AUTHORITY OF LABOR INSPECTION FOR GOVERNMENT EMPLOYEES WITH WORK AGREEMENT (PPPK)

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Abstract: There is a problem in terms of legal protection for honorary workers working in government agencies. But with the enactment of Law No. 5 of 2014 on State Civil Apparatus, the existence of honorary staff is then removed. The term honorary staff is no longer in the ASN Act and is replaced by a Government Employees with Work Agreement (PPPK). However, honorary staff cannot automatically become Government Employees with the Employment Agreement. The PPPK works under a working agreement with the State Apparatus, whose work agreement can be extended as required. There are legal issues concerning Labor Inspection and the enforcement of legal protection for PPPK as it was before for honorary workers. Therefore, it is necessary to clarify the position of “State Apparatus” as “Procuring Entity” in the applicable laws and regulations as well as the authority over the supervision of their employment. The COPC is entitled to legal protection without discrimination.

Keywords: supervision, government employee, work agreement

I. INTRODUCTION

In employment agreements for honorary workers, there are sometimes many violations of the prevailing labor norms. Such as labor agreements for honorary workers whose wages are well below the Regency/City Minimum Wage, continuous employment contract extension or Holiday Allowance and Leave are not provided under applicable labor law regulations. This is due to the weak regulation related to the protection of honorary staff and supervision. Although many honorary staff has been appointed as civil servants based on Government Regulation No. 48/2005 on the Appointment of Honorary Staffs to CPNS, there is still many honorary staff who cannot be appointed because they do not meet the requirements.

With the enactment of Law Number 5 Year 2014 on State Civil Apparatus, the existence of honorary staff is then removed. The term honorary workers no longer exist in Law No. 5 of 2014 concerning the State Civil Apparatus and are replaced by Government...
Employee with Work Agreement (PPPK). However, honorary staff can not automatically become Government Employees with Work Agreement, considering that to be a PPPK there should be selection and test, so that the local government cannot arbitrarily encompass the PPPK and must be in accordance with the needs.

Moreover, if we see that during this honorary workers who work both at the level of provincial, district or city governments do not get protection from the side of supervision of labor norms. So that for the future for Government Employees with Work Agreement (PPPK) should be given protection from the aspect of labor inspection, especially related to employment agreement for Government Employee with Working Agreement (PPPK), so injustice for honorary workers in the past does not continue for Government Employees with Work Agreement (PPPK) in the future.

The principle of legal protection of government action is based on the concept of protection of human rights because according to the history of the west, the birth of concepts of recognition and protection of human rights is directed to the limitation and laying of the obligations of society and government.  

Manpower in private companies has received legal protection from the side of labor inspection, this can be seen from the legislation that has regulated it, as in Law No. 3 of 1951 on the Enactment of Labor Inspection Act of 1948 Number 23 of the Republic Indonesia For All Indonesia, Law Number 13 Year 2003 on Manpower, Government Regulation Number 8 Year 1981 on the Protection of Wages and other legislation. Meanwhile, for non-civil servants such as Government Employees with Work Agreement (PPPK) which has been ratified its existence in Law No. 5 of 2014 on State Civil Apparatus, there is still a vacuum regarding the authority of labor inspection, because until now there is no legislative regulation, an invitation that clearly regulates labor inspection for non-civil servants working in government agencies.

If we look at the side of the National Social Security membership under Law No. 40 of 2004 on the National Social Security System, in Article 1 point 12 explains that “Employer is an individual, an entrepreneur, a legal entity or other entity that employs a workforce or state organizers employing civil servants by paying salaries, wages or other forms of remuneration”, it makes clear that there is no distinction between the rights of workers in private or State Civilian Enterprises in obtaining National Social Security protection.

Of Law Number 24 Year 2011 on the Social Security Management Agency, also provides the same explanation of the Procuring Entity definition. If the provision of the National Social Security System, whether the participation in BPJS Health or BPJS Employment is not distinguished between private and ASN workers, it will be a question of why in the enforcement of other labor norms PPPK does not get labor inspection like workers in the company.

The method used in this study is normative legal research, to examine the synchronization of legislation and analyze the applicable legal norms. As well as using a

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II. RESULT AND DISCUSSION

2.1 Legal Protection and Justice for Non-Civil Servants

Satjipto Raharja in Arba stated that “the protection of the law is to provide guidance on human rights harmed by others and the protection is given to the public in order to enjoy all the rights granted by the law”.

