LEGAL PROTECTION TO WORKERS IN INDUSTRIAL RELATIONSHIP PROCESS

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ABSTRACT

Legal protection of workers in the industrial relations process is essential in order to improve and grow the national economy, but the relationship of workers, employers and government (tripartite) in the industrialized world is increasingly apparent lack of harmony and need to get attention by all parties. These products of labor law which are made by the government biased towards employer and seem only to increase taxes and foreign exchange. The implications of globalization have changed the industrialization, trade and the world economy into a form of business. For Indonesia, the era of globalization means that it faced a huge challenge, and there must be readiness for business and human resource potential, so they can compete in international markets. In terms of the law, it needs to be improved so as to provide protection for workers.

Keywords: Legal protection, Workers Rights, Industrial Relations

A. Introduction

Today labor problem becomes a hot issue with the various cases involving less harmonious tripartite relationship (workers, employers and government) and giving rise to industrial disputes that can not be resolved; arbitrary terminations (layoffs), the workers' rights which are not provided by employers such as maternity leave, sick pay, health insurance, and government policies that do not favor worker’s interests. They feel that their “normative rights” are deprived arbitrarily by employers, so the alternatives the workers did were the destruction of workplaces, strikes and protests to the streets to attract the attention of businesses and the government.

The issue of tripartite relations in the industrial world which lacks of harmony in Indonesia has always been an interesting and crucial issue because it involves the interests of many parties. For the workforce, they have to meet their needs of clothing, food and shelter, so they work hard with the hope of getting a decent wage. In other hand, employers produce manufactured products and or services to make profit to meet the needs of domestic and international market. The government would gain tax and foreign exchange to finance national development.

Ideally this tripartite relationship can work well without harming any of the parties, especially the direct relationship between workers and employers. However, the relations between the two sides did not always go smoothly because workers felt aggrieved with the policies of employers, especially on the issue of wages. Unfortunately, the Indonesian government does not want to learn from the past experience in the face of the normative demands of workers. The government policy has always sided with the interests of employers with the assumption that the industrial sectors pay big amount of taxes and foreign exchange despite having to sacrifice the interests of workers as reliable human resources (HR). As a result of this assumption, the policies of the government through the Department of Manpower and Transmigration (Disnakertrans) of the Republic of Indonesia often sacrificed the normative rights of workers who have already contributed their efforts to the business interests of employers, while they are treated improperly in the employment relationship for the benefit of employers and the target of tax or foreign exchange for the country.

This paper will discuss various issues concerning; (1) some of the causes of employment disputes in the legal relationship of workers and employers, (2) the development of human resources to obtain reliable workers in the process of industrialization, and (3) the legal protection for workers in the industrialization process in order to get legal certainty for workers.

B. Discussion

1. Globalization Era

Entering the globalization era today, the world's population is now in a global village which recognizes the existence of borderless world with the encroachment of information technology which is a industrial revolution based on science and useful to educate human. The involvement of information technology in industry can indirectly influence the attitudes of workers in the employment relationship with employers.

The implications of globalization era have changed the face of industry, trade and the world economy into the form of business in the "global village" which is changing fast.

For Indonesia, entering the globalization era means being faced to great opportunities and challenges, especially for the
industrialized world with limited potential of human resources. The important aspect that must be considered is the problem of professionals and reliable human resources. The quality of human resources who are capable of competing in the global market is needed in the process of industrialization. Recently, Indonesian workers have low quality and are low paid without any efforts of the employers and the government to increase human resources in the industrialization process optimally. Qualified human resources are not only on the comparative advantage but the competitive advantage with the HR of other countries to seize the international market.

The process of industrialization is considered to be successful significantly when supported by the ability of high-quality human resources. Qualified human resources are usually scarce in developing countries, including in Indonesia. The availability of fair rule of law and ensuring legal certainty are important so that they are able to facilitate the needs of the tripartite relationship to be a concrete legal basis for Indonesia's participation in international trade.

Anticipatory and innovative steps are required in meeting the demands of global competition, especially in the field of labor. The tight competition in the manufacture and produce of high quality products or services and the readiness of the law as an instrument related to human resources in the process of industrialization are very important to recognize as an integrated entity.

The success of the competitiveness of Indonesian products is largely determined by the quality of human resources. Law as a device that supports the needs of HR guarantees the normative rights of workers in the process of industrialization so as to achieve harmonization of the ideal industrial relations of Pancasila. Empowering workers to face global competition is also influenced by the carrying capacity of the law on high-quality human resources in the industrialization process. Weak protection of normative rights for workers will make the effort to improve the quality of human resources impossible to be achieved. In addition, the quality and quantity of Indonesian products will not compete with the products of other countries.

