

Problems of Labor Supervision in Enforcing Labor Law in Indonesia

Sherly Ayuna Putri., Amelia Cahyadi

Padjadjaran University Bandung-Sumedang Road, KM. 21, Sumedang, West Java, Indonesia

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ABSTARCT

Labor Supervision is an institution that is very essential in the implementation of labor laws and regulations. The supervision is not only to supervise the implementation of statutory provisions, but also to provide understanding to workers, labor unions, and employers. Labor Supervision is a series of activities carried out for labor law enforcement. The main objective is to convince social partners of the need to review labor regulations in the workplace and their interests in this regard, through prevention, education and where necessary taking enforcement action. The implementation of government affairs in the regions has undergone significant changes to the authority to manage government affairs in the regions. Law No. 23 of 2014 concerning Regional Government has shifted several affairs that were originally carried out by the Regency / City regional government to the authority of the Provincial government, one of which is the authority related to the implementation of Labor Supervision.

The Institutional System of Labor Supervision affects the fulfillment of workers' rights in Industrial Relations, that with the repositioning of Labor Supervisors in Indonesia, causing the authority to supervise labor to shift to the authority of the provincial region, while the district / city does not have any authority at all in terms of Labor Supervision. The repositioning of Labor Supervisors causes the provincial government, especially the manpower agency, to be able to show improvements in the performance of Labor Supervision institutions, especially improvements in the implementation of Labor Supervision in companies. In carrying out the function of Labor Supervision in the regions, experiencing various problems that are quite difficult to fulfill the mandate of Law Number 23 of 2014 and Minister of Labor Regulation Number 33 of 2016 Jo Minister of Labor Regulation Number 1 of 2020 concerning Amendments to Minister of Labor Regulation Number 33 of 2016.

Keywords: Labor supervision, law enforcement, supervision problems

INTRODUCTION

Article 27 paragraph (2) of the 1945 Constitution and its amendments contain two meanings at once, providing citizens with the "right" to obtain one of the basic human rights, namely employment, and imposing an "obligation" on the state to fulfill it. Meanwhile, in addition to the right to obtain employment, Article 38 paragraph (2) of Law No. 39/1999 on Human Rights further emphasizes that citizens also have the right to freely choose the job they like.

The development of industrial relations and the improvement of employment protection are important in the context of developing an industrial relations system that emphasizes partnership and common interests so as to optimally empower and utilize the workforce, protect the rights and interests of the workforce, guarantee equal opportunities and treatment without discrimination, create harmonious working relationships, create business peace, increase company productivity, improve the welfare of workers and their families, provide legal certainty for workers, and ultimately realize an advanced and prosperous Indonesian society. For the enforcement of labor laws and regulations, it is necessary to have a Labor Supervision function. Labor Supervision is an institution that is very important in the implementation of labor laws and regulations.

The supervision not only supervises the implementation of the provisions of the legislation, but also to provide counseling to workers, labor unions, and employers. Labor supervision is a public function of labor administration that ensures the application of labor legislation in the workplace. Its main role is to convince the

social partners of the need to comply with workplace legislation and their common interests in this regard, through preventive and educational measures, and if necessary enforcement.

The politics of labor law of the Indonesian government since the old order, new order, reform, and until now has produced many legal products governing Labor Supervision. Based on a juridical study, there are several legislative products that serve as the legal basis for the implementation of Labor Supervision, including Law No. 3 of 1951 concerning the Declaration of the Applicability of the Labor Supervision Law No. 23 of 1948 of the Republic of Indonesia for All of Indonesia (hereinafter referred to as the Labor Supervision Law); Law No. 13 of 2003 concerning Labor (hereinafter referred to as the Labor Law); Law No. 21 of 2003 concerning Ratification of the International Labor Organization Convention No. 81 of 1947 concerning Labor Supervision in Industry and Trade; Law No. 23 of 2014 concerning Regional Government. (Jefri Hari Akbar, 2020).

The implementation of government affairs in the regions has undergone significant changes to the authority to manage government affairs in the regions. Law No. 23 of 2014 concerning Regional Government has shifted several affairs that were originally carried out by the Regency / City government to the authority of the Provincial government, one of which is the authority related to the implementation of Labor Supervision. The transfer of authority raises various issues that are feared to ignore the constitutional rights of every component concerned in the development of progressive and civilized labor.

Based on the description above, several problems can be drawn related to the Institutional System of Labor Supervision towards the fulfillment of workers' rights, as well as problems faced in the implementation of Labor Supervision after the transfer of authority for Labor Supervision from the Regency / City government to the Provincial government.

RESEARCH METHODOLOGY

Legal research is a scientific activity based on certain methods, systematics, and thoughts that aims at studying one or several certain legal phenomena, by analyzing them. For this reason, legal research requires methods as research directions and guidelines. The method used in this research is a normative legal research method, meaning this legal research is carried out by examining library materials or secondary data, which consists of primary, secondary, and tertiary legal materials (Mamudji & Soekanto, 2011). The data obtained from the research is then analyzed qualitatively, meaning the analysis is carried out by describing, explaining, and analyzing the data obtained during the research based on legal materials, systemically and accurately (Soekanto, 2012). Results from the analyzed data are then presented descriptively.

