

The Substance of Legal Protection for Workers/Labors is based on the Manpower Laws in Indonesia

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Abstract: The purpose of this study is to describe the nature of protection for workers and examine forms of protection for workers' rights based on laws and regulations. This research is normative juridical research. In normative legal research, the data source is secondary data, namely data obtained from the literature. Secondary data is obtained from primary, secondary, and tertiary legal materials. The form of research used is descriptive juridical analytical, which describes the problems and data in the form of legal materials collected and summarizes them in a legal research report as a result of new findings in the field of law. The analysis process begins with examining the data that has been collected from various sources. After that, data reduction was carried out by making abstractions. From these abstractions, the writer will make interpretations to give birth to data that who can justify. Based on the description of the results and discussion above, it can be concluded that the substance of protection for workers is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a set of rules or rules that will protect one thing from other things. In Indonesia, the legal protection in question is always based on Pancasila as an ideal basis, even though the formulation concept uses western thoughts whose conceptual emphasis rests on protecting human rights. As for the types of rights protection for workers as based on Law No. 13 of 2003, including the protection of disabled persons, protection of children, protection of women, protection of working hours, protection of occupational safety and health, protection of wage, and protection of welfare. Besides, forms of worker rights protection based on work relationships, including work agreement and the collective work agreement. Based on this conclusion, it is necessary to synchronize and affirm workers' legal protection in the laws and regulations on legal protection for workers/labor. Besides, the government's guarantees are needed to ensure the continuity of legal protection for workers/laborers that the manpower by relevant stakeholders.

Keywords: Entrepreneur/Employer, Legal Protection, Manpower Laws, Work Relationships, Workers/Labors.

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I. INTRODUCTION

Manpower development is an integral part of national development, which is carried out in developing Indonesian people as a whole, as based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). It is based on Article 27 section (2) of the 1945 Constitution, which regulates that "each citizen has the right to work and to have a decent living for humanity".

Government involvement in manpower is to create a fair workforce because manpower laws and regulations provide rights for workers as whole human beings. Therefore, the government must protect manpower, whether it is safety, health, decent wages, and other safety forms. On the other hand, the Government must also pay attention to the interests and sustainability of companies. The relationship between workers and employers is left to the parties (workers and employers). However, the purpose of manpower law is to create social justice in the manpower sector. In fact, who will face these objectives with the principles of economic activity, in which the strong will always want to control the weak (*homo homini lupus*)?

On this basis, the government has gradually participated in dealing with workers' problems through various laws and regulations. Laws and regulations in the field of manpower are intended to provide legal certainty for employers and workers' rights and obligations. Therefore, the manpower legal system in Indonesia is manifested by several laws and regulations, including the following:

1. Law of the Republic of Indonesia Number 21 of 2000 on Trade Union/Labour Union (hereinafter referred to as Law No. 21 of 2000);
2. Law of the Republic of Indonesia Number 13 of 2003 on Manpower (hereinafter referred to as Law No. 13 of 2003);

3. Law of the Republic of Indonesia Number 2 of 2004 on Industrial Relations Disputes Settlement;
4. Law of the Republic of Indonesia Number 11 of 2020 on Job Creation (hereinafter referred to as Law No. 11 of 2020).

Furthermore, the preamble of point d of Law No. 13 of 2003, considering that:

“Protection of workers is intended to safeguard the fundamental rights of workers and to secure the implementation of equal opportunity and equal treatment without discrimination on whatever basis in order to realize the welfare of workers/labourers and their family by continuing to observe the development of progress made by the world of business”.

Based on Article 80 of Law No. 11 of 2020, regulates that *“in order to strengthen the protection of workers and increase the role and welfare of workers/labourers in supporting the investment ecosystem ...”.*

This is confirmed in Article 6 of Law No. 13 of 2003, which regulates that *“every worker/labourer has the right to receive equal treatment without discrimination from their employer”.* Therefore, every worker has the right to receive equal treatment without distinction from the employer. Consequently, it depends on how the entrepreneur makes it happen, whether the worker is accepted, placed in a specific field until the worker carries out his responsibilities in the company.

As for previous research concerning the issue of legal protection for workers, among others are the following.