All workers who work in companies throughout the territory of Indonesia get legal protection from the side of labor inspection, either PKWTT or PKWT. Starting from the protection of wage norms, social security norms, work time rest periods, work relations norms to safety and health norms. All labor inspectors have responsibility for the implementation of all these norms in accordance with the prevailing laws and regulations in Indonesia. However, for non-civil servants in the government, or what we are familiar with contract workers who have now been replaced by the COP in Law No. 5 of 2014 on ASN, do not get the same protection as the workforce of the company. This can be seen from several cases of labor practices violating labor migrants working with employment agreements with the government, among others:

a) Decision of the Head of Department of Education and Culture of West Nusa Tenggara Province Number: 188.4 / .UM / DIKBUD concerning the Stipulation of Cleaning Service and the Wage of Provision of Wages at West Nusa Tenggara Provincial Education and Culture Office of Fiscal Year 2017, while the violation of labor norms contained therein are:

1) The amount of monthly wage given is Rp.1.631.200, - , while the Office of Education and Culture of NTB Province is in the area of Mataram City, so it must follow the Minimum Wage of Mataram City of Rp.1.714.216, - , this is contrary to Ministerial Regulation Manpower of the Republic of Indonesia Number: PER-1 /MEN/1999 on Minimum Wage Article 1 Paragraph (1) stating that “Minimum Wage is the lowest monthly wage consisting of basic wage including fixed allowance”, Law no. Article 90 Paragraph (1) states that “Employers are prohibited from paying wages lower than minimum wages as referred to in Article 89” and the Decree of the Governor of West Nusa Tenggara Number 561-958 of 2016 concerning Minimum Wage of Mataram City Year 2017 decides that “Minimum Mata Mataram City Year 2017 for Rp.1.714.216, - (One Million Seven Hundred Fourteen Thousand Two Hundred Sixteen Thousand Rupiah) per month “. This also applies only to workers whose working period is less than 1 year; over 1 year will apply wage scale structure.

2) Not granted the right to social security, such as BPJS Health and BPJS Employment, this is contrary to Law Number 24 Year 2011 on the Social Security Administering Body Article 15 stating that “the employer shall gradually register himself and his employee as a participant to the BPJS accordingly with social security followed”;

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b) Letter of Agreement Number: 814.2/137/Ktr.Ckr/I/2016 concerning Self-Procurement of Non-Permanent Employee Service For the Night Keeper at Cakranegara Sub-district Office of Mataram City Budget Year 2016, while there are violations of labor norms contained therein, among others:

1) Worker's remuneration using daily system of freelance, but still counting with 30 working days and conducted for 1 (one) year, this is contrary to Decree of Minister of Manpower and Transmigration Number Kep.100/Men/VI/2004 about Implementation of Work Agreement (2) “The daily casual work contract as referred to in paragraph (1) shall be conducted on the condition that workers work less than 21 (twenty-one) days in 1 (one) month” and Paragraph (3) “In the case of a worker/laborer working 21 (twenty one) days or more for 3 (three) months consecutively or more then the daily work contract is released into PKWTT “.

2) The amount of monthly wage given is Rp.1.200.000, -, while Cakranegara Sub-District Office is located in Mataram City area, so it must follow Minimum Wage of Mataram City 2016 Rp.1.550.000, -, this is contradictory with Ministerial Regulation Manpower of the Republic of Indonesia Number: PER-1 / MEN / 1999 on Minimum Wage Article 1 Paragraph (1) stating that “Minimum Wage is the lowest monthly wage consisting of basic wage including fixed allowance”, Law no. Article 90 Paragraph (1) states that “Employers are prohibited from paying wages lower than minimum wages as referred to in Article 89” and the Decree of the Governor of Nusa Tenggara Barat Number 561-725 of 2015 on Minimum Wage of Mataram City 2016 decides that “Minimum Mataram City Year 2016 for Rp.1.550.000, - (One Million Five Hundred Fifty Thousand Rupiah) per month “;

3) Not granted the right to social security, such as BPJS Health and BPJS Employment, this is contrary to Law Number 24 Year 2011 on the Social Security Administering Body Article 15 stating that “the employer shall gradually register himself and his employees as participants to BPJS in accordance with social security followed “;

4) The work period of the workforce exceeds 3 years with an extended work contract (data attached), this is contradictory to Law Number 13 Year 2003 concerning Manpower Article 59 Paragraph (4) which reads “certain time-based employment agreement for a certain period of time may be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year”;

By looking at both cases above, it can be seen that either the city government or the Provincial Government employed contract workers in a manner contrary to the prevailing laws and regulations and the absence of legal protection from the side of labor inspection that could prevent or prosecute such violations. This is, of course, a small sample of the many similar cases that continue to this day.

