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"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT LAW BASED ON JUSTICE

Christina N M Tobing

Student of Doctoral Program Faculty of Law Sultan Agung Islamic University
Email : tobingchristina48@yahoo.co.id

Eman Suparman

Doctoral Program Faculty of Law Sultan Agung Islamic University
Email : gunartowr2@yahoo.com

Jelly Leviza

Faculty of Law Sumatera Utara University, Medan
Email : Levizajelly@gmail.com

A. Background

The directions of the establishment of Employment Law Indonesia in the era of globalization is influenced by the tendency of the existing market, labor relations aimed to the flexible work system, the indication is the legalization of the system of labor contracts / specified time work agreements (CTWA), outsourcing and daily paid workers agreement (DPWA), nevertheless in practice the flexibility of labor is still being debated in Indonesia (Agusmidah, 2011 : 359).

The core existence of the flexible labor market is an attempt to change the rigid of the labor market to be more flexible and better suited to the climate of competition in the global economy that is increasingly liberal, therefore the various regulations that burden the business, deter the investment, employment and economic growth, should be abolished (Hari Nugroho and Indrasasi Tjandrasingsih, 2007 : 4).

The Indonesian state concept in national development is the Welfare State, the state must realize the social welfare and also must provide protection for all citizens as a social defense. Welfare means an expectation of an objective condition where the needs for the material, spiritual, social and citizens has been fulfilled, so that they wil have decent live and able to develop themselves, be able to perform their social function as human beings as the goal to be achieved (Enam Suparman, 2015 : 3).

In the specific areas of employment, welfare expentancy is formulated in the Constitution of Article 27 paragraph (2) Constitution NRI 1945, namely: "Every citizen has the right to work and a decent living for humanity" and Article 28 D (2) Constitution NRI 1945 namely : "Everyone has the right to work and to receive remuneration and fair handling and proper treatment in the employment relationship" (Eman Suparman, 2015 :

4). The form of the legal certainty is through the establishment of legislation in the field of employment that today is Law No. 13 of 2003 on Manpower.

Based on the considerations of Law No. 13 In 2003, the value of the labor laws are: first, the formulation of labor law should provide protection to workers / laborers and their families in accordance with human dignity and values; second, employment law is also pay attention to the improvement of the business world. The second value must be balanced so that justice is reflected in the substance and implementation of the labor law. However the fact is that these two values are not in accordance with the aspired.

This study focused on DPWA as one of the phenomena of labor flexibility, especially in the plantation sector. Palm Wacht research results, the current plantation sector employs 10.4 million workers and as many as 70% of them are workers non-guarantees job that are Freelance Workers, Labor Wholesale, Contract Labor and outsourcing (Sawit Watch, Pers release,May 12th 2015.)

DPWA is not regulated in Law No. 13 of 2003 but included in the Ministry of Manpower and Transmigration Decree No. Kep.100 / Men / VI / 2004 on the Implementation of the Provisions CTWA. Previously there has been Regulations of the Ministry of Manpower No. Per-06 / Men / 1985 on the Protection of Workers' Day off, in which among other provisions concerning the employer's obligation to provide the labor social security and threats penalties against violations of several articles. The regulation has been declared invalid by the Ministry of Manpower and Transmigration Decree No. : Kep.100 / Men / VI / 2004 which abolished these provisions.

Ministry of Manpower and Transmigration Decree No. Kep.100 / Men / VI / 2004 solely put in 3 (three) articles about DPWA, namely Article 10 to Article 12. This provision is DPWA very flexible and does not clear to the type of work, giving rise to multiple interpretations in implementation, there is no decent wage setting, no social security employment which are the fundamental right of workers. This indicates there are discrepancy between the value of labor law with the substance of the law and its implementation, so as to give rise to injustice.

Based on the description above, it is very urgent and actual to investigate more deeply how the working relationship that is based on DPWA should be built in Employment Law so as to realize the value of labor law with the title reseach :

"Reconstruction of The Daily Paid Work Agreement in the Employment Law Based on Justice"

B. Problems

1. What is the substance of agreements freelance work in Employment Law in casu of Labor and Transmigrations Decree Republic of Indonesia No. : Kep-100 / Men / 2004 is fully synchronized with the value of labor laws and regulations in the field of employment?
2. What are the factors inhibiting the protection of the rights of workers / laborers in the implementation of labor agreements freelance particularly in the plantation sector?
3. How does the freelance work agreement reconstruction in Indonesia Employment Law based on justice?