Latupono, B. (2011:68) concluded that:

“The human rights of workers, especially contract workers, which have already existed in the laws and regulations in our country, cannot yet be applied to cases that occur to contract workers, especially in Maluku.”

Hidayat, H. (2017:105) concluded that:

“There needs to be an acceleration of complaints services for Indonesian migrant workers through call centers, improving skills, knowledge of culture, language and attitudes. Besides, it requires clarity on the regulations of the destination country regarding the rights and obligations of Indonesian migrant workers. The most important thing is that every Indonesian migrant worker must have a passport and other documents that certify the existence of Indonesian migrant workers in the destination country.”

Ismono, J. (2018:355) concluded that:

“There have been industrial relations disputes between employers, workers and the government. The emergence of industrial relations disputes is basically because the parties to the disagreement see a problem only from their perspective.”

However, previous research as described above has focused more on the implementation of organizers related to the manpower. Meanwhile, this research focuses more on the essence of the formation of manpower-related laws and regulations.

Based on the preliminary description above, the purpose of this study is to describe the nature of protection for workers and examine forms of protection for workers' rights based on laws and regulations. This research's expected benefit is to contribute to state administrators in implementing laws and regulations in the manpower. The manpower law enforcement process can run well, especially in protecting and fulfilling human rights as part of realizing worker welfare.

II. METHOD

This research is normative juridical research. According to Soekanto, S., legal research is a scientific activity based on methods, systematics and specific thoughts, aiming to study one or several specific legal phenomena by analyzing them. In normative legal research, the data source is secondary data, namely data obtained from the literature. According to Soekanto, S. in Nawi, S. (2018:32-33), secondary data is obtained from primary, secondary, and tertiary legal materials. The three legal materials, among others, are as follows.

1. Primary Legal Materials

In the form of laws and regulations in the field of human rights and manpower and other related laws and regulations, including:

- a. The 1945 Constitution of the Republic of Indonesia;
- b. The Civil Code;
- c. Law No. 39 of 1999 on Human Rights;
- d. Law No. 21 of 2000 on Trade Union/Labour Union;
- e. Law No. 13 of 2003 on Manpower.

2. Secondary Legal Materials

I have obtained from books, scientific journals, articles, and other documents related to research topics.

3. Tertiary Legal Materials

In the form of a dictionary or encyclopedia, which supports searching for the lexical meaning of a term or meaning.

This research is a decision study, where data is obtained from various books or literature related to the topic, official legal documents or mass media. The data obtained is then processed and analyzed for further drawing a conclusion and suggestions.

The form of research used is descriptive juridical analytical, which describes the problems and data in the form of legal materials collected and summarizes them in a legal research report as a result of new findings in the field of law.

The analysis process begins with examining the data that has been collected from various sources. After that, data reduction was carried out by making abstractions. From these abstractions, the writer will make interpretations to give birth to data that who can justify.

III. RESULTS AND DISCUSSION

A. Substance of Legal Protection

The term legal protection theory comes from English, while in Dutch, it is called *theorie van de wettelijke bescherming* (Lazuardi, G., 2020:43).

Philosophically, the meaning of legal protection according to Soekanto, S. (1993:3), namely:

“Activities harmonize the relationship of values outlined in the rule of law or views that assess steadily and embody the attitude of action as a series of final stage value descriptions, which consist of creating (as social engineering), maintaining, and defending (as social control) the peace of human life.”

As for some of the meanings of legal protection, according to experts, are as follows.

According to Rahardjo, S. (2000:54):

“Legal protection is to protect rights that others have harmed, and security is given to the community so that they can enjoy all the rights provided by law.”

According to Muladi, M. & Arief, B. N. (1992:157):

“In principle, legal protection is the same as the functionalization of law or can also be identified with the operationalization of law or the concretization of law, namely an effort to make the law function, operate, work and be realized in a concrete way.”

According to Atmasasmita, R. (1982:69-70):

“As a law enforcement system, law enforcement is a unit of law enforcement officers whose task is to take action against lawbreakers. Meanwhile, as a process, law enforcement is an integrated process of implementing law enforcement, including the stages of investigation, investigation, arrest and others.”

