

Development of Equitable Employment System through the Establishment of Legislation Based on Pancasila

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Abstract: *In the year 2003 issued law No. 13 year 2003 about the manpower regulating the employment system in Indonesia, although in its application provides protection for workers and, creates an unbalanced position between workers Entrepreneurs in implementing industrial relations. In 2020 the government made a plan on the Omnibus Law Copyright Act as an effort to open the work and increase the nation's economy. In practice the trade union rejected the existence of the endorsement of Omnibus Law Cipta work. Based on the background of the problem, then this research analyzes first about how the development of the employment system through the establishment of legislation based on Pancasila?; Second how Omnibus Law Cipta works in the building of an equitable employment system through based on Pancasila?. The method of research used is normative juridical research by examining the development of the equitable employment system based on Pancasila. Analysis of qualitative deskriptif data by describing the overall development regulation of the employment system is equitable through the establishment of legislation based on Pancasila. Results of analysis studies that in the year 2020 the government of Indonesia tried to build the employment system through the formation of the Draft Omnibus Law Cipta work to open employment and protection opportunities for workers. This formation process is because it wants to open foreign investment opportunity to improve the economy of Indonesia. That the draft Omnibus LAW CIPTA work established by the Government is more focused on investment without regard to justice Pancasila as the basis of the establishment of legislation in Indonesia. Suggestion that in the process of forming a justice system in fairness through the legislation should involve the elements of workers, entrepreneurs, governments, academics to form laws as mandated in Regulations based on the values of Pancasila with regard to the interests of the people not the interests of the investor, that there must be a change of law regulation No. 13 year 2003 that creates the employment system Based on Pancasila.*

Key Words: *Development, Employment System, Justice, Laws, Pancasila.*

1. INTRODUCTION:

In the year 2003 issued the law No. 13 year 2003 about the benefit of regulating the employment system in Indonesia, although in its application provides protection for workers and, creates an unbalanced position between workers and entrepreneurs in carrying out industrial relations. In 2020 the government made a PLAN on the Omnibus Law copyright work as an attempt to open the work and Improve the work of the nation's economy. In practice the trade union rejected the existence of the endorsement of Omnibus Law Cipta work. After the inauguration of President Joko Widodo made a new policy by combining several regulations related to the development of the nation's engineers into one rule known as Omnibus Law. The planned regulation will be established with the Omnibus Law Cipta work as an effort to improve the Indonesian economy by responding to global changes, the 4.0 industrial Revolution, an increase in investment in the efforts to preserve the stability of the economy as well as Improving the foreign working SME's productivity efforts to support the nation's economy.

Omnibus Law Cipta Work is an effort to describe and harmonize regulation and licensing, quality investment, creation of quality work and the welfare of sustainable workers and SMES empowerment. This policy is selected in the settings of Omnibus Law Cipta Kerja chosen because the ease of effort in Indonesia is still under ASEAN currently there are 8415 Central regulations and 15965 regional regulations describing the complexity and obesity of regulation in Indonesia (Coordinating Ministry for the Field of Engineering of the Republic of Indonesia, 2020).

Investment effectiveness is still low compared to other countries, Omnibus Law CIPTA work can provide an impact in the work Increase in the foreign working investment and improve investment effectiveness, the allocation of investments directed to the productive sector and export-oriented for the enhancement of the economy. In addition to the high level of unemployment, it is necessary to increase the wage growth in line with the growing economy and increase workers ' productivity. In this regulation, the expansion of social assistance assurance programs is a government commitment in order to Improve foreign working competitiveness and strengthening human resources and accelerate poverty reduction and income inequality. Assurance of rights and responsibility for permanent workers, contract workers and labor worker in safeguarding and Improving the foreign work welfare. In addition, SMES empowerment is the target of this policy because SMES contribute about 61, 07 GDP and absorb more than 97% of the total workforce. With

the flexibility of labor market, re-skilling, up-skilling, as well as workers welfare program, productivity and SMES income will be able to be left to foreign work.

