

Legal Protection Of Occupational Safety And Health In The Employment Agreement

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Abstract

PT. Indo Hutama Jaya, which is engaged in Civil Mechanical Construction, has been registered with the supervision of the Ministry of manpower, there are some irregularities or problems, namely the right to guarantee Occupational Safety and health for workers who work at PT. Indo Hutama Jaya, such as incomplete use of PPE that has been provided by the company or does not follow the work procedures set by the company. To prevent or minimize the occurrence of accidents and occupational diseases, the PT. Indo Hutama Jaya implement SMK3. The research method used is normative and empirical juridical research. The nature of the research used in this study is descriptive analysis. The data sources used in this study are primary and secondary data. The method of data analysis used in this study is descriptive qualitative. Based on the results of the study, the conclusion in this study is a work Agreement set forth in Article 1601 A of the Civil Code must contain the terms of the validity of the agreement in accordance with Article 1320 of the Civil Code such as the agreement of both parties, the existence of skills in making alliances, the existence of a certain thing, and the existence of a lawful cause. Implementation of legal protection in PT. Indo Hutama Jaya is the legal protection of working hours and breaks, salaries or wages, bonuses or benefits, and the existence of facilities regarding Occupational Safety and health, such as personal protective equipment, guard posts, bathrooms. But in the employment agreement PT. Indo Hutama Jaya, workers do not receive protection regarding Occupational Safety and Health and workers are not included in the BPJS Ketenagakerjaan program. For the implementation of Occupational Safety and Health Protection at PT. Indus Hutama Jaya in accordance with law No. 1 Of 1970 On Occupational Safety. Legal protection of Occupational Safety and Health in the legislation in accordance with Law No. 1 of 1970 on Occupational Safety, especially Article 3 which stipulates the terms of Occupational Safety in the company. And Law No. 13 of 2003 on Labor that provides legal protection against labor/workers, wages, and welfare. The legislation that regulates Occupational Safety and health is also supported by government regulations, ministerial regulations, ministerial decisions on Occupational Safety and health (K3), ministerial instructions, and circulars and decisions of the Director General of Industrial Relations and Labor supervision.

Keywords: Legal Protection, Labor, Outsourcing, Work Accidents

1. INTRODUCTION

The Constitution of the Unitary State of the Republic of Indonesia in 1945 Article 27 paragraph (2) states that every citizen has the right to work and a decent livelihood for humanity. Article 27 paragraph (2) means that the state guarantees the right of everyone to get protection and comfort in

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carrying out their work. The protection is intended to ensure equality and treatment without discrimination on any basis to realize the welfare of workers and their families while taking into account the development of the progress of the business world and the interests of employers. In line with that, Labor development is directed to improve the quality and contribution in development and to protect the rights and interests in accordance with human dignity.

Labor development is organized on the principle of integration and partnership, therefore as stipulated in Law No. 3 of 2003 on Labor, that Labor development aims to create equal employment opportunities and the provision of labor in accordance with employment opportunities and the provision of appropriate labor in realizing welfare.

In the implementation of national development, the workforce has a very important role and position as actors to achieve development goals. Labor is a company asset that must be given protection, especially regarding aspects of Occupational Safety and health (K3) considering this threat is very potential with work agreements in the company.¹ The development of profit-oriented business in Indonesia, which considers that the most important thing of the company is to take maximum advantage, has encouraged workers to work harder in accordance with market needs. Where in this case, it is not uncommon to cause workers to be injured. The injuries in question are very diverse, from injuries to the muscles to injuries that cause fatalities.

Workers are said to be the backbone of the company because it has an important role. Without workers, it would not be possible for companies to walk and participate in national development.² even a company without workers is like an airplane without an engine or like a body without a spirit. Workers are those who have a role in moving the wheels of life or business continuity of a company.