Contract workers or Government Employees with Work Agreement (PPPK) have the same right as a workplace in the company to obtain legal protection from the employment side. Legal protection is a basic right of all Indonesian citizens.

2.2 Understanding Employer

In Act No. 3 of 1951 on Labor Inspection, employers are referred to as employers. In article 3 the employer is a company. However, in other laws and regulations it is explained that the company is not the only employer to be supervised by the Labor Inspector in carrying
out the prevailing labor norms. The understanding of the employer in some other legislation, among others:

a) The definition of the Procuring Entity under Act No. 13 of 2003 on Employment
   In the general provisions of Law Number 13 Year 2003 article 1 point 3 it is explained that “an employer is an individual, an entrepreneur, a legal entity, or other entity that employs workers by paying wages or other forms of remuneration”;

b) The Procurement of Employers in Law Number 40 Year 2004 regarding National Social Security System
   If we look at the side of the National Social Security membership under Law No. 40 of 2004 on the National Social Security System, in Article 1 point 12 explains that “Employer is an individual, an entrepreneur, a legal entity or other entity that employs a workforce or a state organizer employing public servants by paying salaries, wages or other forms of remuneration”;

c) Law Number 24 Year 2011 regarding the Social Security Administering Agency
   In Article 1 Number 9 it states that “Employer is an individual, an employer, a legal entity, or other entity that employs a workforce or a state official who employs a civil servant by paying wages, wages or other forms of remuneration”;

   From the three definitions of the employer mentioned that the legal entity or other entity as one of the employers. The term of legal entity is a translation of Dutch, rechtspersoon.

   According to Molengraaff states that “the legal entity is essentially the rights and obligations of its members together and in it there is an indivisible shared treasure. Each member not only becomes the individual owner for each of them in an indivisible whole, but also as the co-owner of the entire property, so that every member is also the owner of the organized property of the legal entity.”

   According to Article 1653 BW legal entities can be divided into 3 kinds namely:

   (1) Legal entities held by the government / public authority, for example Level I Region, Level II Region / Municipality, Banks established by the state and so on.
   (2) Legal entities recognized by the government / public authority, such as associations, churches and religious organizations and so forth.
   (3) A legal entity established for a particular purpose that is not contrary to law and morals, such as PT, insurance associations, shipping and so on.

   Furthermore Riduan Syahrani argues that “legal entity can be distinguished by its form and its kind:

   (1) Based on the form of legal entity can be divided into two kinds:
       a. The corporation (corporatie) is a combination of persons in association with the law acting together as a separate legal subject. Therefore, the corporation is a member-owned legal entity, but has its own rights and obligations separate from the rights and obligations of its members. For example: PT (NV), insurance associations, and

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3 Jimly Asshiddiqie, *Development and Consolidation of State Institutions Post Reform, Secretariat General and Registrar of MKRI*, 2nd Print, Jakarta, 2006, p. 69
4 Ridwan Syahrani, *Ins and Outs and Civil Law Principles*, Bandung, p. 57
members. For example: PT (NV), insurance associations, shipping, cooperatives, and so forth.

b. The foundation (stichting) is an isolated treasure for a particular purpose. So on the foundation there is no member, there is only the caretaker.

(2) Based on the type of legal entity can be divided into two kinds:
   a. Public legal entity;
   b. Private legal entities.”

In general, legal entities can be distinguished in two types more, namely public legal entities and private entities. Public legal entity is a legal entity established under public law or the public or concerning the interests of the state. While private legal entities are legal entities established on the basis of civil law or civil law concerning the interests of persons or individuals included in such legal entities.