Manpower based on expertise/quality and education in Indonesia consisting of educated workforce has a skill or proficiency in a specific field in the way of FormLA and nonformal schools, then the trained synergies who have expertise in a specific field through work experience that has skills that can strive for workers, and then the abusive workforce only rely on energy only (Muhammad Yusuf & Anissa Ilmi Faried, 2019). So it takes effort with a policy that increases the foreign work workforce with the skills of education and expertise according to market needs.

Government policy through Omnibus Law Cipta work is a conscious effort from the government under the leadership of President Joko Widodo, but if more studied in the Omnibus Law plan copyright work in particular cluster 3 field of employment that there are a number of articles indicating the problems that will arise in the working relationship with the existence of an unconstrained contractual contract, the submission of work with the outsourcing system is governed by the unconstrained type of work that can be outsourced, As well as the existence of foreign workers and various arrangements that workers do not harm employees.

In this paper discuss the development of the employment system through the establishment of legislation based on Pancasila in providing protection for workers and improving the work of the nation's economy foreign to provide business opportunities for investors to strive in Indonesia.

2. LITERATURE REVIEW:

The construction of equitable employment system development is the development of rules, the application of rules on apparatus and labour culture that creates justice in the working relationship between entrepreneurs with workers and surveillance systems and government participation in providing protection for the parties.

Understanding the establishment of legislation based on law No. 15 year 2019 on amendment of Law No. 12 year 2011 Establishment of legislation is the implementation of the order of article 22A of the Constitution of the state The Indonesian Republic of Indonesia (1945) stating that "Further provisions on the Ordinance of the formation of legislation shall be further governed by the law".

The definition of Pancasila is the basis of Indonesian ideology. The name consists of two words from Sanskrit: Panca means five and please mean principle or principle. Pancasila is a formulation and guidance of national and state life for all Indonesian people.

The sense of Omnibus Law is a method of creating a regulation or law consisting of many subjects or subject matter for a particular purpose in order to keep a regulatory norm. The omnibus differs from the most regulatory draft in terms of the amount of payload material covered, the number of regulated (size) articles, and the last of the complexity. In an Omnibus law cover almost all the substance of the related material. The Omnibus act reflects an integration, codification of regulations where the end goal is to streamline the implementation of these rules.

Omnibus Law as a regulatory reform strategy for the arrangement to be done simultaneously on the number of legal regulations with the aim of eliminating overlap, efficiency and eliminate the sectoral ego. The existing law is still valid, except as a matter (legal material that has been dared or declared void. The existing law is applied again if the article (legal material) to be replaced or degrading is not valid as the essence of the law (Muhammad Yusuf & Anissa Ilmi Faried, 2019).

Create work is a policy made by the government in one rule called Omnibus Law. 11 discussion clusters Create the following work: 1. Simplification of licensing; 2. Investment requirements; 3. Employment; 4. Ease of empowerment and protection of SMES; 5. Ease of effort; 6. Research Support & inovasi; 7. Government administration; 8. Imposition of sanctions; 9. Land procurement, 10. Investment and government projects; 11. Economic Area (Muhammad Yusuf & Anissa Ilmi Faried, 2019).

3. METHOD:

The method of normative juridical research examines the existing rules of law and will be formed to compare the rules of the law to see the regulation of ius constituendum in creating a system of employment that is justice of Pancasila through the formation of Legislation. Data collection through the study of the library using primary legal material that examines the omnibus arrangement of law of the 3 cluster jobs on employment by comparing the Law No. 13 year 2003 about Manpower, Using secondary legal material articles, books related to the problems to be researched then the data collected and analyzed with qualitative descriptive analysis describing the conditions of legal regulatory law No. 13 year 2003 about Manpower with the rules to be formed in the form of Omnibus law Cipta work.

