



Law and Economic Perspective: Effort to Realize Outsourcing Workers Welfare

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Abstract— National development and economic development should go hand in hand. For this reason, the government needs to pay attention to the welfare of the working class recruited using outsourcing mechanisms. Even though the Employment Law and Job Creation Law have provided legal protection and certainty for the working class, agency workers in Indonesia can still not fight for their rights effectively. This research examines the application of labor law in Indonesia and its effectiveness in realizing a more advanced country's economy. The working class is a group that still has to continue to fight for their rights and is very vulnerable to losing their jobs. This research is doctrinal research and is supported by conceptual and statutory approaches. Friedman's theory of legal effectiveness is a reference in looking at the ability of worker protection laws in Indonesia to improve the welfare of agency workers. The results of this research state that a country's economic progress needs to be based on sound laws. For this reason, the government needs to continue to monitor law enforcement that can protect workers in Indonesia. Until now, the Employment Law and Job Creation Law have not yet been fully implemented effectively.

Keywords— *Economic law; Law Enforcement; Outsourcing*

I. INTRODUCTION

Law is one of the most essential components that can guarantee the survival of humanity. It cannot be denied that every aspect of life will be interconnected with applicable legal regulations. This condition is caused by the application of legal functions which are used to regulate human behavior. Rechtsstaat is often associated with the concept of the rule of law. However, the two terms originate from different traditions. Rechtsstaat shows the style of the legal system popularized by Immanuel Kant and Friederich Julius Stahl as part of the legal system development that grew in Continental Europe. This idea began to develop in the seventeenth century due to the influence of the trend of monarchical power on the continent. On the other hand, the rule of law is closer to the Anglo-Saxon legal system developed in America. Albert Venn Dicey later developed this idea. [1]

Thinking about the rule of law developed far during Aristotle's glory days. Aristotle interpreted the rule of law as a form of government system for a country that can provide guarantees of justice for all its citizens. The concept of justice in implementing the law must be distinct from the standards of morality in that country. The justice created can then increase the happiness of its citizens because the government system can be run following fair rationality. Thus, the authorities have an essential role in ensuring a balance in law enforcement.

The combination of the concept of the rule of law and the Rechtsstaat was then adopted by the Indonesian government. Recognition of this form of state then implies that the government system is not run based on power alone (machsstaat). This concept was confirmed in the country's Constitution, which is in force today.[2] For this

reason, it is clear that the Indonesian government recognizes the supremacy of law and that the authority possessed by the government must be based on the mandate of the applicable laws and regulations. Thus, it is hoped that the policies issued by the government will not be authoritarian and can take into account the welfare and justice of its citizens.

In order to carry out the constitutional mandate and achieve the eternal ideals of the Indonesian nation, the government continues developing in the legal sector. The reforms that have been going on for more than twenty years are proof that the Indonesian people uphold the supremacy of law and continue to try to monitor the government's actions so as not to violate the constitution's mandate. With the spirit of upholding the values of Pancasila and the Republic of Indonesia in implementing all its policies, the government is expected to continue to promote the recognition of human rights so that social justice for all Indonesian people can be realized.[3]

As a rule-of-law country, Indonesia recognizes the supremacy of law. Pancasila, as the nation's philosophy of life, then provides fundamental values that must become the soul of all regulations that apply in Indonesia. Moh also clearly explained this confession. Yamin in his explanation of the 1945 Constitution. This regulation underlies the spirit of Indonesian nationalism and ensures that the government can form legal products to protect all its citizens. This effort is particular to improve the welfare of the Indonesian people so that differences in national economic conditions can be seen after achieving independence.

The influence of the concept of the rule of law used by the Indonesian government has made the government actively continue to develop its legal products. In the formulation of legal rules made by the government, several concepts were explicitly developed to emphasize the authority of each state institution. This division of authority and power is an essential condition to ensure that the power possessed by the government is not exercised arbitrarily. Apart from that, the government is also developing legal products that specifically recognize and protect the rights of its citizens.[4]

In some conditions, even though the government has strictly regulated the concept of protection and law enforcement for certain conditions, it is not uncommon for these regulations to still not work effectively.[5] The ineffectiveness of the law implementation process can be seen from the existence of legal violations that continue to occur. Apart from that, the continuous struggle of groups protected by legal regulations also indicates that law enforcement and the implementation of these regulations still need to be fully implemented optimally.

