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Legal protection of particular time contract workers in job creation

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Abstract. This type of research is a normative juridical research by using laws and regulations. The Job Creation Law regulates several new provisions for certain time contract workers when compared to the previous arrangements in the Manpower Act. These new provisions are a form of legal protection for certain time contract workers. These provisions can be summarized as follows: a longer period of time for a work agreement for a certain time, a work agreement for a certain time in written form. This is to provide legal certainty to workers regarding the existence of a work agreement relationship between workers and employers.

Keywords. legal protection; contract, creation

Background

Efforts to promote general welfare are realized through work, among others, in Article 28D paragraph (2) 1945 Constitution: "Everyone has right to work and receive fair and proper remuneration and treatment in an employment relationship" and Article 27 Paragraph (2) "Every citizen has right to work and a decent living for humanity". (Rahmat, 2020)

The purpose Government Republic of Indonesia is basically human rights of citizens guaranteed by law and government, in accordance with Article 28J paragraph (1) of 1945 Constitution, namely: "Everyone is obliged to respect human rights of others in an orderly social life, nation and state". To harmonize these objectives, Law Republic Indonesia Number 39 of 1999 concerning Human Rights was born.

The right to promote general welfare in state's goals, one of manifestations is the right to get a job, apart from being a human right in human life, it is also a very basic right in an effort to fulfill his basic needs as a human being to maintain his life and livelihood. Work is so important in human life, because by working humans can fulfill their needs, by doing work humans can earn a living or livelihood. (Santosa et al., 2021)

Karl Marx defines work as a means for humans to create themselves, by working people get recognition. (Kalfa, 2015) While work is the act of doing something, something that is done, as well as a central part in human life that is only uniquely done by humans. Based on description in background of the problem, regarding "Legal Protection of Certain Time Contract Workers in Job Creation Act", it can be formulated the problem in this study is "How is legal protection of certain time contract workers in Law Number 11 of 2020 concerning Job Creation?"

Research method

This type of research is a normative juridical research by using laws and regulations. (Aldilla & Michael, 2022)

Discussion

After enactment Employment Creation Law, there have been several changes regarding the provisions of a certain time work agreement previously regulated in the Manpower Act, which has the objective of protecting the workforce or between individuals and legal entities, is no longer a purely private sphere, but also involves elements of the state within which are authorized to provide legal protection. (Tasyaa & Michael, 2022)

The Employment Creation Act related to the arrangement of work agreements for a certain time has been rejected by workers and other parties because there are several changes to the provisions regarding certain time work agreements which will cause problems in its implementation. One of them is related to changes in the regulation regarding the period of time for a certain time work agreement to be carried out, the length of which is determined by the work agreement and is not explicitly regulated, as in the Manpower Act, especially in Chapter IV on Employment. (Tribunnews, 2020)

Indirectly, the existence of a working relationship with a work agreement for a certain time is contrary to the 1945 Constitution, in an effort to achieve the objectives of the Government of the Republic of Indonesia to promote general welfare and increase the prosperity of the people as the practice of the second precept of Pancasila, "Just and civilized humanity" and the Precepts of Pancasila fifth, "Social justice for all Indonesian people.

Preventing the realization of the constitutional basis for the development of the manpower sector is Article 27 Paragraph (2), "Every citizen has the right to work and a decent living for humanity" and Article 28D Paragraph (2) of the 1945 Constitution: "Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship".

It is proper for laws and regulations to achieve their goals for the welfare of the people which are based on basic values in law such as legal certainty, justice and usefulness, and are validly enforced based on philosophical principles of applicability, namely laws and regulations made based on the value of a person's view of life. nation. In addition to the sociological applicability of laws and regulations, they can be accepted and recognized by the community because they provide the greatest benefit for the prosperity of the people. For the value of legal certainty, which is juridical, it is the legal basis in accordance with the hierarchy of laws and regulations and is made by an authorized institution. The provisions of the Job Creation Act that have undergone many changes are the provisions governing a certain time work agreement, with the following description:

The Term Becomes Longer for A Certain Time Employment Agreement

After the existence of the Employment Creation Law, the arrangements regarding work agreements are contained in Article 56 Paragraph (1) Work agreements are made for a certain time or for an indefinite period of time. Paragraph (2) The employment agreement for a certain time is based on (a) a period of time, or (b) the completion of a certain job. Paragraph (3) The period of time or completion of a particular job is determined based on a work agreement.