4. DISCUSSION:

That in 2020 the Indonesian government seeks to build the employment system through the establishment of the Omnibus Law Cipta work Draft to open employment and protection opportunities for workers. The process of forming is because it wants to open foreign investment opportunities in improving foreign work of the Indonesian

economy. That the government-established Omnibus Law Cipta work is more focused on investing without regard to the justice of Pancasila as the basis of the establishment of legislation in Indonesia.

In a legal system it analyzes the rules of law, legal structure and legal culture. The rule of law discusses how the rules of law are made to regulate the employment system in Indonesia which is in fairness through the establishment of legislation based on Pancasila. That the Law No. 13, 2003 about Manpower governs the employment system in Indonesia through industrial relations based on Pancasila, but in the application of the rules of employment law is not carried out as Which is governed in the intention of forming based on the values of Pancasila that gives a sense of justice to workers and entrepreneurs. Government as a mediator in charge of providing protection for workers.

Aspects of legal structure in implementing the rule of law for example in the process of supervision of employment between entrepreneurs with workers not maximally done in accordance with the provisions of the law. The cultural aspect of the law is due to the injustice felt by the worker in obtaining its rights, trade union problems, the existence of a unilateral cultural employment relationship that the workers only as the recipient of wages is not part of the development Business. The Act of Omnibus Law Copyright work cluster 3 employment as follows:

5. RESULTS:

5.1 Minimum Wage

Policies related to Minimum wage are still using the minimum wage system, the minimum wage is not dropped and cannot be suspended, the minimum wage promotion takes into account the regional economic growth, hourly wages can be awarded for certain types of jobs (consultants, part-time, digital economy).

The Minimum wage applies only to new workers who work less than 1 year, but they are still possible to receive wages on minimum wage with regard to competence, education and certification; Employment with a working period of 1 year and above follows the thickness of wages according to the wage structure and wage scale in each company. The labor-intensive industry can be given incentives in the form of minimum wage in particular according to the needs of companies and workers. The hourly wage scheme can be assigned to a specific type of work (consultant, part-time job, etc.), and the new type of work (digital economy), to provide rights and protection for workers on a particular type of work, if the wage-based hours of work is not set, then the worker does not get a foreign labor wage protection.

The hourly wage system will automatically eliminate the minimum wage system. This will be a bad precedent although there is a statement that calls workers with working hours at least 40 hours a week will earn wages as usual. But for workers with working hours less than 40 hours will be rewarded below the minimum. In practice entrepreneurs will be very easy to lose hours of work, so workers no longer work 40 hours. The rules contained in Law No. 13 of 2003 on employment, have been assessed enough on the labor with a foreign worker, there should be no worker who gets foreign labor wages under the minimum wage. That is, if it is still done, the same with evil. Entrepreneurs who pay wages under the minimum wage can be sentenced. Not to mention when the worker is sick, doing the worship according to his religious obligations, maternity leave, then the wages are no longer paid because at that time is considered not working.

According to the legislation Labour recorded ten obligations of employers against the workers as follows: 1) Pay wages; 2) Pay other non-wages, but payment based on wages, 3) implementing Occupational Safety and Health, 4) make the regulations of the company if there is no PKB, 5) Form a bipartite cooperation institution, 6) to carry out the work of foreign workers into the Social Security program, 7) give the opportunity to worship, 8) provide welfare facilities, 9) Act as a good entrepreneur, 10) provide In addition there is a non-wage payment but the provision is based on wages of work (Mohd. Syauffi Syamsuddin, 2003).

From the explanation above that the eviation has an obligation to pay wages while workers perform the work in accordance with the working operational system that is governed in the company's regulations. In meningkaTenaga foreign work wage workers that Pelu carried out is meningkaTenaga foreign work productivity work that will impact on the addition of wages and wage payments in accordance with the agreement done by the parties and the minimum wage that has been determined by the Government both provincial and Regency/city. If productivity decreases, the working target as the basis of wages payments can be decreased as well. Workers are required to carry out the work in accordance with the working target of employers are required to pay the minimum wage according to the arrangement so that the welfare of the parties met with government support to create a condusif atmosphere in achieving the Indonesian economic target.