In labor recruitment practices in Indonesia, companies can choose to accept their workers as permanent workers or contract workers. The mechanism used to run the production system using a work contract mechanism does not violate existing legal regulations in Indonesia. This mechanism also allows both parties to agree on some issues expected to support effectiveness in the economic system. Problems arose when the Employment Law and Job Creation Law, which protected workers, opened up opportunities for companies to employ agency workers.

This outsourcing recruitment mechanism is considered to cause much unrest in society. Workers employed through outsourcing often experience discrimination and different treatment. It starts from recruitment systems that do not comply with standards, wage methods far below minimum wage standards, erratic working hours, and unclear overtime pay calculations.[6]

One of the problems that continues to receive attention from various community organizations cannot be separated from the government's efforts to protect the working class in Indonesia. Even though the government has issued a law on workers, permitted the existence of trade union organizations, appreciated Labor Day, and periodically raised the minimum wage for workers, this does not mean that the problem of protecting workers in Indonesia has ended.

Labor laws that protect workers' rights have at least ensured that employers have minimal obligations that must be fulfilled. This study will be carried out using the theory of legal effectiveness proposed by Lawrence M. Friedman to see the effectiveness of labor laws in Indonesia.[7] This theory is sensitive to the social dynamics that occur in society and also how a legal system can achieve the goals for which it was created.

II. LITERATURE REVIEW

Lawrence M. Friedman is a philosopher who focuses on developing legal theories. In this study, Friedman's ideas are used to analyze the effectiveness of implementing the Labor Law in Indonesia in protecting the interests and rights of agency workers. The theory of legal effectiveness was chosen because it can show the internal and external factors that can influence policy implementation.

Friedman's theory of legal effectiveness will generally review the three main elements in the policy implementation process. First, the policy must have substance that will be implemented. This legal substance includes the material content contained in statutory regulations. This material will then be able to limit people's actions. The formulation of legal substance will be carried out by state institutions authorized to carry out this process.[8] When discussing laws in Indonesia, the authority to formulate these regulations lies with the legislative body and must obtain approval from the president. The mechanism for formulating legal rules is clearly and firmly stated in the Indonesian Constitution and then described in the Law on the Formation of Legislative

Regulations. In this case, Friedman emphasized that the legal substance will be static because it is a promulgated text and does not change.

Second, the legal structure is another essential element in the policy implementation process. After having a legal rule whose substance can legally be binding on Indonesian citizens, Friedman emphasized the importance of authorized agencies to implement this policy. State institutions with the authority to implement a rule of Law may also have differences from other institutions' authority. Thus, the validity of the authority possessed by these state institutions is very dependent on the mandate of the Law. This aspect is also static because the limitations are clearly contained in the substance of the promulgated Law.[9]

Third, the effectiveness of implementing a legal rule will be influenced by the legal culture that arises in society. Legal culture, as part of culture in general, is a condition that influences the rationality of a group of people. This rationality influences the way people view the laws made by the government. Legal awareness will influence the level of public compliance with these rules. This aspect then creates dynamics in the policy implementation process.

When the Law is implemented, and the community encounters obstacles that do not match their expectations, it is not uncommon for the implementation to cause resistance or rejection from the community. A social group's legal culture will then influence how they articulate their interests. The success of the method chosen to articulate what they want will significantly influence the substance and structure of the applicable Law. In this study, analysis of the structure, substance, and culture of law will be a way to see the effectiveness of implementing the Labor Law in protecting and improving the welfare of agency workers in Indonesia.

