

THE LEGAL PROTECTION FOR WORKERS WHO EXCEED THE OVERTIME LIMIT BASED ON THE LABOR LAW

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Abstract

This research is based on legal problems against workers who work overtime, which is not in accordance with labor laws and regulations. The problems raised in this study are how legal protection for workers who work over the overtime limit based on labor law and obstacles in the implementation of legal protection for workers who exceed the overtime limit based on labor law. The purpose of this study is to determine the legal protection of workers who work overtime based on labor law and obstacles in the implementation of legal protection for workers who exceed overtime working time limits. This research uses descriptive analytical research methods, the approach used is normative juridical. The approach method used in this research is the statute approach. The implementation of legal protection for workers who exceed the working time limit has not been fully implemented based on Article 78 letter b, namely overtime working time which can only be done at a maximum of 3 hours in 1 day and 14 hours in 1 week. The inhibiting factors are the lack of maximum worker performance in carrying out a job and the lack of labor owned by the company.

Keywords: *Limits; Overtime; Protection; Workers.*

A. INTRODUCTION

Work is an effort made by a person to earn income in order to fulfill all their needs. In an effort to get this income, a person will definitely need other people in a relationship of mutual assistance to give everything that is owned and receive everything that is still needed from others. Someone who lacks this capital or income will need a job that can provide him with an income, at least to the extent of his ability. There are many people who have lost their jobs, but there are also many who need jobs to fulfill their daily needs and economic situation. Many employers sometimes lay off their workers because they cannot afford to pay them. This often happens because of the lack of legal awareness and quality improvement between employers and their workers. Thus, the relationship between quality improvement, livelihood security and employment opportunities is a causal relationship that cannot be separated from one another.¹ If life security has been fulfilled through employment opportunities, then the improvement of

¹ Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia*, Jakarta, PT. Raja Grafindo Persada, 2001, page. 9

human quality will be able to begin, therefore the employment problem is an important problem that must be solved.²

Based on the provisions of Article 1 number 2 of Act No. 13 of 2003, labor is every person who is able to do work in order to produce goods and / or services, both to meet their own needs and for the community. Workers are part of the workforce, namely workers who have done work, either working for themselves or working in employment relationships or under the orders of employers (companies, entrepreneurs, legal entities or other bodies. This situation raises the tendency for employers to have full authority over their workers/laborers both from wages and working hours. Protection of workers can be done either by providing guidance, or by increasing the recognition of human rights, physical and technical protection as well as social and economic through the norms that apply in the work environment,³ human rights and with the consequent universal character of these rights.⁴

Working time is the time specified for doing work. Laborers/workers are ordinary human beings who need rest time, therefore to maintain their physical health, their working time must be limited and given the right to rest.⁵

Workers are humans who have physical and psychological limitations in carrying out a job so it is very necessary to organize and pay attention to working time.⁶ In this case, there are still very often problems related to regulations at work, even though these regulations have been established in labor. For example, we often encounter problems in violating labor hours or overtime working time that are not in accordance with the provisions stipulated in the labor law.⁷

In research conducted by Kanyaka Prajnaparamita with the title Legal Protection of Women Workers Based on Act No. 13 of 2003 concerning Manpower, the protection of women workers has been regulated in the law, namely Act No. 13 of 2003 concerning Manpower and Decree of the Minister of Manpower Article 76. In addition, the regulation is also regulated in the Transmigration of the Republic of Indonesia No. Kep 224 / Men / 2003 regulates the obligations of employers who employ female workers or laborers, where the implementation process is carried out directly by the employer through a work agreement between the employer and the workforce which is then supervised by the authorized agency.⁸ Then

2 *Ibid*

3 Abdusalam, 2009, *Hukum Ketenagakerjaan*, Jakarta, Edisi Revisi, Restu Agung, page. 27.

4 Valerio De Stefano and Antonio Aloisi, Fundamental Labour Rights, Platform Work and Human-Rights Protection of Non-Standard Workers, *Forthcoming, Labour, Business and Human Rights Law, Bocconi Legal Studies Research Paper*, No. 3125866, 2019, page. 1-20

5 Lalu Husni, 2002, *Dasar-Dasar Hukum Perburuhan*, Jakarta, PT. Raja Grafindo Persada, page. 46-47.

6 Dirgahayu Lantara, Muhammad Nusran, *Dunia Industri: Perspektif Psikologi Tenaga Kerja*, Makassar, Nas Media Pustaka, 2019, page. v