Article means that there are basically two forms of work agreements, work agreements for a certain time and work agreements for an indefinite period. The choice of the parties in the work agreement as the right to determine depends on the interests of the parties. In paragraph (2), the work agreement for a certain time is based on the period in accordance with the

agreement. It can happen regardless of the nature of the work, whether it is temporary or permanent.

Period of completion of a certain job contains uncertainty for workers, so that the guarantee of the right to get work for workers is not guaranteed, as in Article 27 paragraph (2), Every citizen has the right to work and a decent living for humanity, Article 28D paragraph (2) Everyone has the right to work and to receive fair and proper remuneration and treatment in an employment relationship, which is regulated in 1945 Constitution which doesn't materialize.

Furthermore, a work agreement for a certain time is based on the completion of a certain job.(Senghaas, 2021) This means that prior to the existence of the work agreement, there are certain types of work that will be carried out by workers. Certain jobs here can occur to certain jobs that are temporary or permanent. It is emphasized in paragraph (3) of the article, the time period or completion of a particular job is determined based on a work agreement.

Certain Time Employment Agreement in Written Form.

Basically, as a norm, a work agreement made in written form guarantees more certainty about the rights and obligations of workers and employers, so that if a legal dispute occurs in the future, it will greatly assist the process of proving the existence of a legal relationship in the form of a written work agreement. The Job Creation Act still requires that a certain time work agreement be made in written form, but there are no legal consequences for not fulfilling these requirements.(Michael, 2020)

It is permissible to determine the amount of wages by workers and employers in the form of an agreement

The Job Creation Law regulates signs related to workers' wages including wages based on an agreement, regulated in Article 88A, among others: a) Workers are entitled to receive the same wages for work of the same value, b) Employers are obliged to pay wages to workers in accordance with the agreement, c) Wage arrangements determined on the basis of an agreement between employers and workers or trade unions may not be lower than wage provisions stipulated in laws and regulations, d) In the event that agreement is lower or contrary to the laws and regulations, the agreement is void for sake of law and regulations, wages are carried out in accordance with the provisions of legislation.(Jayanti et al., 2021)

The Employment Creation Law determines basis for wage provisions is an agreement between a private worker and an entrepreneur, an agreement between a worker or a trade union and an entrepreneur, that provided amount of stipulated wage cannot be lower than prevailing laws and regulations. The agreement is an autonomous right of the parties as well as an internal legal protection.

These provisions also contain restrictions on the parties in terms of lowest wages agreed by parties should not be lower than the prevailing laws and regulations. However, there will be obstacles in its implementation because when there is no supervision in implementation of application of wages based on agreement, it will not achieve its target.

Provisions on Sanctions for Fines Against Employers Who Deliberately or Negligently Cause Late Payment of Wages.

Sanctions are a form of law enforcement even though they cannot stop law violations. The provisions for sanctions are regulated in Job Creation Law Article 88A Paragraph (6): Entrepreneurs who intentionally or negligently result in delays in payment of wages shall be subject to a fine according to a certain percentage worker's wages.

From a legal perspective, sanctions can have a deterrent effect, even though that assumption is not always true when viewed in real life. At least certain people when experiencing legal sanctions will cause shame in social life. If these provisions are actually implemented, it is very likely that they will actually cause embarrassment to individual entrepreneur concerned. Remembering that an entrepreneur always maintains his self-respect, good name and integrity among other entrepreneurs.

Prohibition of Employers from Paying Wages Below the Minimum Wage

This is explicitly regulated in Article 88E Paragraph (2) of the Employment Creation Law. Employers are prohibited from paying wages lower than the minimum wage. Article 88E Paragraph (1) This provision serves as a guarantee of legal certainty on the basis of determining wages even though in reality there are still many entrepreneurs who pay workers' wages below the minimum wage.