Realizing the importance of workers for a company, it is necessary to think so that workers can be kept safe in carrying out their work. Likewise, it is necessary to seek tranquility and health for the worker so that what he faces in the work can be taken into account as much as possible, so that vigilance in carrying out the work is guaranteed. These ideas are the beginning of protection activities for workers which in daily practice are useful to be able to maintain the productivity and stability of the company. Therefore, to be able to protect the safety and health of workers in order to realize optimal work productivity, then held Occupational Safety and health efforts as mandated by Law No. 13 of 2003 on Labor Article 86 paragraph (1) letter A, that: "Every worker has the right to protection of Occupational Safety and health."

Occupational Safety and health efforts are intended to provide safety guarantees and improve the health of workers by preventing accidents and occupational diseases, controlling hazards in the workplace, health promotion, treatment, and rehabilitation.⁵ Occupational Safety and health, hereinafter abbreviated as K3, are all activities to ensure and protect safety and health labor through efforts to prevent occupational accidents and occupational diseases.⁶ according to the American Society of Safety and Engineering (ASSE), K3 is defined as a field of activity aimed at preventing all types of accidents that have to do with the environment and work situation.

K3 is also needed along with the development of industry that brings with it the use of various tools, machines, installations and hazardous and toxic materials. The use of tools and materials that were originally intended to facilitate workers in doing their jobs often actually pose an increased risk of work in the process of use/workmanship. The risk of occupational accidents and occupational diseases that at a certain level can cause the termination of the employment agreement so that the continuity of work/livelihood of workers and their families can no longer be maintained. On the other hand, there are risks for the company in the form of the possibility of various damages in the work environment in relation to the continuity of assets and means of production and the onset of compensation costs. The purpose of K3 is to ensure the continuity of the work Agreement system in harmony. Because the success and profit of the company largely depends on the workers. If workers are comfortable and get good treatment from the company, then worker productivity will be maximized. Because they see the benefits of the company is also a blessing for their welfare.

To improve the effectiveness of the K3, it is necessary to implement a planned, measurable, structured, and integrated K3 by the company through the Occupational Safety and Health Management System. In the provisions of Law No. 13 of 2003 on employment Article 87 paragraph (1), it is said that: "Every company is obliged to implement an occupational safety and health management system that is integrated with the company's management system."

The Occupational Safety and Health Management System, hereinafter abbreviated to SMK3, is part of the company's overall management system which includes organizational structure, planning, implementation, responsibilities, procedures, processes, and resources needed for the development, implementation, achievement, assessment, and maintenance of Occupational Safety and health policies in order to control risks related to work activities in order to create a safe, efficient, and productive workplace.

Many companies have not implemented the Occupational Safety and Health Management System (SMK3) in accordance with Article 87 of Law Number 13 of 2003 on manpower, due to the wrong understanding of the

substance of Occupational Safety and health (K3), they consider Occupational Safety and health (K3) as a burden. Whereas Occupational Safety and health (K3) is a long-term labor investment.¹⁴ Occupational Safety and health factors (K3) become important because they are strongly related to employee performance and in turn affect company performance.¹⁵ advanced and appropriate knowledge of Occupational Safety and health obligations to workers working in PT. Indo Hutama Jaya. PT. Indo Hutama Jaya which is engaged in Civil Mechanical Construction has been registered in the supervision of the Ministry of manpower, there are several the discrepancy or problem is the right to guarantee the safety and health of workers who work in the company of PT. Indo Hutama Jaya, such as incomplete use of PPE that has been provided by the company or does not follow the work procedures set by the company. To prevent or minimize the occurrence of accidents and occupational diseases, the PT. Indo Hutama Jaya implement SMK3. Therefore, researchers are interested in researching further why there was a work accident at PT. Indo Hutama Jaya, whereas PT. Indo Hutama Jaya has implemented SMK3.

PT. Indo Hutama jaya which is engaged in Civil Mechanical Construction has an office on Jalan Johar Sei Mencirim Komplek Ayla Residence No. 2-3 Sunggal Deli Serdang regency and currently has a number of freelance daily workers 312 workers, permanent daily about 15 workers and wholesale workers 150 people so that the total number of 472 workers, permanent daily workers already have health insurance in the form of the Social Security Administration (BPJS) employment, freelance and wholesale daily workers have no right to guarantee Occupational Safety and health. but in the event of an accident there is a company's obligation to provide health care , but in this case there is no certainty how the protection of the rights of freelance workers guarantees in the case of Occupational Safety and health.

