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Topic: Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children

Analysis of Labor Law and Human Rights Regarding the State's Obligations in Preventing Forced Labor

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Abstract. Forced labor remains one of the most serious forms of human rights violations and continues to pose significant challenges across many countries, including Indonesia. The practice of forced labor not only deprives individuals of their freedom but also violates fundamental labor rights guaranteed under national and international legal instruments. From the perspectives of labor law and human rights, the state bears constitutional and international obligations to respect, protect, and fulfill workers' rights against all forms of exploitation, including forced labor. However, globalization, labor migration, poverty, and inadequate labor supervision continue to increase the vulnerability of workers to forced labor practices. This study aims to analyze labor law and human rights regulations concerning the prevention of forced labor, evaluate the effectiveness of state obligations in preventing forced labor, and formulate an ideal legal policy model for the protection of workers. The research employs a normative legal method using statutory, conceptual, comparative, and human rights approaches. Data are collected through library research involving national legislation, international conventions, judicial decisions, academic literature, and reports issued by national and international institutions. The findings reveal that although Indonesia has established various legal instruments prohibiting forced labor, their implementation continues to face structural, substantive, and cultural challenges. Therefore, stronger regulatory frameworks, enhanced labor inspection mechanisms, harmonization of national laws with international standards, and improved worker protection systems are required to effectively prevent forced labor practices.

Keywords: Forced Labor; Human Rights; Labor Law; State Obligations; Worker Protection.

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1. Introduction

National development, particularly in the employment sector, is directed towards maximizing the prosperity and well-being of the working community. Therefore, employment law must guarantee legal certainty, justice, the principle of utility, order, protection, and law enforcement.¹

Along with the development of the employment sector, it seems that many business actors are improving themselves after the economic and monetary crisis to wake up from a bad dream, as well as the impact of the global economic crisis that hit Southeast Asia, where Indonesia was not spared from the impact of the wave. The government in its efforts to overcome the global economic crisis together with the community, especially business actors, one of the main reasons is to stabilize the economy and maintain monetary balance and avoid the bankruptcy of most companies that have an impact on the fate of most factory workers and lead to layoffs.²

A fairly effective means of maintaining continuity between business actors and workers in employment relations is the existence of employment laws that regulate the various rights, obligations and responsibilities of the parties.³

Essentially, labor law is intended to protect and create a sense of security, peace, and prosperity by realizing social justice for all people. In providing protection, labor law must be based on two aspects: first, law from an ideal perspective, embodied in legislation (heterotomy) and autonomous law.⁴

Employment law (Law No. 13 of 2003) is established as the legal umbrella in the field of industrial relations and is designed to maintain order, as well as social control, primarily providing a basis for rights for production actors (goods and services), in addition to being a legal umbrella, employment law is projected as a tool in building partnerships. This is stated in the provisions of Article 102 (2) and

¹Murti Pramuwardhani Dewi, "Protection Norms and Employment Opportunities for Potential Elderly People Reviewed from the Principles of Legal Certainty, Justice, and Benefit," *Kosmik Hukum* 23, no. 1 (2023): 93–102.

²Beni Dwi Komara, Heri Cahyo Bagus Setiawan, and Aries Kurniawan, "The Difficult Path of MSMEs and Small Traders to Survive Amid the Covid-19 Pandemic and the Threat of a Global Economic Crisis," *Journal of Business Management* 17, no. 3 (2020): 342–59.

³Arifuddin Muda Harahap, *INTRODUCTORY BOOK TO LABOR LAW* (Malang: Literasi Nusantara, 2020), 7

⁴Muhammad Asri Rajani Maha and Arifuddin Muda Harahap, "Analysis of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation Regarding Rest Time Provisions for Workers/Laborers," *EDUCATIO Journal: Indonesian Education Journal* 9, no. 1 (2023): 346–52.

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(3) of Law. No. 13 of 2003). This provision is seen as a legal rule that must be obeyed by the parties (without any further explanation of what is meant by the meaning of partnership). At a glance, the provisions of Article 102 (3) of Law No. 13 of 2003 state that: "... entrepreneurs have the function of creating partnerships..." This has not provided concrete clarity for the industrial community which is generally unfamiliar with understanding legal provisions. Ironically, the law is only seen as abstract.⁵

Implicitly, this is a form of worker participation in maintaining order, advancing the company, and paying attention to welfare, but this wording is not well understood by the parties, and even such an interpretation lacks concern, especially from the employer, so that this often triggers disputes over rights and interests that culminate in demonstrations and strikes. If this meaning is understood as a partnership, it will distance various personal interests.

2. Research Methods

1. Types of research

This research is a normative legal study focusing on the legal norms governing state obligations to prevent forced labor from a labor law and human rights perspective. The research aims to analyze the synchronization, consistency, and effectiveness of legal norms governing worker protection from forced labor practices in both national and international law.

2. Research Approach

This research uses a normative legal approach with a combination of several legal approaches (doctrinal approaches) which are analytical, evaluative and prescriptive.

3. Data source

a. Primary Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia
- 2) Law Number 39 of 1999 concerning Human Rights

⁵Arifuddin Muda Harahap, "Introduction to Employment Law," 2020, 15.



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- 3) Law Number 13 of 2003 concerning Manpower as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law
- 4) Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers
- 5) Criminal Code (KUHP)
- 6) Government Regulations and Regulations of the Minister of Manpower relating to labor supervision and worker protection

b. Secondary Legal Materials

- 1) Literature and Law Books
- 2) Scientific work
- 3) Expert Opinion

4. Analysis Method

This research uses qualitative legal analysis with a normative-analytical approach combined with socio-legal analysis (normative-empirical), which is evaluative, interpretative, and prescriptive-reconstructive.

