

# Toward Affirmative Legal Policy for Workers Through Centralization of Labor Supervision

Pujiastuti, Endah<sup>1\*</sup> Saraswati, Retno<sup>2</sup> Lita Tyesta, A.L.W<sup>3</sup>

<sup>1</sup>*Faculty of Law University of Semarang, Semarang, Central Java, Indonesia*

<sup>2,3</sup>*Faculty of Law University of Diponegoro, Semarang, Central Java, Indonesia*

<sup>\*</sup>*Corresponding author. Email: endah.pujiastuti@usm.ac.id, saraswatiiretno@yahoo.co.id, litatyestalita@yahoo.com.*

## ABSTRACT

Labor supervision is a form of guarantee so that the labor regulations set by the Government can run following road map the determined. As a manifestation of the state's presence in protection for workers, the Government of Indonesia has issued several policies related to labor supervision. There is a movement of supervision policy from time to time, which of course cannot be separated from government legal policy in the field of labor supervision. At present, the legal policy of labor supervision is centralized supervision. Through the centralization of supervision, it is believed that it will provide legal protection for workers. Pros and cons of following the political movement of labor supervision which was originally decentralized to centralization. Based on these conditions, this article examines the centralization of labor supervision to efforts to realize affirmative legal policy for workers.

**Keywords:** *labor, legal, policy, supervision*

## I. INTRODUCTION

The Constitution of the Republic of Indonesia 1945 has mandated the realization of basic rights for citizens. This mandate signaled to the government as the organizer of the state to realize these basic rights. In the context of the rule of law, the steps were taken by the government certainly cannot be separated from the *ius constitutum*. The government as the executive power holder is obliged to implement the applicable laws and regulations. Besides that, the Government in its scope of authority can also make policies to realize the laws and regulations. To realize the mandate of the applicable laws and regulations, supervision becomes a crucial matter. It is a form of guarantee so that the laws and regulations stipulated by the Government can run. Through this supervision, can also be designed *ius constituendum* by resting on the weaknesses/deficiencies found in the effort to realize prosperity for the whole community.

Supervision of the implementation of laws and regulations must be carried out in all fields without exception. One such area (which is the focus of the study in this article) is the field of employment. Labor supervision is carried out to ensure that labor laws and regulations can run following *road map* determined [1]. Until now, various labor supervision regulations have been launched by the Government of Indonesia to improve the labor supervision system and strengthen labor supervision arrangements.

Every legal product determined by the Government is certainly based on certain considerations at the time the laws and regulations were made, or in other words, the legal policy of stipulating a statutory regulation is inseparable from the sociological conditions, juridical facts, and philosophical purposes when they were drafted. In line with

this, when there is a revocation, change, or making legislation, legal policy should be directed (*ius constituendum*) to achieve the goal of realizing public welfare. The *ius constituendum* lack of an indicator of the imprecision of legal policy. Concerning this matter, the purpose of labor supervision is carried out to guarantee the implementation of labor regulations, the goal is to eliminate/minimize the existence of violations of labor regulations so that the industrial relations process can run well and harmoniously. Labor supervision is a form of protection for workers and also has a social purpose. If the labor supervision legal policy is not able to realize the goals, target, and protect workers, the supervisory legal policy needs to be reviewed.

Labor supervision is currently implementing a centralized system. This system is believed by the Government to be able to provide maximum legal protection for workers. Or in other words, the centralized legal policy of labor supervision is a form of affirmative policy for workers. But on the other hand, the centralization of labor supervision is considered not to protect workers. Centralization is seen as distancing the presence of the state from workers. Based on these conditions this article reviews the legal policy of labor supervision that are centralized in the context of its alignments with workers.

## 2. DISCUSSION

### 2.1 Legal Policy

Legal policy, in general, is useful to know the processes covered in the six study areas to produce a legal policy that suits the needs and sense of justice of the community. The six study areas cover the process of extracting values and aspirations that develop in society, the process of debate and formulation of values and aspirations in the form of draft

legislation, the state administrators who are authorized to formulate and establish legal policy, legislation containing legal policy, the factors that influence and determine a legal policy, and the implementation of these laws and regulations as the implementation of legal policy [2]. As a series of processes, legal policy cannot be separated from the context. It does not stand alone regardless of its environment, but exists and is in its environment. Sunaryati Hartono stated that legal policy is inseparable from the existing social and traditional realities, and as a member of the world community, Indonesian legal policy is inseparable from reality and international legal policy [3].

If you look at the whole study of legal knowledge concerning *das sollen* and *das sein*, then the legal policy examines the relationship of *das sein* with / being *das sollen*, namely the state or thought of the people which gives rise to legal provisions and how the state or thought of the community raises legal provisions thus [4]. Implied here are efforts to bring closer *das sollen* and *das sein* through legal policy.