2. RESEARCH METHOD

The type of research chosen is normative legal research that is research establish the law as a system of norms. The system of norms in question is about the principles, norms, rules and regulations. Peter Mahmud Marzuki that: 'normative legal research is a process of finding a rule of law, principles of law, as well as legal doctrines to answer legal problems faced. Normative legal research conducted to produce argumentation, theory or a new concept as a prescription in solving the problem at hand. research normative law is also called doctrinal legal research, namely research aimed at to provide a detailed systematic explanation of the rule of law governing the field of specific legal rules, analyze the relationship between the rules of law one denhan the other, explaining the elusive parts of a rule of law and it also

includes predictions of the future development of a particular rule of law. Doctrinal legal research is library-based research whose focus is analysis of primary legal materials. This type of research is based on the thought that this study to analyze a system of norms or rules.

3. RESULT AND ANALYSIS

The law aimed at protecting labor and work accidents is Law No. 1 of 1970 on Occupational Safety which was promulgated in 1970 replacing Veilingheids Reglement Stbl. No.406 in force since 1910. Work safety is intended as safety related to machinery, aircraft, work tools, materials and processing processes, the foundation of the workplace environment, and ways of doing work

The objectives of Occupational Safety and health are: 67 1. Protect the workforce for their safety in doing the job. 2. Ensure the safety of everyone else at work. 3. Production resources are maintained and used safely and efficiently.

Furthermore, in order for the purpose of Occupational Safety and health can be achieved, it is necessary to work safety requirements as stipulated in law No.1 of 1997 on Occupational Safety Article 3 among others:

Workers in a company is a party that has an important role, therefore the rights and obligations need to be given to workers. According to Mr. Dedek Maulana as director and also delivered by workers (Mr. Arizal workers at PT. Indo Hutama jaya), The rights and obligations given as stipulated in Article 12 of Law No. 1 of .

The obligations of the board as stated in Law Number 1 of 1970 concerning Occupational Safety Article 14, are also implemented and applied in the work environment of PT. Indo Hutama Jaya, namely: a. Availability of all personal protection tools required by the company on workers. b. The existence of writing about occupational safety in the work environment.

Regulation on the implementation of K3 of the provisions of the RI law. No.1 of 1970 on Occupational Safety Article 15 Paragraph (1) is still general (lex generalist), the implementing regulations are described technically and in detail in the form of PP. Presidential decree, Permenaker, Kepmenaker, SE Menaker and Kepdirjen Binwasnaker Depnakertrans RI. Violation of the implementation of regulation K3 UU RI No.1 of 1970 on Occupational Safety Article 15 Paragraph (2) stipulates and provides criminal threats with imprisonment for up to 3 (three) months or a fine as high as Rp.100.000, 00 (One hundred thousand rupiah). This criminal threat will not create a deterrent effect for entrepreneurs who violate law No.1 of 1970 (including its implementing regulations) seen from the confinement period is so short and the monetary fines imposed are too few considering that it is possible for

many workers in one workplace (company) who experience severe injuries and even death and suffer from occupational diseases.

It is unfair if this K3 problem is only delegated to companies/entrepreneurs. Because the problem of K3 is also the responsibility of workers as an object of K3, for that workers also have rights and obligations related to this K3, namely :

- a. Provide evidence when requested by the supervisory officer / Member K3.
- b. Wear personal protective equipment.
- c. Comply with the requirements of K3.
- d. Ask the manager to melaksanakn conditions K3 required
- e. Expressed objections to the work where the requirements of K3 and personal protective equipment is not guaranteed safety.

As for which includes background supervision of the implementation of K3 : a. Every workforce is always faced with the potential danger of accidents and occupational diseases in accordance with the type or characteristics of the company where they work. b. Cases of accidents and occupational diseases will have a very detrimental impact on the workforce, companies and society in general. c. Cases of accidents and occupational diseases can be prevented through Labor supervision in the field of K3 in general and health in particular.