C. Research methods

This research is a *yuridis* normative research and socio-legal research, because this research is not only the substance of the text of the legislation and the judge's decision, but also the interpretation and implementation of the text with social realities in community life (Soerjono Soekanto, 1984 : 51).

Yuridis research methods used to study the DPWA substance DPWA in Ministry of Manpower and Transmigration Decree No. Kep-100 / Men / 2004 synchronization of the value *ketenagakerjaan* law and with the provisions of the legislation both vertically and horizontally, as the material content and the sort order of legislation (Soerjono Soekanto and Sri Mamuji, 2003 : 13). Research sociological (socio-legal reseach) to strengthen the normative legal research. The method is empirical legal research function to see the law in the real sense, so it can be limiting factors protection of the rights of non-permanent employees in practice (Related : Bahder Johan Nasution, 2008 :122-123).

According to the constructivism research paradigm and the specifications of this study, then the methods used is the hermeneutic, statute approach and the conceptual approach (PDIH FH Unissula, 2014 : 22-23).

D. Synchronization substance DPWA in Ministry of Manpower and Transmigration Decree No.Kep. 100 / Men / VI / 2004 with Value Employment Law and Regulation Legislation in the Field of Employment.

Employment law is the law which was formed to hold a fairness in the employment relationship between the workers/laborers and the employers, given the socio-economic position of employers and workers/laborers are very contradictory. Justice is a basic objective in the establishment and implementation of the law, even the goal of the having state can not be achieved by handing over the economic system solely on market mechanisms. Justice is not imputed value of the market economy because the market approach should always be followed by a normative approach through laws that lay down boundaries and rules (Bustanul Arifin dan Didik J. Rachbini, 2001 : 37).

Social justice seen from an economic perspective is proportional justice, industrial relations in employment should be seen as a form of the worker / laborer participation in a cooperative relationship between the company and workers (Kirdi Dipoyono, 1985 : 41). Fair value in the second principle of Pancasila, essentially instructed to always perform a harmonious relations between human individuals and groups of other individuals to create a fair and civilized relationship (work)(Purnadi Purbacaraka & Soerjono Soekanto,1982:8).

“John Rawls's theory of justice, pay attention to the rights and obligations equally in society, so that everyone is likely to benefit. The principle of justice is, first; gave equal rights and freedoms for everyone (equal liberty principle). Second; Legal able to provide the protection of the weak and reorganize the socio-economic discrepancy that occurs so that it can provide benefits reciprocal (reciprocal benefits) for the rich and the poor (difference principle). Individuals working to get a reward exchange of the organization or company (John Rawls on Peter Mahmud Marzuki, 1997:6).

The substance DPWA in Ministry of Manpower and Transmigration Decree No. Kep.100 / Men / VI / 2004 is not yet justice, in sync with the value of labor law in Indonesia, because it has not given legal protection balanced between workers and employers. The DPWA Substance which is legalizing the system flexibility of labor relations are further protect and benefit the entrepreneurs, for entrepreneurs to open opportunities to use non-permanent employees with a working system, the type of work more freely and forever be the status of PHL. Otherwise do not provide protection against the basic rights of the workers that are decent wages, social security and employment continuity of work.

The inclusion of provisions in the new Ministry of Manpower and Transmigration Decree No. PKHL Kep. 100 / Men / IV / 2004 on the Implementation of the Provisions PKWT not based on statutory delegation of higher Law No. 13 of

2003, so that an aberration or exceed the authority given. Hence it does not synchronize with the material content and the type of legislation, the PHKL substance should dealt with separately in a regulation, not just insert them in three (3) Article Ministry of Manpower and Transmigration Decree No. Kep.100 / Men / VI / 2004.