According to Hadjon, P. M. (1987:2):

“Legal protection for the people carried out by the government is preventive and repressive. Preventive legal protection aims to prevent disputes, which directs government actions to decide based on discretion and repressive protection aimed at the occurrence of conflicts, including their handling in the judiciary.”

According to R., R. H. (2014:303):

“Legal protection contains two aspects, namely preventive and repressive. Preventive legal protection aims to prevent disputes by supervising activities carried out under legal norms. Meanwhile, repressive legal protection seeks to resolve conflicts by returning to the situation before violating legal norms.”

Legal protection is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a set of rules or rules that will protect one thing from other things (Basri, H., 2021:105).

In Indonesia, the legal protection in question is always based on Pancasila as an ideal basis, even though the concept of the formulation uses western thoughts whose conceptual emphasis rests on protecting human rights.

A legal relationship (*rechtsbetrekkingen*) is defined as a relationship between two or more legal subjects. This relationship consists of ties between individuals and individuals, between individuals and communities or between one community and another (Rahman, S., Qamar, N., & Kamran, M., 2020:107). In this legal relationship, the rights and obligations of one party are faced with the rights and obligations of the other party. The law provides certain guarantees for workers. Security shows that they cannot commit arbitrary acts against workers because such acts damage the working relationship between the employer and the worker.

In the context of human rights, acts that discriminate between entrepreneur and a worker/labourer are actions that are categorized as harassment and violate human rights for workers.

B. Substance of Legal Protection for Workers in Indonesia

1. Human Rights Guarantee

In substance, human rights are fundamental rights inherent in human nature itself (Pratama, W. A., 2019:34). Every human being is a creation of one and only god (Begem, S. S., Qamar, N., & Baharuddin, H., 2019:5). Every human being must be able to develop himself in such a way that he must create freely. Self-development as a human being is accountable to God Almighty as the origin and purpose of human life. All rights rooted in his nature as a human being are rights that are born together with human existence itself. Therefore, human rights must be respected, upheld and protected by the state, law, government and everyone (Aswandi, B. & Roisah, K., 2019:129). Basically, who can review the concept of human rights from several theories from previous thinkers, including the following.

According to Locke, J. (1821) based on the Theory Society Agreement:

"The ideal government will encompass the preservations of these three rights for all, every single one, of its citizens. It will provide these rights, and protect them from tyranny and abuse, giving the power of the government to the people."

According to Kant, I. (1998) based on the Theory State of Law:

"Is only a legitimate government that guarantees our natural right to freedom, and from this freedom we derive other rights."

According to Rousseau, J.-J. (1972) based on Theory of Sovereignty of the People:

"... for people to enter into a social contract. They would give up all their rights, not to a king, but to "the whole community," all the people."

Thus, human rights are universal or apply anywhere in the world. Where there are humans, there are human rights and must be upheld by anyone without exception. Human rights do not depend on the recognition of others, and it does not rely on the recognition of society or the State.

The concept of human rights in the context of protecting the rights of workers/laborers is in line with the Fourth Paragraph of the Preamble to the 1945 Constitution, which regulates that:

"Subsequent thereto, to form a government of the state of Indonesia which protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare,"

Furthermore, based on Article 28A of the 1945 Constitution, regulates that *"every person has the right to live and to maintain their lives and livelihood"*.

Based on Article 28D section (2) of the 1945 Constitution, regulates that *"every person has the right to work and to receive fair and decent remuneration and treatment in employment relations"*.

Based on Article 28I section (1) of the 1945 Constitution, regulates that:

"Right to live, right to be free from torture, right of freedom of thought and conscience, right of religion, right to be free from slavery, right to be recognized as a person before the law, and right not to be prosecuted under a law with retrospective effect are all human rights that cannot be deprived under any circumstances."

To reinforce the substance and understanding of human rights above, based on Article 1 number 1 Law of the Republic of Indonesia Number 39 of 1999 on Human Rights, explains that:

"Human rights mean a set of rights bestowed by the Almighty God in the essence and existence of humans as creations of the Almighty God and which must be respected, upheld in the highest esteem and protected by the State, law, Government, and every person for respectability as well as protection of human dignity and worth."

