

The Legal Protection Of Workers' Rights Fulfillment Of The Homeworker In The Industrial Relations Court Semarang

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Abstract. The study on "The Legal Protection of Workers' Rights Fulfillment of The Homeworker In the Industrial Relations Court Semarang" aims to: 1) analyze the legal protection of the fulfillment of the rights of homeworkers in the Industrial Relations Court Semarang. 2) analyze the decision of the Industrial Relations Court of Semarang on the fulfillment of the rights of homeworkers.

Methods of research in this thesis using sociological juridical approach to the specification of descriptive analysis is the method of collecting data to obtain data that will be used as a thesis through interviews with homeworkers in the Industrial Relations Court Semarang, or by observation in the form of observations systematically involved in obtaining the data. Afterwards will be analyzed data obtained from various sources qualitatively.

The results showed that: 1) homeworkers have not received the fulfillment of the rights as workers. 2) based on the right trial Industrial Relations Decision No. 26 / Pdt.Sus-PHI / 2018 / PN.Smg states that homeworkers have the same status as formal workers who work in the company so that they are entitled to the fulfillment of workers' rights as stipulated in the Act No. 13 of 2003 on Labor.

Keywords: Legal Protection of Workers; The Industrial Relations Court.

1. Introduction

Semarang is one of the big city can not avoid the social problems caused by uneven social welfare. Semarang is the capital of central Java province which has the motto "Semarang is Atlas City " acronym (Safe, Orderly, Fluent, Harmony and Healthy) as the slogan for the maintenance of the beauty of the city. In addition to the acronym, the meaning of Semarang city of Atlas is in Semarang there are many sectors in various fields, such as tourism with the number of sites that can be used as a holiday destination, the education sector with the large number of universities, both public and private sector, the business with many companies, and many other areas of life.

Rapid population growth in Semarang cause various problems, among jobs. Although many firms in the city, has not been able to reduce unemployment because besides natives also many visitors from different cities to find employment in the city of Semarang.

NRI Constitution of 1945, Article 27 paragraph (2) provides that "every citizen has the right to work and a decent living for humanity". Based on the article, obviously desirable that all Indonesian citizens who are willing and able to work, in order to be

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given the job, along with the jobs they can live decent lives as human beings who have rights protected by law.³

The companies labor- both contract and permanent workers. Besides having a lot of manpower, the company also used the method business partners to reduce the cost to pay the salaries of the workforce. This is because the company considers it is not the workers' working partner / labor that must be met for their rights as workers as contained performance Act No. 13 of 2003 on Labor. Company is every establishment which employs workers with the aim of seeking a profit or not, either private or state-owned.⁴

Understanding among workers is clearly different partners. Labor is the workers who work at the company, where the workers must be subordinated to the command and work rules that are held by the employer (the employer) is responsible for the enterprise environment, to which the workers would acquire the wage fund or life assurance more fair⁵, While the partners is the cooperative relationship of mutual benefit.

The working relationship which was originally born as "status" as a servant or slave had to work to be a "contract" and the contract was changed to "partnership". The partnership between labor (workers) and entrepreneurs have been put forward by Roscoe Pound in 1923 (Roscoe Pound Interpretation of Legal History). Also the partnership that has been declared a national consensus in Labor relations of Pancasila Industrial Relations (HIP).⁶

In Article 1 point 15 of Act No. 13 of 2003 on Labor stated that the employment relationship is the relationship between employers and workers / laborers by employment agreement, which has elements of jobs, wages, and commands. So, that the employment relationship cannot arise from the partnership agreement, but must be of a work contract.

Agreements are important and certainly carried out in a contract or cooperative work between people / workers and employers before the intended work together, either written or unwritten agreements. It is intended that both parties fulfill its obligations in fulfillment of the rights set out in the agreement. Understanding the work agreement Article 1 point 14 of Act No.13 of 2003 on Labor is an agreement between the workers / laborers with employers or employer which contains the terms of employment, rights and obligations of the parties.

