The Informal Sector: Employment Dilema and Solution

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Abstract: The level of compliance of an employer with Law number 13 of 2003 on Manpower is only 30 out of 100 percent of all work relationships between employers and employees. The paradigm used in this study is called “post-positivism”. This research is based on the descriptive analysis. This research is a study that combines both normative legal research (doctrinal) and empirical research (non-doctrinal). The data in this study include both primary and secondary data. This problem is caused because the substance of the manpower law does not differentiate between the ability of individual employers, partnerships or legal entity. The redefinition of work relationship regulated by Law number 13 of 2003 on Manpower, has defined ‘working relationship’ for both formal and informal sectors, and now has become the right choice for raising the level of compliance by businesses.

Keyword: employees, informal sector, working relationship

1. Introduction

The LIPI study of Law number 13 of 2003 on Manpower and information sources from the Ministry of Employment of the Republic of Indonesia stated that only 30% (thirty percent) of 100% (one hundred percent) of labor relations in the community are in compliance with Law number 13 of 2003 on Manpower [1]. The working relationship is defined as the relationship of employers with employees based on labor agreements that meet and define the elements of wages, job orders, and work [2]. The subject of the employment relationship is both employers and employees. Employers are defined as individuals, partnerships and legal entities who run the companies either owned individually or owned by others [2]. Employees are defined as any person who works for a wage or any other form of payment [2]. Starting from the definition of employment, all individuals, partnerships, and legal entities that run companies with either a large amount of capital or a small amount of capital are referred to as businesses or companies. If in running their business they hire workers, then both parties are tied to the obligations of working relationship. Thus, a legal obligation that must be met by the employer was born, such as basic rights for employees. The simplest example of normative rights that must be met is the minimum wage set according to the district or province.

Considering the differences in capital and scale of various businesses, it can be difficult for individual entrepreneurs and partnerships to fulfill the previously mentioned legal obligations, for example, a driver who works for an individual who offers transportation for school children. According to the provisions of Law number 13 of 2003 on Manpower, the individual owner is a business and the driver is an employee. In such a case, the driver is entitled to certain rights, but a condition where the driver receives these rights will be difficult to find. The Problems: A). Why is the level of compliance of business owners with the law governing manpower so low? B). Can the informal sector become a solution in the effort to improve compliance of businesses with the law governing manpower and employment?.
2. Methodology

The paradigm used in this study is called “post-positivism”. This research is based on the descriptive analysis. It is called descriptive because it hopes to obtain a complete and systematic picture of the informal sector as both dilemma and solution. It is called analysis because thereafter an analysis will be done on various aspects of the rule of law found in Law number 13 of 2003 on Manpower. This research is a study that combines both normative legal research (doctrinal) and empirical research (non-doctrinal). The data in this study include both primary and secondary data. The data obtained, both from primary as well as secondary sources have been studied and then classified according to its type. The basis of the analysis used must be constant, steady and without contradiction so that the conclusions drawn can be accounted for in a rational way.

3. Findings

3.1 The cause of the low level of compliance of employers with Law number 13 of 2003 on Manpower

One of the previous causes of the non-compliance of business owners with Law number 13 of 2003 on Manpower has been the inability of businesses to fulfill legal obligations which resulted from establishing the employer-employee relationship. The obligation to pay a minimum wage to workers for companies that have large amounts of capital would not be a problem, but for companies with little capital, paying a minimum wage is a big problem. The working relationship Law Number 13 of 2003 on Manpower does not reflect the values of Pancasila and the Constitution of the Republic of Indonesia of 1945, especially the value of the fifth rule of Pancasila, social justice for all the people of Indonesia and Article 28D (2) Constitution RI 1945, which concerns with a fair working relationship, because it does not distinguish individual entrepreneur capabilities, partnerships and legal entities. As a result, employees are disadvantaged, because the employees’ basic rights are not met by employers who do not have the necessary capital to carry out the obligations set by Law No. 13 of 2003 on Manpower.

In Indonesia's economy, most enterprises are in the form of small businesses, which generally operate without clear legal status. Private partnerships or Maatschap are regulated in the provisions of Article 1618 up to 1652 of the Civil Code. Firms and CV’s are subject to the provisions of Article 15 through Article 35 of the Book of the Laws of Commerce (Commercial code) and are forms of business entities that do not have certain legal status. Other forms of business entities with reduced legal status are: commercial companies, associations, civil partnerships, partnership firms, and limited partnerships. Also, business entities are formed as civil partnerships and civil firms[3].

According to Sri Adiningsih, small businesses with a capital of less than 1 billion IDR, which is 99.85% of all businesses, are able to absorb 88.59% of the total labor force of the same year. Likewise, medium-scale enterprises (0.14% of total businesses) with a capital value of between 1 billion and 50 billion IDR are only able to absorb 10.83% of the workforce. While large-scale enterprises (0.01%) with capital above 54 billion IDR are only able to absorb 0.56% of the workforce. So, their contribution to the economy is increasingly important. Micro, small, and medium enterprises should receive increasingly more attention from policymakers, especially government agencies responsible for the development of such enterprises[4].

According to the opinion of Sri Adiningsih, it is not surprising that labor relations tend to be run only by law-abiding businessmen with large-scale capital, which generally are legal entities, especially limited liability companies. However, there are many companies who deny labor relationships using the reason, ‘limited ability of the company’, until the rights of the workers are ignored.
Online media disclosed that in Western Java, 140 companies applied for the suspension of the minimum wage [5]. This shows that not all companies are able to fulfill the legal obligation to pay the minimum wage which is a basic right for workers. So how will it be with companies with a smaller capital scale such as individual or partnership formed businesses?