D. Factors Inhibiting Legal Protection of Daily-Paid Workers' Rights in Practice.

Employment Agreement (*arbeidsovereenkomst*) is the basis of the legal relationship which is the center of labor laws (Imam Soepomo, 1995 : 6), so it is the most important issue in an employment relationship because it concerns the rights and obligations of the parties that must be fulfilled in a legitimate employment relationship (Agusmidah, 2011 : 321).

Employment law established to ensure the constitutional rights of workers, but labor law can not be removed solely from the social facts on its surrounding. Between the positive law which is established by the social fact, there is a mutual influence upon each other. The condition in the society does play a not-least role in the formation, interpretation and implementation of the labor law. Employment law should be seen as a system of law, namely the substantive law and the legal structure and legal culture.

Result of reseach have factors inhibiting legal protection of daily-paid workers' rights in the on PKHL implementation in the plantation sector are :

- a. The substance of DPWA on the Ministry of Manpower and Transmigration Decree No. Kep.100 / Men / VI / 2004 is not clear, the type and nature of work to do with DPWA very flexible and multi interpretation, does not regulate about the decent daily pay, does not regulate the employment system, the DPWA can be the PHL list that is massive which lead workers do not have evidence of a working relationship, then there is no social security employment. These factors have open up opportunities for employers to hire workers freely forever with PHL status and eliminate the basic rights of workers without any sanctions, so it is not fair and there is no legal certainty.
- b. The legal structure:
 - Supervision by a responsible agency in the field of employment can not be done because of the written Daily-paid Employment Agreement and List of the Daily-

paid workers are never existed, let alone registered by employers, in addition, limited human resources because (there is only one (1) person Inspectors for the area Asahan).

- Trade unions / labor unions can not represent PHL role to protect and defend their rights if they are not fulfilled, because PHL can not be members of trade unions / labor unions because it is not permanent employees.
- Plantation sector employers' association has not set workflow, making it difficult to determine which permanent jobs and a core which is a kind of work of PKWTT and PKWT.
- DPWA dispute resolution through the Industrial Relations Court ineffective and inefficient because it takes a long time, hard executions carried out even though the decision was legally binding because it opens the opportunity for extraordinary legal remedy Reconsideration, and the payment of workers' rights is also an object of the Commercial Court.

c. Legal culture:

- People in the plantation still receives PHL practices or plantation workers as a habit of the Dutch colonial era, because of the lack of jobs and low levels of education, knowledge and skills of workers.
- Although the substance DPWA of the Ministry of Manpower and Transmigration Decree No.Kep.100 / Men / VI / 2004 has provided greater protection to employers, but employers are not doing it with goodwill. Employers also are not willing to voluntarily implement the decision of the Industrial Relations Court related DPWA despite it has inkraht already.

E. Reconstruction of the PKHL in equity-based Employment Law.

Special characteristics of labor relations, workers as a receiver and employers as a provider established in the relationship that is not balanced. The negotiations in the employment relationship is being limited, especially with the conditions in Indonesia where the job opportunities are not balanced with the number of the existing workforce. This is resulted to positions of the workers are weak both socially and economically (Gunarto, 2014).

The Employment law should regulate non-equilibrium so the harmonious working relationship is consistent to the value of the employment relationship, if it is

harmonious it will create the economic improvement, development stability, the entrepreneurs can invest safely and workers / laborers could prosper (Gunarto, 2014).

Principal findings of this study are: flexibility of labor relations, tend towards the weakening of workers' rights, so that is necessary for legal arrangements either through reconstruction.

Value of labor law is to balance the protection of workers 'rights and employers' business continuity protection. PHL position are weaker than employers and thus need to be given more protection for the balance embodied in the form of compensation. Thus the reconstruction value is compensated for the provision of workers' status-based imbalance of justice.

Reconstruction of the value has to be embodied in the reconstruction of the juridical PKHL in Article 10 and Article 12 Ministry of Manpower and Transmigrations Decree No. Kep.100 / Men / VI / 2004-based justice is as the following conclusion.

