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Labor supervision policy in Indonesian legal system based on Pancasila

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Abstract. Labor supervision policy is one of the important aspects of labor law enforcement. Through labor supervision, the state is present in an effort to provide legal protection for workers. Along with the passing of the ASEAN Economic Community (AEC), the need to provide legal protection for workers is very important in an era of opening the demands of employment and investment. In the concept of Pancasila state law, labor supervision policy objectives cannot be separated from the country's national objectives based on the ideals of Indonesia and Indonesian law. On the other hand, Indonesia's participation in the AEC would bring consequences compliance with policies along the AEC. This paper analyzes on labor supervision policy in the Indonesian legal system based on Pancasila in order to provide legal protection for workers in an era of global competition. The study of this paper is normative with statute, concept, historical, philosophical, and analysis approach. The results of the analysis show that the policy of labor supervision as stipulated in the Law of the Republic of Indonesia Number 13 Year 2003 and Ministry Labor of the Republic of Indonesia Number 33 Year 2016 still have weaknesses in the aspect of substance, structure, and culture. These weaknesses have implications to the lack of legal protection for workers in the face of global competition.

Keyword: Pancasila, supervision, labor

1. Introduction

The development of the Indonesian legal system cannot be separated from the concept of a legal state as stated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3). Considering the content of the Preamble and Articles in the 1945 Constitution of the Republic of Indonesia as the source of Indonesian legal politics, it is clear that the concept adopted by the Indonesian legal state is the concept of the Pancasila legal state. The concept of Pancasila legal state differs from the concept of *rechtstaats* and rule of law [1] This concept is a crystallization of the views and philosophy of life that is loaded with the noble ethical and moral values of the Indonesian nation as stated in the Preamble and implied in the Articles of the 1945 Constitution of the Republic of Indonesia [2]. In the concept of Pancasila legal state, there are characteristic values which crystallize goals, basis, *rechtsidee*, and basic norms of the Indonesian state that gave birth to the national legal system of Indonesia [1]. This is characteristic of the Pancasila legal state [1]. These characteristics are as follows: It is a state of kinship, that create a balance and harmony between individual interests and the interests of society as a whole; Certainty and justice of legal state, the concept of the legal state of Pancasila takes prismatic concept that combines the principles of legal certainty and the principle of justice; Religious nation-state, the concept of Pancasila legal state that respects and fosters all the religious affiliations of the people along the humane and civilized. So the concept of Pancasila legal state is the concept of divinity state, it is neither a religion state nor a secular state; Law as a tool of social engineering and the law as a mirror of the state of society.

By combining these two concepts, Pancasila legal state tries to preserve and reflect the values that live in the community as well as applying positive laws that live in these communities to encourage and guide the community on developments and progress in accordance with the values of Pancasila; Base creation and establishment of national law must be based on the principle of law that



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is neutral and universal. In this sense, Pancasila as adhesive and unifier; based on the value that can be accepted by all interests and does not favor any particular group or class. The concept of Pancasila legal state is the main characteristic that distinguishes Indonesia's legal system from other legal systems. It is a prismatic choice; it is well-known by prismatic law in the legal context .

Furthermore, legal system mainly consists of three elements; substance, structure, and culture (Lawrence M. Friedman, 2017. Translation). Therefore, Indonesian legal system in all areas of law should refer to the concept of the Pancasila legal state and include aspects of substance, structure, and culture. In this case, Pancasila is grundnorm and rechtsidee as belief framework and has two functions namely constitutive and regulative function.

In the field of labor law, the government has issued labor policies, including labor supervision policy based on the mandate of the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (2) and Article 28 I paragraph (4). The Constitution of the Republic of Indonesia Year 1945 Article 27 paragraph (2) claims: "Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan". This provision implies to the Government to protect and meet the basic rights of citizens referred to in the aforementioned article. Furthermore, Article 28 I paragraph (4) stated that: "Perlindungan, pemajuan, penegakan, dan pemenuhan hak asasi manusia adalah tanggung jawab negara, terutama pemerintah." The article is a mandate for the Government to pay attention to aspects of the protection of human rights in all forms, including seeking assurances through the framework of legal reform. In this case, the renewal of established law should refer to and not in conflict with the fundamental rights set out in the constitution.