The protection for workers by providing their decent normative rights is an urgent need for the creation of Pancasila industrial relations. The issue of harmonization becomes crucial when there is no desire of employers and the government to provide the normative rights of workers as part of the recognition as equal partners and beneficial government policy.

2. The Conception of Law in Industrialization Process

In terms of discussing the conception of law as an analysis knife of employment issues in Indonesia today, it may require us to determine the jurisdiction where the analysis of employment issues in Indonesia can be conducted in terms of the relationship of labor with employers.

In relation with the conception of law with labor issues, the description proposed by Hermien Hadiati Koeswadji on the conception of law is more appropriately used. Koeswadji\(^1\) suggests three conceptions of law; first, the conception which includes the relationship between law and morals due to the origin of law and the origin of sanctions in terms of truth (the right reason). Second, the conception in terms of the relationship between law and political forces due to the will of state. Third, the conception of viewing law and in terms of the relationship between law and overall historical development (public) due to the traditions, customs and national character.

The employment issues in second conception above are highly appropriate to be used considering employment as Human Resources due to the process of industrialization which is the public policy of the government in the form of the ideal basis of Pancasila and the constitutional basis of the 1945 Constitution which has been regulated under Article 27 and Article 33.

The understanding on the meaning of human resources needs to be standardized so as not to cause inappropriate interpretation. Human resources, according to Taliziduhu Ndraha\(^2\), are the residents who are ready, willing and able to contribute to an achievement of organizational goals. In the science of population, the concept is the same as workforce that includes the productive labor force within a certain age.

In the theory of HR, according to Taliziduhu Ndraha\(^3\), there are variety of tools that can be used by humans to identify the problems of human resources, to explain the symptoms of HR, to predict the things that may or will occur in the areas of human resources, and to provide solutions to human problems.

One of the theories of human resources with the analytical tools used to result in the studies in the Science of Law is the issue of Employment Law, with particular regard to the industrial relations between workers and employers. The analysis tools used can explain the problems in the relationship of industrialization process. However, the issue of


human resources in the labor laws, by Hermien Hadiati Koeswadji, is not just to do or not to do (prohibition and recommendation) but also concerns with government policies as outlined in the official form and translated into real actions that includes labor law, administrative regulations and executive ability to implement them.

The process of industrialization for a country is usually through the stages of pre-industrial, industrial and post-industrial. When industrialization is associated with the education of the workforce, the ideal of human resources is an educated labor having skilled work with adequately high science and technology. In the presence of such requirements, they are expected to compete with the products of foreign states in the era of economic globalization.

However, in developing countries, the process of industrialization still faces major constraints on the limited ability of science and technology along with the number of low qualified workforce, so the policies of the governments in economic development focus on accommodating workers in the industrialization by putting more priority to labor-intensive, capital-intensive, and high quality science and technology industries with high-quality workers. Unfortunately, the company's output in the international market is not able to compete with other countries that use high technology with quality goods. As a result, workers are paid low and their normative rights are not provided properly due to company’s limited financial capabilities. For Indonesian labor, industrialization process is now demanding reliable human resources that cannot be bargained facing economic globalization with open market. Good HR leads the company's products to be improved and the company will be able to fulfill the workers' normative rights.

To obtain reliable human resources in production systems, an operational management is required to be applied by employers consistently in a good industrial relation. Operation management is a management of the transformation system that converts input to obtain output. Input is converted into goods and services through a technological process. The use of various inputs can change output in a production operating system.

The process of industrialization seizes international market from the output of Indonesian workers. Then, Hermien Hadiati Koeswadji reminds the importance to approach through three elements (tripartie), namely employers, workers and governments in an effort to improve the situation by performing the following three ways:

a. Workers should have the skills (fast and consistent to meet market demand), discipline and high working ethic to obtain effectiveness and efficiency compared with other countries.

b. Developing communication, information and education by utilizing science and technology so that the added value can be developed, and

c. Developing human resources the short, medium and long terms focused on physical fitness development, working ability and attitude towards work or work ethics.

The government policies in issuing the decision associated with the law should be observed carefully for the benefit of workers and employers in industrialization process to obtain legal certainty at works because it involves the harmonization of employment relationship.

3. Legal Relation Dispute of Workers and Employers

The occurrence of demonstrations, strikes, or destruction of workplaces and public facilities are the pictures of discontent of the workers on their working relationship with employers and the law which regulate them. The government passing the law or policy turned out being unfair to the detriment of one party that can lead to disputes. Industrial dispute started from the denial of the collective labor agreement (KKB) or the biased rules and policies that injured the right of one party and could trigger discontent.

Labor disputes can usually occur in two ways; first, employers who give works to their workers; second, the government policies that issued the rules and laws in industrial relations.