LITERATURE REVIEW

History of the Development of Labor Supervision in Indonesia

Labor legislation is a consequence of the industrial revolution that began in Europe in the late 18th century and continued in the 19th century. The 19th century was marked by strikes and riots, often leading to violent revolutions that made Governments realize that the state had to intervene in the administration of employment relations and the determination of working conditions. The Labor Supervisions service was established and built up to oversee the implementation of the first protective legislation. Since the appointment of the first Labor Supervisors in England in 1833, Labor Supervisors have been established in almost every country in the world. For about 175 years, Labor Supervisors have been doing their work to improve working conditions. Their worldwide achievements and record of success are very proud (Giuseppe Casale, 2014).

In 1948, the Indonesian government introduced Law Number 23 of 1948 concerning Labor Supervision, with the consideration that in order to supervise the implementation of labor laws and regulations in particular and to obtain information materials on labor matters in general, it is necessary to improve the rules concerning Labor Supervision, which are based on Article 5 paragraph (1), Article 20 paragraph (1), and Article IV of the Transitional Rules of the 1945 Constitution as well as the Vice President's edict dated 16 October 1945 Number X.

Law No. 23/1948 revoked the regulations in Staatblad 1941 No. 381 concerning "Vaststelling van oen regeling inzake het informatierecht van het hoof den de ambtenaren van het kantoor van arbeid". Article 1 paragraph (1) of this law states that Labor Supervision is conducted in order to:

- a. To supervise the implementation of labor laws and regulations in particular;
- b. To collect information material on questions of labor relations and labor conditions in the broadest possible sense in order to make labor laws and regulations; and
- c. To carry out other work assigned to it by law or other regulations.

Provisions of the Labor Supervision

Supervision is the process of observing the implementation of all organizational activities to ensure that all work being carried out is in accordance with a predetermined plan or all efforts or activities to find out and assess the actual reality regarding the implementation of tasks or activities and activities or the process of activities to find out the results of implementation, errors, failures, to be corrected later and prevent so that the implementation is not different from the predetermined plan, in the implementation of the absolute need for plans and implementation orders (Nur Edi, 2014: 86).

Supervision norms are benchmark rules or measures set by the authorities that must be followed in order to carry out the supervisory function in order to achieve the desired quality of supervision:

- a. Supervision is not fault-finding, that is, it does not prioritize looking for who is wrong, but if errors, deviations and obstacles are found, it is necessary to report the causes and how they occurred, and find out how to fix them.
- b. Supervision is a continuous process, which is carried out continuously, so as to obtain continuous supervision results.
- c. Supervision must ensure the possibility of taking quick and precise corrections to the deviations and irregularities found to prevent the continuation of errors or deviations.
- d. Supervision is educational and dynamic, which can generate enthusiasm to improve, reduce or eliminate deviations in addition to being a driver and stimulus to bring order and perfect the condition of the object of supervision (Sujamto, 1988: 19).

Labor Supervision is a sequence of activities undertaken for the enforcement of labor laws. The main objective is to convince social partners of the need to review labor regulations in the workplace and their interests in this regard, through prevention, education and if necessary law enforcement actions (Sujamto, 1988: 19). Law enforcement is the process of making efforts to uphold or function legal norms in reality as guidelines for actors in traffic or legal relations in the life of society and the state. Law enforcement is an effort to realize the ideas and concepts of law that are expected. Another definition according to Jimly Asshiddiqie, that law enforcement is an effort to uphold or function of legal norms in reality as a guide to behavior in traffic or legal relations in the life of society and the state (Akhyar Ari Gayo, 2012: 59).

Law Number 13 of 2003 concerning Labor determines that Labor Supervision is an activity of supervising and enforcing the implementation of laws and regulations in the field of labor. Labor Supervision is carried out by Labor Supervisory employees who have competence and independence to ensure the implementation of labor laws and regulations. Labor Supervision is carried out by a separate work unit in the agency whose scope of duties and responsibilities in the field of labor in the central government, provincial government, and district / city government.

ILO Conventions 81 and 129 are the access points for effective labor supervision according to these universal standards, including (Giuseppe Casale, 2014):

