Decree on Procedures for Minimum Wage Suspension. In addition, procedures for proving the inability of companies have been regulated in Article 4 paragraph (1) letter b, paragraph (2), and paragraph (3) of the Minister of Administrative Decree on Procedures for Minimum Wage Suspension. Article 4 paragraph (1) letter b of the Decree of the Procedure for Minimum Wage Suspension stated that the request for the suspension must be accompanied by a company financial statement consisting of the balance sheet, loss/profit calculation, and explanations of the company's economic condition for the last 2 (two) years. In Article 4 Paragraph (2), it is stated that in the case of a legal entity, the financial statements referred to in paragraph (1) letter b must have been audited by a public accountant. Likewise, in Article 4 paragraph (3), upon the application referred to in paragraph (1), if necessary the Governor can ask a public accountant to conduct a financial examination to be able to prove the inability of the company.

The issue of approval of the minimum wage suspension is regulated in Article 5 of the Decree of the Minister for the Procedure of Minimum Wage Suspension. As stipulated in Article 5 paragraph (1), the approval of the suspension is determined by the Governor for a maximum period of 12 (twelve) months. Then in Article 5 paragraph (3), it is stated that after the expiry of the license suspension period, the employer must implement the new minimum wage provisions.

The Manpower Act explains the regulation of the legal consequences for violators, both employers and workers who do not obey the laws and regulations

relating to employment. The legal consequences that must be received by companies for violations are criminal provisions and administrative sanctions. In connection with the employer's obligation to provide wages or salaries as a right of workers as stipulated in Article 90 paragraph (1) of the Manpower Act, if the obligation cannot be fulfilled by employers, then employers may be subject to criminal sanctions as such regulated in Article 185 paragraph (1) of the Manpower Law which states that whoever violates the provisions referred to in Article 42 paragraph (1) and (2), Article 68 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraphs (4) and (7), are subject to a minimum of 1 (one) year imprisonment and a maximum of 4 (four) years and/or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and at most Rp. 400,000,000.00 (four hundred million rupiah). The criminal acts referred to above include criminal offenses as regulated in Article 185 Paragraph (2) of the Manpower Act.

Legal Protection for Workers

Based on the Manpower Act, there are a number of workers' rights that must be fulfilled by the company. Among them are as follows: 1.) The right to receive the same treatment without discrimination, which is stipulated in Article 6 of the Manpower Act; 2.) The right to get job training in accordance with Article 11 of the Manpower Law; 3.) Right to recognition of competencies and work qualifications in accordance with articles 18 and 23 of the Manpower Law; 4.) The right to choose work placements in accordance with Article 31 of the Manpower Act; 5.) The right to healthy work time duration as stated in Article 77 of the Manpower Law; 6.) The right to receive overtime pay in Article 78 of the Manpower Act. Those are some of the rights of workers that must be fulfilled by the company in accordance with applicable Labor Law. Hence, the failure in fulfilling those rights might cause the company concerned to suffer a legal impact.

In an employment relationship, there are obligations that must be carried out by the company to workers, such as fulfilling their employee's rights. Obligation is a form of responsibility that is contractual in nature. Company's obligations to workers also prioritizes work ethics which aims to make the employees to work in compliance with the rules.

According to the Law of the Republic of Indonesia no. 39/1999 concerning the human rights of Indonesian, protection is a defense towards human rights. Every human being has the same rights and obligations, in which each has the same right to protection (Prakoso and Setyaningati, 2018). In the field of labor law, the form of preventive legal protection in the implementation of minimum wages can be in the form of conducting supervision by the Government through the Ministry of Manpower, which aims to ensure the implementation of legislation in the field of labor, especially in terms of minimum wage provision.

Supervision is generally carried out in the workplace based on direct observations of the conditions of work, overtime work, minimum wages, female and child workers, as well as aspects of occupational safety and health. For workers, supervision will guarantee the fulfillment of workers rights that have been regulated in the legislation. For entrepreneurs and employers, supervision is a means to obtain clarity from parties who have the authority and competence regarding their obligations based on the laws and regulations (Maimun, 2007).

In general, if there is a dispute in the business world, the solution used is by litigation. In this process, the two disputing parties face each other; this method is also a last resort that can be taken if the alternative method of settlement does not provide a maximum result for the disputing parties. Non-litigation legal remedies are the first step used when there are disputes in industrial relations, such efforts may take the form of Bipartite Negotiations, Mediation, Conciliation, and Industrial Relations Arbitration.

There are 2 (two) ways to resolve employment relationship disputes, namely by litigation and non-litigation. The non-litigation takes the non-judicial route. There are several solutions in this route. Among them are: 1.) Bipartite settlement. Disputes must be resolved by conducting deliberative bipartite negotiations to reach consensus and resolved no later than 30 days after negotiations begin; 2.) Settlement by Mediation, According to Article 1 Number 1 of Law No. 2 of 2004, mediation of industrial relations is disputes over rights, disputes of interest, disputes over termination of employment and disputes between trade unions in only one company with deliberations led by mediators; 3.) Settlement through conciliation, based on the provisions of article 1 number 13 of Law no. 2 of 2004, Industrial Relations Conciliation, hereinafter referred to as Conciliation, is the settlement of disputes of interest, disputes over termination of employment or disputes between trade unions/labor unions in only one company through deliberations mediated by one or more neutral conciliators; 4.) Settlement through Arbitration, Based on the provisions of article 1 number 15 of Law No. 4 of 2004, Industrial relations Arbitration hereinafter referred to as Arbitration is the settlement of a dispute of interests and disputes between trade unions/laborers in only one company, outside the industrial relations court through a written agreement from the disputing parties. To submit the dispute resolution to the arbitrator whose binding decision the parties and are final.

Litigation settlement is settlement through the court. The judiciary is authorized to examine and decide on all types of disputes. Judges who examine and decide upon disputes consist of judicial and ad hoc judges. In this court, trade unions and employers' organizations can act as legal representatives on behalf of their members. Based on the provisions of article 56 of Law No. 2 In 2004, the industrial relations court was in charge and authorized to examine and decide: 1.) Disputes of Rights; 2.) Disputes of interest; 3.) Disputes of Employment; 4.) Disputes between trade unions/labor unions in one company.

CONCLUSION

Based on the Manpower Act, there are a number of workers' rights that must be fulfilled by the company. Among them are the right to receive the same treatment without discrimination, which is contained in Article 6 of the Manpower Act, the right to receive job training in accordance with Article 11 of the Manpower Act, the right to recognition of competencies and work qualifications as stated in Articles 18 and 23 of the Manpower, Employment Act, etc. While the responsibility of foreign companies to workers has been regulated in Article 88 of the Manpower Act.

REFERENCES

Maimun (2007) *Hukum Ketenagakerjaan Suatu Pengantar*. Jakarta: Pradnya Paramitha.

Paul Schoukens, Alberto Barrio. (2017). The changing concept of work: When does typical work become atypical?. European Labour Law Journal 8(4)

Prakoso, A. E. J. and Setyaningati, C. N. (2018) 'Law Protection for Procurement Officers: Legal Protection against the Procurement Instrument of Goods and Services', *IOP Conference Series: Earth and Environmental Science*, 175(1), p. 2019. doi: 10.1088/1755-1315/175/1/012128.

Rusli, H. (2003) *Hukum Ketenagakerjaan*. Jakarta: Ghalia Indonesia.

Robinson Monday Olulu, Sylvester Alor F. Udeorah. (2018). Contract of Apprenticeship and Employment Generation in Nigeria. International Journal of Scientific Research in Education. 11(3): 335-344.