5.2 Termination of Employment (Layoffs)

The main policy regarding layoffs will still provide protection for workers affected by layoffs, employees affected by layoffs still get foreign work compensation of layoffs (in the form of severance, award of employment, and workers affected by layoffs still get foreign work severance and other layoffs compensation; To provide protection for workers affected by layoffs, the Government provides additional compensation in the form of loss of work guarantee (JKP).

Guaranteed loss of job benefits of JKP in the form of: 1) Cash Benefit, 2) Vocational Training, 3) Job Placement Access. Adding the benefits of JKP does not add to the burden of dues for workers and companies, workers who get foreign work JKP still will get foreign work guarantee of social security employment and national health insurance coverage and to provide increased protection for contract workers, is compensated for termination of employment relationship.

In law No. 13 of 2003 on employment that regulates a maximum severance rate of 9 months and can be multiplied by 2 for the termination of certain types of layoffs. Total can get 18 months wages, will be eliminated as stipulated in article 157 of the manpower act. Award for a maximum of 10 months wages and a change of rights at least 15 percent of the total severance and/or award of the employment. The government is rated to have a plan to trim severance into a 6-month layoffs allowance.

The form of termination of employment as follows: 1) expiration by law due to agreements, terminated the trial, at the request of the worker, the employee dies, due to retirement age, on the approval of both parties, terminated by court, 2) with respect to the circumstances attached to the employee's personal such as illness for more than one year, permanent total defects, due to marriage, 3) concerning the conduct of workers in the form of severe error, breach of agreement, worker Entrepreneurs in the form of persecution, abusive abuse, persuading or telling workers to conduct acts concerning the legislation, do not pay on time wages, do not perform the obligations that have been promised, govern workers outside the promised, provide work that is harmful souls, health safety and morality that has not been included in the work Agreement, 5) concerning the company's roads such as close company, change Company performs efficiency, the company is bankrupt (Mohd. Syaufii Syamsuddin, 2003).

Compared to the Omnibus Law Cipta work that is known to be a job loss guarantee (JKP) with a variety of protection efforts for workers to survive in the midst of layoffs because contractual agreements no time limit can be appointed as workers, so that layoffs happen due to the legal end of an unrenewed employment agreement, but are prepared for the loss of worker with Cash Benefit, 2) Vocational Training, 3) Job Placement Access.

6. Improved Worker protection & field expansion:

In the provision of employment law clearly to the foreign employment rules of the specific employment agreement as follows:

- Must be made in writing if made unwritten into an Unspecified Time Work Agreement;
- When made in Bahasa Indonesia and English has a different interpretation, which is used in Bahasa Indonesia;
- Do not qualify for foreign workers trial period, if there is a trial period then null and void;
- UTWA can only be created for a specific job that is according to the type of nature or work activity will be completed within a certain time
- UTWA can not be held for a fixed work.
- UTWA can be extended or refurbished;
- UTWA for a certain period of time can be held for at least 2 years and may only be extended 1 time for a period of at least 1 year;
- The renewal process must match the mechanism if it is not appropriate to be a Time-Specific Employment Agreement.

Provisions of article 64 S/d 66 The Employment Law governs the submission of work from the company to another company. Such activities are under the Requirement of foreign work to be made in writing, the beneficiary company of the work must be legal entity. In article 65 paragraph (1) and article 66 subsection (2) item (d), contractor and service provider of workers, shall be obliged to make an agreement in writing with the parent company (service user). The company is a legal entity (business entities) and has permission from the agency responsible in the field of employment. The provisions of the Minister of Manpower and Transmigration decree No. KEP-10/Men/VI/2004 on procedures for licensing of workers/labour service providers, in particular chapters 2 and 3 that the company is obliged to have operational permits from the institution responsible for the employment (c.q Employment Office in the District/city) according to the company's domicile of the worker/Labour service provider. The permit is valid in Indonesia for a period of 5 years extended the same timeframe. The company is a legal entity (business entities) and has permission from the agency responsible in the field of employment.