³Zainal Asikin, 2010, *Dasar-Dasar Hukum Perburuhan*, Cet. VIII, PT Raja Grafindo Persada, Jakarta, p. 265.

⁴Basani Situmorang, 2000, *Naskah Akademis RPP Tentang Peraturan Perusahaan*, Badan Pembinaan Hukum Nasional Departemen Kehakiman RI 1997/1998, Jakarta, p. 5

⁵Kartasapoetra G. et al, 1994, *Labor Law In Indonesia Based on Pancasila*, Ed. IV, Sinar Grafika, Jakarta, p. 17

⁶G. Kartasapoetra dkk, 1994, *Hukum Perburuhan Di Indonesia Berlandaskan Pancasila*, Cet. IV, Sinar Grafika, Jakarta, p. 25

Research Methods

The method used in this research is the socio-juridical. Sociological juridical aspects used in this research that legislation and related legal certainty on the legal protection of the fulfillment of the rights of homeworkers (homeworkers) based on the industrial relations court ruling.

The data used in this study are primary data. Primary data in this study were obtained through interviews with homeworkers and legal institutions that manage the cases of based home workers. In addition to the primary data in this study also uses secondary data consists of primary legal materials, secondary law, and tertiary legal materials to support the primary data.

This study uses data analysis qualitative that is data obtained during the research process then collated systematically and analyzed so as to achieve clarity of the issues discussed is about the legal protection of the fulfillment of the rights of based home workers (Home Worker) In the Industrial Relations Court Semarang.

2. Discussion

2.1. Legal Protection on Fulfilling the Rights of Based Home Workers in the Industrial Relations Court Semarang

The discourse on the legal protection of the fulfillment of the rights of homeworkers has not been a concern in the discussion of employment law in Indonesia. This has implications for the lack of, or even no legal protection of the rights of workers / laborers housing. In the Basic Law (Constitution) of the Republic of Indonesia Of 1945 Article 27 paragraph (2) and Article 28 D (2) has been explained that everyone is entitled to work as well as fair and proper treatment in the employment relationship.

In this case should be interpreted as an initial push (early encouragement) in order to shape policies and practices that protect homeworkers law. Homeworkers can defined as employees of a company that is doing his job outside the company.

Some companies implement a hiring partnership with the local community as the worker / laborer housing, in order to suppress the recruitment of workers / laborers formally redundant. Some examples of work to implement a partnership with homeworkers are finishing the garment products, packing (packaging), and food processing.

International Labor Organization (ILO) stated there were at least 12 problems frequently encountered by homeworkers in Indonesia, among others:

- There is no written employment agreement / contract,
- There is no bargaining,
- Wages below the minimum wage Regency / City (UMK),
- Working hours are often long,
- There is no guarantee of a job or income that is not necessarily,
- There is no social security,

- There are no health and safety protection,
- No maternal protection,
- There is no mechanism for the settlement of disputes,
- Barriers to establish or run a trade union activity,
- The involvement of child labor,
- To bear some of the cost of production and the risks are generally the responsibility of the employer.

Based on ILO Convention 177 of 1996, the definition of Workers The housing is someone who works at home or any other location chosen besides the employer, to accept the wages and incomes of goods and services as requested by the employer, irrespective of who provides the equipment, materials or other requirements needed for the job. Protection of the rights of based home workers have not received special attention from the Government and Act No. 13 Of 2003 on Labor. Act on Employment only focus on the protection of workers / laborers who are bound by a specific time employment agreement (PKWT) and a work agreement for an unspecified time (PKWTT). Pattern of business partnerships are one way companies in order to suppress the efficiency of budget expenditures by employing the surrounding community become homeworkers. In this partnership business pattern of homeworkers as if positioned as workers / laborers of the company. This is caused by bending the working relationship between homeworkers and companies.