7 *Ibid*

8 Kanyaka Prajnaparamita, Perlindungan Hukum Terhadap Tenaga Kerja Perempuan Berdasarkan Undang-Undang Nomor 13 tahun 2003 tentang Ketenagakerjaan, *Administrative Law & Governance Journal*. Vol. 2, Issue. 1, 2019, page. 34-47

the research conducted by Ngabidin Nurcahyo with the title Legal protection of workers based on laws and regulations in Indonesia that the protection for workers in the BPJS Law is the obligation for employers to register their workforce into BPJS membership and the responsibility of employers if they do not register BPJS membership is sanctions ranging from written warnings, fines, and not being able to get certain public services.⁹

Violations of labor issues related to working time that is not in accordance with these laws and regulations often occur in companies engaged in the industrial sector that are pursuing targets in their production efforts.¹⁰ The issue of legal protection of workers who work beyond the working time limit is an interesting thing to discuss.

Based on the description above, the purpose of this study is to determine the legal protection of workers who work overtime based on labor law and obstacles in the implementation of legal protection for workers who exceed the overtime work limit.

B. RESEARCH METHODS

The type of research used in this research is normative juridical. Normative juridical research is research that uses the legis positivist conception. This concept views law as identical to written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from real community life.¹¹

This research method is descriptive analytical describing legal issues about legal protection for workers who work overtime and obstacles in the implementation of legal protection for workers who exceed the overtime limit based on labor law.¹² The approach method used in this research is a statute approach. Secondary data includes primary and secondary and tertiary legal materials. Primary legal materials are in the form of laws and regulations. Secondary legal materials consist of textbooks, legal journals, results of previous research, opinions of scholars, and other publications. Tertiary legal materials that provide guidance or explanation of primary and secondary legal materials such as legal dictionaries, encyclopedia and others. Drawing conclusions is done in a deductive way, namely drawing conclusions from a general problem to concrete problems.¹³

C. RESULTS AND DISCUSSION

1. Legal Protection for Workers Who Exceed the Overtime Limit Based on the Labor Law

Legal protection for workers in Indonesia is a mandate from the constitution, notably Article 27 paragraph 2 of the 1945 Indonesia

9 Ngabidin Nurcahyo, Perlindungan hukum tenaga kerja berdasarkan peraturan perundang-undangan di Indonesia, *Jurnal Cakrawala Hukum*, Vol. 12, No. 1, 2021, page. 69-78

10 Rudy Kusworo, *To Build A Great Workplace*, Jakarta, Buana Ilmu Populer, 2019, page. 26

11 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, 1988, page. 13-14

12 Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta, UI- Press, 2008, page. 10

13 *Ibid*

Constitution (UUD NRI 1945), which states that the state guarantees the right to work and a decent living.¹⁴ In formulating the principles of labor law protection, we must first understand the nature of labor law. The position of workers can essentially be viewed from two juridical aspects and socio-economic aspects. From a juridical point of view, workers need legal protection from the state against the possibility of arbitrary actions from employers. From a socio-economic perspective, workers need protection from employers to improve workers' welfare. There are two kinds of legal protection, namely preventive legal protection and repressive legal protection.¹⁵

Companies or any form of business that is a legal entity or not, whether privately owned or state-owned that employs workers / laborers, when getting orders for their products by buyers, which are very large in number so that the production stock, which is to cover the very large number of orders. The company employs employees or laborers by exceeding working hours, so that the number of orders from buyers can be fulfilled.¹⁶ Companies must pay overtime wages because it is the right of workers/laborers. According to the Manpower Law, provisions regarding overtime work time and overtime pay for overtime work must have a written order from the employer and written consent from the worker/labor concerned.¹⁷

According to Zainal Asikin, labor law protection is divided into three types, namely: Economic protection, namely labor protection in the form of sufficient income including if the labor is unable to work against its will. Social protection, namely labor protection in the form of occupational health insurance and freedom of association and protection of the right to organize or can be called protection related to community efforts, the purpose of which is to enable workers to enjoy and develop their lives as human beings in general, and as members of society and family members or what is called occupational health. Technical protection, namely protection related to efforts to protect labor from the danger of accidents that can be caused by aircraft or other work tools or by materials processed or worked on by the company. A labor protection in the form of occupational security and safety.¹⁸

The three types of protection above must be understood and implemented properly by employers as employers. If employers commit violations, it is the role of the government, provincial government and

14 Nyoman Mas Aryani, Ayu Putu Laksmi Danyathi, and Bagus Hermanto, Quo Vadis Protection of The Basic Rights of Indonesian Workers: Highlighting the Omnibus Legislation and Job Creation Law, *PANDECTA*, Vol. 17, No. 1, June 2022, page. 103-120

15 Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, Surabaya, Bina Ilmu, 1987, page. 2

16 Trijono, R. *Pengantar Hukum Ketenagakerjaan*. Depok: Papas Sinar Sinanti. 2014, Page. 5

17 Sarjana, Sudiawan, Medd, Raksita, & Hermanto, Omnibuslaw Employment Cluster: Is It a Form Of Labor Exploitation In The Indonesian Context?, *UUM Journal of Legal Studies*, Vol. 14, Issue. 1, 2023, page. 57–88.