3. Results and Discussion

Basically, the production process of goods and/or services carried out by production actors, namely employers and workers, cannot be separated from the involvement of the state through the issuance of protective, coercive and sanctioning legal regulations, namely Law No. 13 of 2003 concerning Manpower and all its implementing regulations. This rule stands in the public and private spheres. This can be seen from its protective nature, coercive power and the imposition of sanctions (*miserapa*), while its private nature is known from the contractual legal relationship consisting of parties in the context of carrying out

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production activities, who mutually respect each other's rights, obligations and responsibilities based on a balance of interests.⁶

As is well known, Indonesia is a state based on the rule of law, and one characteristic of a state based on the rule of law is the recognition of human rights. As a state based on the rule of law, Pancasila must reflect the spirit of the nation and inspire and underpin applicable legal regulations in order to achieve general welfare and order. This has the legal consequence that every citizen and state official must act in accordance with the law.⁷

The term legal state (*rechtsstaat*) was used by Rudolf von Gneist (Germany 1816-1895) in the 19th century in his work: "das Englische Verwaltungerechte" for the British government.¹¹ In the Indonesian Encyclopedia, the term legal state is formulated as a state that aims to organize legal order (order based on law) and so that everything runs according to law. The term legal state also has an equivalent word with "The Rule of Law".¹² This was stated by Sunaryati Hartono, namely: "Therefore, in order to create a legal state that brings justice to all the people concerned, the recognition of "The Rule of Law" must be interpreted materially."⁸

The principle of legal certainty as a characteristic of a state based on law is also regulated in criminal law Article 1 (1) of the Criminal Code, which states: "No act can be punished except by virtue of criminal regulations in legislation that existed before the act was committed." The principle of law (legality) in the narrow sense is known as the adage: "Nullum Delictum, Nulla Poena, Sine Praevia Lege Poenale", while in the broad sense (including criminal procedural law), the prosecutor is obliged to prosecute all people who are deemed to have sufficient grounds to believe that they have violated the law."⁹

What about labor law, which has two legal domains? Public and private law. In this case, as briefly outlined above, labor law is protective, enforceable, and sanction-

⁶Mar'ie Mahfudz Harahap Arifuddin Muda Harahap, Rahmad Efendi, "Employment Law as Part of the Diversification of Higher Legal Education to Produce Legal Professionals' BOPTN UINSU MEDAN 2023 Research Report," 2023.

⁷Ady Supryadi et al., "Pancasila Legal State in the Indonesian Constitutional System: A Literature Review Study," CIVICUS: Pancasila and Citizenship Education-Research-Service 11, no. 2 (2023): 18–25.

⁸Zulfahmi Nur, "Reconstruction of the Rule of Law in the Islamic Law and Constitutional Paradigm in Indonesia," Misykat Al-Anwar Journal of Islamic and Community Studies 6, no. 1 (2023): 119–42

⁹The Principle of Legality Expansion, "Expansion of the Principle of Legality in the Draft Criminal Code as an Effort to Reform Indonesian Criminal Law," Journal Presumption of Law3, no. 1 (2021): 55–79.

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imposing, while the private domain involves contractual legal relationships within the context of production activities based on the principle of a balance of interests.

Like other laws, labor law has the function and purpose of maintaining social order, especially the relationship between employers and workers in the production process of goods and services, which contains and reflects the values of legal certainty, utility (benefit), and justice. Here, these three values are the pillars that underlie the establishment of labor law, and at the same time serve as the objectives of labor law. As is known, one of the elements of the rule of law is human rights as basic rights, which are naturally inherent in humans since birth and cannot be revoked in such a way, if these rights are revoked, their presence in the social realm will lose their existence as humans. This is in accordance with Wolhoff's statement, that a number of rights that seem to be rooted in the nature of every individual human being precisely because of their humanity that cannot be revoked by anyone because if revoked, their humanity will also be lost.¹⁰

4. Conclusion

Based on the above description, it can be concluded that the purpose of employment law is to maintain order in the working relationship between workers and employers. In order to maintain order, behavioral guidelines are needed in the form of normative law (legal certainty), and are directed towards legal ideals, namely justice and benefit. These three values underlie the upholding of employment law. In addition, Indonesia, as a state based on the rule of law, enforces equality before the law (Equality before the Law). Employment law in the legal constitution (Indonesia) is an implementation of the basic philosophy, namely Pancasila and the basic theory (UUD. 1945). These basic values have aspects of legal certainty, justice, and benefit. This certainty also reflects the value of justice, which provides benefits for the survival of workers and employers within the company corridor. The determination of the minimum wage must be guided by the Decent Living Standard (KHL) to ensure that every worker receives a salary sufficient to meet their basic needs. The government plays a crucial role in this regard and must ensure the availability of sufficient labor inspectors to effectively monitor the implementation of minimum wage policies. With a more active monitoring system, violations related to minimum wage provisions can be detected early and prosecuted according to the law. Furthermore, sanctions against companies that violate minimum wage provisions must be implemented firmly to uphold justice for workers. Every company is obliged to provide wages in

¹⁰Prima, "Criminal Law Policy on Criminal Acts in the Field of Employment (Case Study at the Lubuk Pakam District Court)."



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accordance with the applicable minimum provisions, as this is a basic right for every worker. Furthermore, to ensure that workers and laborers understand their rights, it is necessary to conduct outreach, seminars, and training involving the government, trade unions, and companies. Through these activities, workers can better understand the regulations regarding minimum wages and their rights in the workplace. In the process of setting minimum wages, the government needs to play a role as a balance between the interests of workers and companies, ensuring that decisions taken meet standards of justice and the interests of both parties.

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