In the case of the homeworkers, as though the government will allow home-based practices employ workers with large industry without clear legal framework and certainly the protection of the law. The Employment Act so far only identified with the workers / laborers formal. In contrast to homeworkers, which has been positioned as workers / laborers in informal work in the formal sector.

Terms of the employment agreement to prove whether or not the employment relationship can refer to the explanation of Article 51 paragraph (1), which explains that the labor agreement is possible to be made orally. That is the agreement between the company and homeworkers would still be considered a work agreement, though not in written form. Indonesia's labor law to include all forms of time including part-time work. Article 1 point 3 and point 15 of Act No. 13 tahun2003 on Employment have been met relationships between companies and homeworkers. This means that homeworkers subject as draft Employment Act. Therefore,

Based home workers' rights set out in the Act of Labor:

- Non-discrimination (Article 5 and Article 6)
- Decent wages (Article 88-Article 98)
- Social guarantee (Article 99)
- Decent working time (Article 77-Article 85)
- K3 assurance (Article 86 and Article 87)
- Menstruation Holiday (Article 81)
- Maternity rights (Article 82 and Article 83)

2.2. The decision of the Industrial Relations Court (PHI) Semarang towards fulfillment of Based home workers' Rights in Semarang

Based on an interview on July 10, 2019 with the former Mrs. Giyati as homeworkers PT. Ara Shoes Indonesia with registration number 801 194 which was cut off HW partner relations on August 5, 2016, with No. 0508/02 / SP-HW / 20016 unilaterally by the company without any apparent reason. Mrs. Giyati company works housed in Semarang district to implement a partnership effort. Pattern of business partnership between companies and homeworkers evidenced by a written agreement in which testimony from the top of the letter is written "Partnership Agreement" signed by both parties that the companies with Mrs. Giyati. However, Mrs. Giyati signed the partnership agreement in 2014.

Pattern of business partnership between PT. Ara Shoes Indonesia with Ms. Giyati began in 2009. However, Mrs. Giyati were made to sign a partnership agreement by a new company in 2014. That is, Mrs. Giyati been working for 5 years in the company as homeworkers. Mrs. Giyati said he did not understand the contents of the letter partnership agreement to be signed by him. Mrs. Giyati company signed a letter requesting the partnership agreement at the time of taking orders Mrs. Giyati of shoes to be sewn.

In the agreement it is stated that homeworkers must submit and adhere to the agreement that has been agreed. Homeworkers are required to implement all the provisions stated in the rules and other provisions into the company's decision. Moreover, in such an agreement does not regulate social security to workers' protection against homeworkers. Such as occupational accidents, companies bear only when the environment of the company. However, the scope of homeworkers to work in their homes so there is no guarantee of protection for certain homeworkers. This was stated in Article 2 (2), point e Partnership Agreement.

Furthermore there is no guarantee of safety for sure, with regard to the subject of wages, is based on the results of the work unit has been completed and a large salary / compensation is determined by the company. In partnership agreement, homeworkers otherwise not bound by office hours. However, in practice, homeworkers are required to complete its work for a maximum of two days.

Mrs. Giyati businesses also can not be called a medium because the criteria are higher than micro enterprises. Based on the above, it can be seen that the pattern of business partnerships are adequate for PT. Ara Shoes Indonesia with house workers not in accordance with applicable law. It can be concluded at least four impact experienced by homeworkers in the pattern of a business partnership, namely:

- The occurrence of discrimination against based home workers in the employment relationship
- No provision of social security by the company
- The low wages of even less than half the number of MSEs while working hours are relatively similar,

- No guarantee of K3.

Weak protection of the fulfillment of the rights of based home workers also affirmed by the lack of application of labor laws to protect homeworkers. For example, the Legal Aid Institute (LBH) Semarang noted, the case of layoffs by PT Ara Shoes Indonesia experienced by Mrs. Giyati was stated by the Department of Labor Semarang District is not a case of industrial disputes on the grounds homeworkers are not working and there was no employment relationship between the homeworkers with the company.