This policy has always been improved from time to time by Indonesia government to strengthen labor supervision management. However, many problems still occur and some weaknesses always appear because the implementation of policy does not run well on the right track. Considering the implementation of the AEC nowadays, labor supervision management becomes crucial because the professional labor market is widely opened. If labor supervision is not going well, it will be harmful to Indonesian labor. Therefore, it is necessary to review the current labor supervision policy based on the concept of Pancasila legal state so that the problems of labor supervision can be overcome and at the same time it can be a protection for workers in the AEC era.

2. Methodology

The paradigm of this research is positivism, which conceives reality as it is visible [6]. The law is considered as a set of written rules, issued by a legitimate institution, which is imposed to govern individuals becoming a good society. Reality here refers to the legislation on labor supervision.

This research is a normative legal research. Legal research is a process of finding the rule of law, principles of law, and the legal doctrines in order to address the legal issues at hand. At the substance is a normative legal research study that examines and analyze on legal norms that have been established by the competent authority. Legal norms in question here are the laws and regulations related to labor supervision. This type of research is analytical descriptive research. This type of research is descriptive analytical research, which will describe the results of the analysis in a systematic, factual, and accurate information on a particular population. Soerjono Soekanto interprets descriptive research as research that is intended to provide the data as thoroughly as possible about the people, circumstances, or other symptoms. In this study, we describe the results of an analysis of the labor supervision arrangements in the Indonesian legal system based on Pancasila.

The collected data were secondary data through literature study and document study which was then analyzed by prescriptive analysis method. The prescriptive analysis is intended to provide arguments on the research that has been conducted by the researchers.

3. Findings

Labor supervision policy in Indonesia refers to the provisions of the 1945 Constitution of Republic of Indonesia Article 27 paragraph (2) and Article 28 I paragraph (4). The article implies that the protection and fulfillment of the basic rights of the citizens must be realized by the Government in all forms, including seeking guarantees through regulation. In line with the mandate, the Government has issued several labor supervision policies in the following legislations.

- a. The Republic of Indonesia Law Number 3 of 1951 on the Declaration of the Supreme Court of the 1948 Labor Supervision Act. No. 23 of the Republic of Indonesia to all over Indonesia;

This Act provides that labor supervision is held in order to:

- (1) Supervise the enactment of labor laws and regulations in particular;
- (2) To gather materials on labor relations and labor conditions in the broadest sense in order to enact labor laws and regulations;
- (3) Perform any other work assigned to him by law or other regulations.

Then, it is also to manage the rights and obligations of supervisory staff.

- b. The Republic of Indonesia Law Number 13 of 2003 on Manpower. The regulatory arrangements contained in this Act are in Chapter XIV, Articles 176-181. The supervisory provisions shall be conducted by a competent and independent supervisor. This law, in addition to requiring supervisors to keep secret everything that by its nature is anonymous, it also requires them not to abuse their authority.

- c. The Republic of Indonesia Law Number 21 of 2003 on the Endorsement of ILO Convention Number 81 Concerning Labor Inspection in Industry and Commerce.

The functions of the labor supervision system based on the convention are:

- (1) to ensure law enforcement on labor conditions and labor protection and regulations concerning working hours, remuneration, safety, health and welfare, child and youth labor, and other related issues.
- (2) to provide information on technical issues to employers and workers on the most effective way to comply with laws and regulations.
- (3) to notify the government on the occurrence of irregularities or misconduct that are not specifically regulated in the prevailing laws and regulations.

- d. The Republic of Indonesia Law Number 23 of 2014 on Regional Governance regulates the repositioning of the implementation of labor supervision. Structurally, there has been a change in the position of labor supervisor from the structure of the district/city government to the central government. Supervision authority relating to the establishment of labor supervision system and the management of labor supervisor becomes the authority of the central government. Provincial governments are authorized to conduct labor supervision, while district/city governments have no authority related to labor supervision.

- e. Government Regulation of the Republic of Indonesia Number 21 Year 2010 on Labor Supervision.

This regulates the management of labor supervision in a unified, coordinated, and integrated system covering work units, supervisor, and procedures.

- f. The Regulation of Ministry of Manpower of the Republic of Indonesia Number 33 of 2016 on the Procedures of Labor Supervision, which regulates the implementation of supervision through several stages, namely educative preventive stages, repressive non judicial, and repressive judicial. The activities are carried out through the activities of coaching, inspection, testing, and /or investigation of labor crime.