In charge of overseeing the observance or not of legislation in the field of Occupational Safety and health is 1) employees of Occupational Safety and health supervisors are technical supervisors with special skills from the Ministry of Labor appointed by the Minister of Labor. 2) Occupational Safety and health experts are technical workers with special skills from outside the Ministry of Labor appointed by the Minister of Labor.

Supervision of Occupational Safety and health is an important element in labor protection, as well as efforts to enforce labor law as a whole. Law enforcement is carried out in 2 (two) ways, namely preventive and repressive. Basically, both ways are taken very dependent on the level of compliance of the community (employers, workers, unions) to the provisions of labor law. Preventive measures are taken if possible and there is still public awareness to comply with the law. However, if preventive actions are no longer effective, then repeated actions are taken with the intention that the community is able to carry out the law even with coercion.

The goal of Labor supervision is to eliminate or minimize violations of labor laws, so that the industrial Relations process can run well and harmoniously. Directorate of supervision of Occupational Safety and health norms is an organizational unit of supervision of Occupational Safety and health in accordance with the provisions of Article 10 of law no.14 of 1969 and Article 5 Paragraph (a) of Law No.1 of 1970.

In general, supervisory employees are entitled and obliged to perform their duties, which are as follows:

- a. Entering all places where work is carried out or commonly carried out or it can be assumed that there is work carried out and also all houses that are rented or used by employers or their representatives for housing or guardianship of workers.
- b. In case of refusal to enter these places, the supervisory officer has the right to ask the police for help.
- c. Obtain clear information from employers or their representatives and workers about the conditions of Employment Relations at the company in question.
- d. Ask a question without a third party.
- e. Must coordinate with the Union. f. It is obligatory to keep secret all the information obtained from the examination. g. Obligated to master the offense.

Law No.13 of 2003 on Labor Article 181 affirms that the supervisor must: first keep secret everything that by its nature deserves to be kept secret. The second does not abuse its authority.⁷⁸ who has the right to conduct an occupational health examination is a doctor appointed by the head of the company/place of work and approved by the Ministry of Labor. Implementation of Occupational Health Supervision addressed to:⁷⁹ 1. Place of work, namely : a. Hygiene and care. b. Working environment conditions. 2. The work process that needs to be investigated how the work process starts from the warehouse of raw materials, preparation pengolaha packing until distribution. 3. Labor/workers, which need to be considered : a. Personal protective equipment b. His working attitude c. Gender d. Age e. Working load f. Labor nutrition 4. Occupational health services 5. Health facilities.

As explained earlier, these health rules are coercive. The company that is generally required to implement occupational health rules and is responsible for their implementation. However, the company is still given the opportunity to hold irregularities in the rules of Occupational Health, for example: 1 the company may make deviations in terms of working time. The Prohibition of doing work more than 7 hours a day and more than 40 hours a week, can be waived when it comes to the development of the country. 2 the company may waive the rest period and holiday provisions and the Prohibition of working more than 7 hours a day, 40 hours a week if there is work that must be completed immediately.

Cases of accidents and violations of Occupational Safety and Health at PT. Indo Hutama Jaya, never happened but very nimim. This is due to the direct supervision of the head of workers (Foreman) and gives an appeal to workers to pay attention to Occupational Safety and Health at work. And the role of workers who are very concerned about the work environment.⁸⁵

likewise with the health of workers, where workers often suffer or feel back pain, colds as a result of work that interfere with the health of the worker. This is because when doing work, workers do not wear protective equipment provided by the company that they consider uncomfortable when doing work and lack of water consumption.

4. CONCLUSION

Implementation of legal protection in PT. Indo Hutama Jaya is the legal protection of working hours and breaks, salaries or wages, bonuses or benefits, and the existence of facilities regarding Occupational Safety and health, such as personal protective equipment, guard posts, bathrooms. But in the employment agreement PT. Indo Hutama Jaya, workers do not receive protection regarding Occupational Safety and Health and workers are not included in the BPJS Ketenagakerjaan program. For the implementation of Occupational Safety and Health Protection at PT. Indus Hutama Jaya in accordance with law No. 1 Of 1970 On Occupational Safety.

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