Labor disputes with employers are the forms of disharmony for their denials to KKB which is the rule of law for both parties and signed together. Dissatisfaction can be on the issues of workers' normative rights, such as the factor of wages, social security, overtime pay, severance and less conducive employment atmosphere.

The causes of dispute, according to Imam Supomo, can be divided into two categories. First, the disputes over rights (rechtsgeschillen) are the disputes that arise as a result of breach of contract committed by one of the parties in production process, i.e.: (a) not in accordance with the content of work agreement, (b) not in accordance with the content of labor agreement, (c) not complying with company regulations, (d) not in accordance with the regulations in force. The disputes of rights are related to the efforts to comply with normative rights, both for employers and employees. Second, the disputes of interests (belangengeschillen) generally occur as a result of lack of consensus

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6Imam Soepomo, Hukum Perburuhan Bidang Hubungan Kerja (Labor Law in the Field of Working Relation), Djambatan, Jakarta, 1994, p. 175.
between employers (work association) and workers represented by a union or joint union dealing with the issues of employment, terms of work, and/ or existing employment condition.

When SKB or KKB is desirable by employers or workers, the industrial dispute occurs soon. When KKB is not reached, strikes, demonstrations or destruction of workplaces may occur which are performed by the workers who have sweated for businesses’ profit but they do not get decent reward that they are entitled. Instead, employers will not give the rights of workers when workers do not meet the obligations stipulated in KKB.

The disputes between workers and the government were usually related to the government’s policies in issuing rules of law or the decision that did not take side on the interests of workers, but more beneficial for businesses. So far, the government policies are perceived for not taking sides on the weaker party, workers, but on the strong party namely employers.

If the protest in the form of proposed improvements of KKB is not complied by employers, or the government policies do not favor the interests of workers, of course, workers will choose the last alternative by taking action in the form of strikes, demonstrations, and destruction which are detrimental to all parties. It happens because they are not appreciated properly as human beings.

Actually, by recognizing the factors that lead to industrial disputes, employers have already to prevent or anticipate them as early as possible if workers’ demands can be met in accordance with company ability. Labor law and collective labor agreements have set up the rights and obligations of workers properly as well as the rights and obligations of employers to their workers.

The entrepreneurs oriented on improving the welfare of workers will make every effort to meet the demands of workers in accordance with Act No. 13 of 2003 on Employment and company ability that attempt to spare the part of profits for their workers. Employers should avoid dispute resolution based on structural approach (superior-subordinate) or security approach through an act of violence by the police as frequently happened in the past to resolve any form of labor protests and strikes.

A good approach to do by businesses is functional approach (partnership) that respects each other and respects the rights and obligations of workers with employers. The approach is easy to avoid prolonged conflict between employers and their workers through the deliberation way to result in a mutual agreement. There is no advantage to be learned if workers and employers do not support each other in industrial relation. Supporting and respecting the rights and obligations of each are the best effort to resolve any industrial disputes that arise. Instead, the use of force or violence against disputes will not solve the problems, and it even describes the absence of a good partnership between workers and employers that can inhibit the production process and does not mutually respect in implementing the industrial relation of Pancasila.

4. **Promoting Welfare to Improve Working Quality**

The granting of the rights of workers by employers is usually along with the working ability of workers and company’s financial ability to pay the workers. Company pays the salary of their workers from the sales of their products in domestic and foreign markets. Improper treatment in the provision of workers’ rights by employers often causes industrial disputes.

The program to improve employment in the industry is a concept and operation for the development of human resource potential, especially the potential of young people who are the effective powers for national development and the human development having good personality, intelligent, disciplined, skilled and highly skilled, productive and highly motivated, and steady mental attitude to face increasingly tight competition. This condition is in accordance with the needs of industrial and post industrial development to the information society along with the development of globalization.

The function of the business world in job training, according to Achmad Ichsan⁸, is self-development which is the attempt of workers to improve their skills independently in a competition because companies usually seek professional and reliable workers. They are all intended to make the industry products of a company more qualified and able to compete with the products of other companies in the world.

Furthermore T. Soelaiman said that there are five forms in job training;⁹ first, job training is the complement to formal education. Here, job training can bridge the world of education and the world of work. Second, some types of knowledge and occupational skills are not prepared and not provided through formal education system. Such knowledge and skill need to be given and prepared through training and work experience. Thus, job training is a complement to educational system. Third, formal education system only uses the system with the implementation that takes time long enough in certain number of participants and adequate mastery of materials which are quite a lot. On

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the other hand, job training can be held with a special curriculum and limited to only the type of skills needed for particular job requirements so that the implementation can be shorter and the cost becomes relatively cheaper. Fourth, our world of economy is characterized by rapid technological development so that the knowledge and skills of workers must be improved and adapted in line with the technological developments. Such adjustments are easier to be pursued through job training system than formal education system that demands changes in the educational curriculum which usually requires considerable time. Fifth, job training program is also required for the promotion and transfer of employees from one office to another that require new skills. The promotion and mutations will be able to spur the spirit and creativity of workers.