In Omnibus Law There is a new term to be incorporated i.e. the flexibility of the job market. The sense of the term is that there is no more work certainty and the appointment of status to a permanent employee or an unspecified time employment agreement (a No Time Employment Agreement). Automatically it will also make the type of work that can be outsourced would be expanded, no more 5 types of work as it is currently, namely Cleaning Service, security, transportation, catering, mining contractor. Social security in the form of old-day guarantees and potentially threatened retirement guarantees, the reason the flexible work system makes workers can not get a guaranteed old day and a pension guarantee because there is no certainty of work. This system that makes workers can move to work every year, because of the wages of several hours in a single day that is in the company.

7. Licensing Foreign workers experts and sweetener:

Foreign worker (Foreign worker) is not skilled (unskill) is able to enter into Indonesia if referring omnibus law. Article 42 of the employment LAW governs the position that can be occupied by FOREIGN workers who require certain skills that are not yet owned by the local worker. The term is limited to a maximum of 5 years and must be accompanied.

The concept of an omnibus law PLAN of law minimised or enlarges industrial relations disputes. The Plan of Omnibus law is expected to create justice, general well-being and protect the rights of individuals, especially in the era of changing economies that the existence of equity crowd funding and peer-to-peer lending proves the public can Become the owner of the company by mutual cooperation, so that between the government, entrepreneurs and the public should collaborate to share the results. If the analysis of the rules to be applied can increase the problem especially in the improvement of worker protection and expansion of employment that provides foreign employment that for contract work for all types of work of this matter Causes almost the company to determine all workers with the contract system.

The mention of outsourcing as part of the employment system in Indonesia, whereas the Law No. 13 year 2003 only Disseminate foreign workers, while the power experts in which the company uses high technology and only certain people Can work means that the government opens a widest about outsourcing workers and guarantee the existence of wages, social security and K3 protection but does not guarantee the validity period of the contract or outsourcing applied to workers in Indonesian.

Expanding the inclusion of foreign workers although limited only to certain types of occupations that can not be done by domestic workers and the use of Foreign workers who perform certain activities that do not use Foreign workers. Industrial relations disputes in industrial relations, formal aspects (procedures) should be observed, not only the material aspect (substance) only. Procedure for settlement of Industrial relations dispute (PHI) pursuant to Law No. 2 of 2004 on the settlement of Industrial relations dispute (PHI Law).

Based on the explanation above that the application of Omnibus Law Copyright work can affect the cause of new problems especially in the cluster 3 employment This thing even happens a working relationship especially the contract will be for life because it is not limited Period of agreement, there will be outsourcing for all jobs, foreign skills unskill, loss of social security The old days when a lifetime contract and outsourcing, Layoffs are simplified and the loss of criminal sanctions for entrepreneurs. This arrangement will impact the industrial relations dispute where the worker cannot choose only as a worker in accordance with the business or investor.

Therefore, the efforts of the central government and local governments in Improving the foreign work have returned the tripartite cooperation between workers, entrepreneurs, and governments in resolving industrial relations disputes, so that it can create Industrial relations in accordance with the values of Pancasila to prioritize deliberation as a form of the values of the nation and the wisdom of the nation of Indonesia. So that it can create a justice system based on the establishment of legislation based on Pancasila as the Dasark in the establishment of legislation stipulated in the law No. 15 year 2019 on change of Law No. 12 Year 2011 On the establishment of legislation.

8. CONCLUSION:

Conclusion of the results of this study as follows:

- That in the year 2020 the government of Indonesia tried to build the employment system through the formation of the Draft Omnibus Law Cipta work to open employment and protection opportunities for workers. This formation process is because it wants to open foreign investment opportunity to improve the economy of Indonesia.
- That the Plan Law Omnisbus Law Cipta work established by the Government is more focused on investing without regard to justice Pancasila as the basis of the establishment of a statutory law in Indonesia

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