G. Conclusion

Based on the theoretical study and the results of research by the author, it can be concluded:

1. The substance of the new Ministry of Manpower and Transmigrations Decree No. PKHL Kep.100 / Men / VI / 2004 on the Implementation of the Provisions PKWT is yet fair, because it does not provide protection of the constitutional rights of workers / laborers and their families were balanced with the protection of the continuity of the business world, so the value is not in synchronization with Indonesian labor law. The substance PKHL in Ministry of Manpower and Transmigrations Decree Republic of Indonesia No. Kep.100 / Men / 2004 is not yet in sync with the legislation in the field of employment.
2. Factors inhibiting the protection of the rights of workers / casual workers in the plantation sector PKHL implementation are as follows:
 - a. The substance of PKHL of the Ministry of Manpower and Transmigrations Decree No. PKHL Kep.100 / Men / VI / 2004 is not clear, the type and nature of work to do with PKHL very flexible and multi interpretation, does not provide for a decent daily wage and work system, PKHL can be either list PHL which is massive, then no social security employment.

- b. The legal structure: Supervision by a responsible agency in the field of employment can not be done because the written PKHL and List Full of freelance are never existed, let alone registered by employers..Trade unions / labor unions can not act to protect and represent PHL, PHL cause can not be members of trade unions / labor unions because it is not permanent workers. Plantation sector employers' association has not set workflow.PKHL dispute resolution through the Industrial Relations Court is not effective and efficient, the execution is difficult.
- c. Legal culture: People in the plantation still receives PHL practices or plantation workers as a habit of the Dutch colonial era. Employers do not implement provisions PKHL with goodwill and also not willing to voluntarily implement the decision of the Industrial Relations Court related PKHL despite inkracht.

3. Reconstruction Work Agreement freelance in equity-based Employment Law are as follow:

No	Point	Discription
1.	Reconstructed Value	Granting compensation for the imbalance position of workers in order to realize the balance of justice, such legal restrictions on the rights and obligations of the employer.
2.	Rekonstruks Article 10 and Article 12 Kepmenakertr ans No. Kep.100/ Men/VI/2004	<p>In essence is:</p> <ul style="list-style-type: none"> - Article 10 paragraph (1): The definition of SFM and PKHL clear, restrictions on types of work, the establishment of large daily rates based on certain business sectors set local government welfare-based. - Article 10 paragraph (2): a working system based on time of employment or employment targets, where the rights and obligations of workers and employers balanced in the calculation of wages based on performance and results of the worker. - Article 10 paragraph (3): sanctions for violations of the provisions of that status PHL PKHL become permanent workers, reinforced by the addition of administrative sanctions if the employer does not comply with them. - Article 12 paragraph (1): employers must make PKHL in writing in duplicate 3 (three) each for employers, workers and government agencies the field of employment, minimum provisions on the content PKHL (so obviously their working relationship and those of his party), and the obligation to register with government agencies for local manpower (as a preventive measure PKHL abuse prevention in practice). - Article 12 paragraph (2): by adding the requirement contents Full list ie: the business sector companies, sex workers, registration number PKHL

		<p>every worker in the local employment agency and the type of work and the system works.</p> <ul style="list-style-type: none"> - Article 12 paragraph (3): the employer's obligation to make and maintain List Full freelance including addition and subtraction and must be submitted to local employment agencies (so that the monitoring function can be executed). - Article 12 paragraph (4): an additional paragraph about the fundamental right of workers to obtain employment social security in accordance with the time it works.
5.	Reconstruction Purpose	Providing justice for daily paid workers and employers in labor relations that are based on the Daily-paid Freelance Employment Agreement.

H. Suggestion

1. Minister of Manpower and Transmigration to revise the provisions of Article 10 and Article 12 Kepmenakertrans No. Kep.100 / Men / VI / 2004 in the form of regulation in accordance with Law No. 12 Year 2011 on the Establishment of legislation, in order to achieve fairness, certainty and legal expediency.
2. Supervision of the PKHL practices to be implemented on a regular basis by the agencies responsible for local manpower to prevent and crack down on the practice of modern slavery in the plantation sector, by adding the legal basis of authority clear, and adds to employee supervisors.
3. Local government immediately determine the amount of daily wages in the business sector PHL plantation-based welfare.
4. Association planters immediately establish the production process flow to ensure the plantation where the type of core or permanent work, which should not be done with PKHL.

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