18 Zainal Asikin, *Dasar-Dasar Hukum Perburuhan*, Jakarta, Cet.V, Raja Grafindo Persada, 2004, page.76

regency/city government to provide guidance and supervision in accordance with their authority, including law enforcement through applicable procedures and mechanisms.¹⁹

Article 77 paragraphs (1) and (2) of Act No. 13/2003 jo. Act No. 21/2020 and article 21 paragraph (2) of Government Regulation No. 35/2021 obliges every employer to implement the provisions of working hours. This working hour provision has been regulated in 2 systems as mentioned above, namely: 7 working hours per day or 40 working hours per week for 6 working days per week; or 8 working hours per day or 40 working hours per week for 5 working days per week.

If the working time exceeds the provisions of the working time, then the ordinary working time is considered to be included as overtime working time so that workers/laborers are entitled to overtime pay.²⁰ However, there are certain business sectors or jobs where the above working hour provisions do not apply. In the case of consent from workers to do overtime work is a mandatory requirement as referred to in Article 78 paragraph (1) of Labor Act No. 13/2003 jo. Job Creation Act No. 11/2020, and article 28 of Government Regulation No. 35/2021. Furthermore, Article 188 of Labor Act No. 13/2003 jo. Job Creation Act No. 11/2020 mentions that violations of the provisions of obtaining consent from workers to carry out overtime work can be subject to criminal sanctions with a minimum fine of IDR 5,000,000.00 (five million rupiah) and a maximum of IDR 50,000,000.00 (fifty million rupiah). Based on a series of regulations mentioned above, it means that accepting or refusing to do overtime work is the normative right of workers. And employers can be punished if they force workers to do overtime work.

Regarding the obligation of employers to provide wages for workers who work overtime, it is stated in the Manpower Law in Article 88 paragraph 3 letter b, which states that overtime wages are one part of the wage policy that protects workers/laborers. For implementing regulations, in 2004, the Minister of Manpower and Transmigration of the Republic of Indonesia issued a Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP. 102/MEN/VI/2004 concerning Overtime Working Time and Overtime Pay. For the implementing regulations, in 2004, the Minister of Manpower and Transmigration of the Republic of Indonesia issued Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP. 102/MEN/VI/2004 on Overtime Working Time and Overtime Pay.

Based on article 187 paragraph (1) and (2) of Labor Act No. 13/2003 jo. Job Creation Act No. 11/2020 states that if the employer does not pay overtime work wages, it can be subject to criminal

¹⁹ *Ibid*

²⁰ Windi Suarni, Annisa Nurul Audri, Hubungan Antara Pendidikan, Jam Kerja, Dan Usia Terhadap Hukum Tenaga Kerja, *Jurnal Ilmu Manajemen Terapan*, Vol. 2, No. 6, 2021, page. 721-732

sanctions of imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and / or a fine of at least IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 100,000,000.00 (one hundred million rupiah). And the criminal offense is a criminal offense. Based on Article 188 paragraphs (1) and (2) of the Job Creation Act No.11/2020, if the employer/company violates Article 78 paragraph (1) regarding the requirement for approval from workers to carry out overtime work, it is subject to a criminal sanction of a fine of at least IDR 5,000,000.00 (five million rupiah) and a maximum of IDR 50,000,000.00 (fifty million rupiah). And the criminal offense is a criminal offense.

Meanwhile, if it violates the requirement to provide food and drinks if overtime work is carried out for 4 (four) hours or more, Article 61 (1) of Government Regulation No. 35 of 2021 states that companies may be subject to administrative sanctions in the form of: written warnings, restrictions on business activities, temporary suspension of part or all of the production equipment, and suspension of business activities.

2. Obstacles in the Implementation of Legal Protection for Workers Who Exceed the Overtime Work Time Limit Based on the Labor Law

In the implementation of legal protection against labor, of course, obstacles will arise and what is related to the realization of legal protection against labor.²¹ In this case, there are many aspects that will hinder the realization of legal protection against labor, including implementation procedures that are not in accordance with the provisions and the relationship between employers and labor in the realization of the implementation of legal protection. The provisions in the laws and regulations sometimes cannot be fully implemented because in certain situations and conditions it is not possible to comply fully.