III. METHOD

This research uses doctrinal legal research methods to analyze the effectiveness of implementing the labor law in protecting the rights of outsourcing workers in Indonesia.[10] The analysis is based on a review of the laws and regulations and the theories used. The theory of legal effectiveness put forward by Friedman has become the standard for assessing the ability of the Labor Law to provide legal certainty and protection for outsourcing workers.[9] The series of legal rules that are specifically the subject of study in this article will have limitations on the rules regarding agency workers. The results of the analysis will be presented in descriptive form.[11]

IV. DISCUSSIONS AND RESULTS

The development of the economic system needs to be supported by community welfare. Without a goal to improve the welfare of its citizens, national economic development will be in vain. To align these two goals, the Indonesian government has seriously paid particular attention to the acceleration and ease of investment. This strategy was chosen to increase the amount of investment entering Indonesia. Apart from that, the ease of investing is also expected to increase the effectiveness of government efforts in creating jobs. By trying to open up as many job opportunities as possible, the government is expected to reduce the unemployment rate.[6]

Legally, the government has tried to protect workers' rights in Indonesia through the Employment Law, which was later refined with the Job Creation Law. Nevertheless, problems regarding worker protection continue to emerge. One of the problems the government needs to be able to handle seriously is legal violations, which ultimately harm agency workers. Referring to Friedman's theory, this will be very closely related to the substance of the Employment Law and Job Creation Law, which are the basis for protection for workers in Indonesia.

Various criticisms emerged among the public when the government improved the Employment Law but still opened up opportunities for companies to employ employees by outsourcing. Recruiting outsourced workers increases companies' profits because they can cut labor costs. Outsourced workers can only be used to handle certain types of work and work based on a particular time contract. However, the government has imposed restrictions on companies not employing outsourced workers to handle the primary production process. The government uses these conditions to ensure that workers who work in factories will have legal certainty and protection.[1]

The substance of the Employment Law and the Job Creation Law is still fragile in protecting the rights of outsourcing workers. In several cases, violations were still found in the recruitment process, making work contracts and fulfilling wages and benefits. If this continues, of course, it will be very detrimental to the working class in Indonesia. The limited education that can hone the skills of the Indonesian population and the number of job opportunities that are not commensurate with the workforce have resulted in many residents remaining willing to work as agency workers even though their rights still need to be fulfilled.[5]

The aspirations of the community calling for changes and strengthening of protection patterns for agency workers have been conveyed through the Constitutional Court. The legal culture of society formed to apply for the protection of constitutional rights through judicial review has borne fruit. The Ministry of Manpower, a

structural institution protecting workers in Indonesia, has also issued a ministerial circular to follow up on the 2011 Constitutional Court Decision regarding the protection of agency workers.

Problems then arise when these regulations are not strong enough to protect the rights of agency workers in Indonesia. Thus, the results of this study show that the government needs to design legal regulations regarding employment that can genuinely protect agency workers. Suppose we refer to Friedman's theory of legal effectiveness. In that case, the Employment Law and Job Creation Law have yet to be able to protect workers in Indonesia fully. These two regulations have yet to effectively ensure the fulfillment of workers' rights that companies should provide.

V. CONCLUSION

The need for continuous and consistent socialization by Stakeholders, in this case the relevant Ministries to provide clarity related to the implementation of existing laws so that it will minimize potential violations and / or at least by providing understanding to the company through HR Managers, it is expected that the company will make a commitment to the fulfillment of workers' rights. This will be able to realize the national ideal, which is to prosper people's lives through work. With work, it will provide people's purchasing power because the level of decent livelihood will certainly increase. Therefore, an intensive and periodic socialization program is needed to ensure the implementation of the regulation. In terms of implementation, coordination and communication of every element ranging from the Government, employer companies, outsourcing companies and associations and other related agencies are needed so that each will control each other in the implementation of the fulfillment of the rights of security guard workers so that they are appropriate and there are no violations. If viewed from this, the Ministry of Manpower in this case the Provincial / City Manpower Office, Companies, Abujapi and Workers themselves must report if there is a violation so that it can be corrected and avoid the same mistakes later by other companies. Inhibiting factors or constraints from the implementation of the fulfillment of rights both internally and externally need to be parsed one by one comprehensively so as not to cause new problems. The company's commitment as the main factor must be publicized so that it can be monitored by all parties. The fulfillment of good human resources is also a concern because it is a supporting factor for the implementation of the company's commitment in implementing its provisions. The government must create a good tender system such as *Eproc* that is open, credible and transparent. This can be improved and refined so that loopholes in the occurrence of violations can be eliminated. A strict supervision system from start to finish and implementation will also provide certainty for workers about the applicable legal rules and the rights they should receive.

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