Darmanto, an entrepreneur who runs a company formed as a partnership, said it was difficult to meet the legal obligations to workers in accordance with Law number 13 of 2003 on Manpower, because of inadequate financial capacity. He also explained the reasons other than the ability of companies and the perception that the working relationship between employees and individual employers or partnerships that run companies as such are not included in the regulations of Law number 13 of 2003 on Manpower.

The government actually has distinguished and qualified the scale of business as stipulated in Law number 20 of 2008 on SMEs (small and medium enterprises). The provisions of Article 6 paragraphs (1), (2), and (3), provide criteria for business based on net worth and/or annual sales. For example, the criterion for micro business is a net worth of at most Rp.50.000.000, - (fifty million) with annual sales of Rp.300.000.000, - (three hundred million rupiah).

The theory of antinomy of Aloysius Uwiyono as the basis for the establishment of labor law, explains balance or compatibility [6]. Categorizing the financial ability of individual entrepreneurs with partnerships and legal entities has already caused incompatibilities or imbalances, until regulations are needed differentiate the definition of companies based on their amount of capital, because based on the criteria of Law number 20 of 2008 on SMEs and the opinion of Sri Adiningsih, small-scale enterprises absorb up to 88.59% of the labor force.

3.2 Efforts to Enhance Compliance of Companies

Labor relations, which are governed by Law No. 13 of 2003 on Manpower are unable to provide legal protection for employers and employees, due to the inability of some employers. This problem is originated from the Act, so it is necessary to redefine the legal substance in the case of Act No. 13 of 2003 on Labor, particularly Article 1 (15) and Law number 13 of 2003 on Manpower, namely:

"The working relationship is the relationship between employers and employees/laborers by the employment agreement, which has elements of jobs, wages, and commands".

The substance of the law, according to Friedman, is the actual results published by the legal system in the form of legal norms, both regulations, and decisions, used by law enforcement officials as well as by those who are governed by the law.

A redefinition of ‘working relationship’ as regulated in Law Number 13 of 2003 on Manpower needs to be done as a form of government responsibility to provide legal protection and welfare for workers and their families. When these two actions are carried out, then the government will become just. Justice granted by the government to its citizens through a redefinition of employment relationships regulated in Law Number 13 of 2003 on Labor, would be a form of distributive justice. The triangular theory of justice of Notonagoro, which mentions that there are three types of justice, which are: distributive justice, obedient or legal justice, and commutative justice.

Triangular justice demands and emphasizes the importance of not only the government but also the employers and employees in obeying the law (legal justice), and that between employers and employees there should also be a sharing of rights and obligations (commutative justice). When the roles of all are carried out accordingly then new justice will be realized.
The provisions of Article 1, paragraph (15) and Law number 13 of 2003 on Manpower, concerning the definition of the employment relationship, has much in common with the definition of the employment relationship in the formal sector which is regulated by the provisions of Article 1, paragraph 7 of Law number 25 of 1997 on Manpower, which has been declared to be revoked. Historically, the working relationship, which is governed by Law number 25 of 1997 on Manpower, was divided into the formal sector labor relations and the informal sector labor relations. This division is actually very fair to employers and employees in the informal sector because the informal sector employers' legal obligations to employees were limited to health insurance and accidents. This certainly would give opportunities for micro, small, and medium enterprises to be able to grow.

Informal sector business owners, which are regulated in Law number 25 of 1997 on Manpower, include an individual or a few people who do business together that is not a legal entity. Meanwhile, the form of business that is not a legal entity is not only restricted to individual employers but also partnerships and cooperatives that have not been established as legal entities. To redefine the informal sector the company's scale of capital must be made a criterion in determining which companies are included in the informal sector. According to the above criteria, the employment relationship regulated in Law number 13 of 2003 on Manpower can be redefined by dividing it into two forms of working relationship, namely:

The formal sector employment relationship as the relationship between employers which are legal entities with their employees based on an employment agreement, which has elements regarding work, wages, and commands.

The informal sector employment relationship as a working relationship which is established between workers and individuals or persons who are operating a joint venture, that is not a legal entity, and on the basis of mutual trust and agreement, in which there is received pay and/or remuneration or profit sharing. This division will lead to legal consequences for employers and formal and informal sector workers. First, with regard to the protection of employee’s rights and employer’s obligations. Secondly, with regard to work regulations. So, the rights of workers in both the formal and informal sectors need to be formulated. Redefining the working relationship will have an impact on changes to be made to Law number 13 of 2003 on Manpower. Regulations for employer – employee work relationships must be harmonized or adjusted. This is the dilemma of labor relations regulations of the informal sector.

4. Conclusion

One of the causes of non-compliance is that individual employer, partnerships, and legal entities have different levels of ability determined by various capital and owned wealth. It caused legal obligations regulated and governed by Law number 13 of 2003 on Manpower, must also be distinguished. Redefining ‘working relationship’ as regulated by Law No. 13 of 2003 on manpower, would bring about an increase of company compliance in both the formal and informal sectors. The prerequisite is that the protection of workers' rights and also working requirements must be clearly determined, so that they can be accepted by employers and employees, which can be the dilemma.

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