Besides, Indonesia has also ratified the International Covenant based on Law of the Republic of Indonesia Number 11 of 2005 on Ratification of the International Covenant on Economic, Social, and Cultural Rights.

Based on the description above, who can conclude that the rights of workers/labor, mainly related to the payment of wages from work, are fundamental. The only source to sustain life for oneself and family is obtained through the results of their sweat. So there is no single reason that can become an obstacle in prioritizing the payment of wages or workers/laborers' rights in a true sense, including if the company where they work goes bankrupt. In addition, workers/laborers' rights, especially wages, are debts of entrepreneurs/investors to workers/laborers paid for their sweat.

2. Trade Union/Labour Union Status

Based on Article 2 section (2) of Law No. 21 of 2000, regulates that *“the trade unions/labor unions, federations and confederations of trade unions/labor unions have statutory bases that do not run against the Pancasila and the 1945 Constitution”*.

Based on Article 3 of Law No. 21 of 2000, regulates that *“the trade unions/labor unions, federations and confederations of trade unions/labor unions shall be free, open, independent, democratic and responsible”*.

Based on Article 4 section (1) of Law No. 21 of 2000, regulates that:

“Trade unions/labor unions, federations and confederations of trade unions/labor unions aim to protect, defend the rights and interests of, and improve the welfare of workers/laborers and their family, as is proper.”

Based on Article 4 section (2) of Law No. 21 of 2000, regulates that in order to achieve the objectives as referred to under Subsection (1), trade unions/labor unions, federations and confederations of trade unions/labor unions shall have the following functions:

- a. As a party in the making of a Collective Labour Agreement and the settlement of an industrial dispute;
- b. As workers/laborers' representative in cooperation institutes in the area of manpower in accordance with the union's hierarchy/level;
- c. As a structure to create industrial relations that are harmonious, dynamic, and uphold justice according to valid national statutory rules and regulations;
- d. As a structure to channel aspirations in defense of the rights and interests of its members;
- e. As the planner of, the actuator of, and the party that is responsible for a strike in accordance with valid national statutory rules and regulations;
- f. As workers/laborers' representative in striving for the ownership of shares in the enterprise.

3. Legal Protection

Law appears as the rule of the game in regulating legal relationships. Law is created as a means or instrument of means to control the rights and responsibilities of legal subjects. Law functions as human protection. Laws must be implemented so that human interests are protected. Law enforcement can take place usually peacefully, but it can also occur because of lawlessness. Violation of the law can happen when a particular legal subject does not carry out the obligations that should carry out or because it violates the rights of another legal subject. Other legal issues whose rights are violated must obtain legal protection.

Legal protection for workers/labor is essential given their weak position. According to Asikin, Z., et al. (1992:5), that:

“Legal protection from the power of the entrepreneur/employer is carried out if the statutory regulations in the field of manpower which require or force the entrepreneur/employer to act as in the law carry out all parties due to the validity of a law which who cannot measure juridically but measured sociologically and philosophically.”

Manpower legal protection, which is the basis for providing legal protection for workers/laborers according to Soepomo, I. (2003:9) includes five areas of hunting law, namely:

- a. The field of direction/work placement;
- b. The field of labor;
- c. The field of occupational health;
- d. The field of job security;
- e. The field of job guarantee.

Law No. 13 of 2003 has regulated several types of legal protection, including:

- a. Protection of disabled persons;
- b. Protection of Children;
- c. Protection of Women;
- d. Protection of Working Hours;
- e. Protection of Occupational Safety and Health;
- f. Protection of Wage; and
- g. Protection of Welfare.

Legal protection has the meaning of protection using lawful means of protection provided by law, shown against particular interests, namely by making the interests that need to be protected in legal rights. Rights are also called subjective laws. Subjective law is an operational aspect of the legal relationship provided by objective law. In terms of subjective law are norms, rules. Legal protection is always closely related to the function of law as a regulator and protection for the interests of society.