Some of these supervisory policies are to create a harmonious relationship between workers and employers. Then, it also provides legal protection for them. Based on the results of the analysis, it is known that there are weaknesses of the substance of the regulatory aspects of labor supervision in

Law of the Republic of Indonesia Number 13 of 2003 that does not provide criminal and administrative sanctions on the regulation. So any violation in the implementation of these articles cannot be given strict sanctions. Furthermore, administrative sanctions and criminal sanctions are not entirely authorized by regulatory authorities. It also means that labor supervision is not legally enforceable. Weaknesses are also found in the regulation of Ministry of Manpower of the Republic of Indonesia Number 33 of 2016. In this regulation, it is not expressly determined in terms of how the guidance, inspection, testing, and investigation of labor crime are conducted. Referring to the opinion of Mahfud MD and Arief Hidayat, the weakness in this substantial aspect does not reflect the characteristics of the Pancasila legal state; as a legal state with justice and legal certainty as well as a kinship state.

From the structural aspect, the quality and quantity of supervisory staff is considered inadequate. From the aspect of structure, quantity Inspectors inadequate (Total = 1,776 people, overseeing 265 209 companies. Ideally, 4,452 people, there is a shortage of 2,676 supervisors, from 514 districts/cities in Indonesia, 155 districts/cities have not had inspectors.) [13] The availability of the quality and quantity of supervisory staff certainly has an impact on the implementation of labor supervision. Lalu Husni said that preventive supervision is rarely conducted because of the limited number of supervisors [14]. Moreover, the results of Chaerul Ismet's research stated that the professional level of the labor supervisor and over 75% of the number of existing labor supervisor have been over 45 years old [15]. In addition, infrastructure facilities to conduct monitoring activities are also inadequate, such as transportation facilities, work space, budget, and others.

From the cultural aspect, the motivation of supervisory staff in supervising is low as well as the level of awareness of workers to participate in supervision, and there is a reluctance to submit complaints of compliance with the norms of work due to the presence of supervisory officers who are not close to them.

Besides those three aspects, there is one more thing to note related to the global level. At this level, there are challenges that require the readiness of a strong Indonesian legal product that originates from Pancasila and the 1945 Constitution of the Republic of Indonesia, which provides legal certainty, legal protection and law enforcement. As the implementation of AEC, it is necessary to have labor supervision policies to strengthen the labor supervision system and provide better legal protection for workers. On the one hand, the AEC brings a good opportunity and a challenge. On the other hand, it also poses a threat to us if we are unable to prepare ourselves for competition with other countries.

Therefore, referring to point of view of Sunaryo, labor supervision policy that is grounded in the values derived from the culture of Indonesian people themselves is needed, and Pancasila should be the paradigm as a legal goal. (Sunaryo, 2013). Therefore, by looking at labor conditions in Indonesia, we need a labor supervision policy that provides protection for workers in particular from the flow of goods and services in the MEA era that is no longer possible to avoid. The intended policy is a policy based on the real conditions of Indonesian society which is based on values rooted in Indonesian culture itself, namely Pancasila.

Supervision is an important aspect of the rule of law, even becoming one of the pillars that must exist to avoid abuse of power. As Karl Loewenstein discloses, cited by La Ode Husen, this supervision aspect is an essential element in the conception of a state of law and democracy (La Ode Husen, 2005). Based on the concept of the legal state, the policy of labor supervision cannot be separated from the context of the development of the Indonesian legal system based on Pancasila. It is indeed necessary to conduct labor supervision which aims to ensure the implementation of employment policies that accommodate the interests of workers and employers and it also provides protection for workers, encourage business performance, and improve the welfare of society in general. These will become meaningless because of the weaknesses occurring in the substantial regulation and structural and cultural aspect of supervision in work norms.

4. Conclusion

Based on the description above, it can be concluded that the policy of labor supervision is regulated in several laws and regulations. Supervision policy regulated in Republic of Indonesia Law Number 13 of 2003 and the Regulation of Ministry of Manpower of Republic of Indonesia Number 33 of 2016 still has a weakness of the substance aspect. There are also disadvantages of structural and cultural aspects. These weaknesses do not reflect the characteristics of the Pancasila legal state and imply the weakness of legal protection for workers. Therefore, it is necessary to improve the labor supervision policy in order to provide maximum benefit for all parties by maintaining the basis of the legal state of Pancasila.

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