Results of the study, it appears that the efforts of PT. Ara Shoes Indonesia to anticipate worker legislation is to create a partnership agreement. Though the shape of that agreements are standard agreements where there is a clause which states that homeworkers must submit and implement all the provisions of the partnership agreement content. Therefore, instead of homeworkers equal position with a partner. Homemaker it is in a vulnerable position.

According to Section 1320 Book of the Law of Civil Law for the validity of a treaty required four conditions:

- They agreed that bind himself
- Competent to make a deal
- About a certain thing
- A cause that kosher

The first two conditions are called the terms of the subjective, because of the people or the subjects who entered into an agreement, whereas the latter two conditions called objective criteria because the treaty itself or the object of a legal act performed it.

Although home-based labor rights guaranteed in Act No. 13 Of 2003 on Labor. However, the practice field is still unmet homeworkers their rights. Therefore, it required the mobilization of the law, because, as presented by Black that "Without mobilization of the law, legal control system lies out of touch with the human problems is designed to oversee". This is reinforced by the explanation constitution through Article 27 (2) and Article 28 D (2) of the Constitution (Constitution) of the Republic of Indonesia Of 1945 which essentially explains that everyone is entitled to work and fair treatment and appropriate in relation work. In an effort to find a violation, there is a strong enough legal basis in employment law, namely Article 102 paragraph (1) of Act No. 13 of 2003 on Labor.

That is, the government is required to be proactive in finding violations of the rights of based home workers through labor inspectors. As for setting the procedures for labor inspection contained in the Minister of Manpower Regulation No. 33 Of 2016 on Procedures for Labor Inspection. Thus, the fulfillment of the rights of based home workers to do as the theory of justice as fairness.

Under the Industrial Relations Court Decision No. 26 / Pdt.Sus-PHI / 2018 / PN.Smg, the case of Mrs. Giyati, Osela with PT. Ara Shoes Indonesia judge that the point is in the fulfillment of the rights of based home workers the same rights as workers /

laborers formal company. It is based for homeworkers meet the elements as set forth in Article 1 paragraph 15 of Act No. 13 of 2003 on Labor, namely:

- **Work Elements**
That Mrs. Giyati and Osela ordered to do sewing shoes, when in tailoring these shoes are not right or wrong, Mrs. Giyati and Osela ordered to make a correction or repair on the spot.
- **Elements Wages**
That the work performed by Mrs. Giyati and Osela, is entitled to payment services in accordance with the number of pairs of shoes that had they completed. Large amount of compensation in tentkan by the company, namely PT. Ara Shoes Indonesia.
- **The command element**
Mrs. Giyati with Osela ordered to take the job at least 25 (twenty five) pairs of shoes and ordered to hand back the results of such work to the PT. Ara Shoes more than 2 (two) days after retrieval.

The Court's decision is expected to be a legal basis for legal protection for homeworkers in the City / County Semarang. The government also must be proactive in monitoring the fulfillment of the rights of homeworkers. With so legal protection for homeworkers are also uncertain.

C. Closing

- **Conclusion**

Fulfillment of legal protection of the rights of homeworkers has not been a particular concern in the discussion of employment law. This led the homeworkers have not received their rights as workers / laborers as stipulated in Act No. 13 of 2003 on Labor. It caused because the working relationship between the company and homeworkers are considered as partners.

Industrial Relations Court Decision No. 26 / Pdt.Sus-PHI / 2018 / PN.Smg states that homeworkers have the same position with the workers / laborers who worked on the company's formal.

- **Suggestion**

For The Government; Employment law should be mobilized in order to fulfill the rights of based home workers and the Government must be proactive in the supervision of the fulfillment of the rights of homeworkers.

For Companies, The company is also expected to not turn a blind eye on the welfare of homeworkers to fulfill the rights of homeworkers as workers / laborers formal.

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