C. Forms of Worker Rights Protection based on Work Relationships

1. Work Agreement

The work agreement, which in Dutch is called “*arbeidsovereenkomst*”. Based on Article 1601a of the Colonial Regulations, Staatsblad Number 23 of 1847 on the Burgerlijk Wetboek voor Indonesië (BW)/the Civil Code (hereinafter referred to as the Civil Code), regulates that “*the labor agreement is an agreement in which one party, the laborer, agrees to render his services to the other party, the employer, for a specific term in return for remuneration*”.

Based on Article 1 number 14 of Law No. 13 of 2003, explains that:

“An [individual] work agreement shall be defined as an agreement made between a worker/labourer and an entrepreneur or an employer. The agreement specifies work requirements, rights and obligations of both sides.”

In addition to the normative understanding as stated above, Soepomo, I. (2003:11) argues that:

“A work agreement is an agreement in which the first party (laborer) binds himself to work and receives wages from the second party, namely the employer. The employer binds himself to employ workers by paying wages.”

As for based on Article 1 number 15 of Law No. 13 of 2003, explains that:

“An employment relation or relationship shall be defined as a relationship between an entrepreneur and a worker/labourer based on a work/employment agreement, which deals with aspects relating to the job [that the worker has to do], the worker’s wage, and orders and instructions [that the worker has to carry out].”

From the provisions above, it is clear that talking about work relations cannot be separated from the work agreement. The conditions for a working relationship must be a work agreement. Therefore, several elements of the working relationship can be drawn, namely:

a. There is an Element of Work

In a working relationship, there must be work that was agreed upon (the object of the agreement). Furthermore, based on Article 1603a of the Civil Code, regulates that “*the laborer shall be obligated to perform the tasks himself; he may not be substituted by a third party other than by approval of the employer*”.

The nature of the worker’s work is very personal because it is related to his/her skills, then according to the law, if the worker dies, the work agreement ends by law (Sangkoy, M. T., 2016:118).

b. There is an Element of Order

The manifestation of the work given to workers by the employer is that the worker concerned must comply with the employer’s order to carry out the work as agreed (Umbas, R. R., 2014:173). It is where the working relationship differs from other relationships. For example, the relationship between a doctor and a patient, a lawyer and a client. The relationship is not an work relationship because doctors, lawyers are not subject to orders from patients or clients.

c. There is an Element of Wage

Wages play an essential role in work relations (work agreements). Even the primary purpose of workers working for employers is to earn wages. So that if there is no wage element, then a relationship is not an work relationship like a prisoner who is required to do specific jobs, a student who is doing field practice.

Furthermore, the work agreement must meet legal requirements, as based on Article 1320 of the Civil Code, which regulates that in order to be valid, an agreement must satisfy the following four conditions:

1. There must be consent of the individuals who are bound thereby;
2. There must be capacity to conclude an agreement;
3. There must be a specific subject;
4. There must be an admissible cause.

Besides, based on Article 52 section (1) of Law No. 13 of 2003, regulates that a work agreement shall be made based on:

- a. The agreement of both sides;
- b. The capability or competence to take legally-sanctioned actions;
- c. The availability/existence of the job which both sides have agreed about; and
- d. The notion that the job which both sides have agreed about does not run against public order, morality, and what is prescribed in the valid legislation.

The four conditions are cumulative, meaning that everything must be fulfilled before saying that the agreement is valid. The terms of the free will of both parties and the ability or ability of both parties to make agreements in civil law are called subjective conditions because they concern the person agreeing. Meanwhile, the conditions for the promised work must be lawful because it involves the object of the agreement. If the objective conditions are not met, then the deal is null and void. If the subjective conditions are not fulfilled, then who can cancel the legal consequences of the contract. Apart from that, the parties who gave the consent not freely and the parents/guardians or guardians of people who cannot agree can ask the judge to cancel the agreement. Thus, the deal has legal force as long as the judge has not withdrawn it.

The work agreements based on Article 51 section (1) of Law No. 13 of 2003, regulates that “*work agreements can be made either orally or in writing*”. Normatively the written form guarantees the certainty of the rights and obligations of the parties so that if a dispute occurs, it will be helpful in the process of proof.

However, it cannot be denied that many companies do not or have not made a written work agreement due to the inability of human resources or due to common practice, so based on trust, they make a work agreement verbally.