Some scholars have provided definitions of legal policy. Abdul Latif and Hasbi Ali concluded that the legal policy is part of the science of law that examines changes in applicable legal provisions by selecting and determining legal provisions regarding the objectives and ways and targets to achieve these objectives in meeting changes in people's lives as the law aspired [5]. The definition of legal policy is also conveyed by Siswanto S as an ideal, ideas and wishes of the government which are realized in the form of rules [6]. If the law is seen not as a goal but only as a bridge that leads us to the ideals that are aspired, then the legal policy is expected to create the desired national law. It appears here that the direction of legal policy is the realization of the *ius constituendum*.

Satjipto Rahardjo stated that politics is an area in society that deals with that society. Politics is also the activity of choosing a particular social goal. Likewise in law, namely the existence of the necessity to determine choices regarding objectives and ways to be used to achieve these goals. The law must always adjust to the goals to be achieved by the community. Thus, the law has dynamics. Political law is one of the factors that cause the dynamics because it is directed to the *iure constituendo* [7].

Another opinion expressed by Moh. Mahfud MD. He gives that a *legal policy* or the legal direction that will be enacted by the state in the form of new laws and the replacement of old laws [8]. From the assumption that law is a political product, so once politics change, the law also changes [9]. Law as an outcome is the result of a political process following its configuration, meaning that every legal product must be a crystallization of political thought and/or process [10]. Furthermore, it was also conveyed that the political orientation of law is a desirable state goal and guided by the basic values of the state's goals [11].

## **2.2 The Legal Policy on Centralitation Labor Supervision**

Labor supervision policies in Indonesia cannot be separated from the provisions of the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (2) and Article 28 I

paragraph (4). The two articles indicate that the protection and fulfillment of the basic rights of citizens must be realized by the Government in all its forms, including seeking guarantees through regulation. In this case, labor supervision policies must refer to and not conflict with the basic rights stipulated in the constitution [12].

Labor supervision according to the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower Article 1 Number 32 is the activity of supervising and enforcing the implementation of legislation in the field of manpower. Labor supervision is a function of the state in terms of labor administration that wants to ensure the implementation of labor regulations in the workplace. This is a form of state presence in protecting workers' rights. Referring to the philosophy of supervision as an effort to prevent as early as possible the occurrence of irregularities, waste and misuse, obstacles, mistakes and failures in achieving goals and target and the implementation of organizational tasks, labor supervision is an important stage in a series of implementation of laws and regulations invitation in the field of employment.

Along with the enactment of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia 2014 Number 244), there are movement arrangements regarding the implementation of labor supervision. The law which was passed in Jakarta on September 30<sup>th</sup>, 2014 was declared effective from the date of promulgation on October 2<sup>nd</sup>, 2014 [13]. Structurally there has been a change in the position of the labor supervisor from the structure in the district/city to the center. this is based on the provisions as stipulated in the Appendix of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government concerning the division of concurrent governmental affairs between the central government and the provincial and district/city regions letter G number 4. It is determined that the central government holds the supervisory authority related to the establishment of a labor supervision system and the management of labor supervisors, while the provincial government has the authority to carry out labor supervision. The management authority of the management element includes the management of facilities and infrastructure, personnel, materials, work methods, while the authority in the management of management functions includes planning, organizing, implementing, coordinating, budgeting, monitoring, research and development, standardization, and information management.

Based on the law, this law has taken place in a movement of authority where the district/city regional government which originally had the authority in carrying out labor supervision has no longer had authority in the implementation of labor supervision [14]. It appears that there is a change in the labor supervision policy from what was originally decentralized to centralized.

This policy change is certainly inseparable from the purpose of labor supervision. From the political aspect of the law, by referring to the opinion of Moh. Mahfud MD, the purpose of labor supervision must also be oriented towards the country's goals and be guided by the basic values of the country's

goals. In this case, the law is a tool that works in a legal system to achieve the goals of the state or the ideals of society. As discussed in the previous sub-section, the purpose of labor supervision is to guarantee the implementation of labor laws and regulations in the workplace.

Some things need to be examined about the implementation of labor supervision before the promulgation of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government. About independence, empirical facts are found that there are interventions in the implementation of labor supervision. The implementation of labor supervision and its reporting is suspected to be inseparable entirely from the intervention of other parties. This causes the supervisory function to not run optimally, or in other words, the independence of labor supervisors has not yet been realized. When the independence is not realized, if there is a violation of the provisions of the legislation in the field of labor that is not implemented in the workplace, the facts cannot be revealed completely and correctly. To ensure the realization of the independence of supervisory employees, centralization of labor supervision is needed.

Judging from the aspect of the availability of human resources as a supervisory employee, it is found that the limited number of available labor supervisors. Until the end of 2018, the total of labor supervisors in Indonesia is 1673 people spread across 34 (thirty-four) provinces. 1673 labor supervisors consist of general supervisors and specialist supervisors. The total of companies oversees 228,062 companies [15]. Seen here is a comparison with a fairly large ratio. To overcome this gap centralization is the right choice because the management of supervisory employees is in the hands of the central government. Thus, they will be more easily managed to meet the needs of supervisory employees in all regions of Indonesia following the needs in each province.