The implementation of job training to improve worker’s productivity can be performed in the training ways of service training, on the job training, apprenticeship, or others. In practice, the job trainings should pay attention the trilogy of job training, i.e.:

a. Job training should be in accordance with the labor market,
b. Job training should always updated in accordance with the development of science technology,
c. Job training should be an integrated activity meaning that it is a process of industrialization in the needs for both working relationship and independent business.

The good result of working practice is usually to improve productivity and quality of the goods or services as well so that the bargaining position of workers to earn decent wages from employers can be achieved. This is the ideal goal that must be achieved for the creation of the protection of workers’ normative rights in the activities of industrialization.

5. Protection of Workers’ Normative Rights

Workers’ normative rights should be appropriately given by employers to create the harmonization of a good industrial relationship when workers have fulfilled their obligations. The industrial disputes have harmed the interests of workers so far as the weak party, so the workers’ normative rights should be protected by the government from the arbitrary actions of employers who consider workers a "means of production" whose power can be squeezed because they prioritize on personal profit regardless of the fate of their workers who need a decent welfare.

If a dispute can be resolved through the Industrial Relation Resolution (PHI) as stipulated in Act No. 2 of 2004 on the industrial dispute resolution or usually resolved through the Arbitration Institution in various ways, such as:

a. Bipartite; a settlement by means of negotiation between workers and employers for resolving industrial dispute,
b. Mediation; a dispute resolution between workers / labor unions in a company through deliberation by a mediator,
c. Conciliation; a dispute resolution between workers/ labor unions in a company handled by one or more neutral conciliators.

Furthermore, labor dispute resolution is also set out in Article 136 (1) of Act No. 13 of 2003; 'the dispute resolution of industrial relationship shall be implemented by employers and workers/ laborers or union/ labor union through "deliberation"'.

Furthermore, the protection to workers’ normative rights is in the form of prohibiting employers from conducting layoffs arbitrarily. The work termination without legal procedures and KKB is obviously a violation of the law and prohibited by law. According to Article 153 of Act No. 13 of 2003, employers are prohibited lay off workers in terms of; first, the worker is absent from work because of illness by doctor’s information the time of not exceeding 12 months continuously. Second, the worker is unable to run the job as fulfilling the obligations to the State in accordance with the applicable law. Third, the workers worship in accordance with their religions. Fourth, the workers are married, pregnant, give birth or have abortion. Fifth, the workers have blood relation and/or bond with other workers in a company unless it has been stipulated in KKB or company regulations. Sixth, the workers establish or become the member and/ or official of labor union.

In addition to the prohibition to protect the workers in KKB, workers can decide to terminate the working relationship for urgent reasons. The urgent reasons are:

a. Employers abuse, insult rudely or threat that endanger the workers, the workers’ family or members of the household or to let the acts carried out by the employers’ members of the household or subordinates,
b. Employers persuade or try to persuade workers, the workers’ family members or household members to perform the actions contrary to the law or immoral or let such inducement or persuasion carried out by the employers’ members of the household subordinates,
c. Employers do not pay the wages on time,
d. Employers do not provide proper food and shelter as stated in the agreement,
e. Employers do not provide sufficient works,
f. Employers do not provide any assistance as promised to workers whose wages are determined based on the results of the work performed,
g. Employers, in other ways, neglect their obligation imposed by an agreement excessively,
h. Employers, out of the coverage of the employment relationship, tell workers, although rejected, to do the work in
the company of other employers,
i. The continuous relationship can pose a great danger that threatens the life, health, morals, or the good name for workers which are not included when the agreement is made
j. The workers, due to illness or other reasons out of their fault, unable to do the the job promised.

All forms of protection to workers' rights above have the purposes or in an attempt to create harmony in the working relationship and the legal relationship between workers and employers in the process of industrialization.

C. Conclusion
Legal protection to workers is still insufficient because of the poor ability of workers of both their quality and understanding of the law. As a result, the workers, in obtaining their normative rights, are also less noticeable, and, on the other hand, the government policies seemed to favor the interests of employers. Workers had been still regarded as production tools for the benefit of employers and the income of tax and foreign exchange for the country.

In general, labor laws have already regulated the protection to workers' rights, but the implementation still needs more emphasis and scrutiny so that the laws can be implemented well and in need of the government intervention as a whole and continuously. Therefore, the law can be implemented in an integrated way with various government policies.

Improved quality of work cannot be separated from an increase of workers' welfare. It requires the commitment of employers that workers are their partners in production process.

D. References