The factors inhibiting the implementation of legal protection for workers who work beyond working hours are as follows:

The planning in order completion is more about the management of receiving orders up to the finishing process and delivery of ordered goods to the buyer. Planning in order to complete orders from consumers who buy goods and to send goods on time is one of the inhibiting factors to carry out the provisions of overtime hours according to the law.²²

Based on the explanation of Mr. Drs. Sudiarta, in carrying out

21 Ulansari, Perlindungan Hukum terhadap Pekerja yang Bekerja Melebihi Waktu Kerja (Studi Pada Perusahaan UD. Indra Jaya Seafood Supplier), *Jurnal Preferensi Hukum*, Vol. 1 No. 2, 2020, page. 121-127.

22 Heri Sandi and friends, Relationship Between Budget Participation, Job Characteristics, Emotional Intelligence And Work Motivation As Mediator Variables To Strengthening User Power Performance: An Emperical Evidence From Indonesia Government, *Morfai Journal*, Vol. 1, No. 1, 2021, page. 5

production, it is less than optimal so that additional working time is needed to maximize his work. According to him, this is a humane thing, because humans are not free from mistakes. Some workers still do not have skills that are in accordance with their field of work and workers do not have sufficient employability skills as demanded by the world of work.²³

In implementing legal protection for workers, it is often the case that a company does not escape the obstacles experienced. However, as a company that pays attention to the welfare of its workers and not just consumers, it is appropriate for a company to make efforts in handling obstacles in the implementation of legal protection for workers, in this case protection for workers who work overtime.²⁴

In maximizing overtime work, of course, workers also need to get enough rest and eat and drink. In overtime work, workers will be given or prepared more food and drinks, besides that workers are also free to take breaks, provided that the work targeted in overtime work must be completed at the specified time. As previously explained, one of the inhibiting factors in the implementation of legal protection for workers who exceed working hours is the shortage of labor currently owned, which also has implications for planning the completion of orders that are not on time. Based on these obstacles, the company will always try to find more workers to minimize their workers to do overtime work. One solution that can be done is to find workers with a piece-rate system so that it can also reduce production costs. Providing more wages for workers who work overtime is the most important effort.²⁵ As stated in the laws and regulations that in employing workers beyond working hours, employers are obliged to provide overtime pay. Overtime work still formally requires worker agreement. According to the Government's Discussion Paper, this change to overtime was 'needed to fulfil the needs of the business world in increasing production and accommodating dynamic work relations patterns.'²⁶

In implementing legal protection for workers, it is often the case that a company does not escape the obstacles experienced by the company.²⁷ However, as a company that pays attention to the welfare of its workers and not just consumers, it is appropriate for a company to make efforts in dealing with obstacles in the implementation of legal protection for workers, in this case protection for workers who work

23 Ivan Hanafi, Re-Orientasi Keterampilan Kerja Lulusan Pendidikan Kejuruan, *Jurnal Pendidikan Vokasi*, Vol. 2, No. 1, 2019, page. 107-117

24 Endang Wahyani Yustina, *Hukum Jaminan Kesehatan*, UNIKA, Semarang, 2020, Page. 17

25 David Weil, Creating a Strategic Enforcement Approach to Address Wage Theft: One Academic's Journey in Organizational Change, *Journal of Industrial Relations*, Vol. 60, Issue. 3, 2018, Page. 3-13

26 Petra Mahy, Indonesia's Omnibus Law On Job Creation: Reducing Labour Protections In A Time Of Covid-19, Labour, *Equality and Human Rights (LEAH) Research Group, Working Paper*, No. 23, January 2021, page. 1-23

27 Pande Md. Meby Elbina Devita Cesmi, Perlindungan Hukum Terhadap Tenaga Kerja Yang Bekerja Melebihi Batas Waktu Lembur Pada Perusahaan PT. Bintang Merapi Denpasar, *Kertha Semaya*, Vol. 6, No. 5, 2018, page. 1-15

overtime.

D. CONCLUSION

Legal protection for workers who work overtime based on labor law, namely the Manpower Law in Article 88 paragraph 3 letter b states that overtime pay is one part of the wage policy that protects workers / laborers. For implementing regulations, in 2004, the Minister of Manpower and Transmigration of the Republic of Indonesia issued a Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP. 102/MEN/VI/2004 on Overtime Working Time and Overtime Wages. The obstacles in the implementation of legal protection for workers who exceed the overtime working time limit based on labor law are due to the lack of maximum performance of workers and the lack of labor owned by the company, and also some of the workers still do not have skills that are in accordance with their field of work.

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