In Article 1 Number 9 of Law Number 24 Year 2011 regarding the Social Security Administration Agency it is stated that “Employers are individuals, employers, legal entities or other entities employing labor or state officials who employ public servants by paying salaries, wages, or other form of remuneration”. The organizer of the country is mentioned directly as an employer in this Act.

In the theory of interpretation of the law is known systematically interpretation is the interpretation that interprets the laws and regulations associated with the rule of law or other laws or with the entire legal system. Because, the formation of a law is essentially a part of the entire system of legislation in force so that there cannot be a single law that stands alone without being bound by other laws and regulations. As a logical consequence of the coming into effect of a legislative system, to interpret the law should not deviate from or exit the system. Therefore this systematic interpretation is also called logical interpretation.

By using a systematic interpretation in view of the understanding of the employer in the Act Number 24 of 2011 on the Social Security Administering Agency, it can be said that the State Operator as the Procuring Entity becomes generally applicable to all other laws and regulations, since Law 24 Year 2011 on Social Security Administering Agency cannot stand alone.

2.3 Supervision of Government Employee with Work Agreement (PPPK)

In relation to the number of irregularities occurring in the working relationship between government and non-civil servant workers employed by employment agreements commonly known as Government Contract Employees who are now superseded by Government Employees with Employment Agreement (PPPK), KASN has absolutely no authority in its control even during this violation is also not touched by the Labor Inspection conducted by the Employee of the Labor Inspectorate.

In an interview with Diah Artanti Puspasari, SH., M.Hum Head of Sub Directorate Employment Relations and Labor Protection of the Ministry of Manpower of the Republic of Indonesia in a national coordination meeting on labor inspection in 2017 in Bandung, stated that “there is disharmony from Law Number 5 Year 2014 on State Civil Apparatus and Law

5 Ridwan Syahrani, Ibid, p. 58-59
Number 13 Year 2003 concerning Manpower, so it is necessary to coordinate the function of the Ministry of State Apparatus Empowerment and Bureaucratic Reform to the Ministry of Manpower. With regard to Labor Inspection for PPPK in ASN, there should be a clear legal umbrella in the implementation of labor inspection function for PPPK, either from labor norm or SMK3 (Occupational Safety and Health Management System) “.

The State Operator shall be included in the employer, with the appointment of the COP as a workforce using employment agreements, providing remuneration and the obligation to guarantee all rights are reasonably acceptable, in accordance with applicable laws and regulations. The COPC is also entitled to the protection of the law in the implementation of the applicable labor norms, and is entitled to protection under its supervision carried out by the Employee of the Labor Inspectorate. There is no justification for differential treatment for workers who work in government agencies such as PPPK. Every COP shall be entitled to all forms of equitable legal protection in labor law and regulations without any discrimination.

Law and justice are two things that cannot be separated, have a very close attachment and influence each other in the aspects of community life. The law in its formation must certainly fight for justice aspect and become the main goal so that the realization of social stability that aspired in society.6

From the point of view of Human Rights (HAM), this discrimination is certainly contrary to human rights. Specifically, discriminatory practices conflict with Article 38 paragraph (3) of Law no. 39 of 1999 on Human Rights, where it is stated that “Everyone, whether male or female who performs equal, comparable, equivalent or similar work, is entitled to the same wage and terms of employment agreement.” Then, this discrimination also goes against article 7 of the International Covenant on Economic, Social and Cultural Rights (ECOSOB) endorsed by Law no. 11 of 2005, in which workers have the right to obtain “equal remuneration for work of equal value without any distinction.”

III. CONCLUSION

“State Apparatus” is the “Procuring Entity” for the COP, so that the state apparatus in taking a policy related to the COP should take note of the mandate of the Manpower Act, and the COP shall be entitled to the protection of the law in the implementation of the applicable labor norms and shall be entitled to protection under its supervised supervision by Employment Supervisors. There is no justification for differences in treatment for workers with employment agreements working with government agencies. Every COP shall be entitled to all forms of legal protection in labor law and regulations without any discrimination.

The occurrence of disharmony between the Labor Law and the Act on ASN, will certainly cause problems in the future so that the need for a clear legal umbrella in the implementation of labor inspection functions for PPPK and the coordination function of the

Ministry of State Apparatus Empowerment and Bureaucratic Reform to the Ministry of Manpower.

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