Other aspects that need to be examined also are the availability of infrastructure and inadequate budgeting, increasingly complex labor issues, and a labor supervision system that is less integrated by involving all elements of stakeholders. Through the centralization of labor supervision, these constraints can be overcome effectively and efficiently, both those relating to infrastructure and funding (budget). Besides that, the complexity of labor issues can also be handled more comprehensively.

Through the centralization of labor supervision, these facts are sought to be addressed. If the centralization of labor supervision can proceed following *road map* the specified, the government's steps to ensure the implementation of laws and regulations in the field of labor will be realized. This means that the guarantee of protection for workers will be realized by the goals specified in the country's constitution. Another meaning that can be captured here is the existence of the partisanship of the state to workers who are empirically in a *subordinate* position.

One thing that must not be neglected and must be guarded is the realization and improvement of the labor supervision system sustainably from this centralized legal policy. It has

been 5 (five) years running, but it is felt that it has not shown significant results. It is even suspected that there are still friction of interests and also power struggles.

### 3. CONCLUSION

Labor supervision is an activity to supervise and enforce the implementation of laws and regulations in the field of manpower. Labor supervision is a realization of the function of the state and is a manifestation of the state's presence in protecting workers' rights. The labor supervision policy as a legal product cannot be separated from its legal policy. The legal policy of labor supervision implemented since the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government is a centralized labor supervision. This legal policy is based on the results of an evaluation of the implementation of labor supervision before the promulgation of the Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government. where labor supervision policies are decentralized and do not provide maximum benefits especially for workers. De jure, the legal policy of labor supervision which is centralized shows the state's support for workers. De facto, escort is needed in its implementation considering the persistence of interests and power struggle.

### ACKNOWLEDGMENT

Funding by Kementerian Riset, Teknologi, dan Pendidikan Tinggi Republik Indonesia – Direktorat Jenderal Penguatan Riset dan Pengembangan.

### REFERENCES

- [1] Pujiastuti, Endah, and A. Heru Nuswanto, "Pengawasan Terhadap Perusahaan Penyedia Jasa Pekerja/ Buruh", *Prosiding. SnaPP 2014 Sosial, Ekonomi, dan Humaniora*, ISSN 2089-3590, EISSN 2303-2472, Bandung: SnaPP Unisba 2014, pp 311–318.  
<http://proceeding.unisba.ac.id/index.php/sosial/article/view/174>
- [2] Syauckani, Imam and A. Ahsin Thohari, *Dasar-Dasar Politik Hukum*. Cetakan kesembilan, Jakarta: RajaGrafindo Persada, 2013, pp 51-52.
- [3] Hartono, Sunaryati, *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Cetakan Pertama, Bandung: Alumni, 1991, p.1.
- [4] Latif, Abdul and Hasbi Ali, *Politik Hukum*, Cetakan Kedua, Jakarta: Sinar Grafika, 2011, p 36.
- [5] Ibid. p.11.
- [6] Siswanto S, *Politik Hukum Pidana dalam Undang-Undang Narkotika (UU Nomor 35 Tahun 2009)*, Jakarta: Rineka Cipta, 2012, p.60.
- [7] Rahardjo, Satjipto, *Ilmu Hukum*, Cetakan Kelima, Bandung: Citra Aditya Bakti, 2000, p.352.
- [8] Moh. Mahfud MD, *Konstitusi dan Hukum dalam Kontroversi Isu*, Cetakan Kedua, Jakarta: RajaGrafindo Persada, 2010, p.5.
- [9] [9] Ibid, p.71.
- [10] \_\_\_\_\_, "Perkembangan Politik Hukum :Studi tentang Pengaruh Konfigurasi Politik terhadap Produk Hukum di Indonesia", *Disertasi*, Yogyakarta: Universitas Gajah Mada, 1993, p.28.

- [11] \_\_\_\_\_.,“Moh. *Membangun Politik Hukum Menegakkan Konstitusi*, Jakarta: RajaGrafindo Persada, 2010, p.16.
- [12] Pujiastuti, Endah dan Ani Purwanti, Labor Supervision Policy in Indonesian Legal System Based on Pancasila, IOP Series, 2018, p.3. <http://iopscience.iop.org/article/10.1088/1755-1315/175/1/012192/meta>
- [13] Sekretariat Negara, Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 tentang Pemerintahan Daerah, Jakarta, Sekretariat Negara 2014.
- [14] Pujiastuti. Op.Cit., p.3.
- [15] Kementerian Tenaga Kerja Republik Indonesia, Data Pegawai Pengawas Triwulan IV Tahun 2018 K1, Jakarta: Kementerian Tenaga Kerja Republik Indonesia, 2019.