Compared to the provisions in Government Regulation Number 36 of 2021 concerning Wages, Article 1 Number (1), which basically means that wages are determined according to a work agreement, agreement or statutory regulation, certainly contains controversy. Because these provisions allow to determine the amount of wages based on the agreement. From a civil perspective, there is nothing wrong with considering it as a form of the autonomous rights of the parties. However, it should be noted that wages as the only source of livelihood for workers and their families if there is minimal legal protection will be very detrimental to workers.

Article 88C Job Creation Law: Paragraph (1) The governor is obligated to stipulate provincial minimum wage, Paragraph (2) the Governor may determine regency/city minimum wage under certain conditions, Paragraph (3) The minimum wage is determined based on economic and labor conditions, Paragraph (4) Certain conditions in paragraph (2) include regional economic growth or inflation in relevant district/city. Paragraph (5) The district/city minimum wage as referred to in paragraph (2) must be higher than provincial minimum wage.

Against Workers With a Specific Time Work Agreement Does Not Require a Probation Period

A worker with a work agreement for a certain period of time that has been accepted by an entrepreneur, his tenure is immediately calculated from the time he first enters work for an entrepreneur. This is logical because workers with a certain time work agreement are generally short-term or short-term. Another thought is that the worker will definitely go straight to work and during the contract period, he will certainly not be expelled from the employer where he works.

Article 58 Job Creation Law: Paragraph (1) A work agreement for a certain time cannot require a probationary period. Paragraph (2) In the event that a probationary period is required, the required probationary period is null and void by law, and the working period is still counted.

In relation to provisions of Article 88E Paragraph (1) and Paragraph (2), the minimum wage applies to workers with a period of service of less than 1 (one) year at the company concerned. The provisions of Article 58 Paragraph (1) are positive for contract workers. This is because working period of contract workers is directly calculated from time the worker is first accepted as a worker, which has an impact on worker benefits. As in previous description, the longer working period of a worker in an entrepreneur, the greater work allowance received or even greater wages received because of the length service he or she has paid attention to.

There is an Employer's Obligation to Provide Compensation

These provisions contain the employer's obligation to provide compensation to workers at the end of each period of a certain time work agreement as regulated in Article 61A paragraphs (1) and (2) of the Job Creation Law, which is then manifested in Article 15 to Article 17 Government Regulation Number 35 of 2021 year.

Taking into account the term of the contract for workers with a certain time work agreement in Government Regulation Number 35 of 2021 which is not determined with certainty, then in fact the application of a certain time work agreement to workers in the Government Regulation is only an effort by employers to reduce the cost of paying workers' salaries and their benefits. Because by using workers with work agreements for a certain time, employers will reduce the cost of paying workers' salaries and benefits. Given that there are many differences in the rights of contract workers and permanent workers. For example, for permanent workers in addition to the basic salary there are various work benefits that can be accumulated so that the income of permanent workers is quite large when compared to contract workers.

Ideally, giving compensation to workers with a work agreement for a certain time, the calculation method is the same as calculating severance pay for permanent workers. Because the basis for calculating compensation is same as one of the criteria in providing severance pay to permanent workers, the amount of which depends on length service, as in Article 16 paragraph (1) and paragraph (2) of Government Regulation Number 35 of 2021. The calculation method is based on worker's tenure. This is same as calculating severance pay for permanent workers, as regulated in Article 40 of the said Government Regulation. Article 16 paragraph (2) of the Government Regulation Number 35, actually there are affirmations and restrictions as basis for calculating payment of compensation money, namely basic wages and fixed allowances.

Conclusion

The Job Creation Law regulates several new provisions for certain time contract workers when compared to the previous arrangements in the Manpower Act. These new provisions are a form of legal protection for certain time contract workers. These provisions can be summarized as follows: a longer period of time for a work agreement for a certain time, a work agreement for a certain time in written form. This is to provide legal certainty to workers regarding the existence of a work agreement relationship between workers and employers.

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