Based on Article 54 section (1) of Law No. 13 of 2003, regulates that A written work agreement shall at least include:

- a. The name, address and line of business [of the enterprise];
- b. The name, sex, age and address of the worker/labourer;
- c. The occupation or the type of job;
- d. The place, where the job is to be carried out;
- e. The amount of wages and how the wages shall be paid;
- f. Job requirements stating the rights and obligations of both the entrepreneur and the worker/labourer;
- g. The date the work agreement starts to take effect and the period during which it is effective;
- h. The place and the date where the work agreement is made; and
- i. The signatures of the parties involved in the work agreement.

Based on Article 55 of Law No. 13 of 2003, regulates that “*the work agreement cannot be withdrawn and/or changed unless both sides in the agreement agree to do so*”.

Furthermore, based on Article 56 section (1) of Law No. 13 of 2003, regulates that “*the work agreement may be made for a specified period of time or for an unspecified period of time*”.

With the establishment of Law No. 13 of 2003, it is hoped that workers/laborers will know more about the terms of the work agreement along with the fulfillment of their rights and obligations.

2 A Collective Work Agreement

A collective work agreement in the British tradition is known as the Collective Labor Agreement (CLA), or in the Dutch tradition, it is called the Collective Arbeids Overemkomst (CAO) (Tobing, B. A. L. & Buwana, S. A. N., 2016:6). Based on Article 1 number 21 of Law No. 13 of 2003, explains that:

“A collective work agreement is an agreement resulted from negotiations between a trade/labour union or several trade/labour unions registered at a government agency responsible for manpower affairs and an entrepreneur or several entrepreneurs or an association of entrepreneurs. The agreement shall specify work requirements, rights and obligations of both sides.”

From the above provisions, a collective work agreement requires that a trade union/labor union that is formed must notify the agency responsible for the field of manpower to be recorded. Furthermore, according to Husni, L. (2020:78), that:

“A collective work agreement is prepared by the registered entrepreneur/employer and trade union/labor union and is carried out deliberately to reach a consensus. A collaborative work agreement can only be negotiated and drawn up by a trade union/labor union supported by most workers/laborers in the company concerned.”

The procedure for making a collective work agreement is regulated in Article 116 to Article 120 of Law No. 13 of 2003.

Furthermore, a collective work agreement contains work rules or conditions for workers. A collaborative work agreement also regulates employers and workers’ rights and obligations and serves as a guideline for dispute resolution between the two parties. One company can only create one collective work agreement that applies to all workers in that company. Work agreements are not the only protection for laborers/workers and employers because there are other forms of protection, namely a collective work agreement and company regulations. A collective work agreement is an agreement between trade unions/labor unions or several trade unions with employers or employers’ organizations, and company regulations are made unilaterally by employers (Tyagita, A., 2011:8).

In line with the law of manpower, according to Soepomo, I. (2003), that “a collective work agreement aims to protect the weak and put them in a position worthy of humanity”.

Thus, a collective work agreement departs from the philosophical premise of protecting the weak. Besides, another important role is to place workers in a decent position. In making a collective work agreement, the worker/labourer is represented by a trade union/labor union or several trade unions/labor unions to have a stronger position (bargaining power) in determining the terms of work, rights, and obligations of both parties (Prasnowo, A. D. & Badriyah, S. M., 2019:72).

IV. CONCLUSIONS AND SUGGESTIONS

Based on the description of the results and discussion above, it can be concluded that the substance of protection for workers is the protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a set of rules or rules that will protect one thing from other things. In Indonesia, the legal protection in question is always based on Pancasila as an ideal basis, even though the formulation concept uses western thoughts whose conceptual emphasis rests on protecting human rights. As for the types of rights protection for workers as based on Law No. 13 of 2003, including the protection of disabled persons, protection of children, protection of women, protection of working hours, protection of occupational safety and health, protection of wage, and protection of welfare. Besides, forms of worker rights protection based on work relationships, including work agreement and the collective work agreement. Based on this conclusion, it is necessary to synchronize and affirm workers' legal protection in the laws and regulations on legal protection for workers/labor. Besides, the government's guarantees are needed to ensure the continuity of legal protection for workers/labors that the manpower by relevant stakeholders.

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