- a. Labour Supervision should be organized as a system applicable to all workplaces where legal provisions relating to working conditions and the protection of workers are enforced;
- b. Labor supervision should be placed under the supervision and control of the central power to the extent that it is compatible with the administrative practices of the country concerned;
- c. The supervision should ensure an educational and enforcement function in relation to working conditions (such as working hours, wages, security, health and welfare, child and youth labor and other related matters) and alert the competent authority to any deficiencies or abuses not covered by the applicable statutory provisions;
- d. Supervisors should be public servants secured by a stable employment relationship and independent from changes in government and inappropriate external influences;
- e. They should be recruited solely on the basis of their qualifications and they should be adequately trained for the proper performance of their duties.
- f. Their number should be sufficient to ensure the effective discharge of their duties in relation to, among other things, the number, nature, size and situation of the workplace, the number of workers employed, and the number and complexity of the legal provisions to be enforced;
- g. They should be equipped with adequate office and transportation facilities and measurement materials;
- h. They should be given adequate powers and be legally empowered;
- i. Workplaces should be supervised as frequently and in as much detail as possible to ensure the effective application of the relevant legal provisions. Supervisors should provide information and advice to employers and workers on how to comply with the law;
- j. Adequate penalties for violation of legal provisions should be enforced by Labor Supervisors and for obstructing Labor Supervisors in the performance of their duties should be provided for in national laws and regulations and should be effectively enforced; and
- k. The operational implementation of the Labor Supervision system can be achieved through cooperation with other government bodies and private institutions involved in the protection of workers as well as employers and workers and their organizations.

In addition to being in charge of carrying out Labor Supervision, labor supervisors are also given the authority as Civil Servant Investigators in accordance with the provisions of laws and regulations. Civil Servant Investigators are authorized to:

- a. To examine the truth of reports and information regarding criminal acts in the field of labor;
- b. Examine persons suspected of committing criminal acts in the field of labor;
- c. Request information and evidence from persons or legal entities in connection with criminal acts in the field of employment;
- d. Conducting examination or confiscation of materials or evidence in the case of criminal acts in the field of employment;
- e. To examine letters and/or other documents regarding criminal offenses in the field of employment;
- f. Requesting the assistance of experts in the context of carrying out the task of investigating criminal acts in the field of labor; and

- g. Stop the investigation if there is not enough evidence proving the existence of criminal acts in the field of labor.

RESULTS AND DISCUSSIONS

Institutional System of Labor Supervision on the fulfillment of workers' rights

ment of Law Number 23 of 2014 concerning Regional Government, there have been significant changes for labor supervisors. Government Affairs are regulated in the Regional Government Law, while Labor Supervision is included in the category of Concurrent Government Affairs which are divided between the Central Government and Provincial Regions. Previously, in Government Regulation Number 38 of 2007 concerning the Division of Government Affairs between the Government, Provincial Regional Government, and Regency / City Regional Government; Labor Supervision as a Government Affairs has been divided between the Central Government, Provincial Regions, and Regency / City Regions. The distribution of Labor Supervision affairs in this Government Regulation tends to be balanced. The difference only appears in the scope. Regency / City scope affairs become the authority of the Regency / City Regional Government, Provincial scope affairs become the authority of the Provincial Regional Government, and national scope affairs become the authority of the Central Government.

Currently, the distribution of Labor Supervision affairs in Law Number 23 of 2014 concerning Regional Government has a tendency to be one-sided / unbalanced. The authority vested in the Central Government is the establishment of a supervisory system and personnel management. The authority that exists in the Provincial Region is the implementation of Labor Supervision. Meanwhile, the Regency / City does not have any authority at all in matters of Labor Supervision. This system is often referred to as "limited centralization". "Centralized" means centered, and "limited" means restricted to only 9 provincial regions. So, the Labor Supervision affairs that were previously spread across all levels of government are now centralized to the Provincial Regions, namely in terms of its implementation.

Labor Supervision is a sequence of activities carried out to enforce labor law. The main objective is to convince social partners of the need to review labor regulations in the workplace and their interests in this regard, through prevention, education and where necessary enforcement action. (Abdul Khakim, 2020). Furthermore, Labor Supervision is a public function of the labor administration that ensures the application of labor legislation in the workplace.

This distribution of government affairs arrangement is not without problems. Currently there are four laws and regulations governing the authority of Labor Supervision. First, is Law No. 3 of 1951 on the Declaration of the Enactment of the Labor Supervision Act of 1948 NR.23 of the Republic of Indonesia for the Whole of Indonesia. Second, is Law Number 13 of 2003 concerning Labor. Third, is Law Number 21 of 2003 concerning the Ratification of ILO Convention No. 81 Concerning Labor Inspection In Industry and Commerce. And fourth, is Law Number 23 of 2014 concerning Regional Government, as explained above.

The Problematics facing the Implementation of Labor Supervision

Many things are behind the condition of Labor Supervision in the Regions so that Labor Supervisors seem to be indecisive in conducting Labor Supervision. First, in terms of regulations, Minister of Labor Regulation Number 33 of 2016 concerning Labor Supervision Procedures in conjunction with Minister of Labor Regulation Number 1 of 2020 concerning Amendments to Minister of Labor Regulation Number 33 of 2016 explains that the implementation of Labor Supervision is carried out through preventive educative, non-judicial repressive and judicial repressive stages. However, for supervision originating from supervision work plans or worker complaints, it is very difficult to measure its effectiveness because often the stages that are passed tend to be educative preventive (coaching, technical advice, and assistance) and non-judicial repressive (Inspection Memorandum or statement letter of compliance with labor laws and regulations), because they are administrative in nature. Second, the implementation of government affairs in the regions has undergone significant changes to the authority to manage government affairs in the regions. Law No. 23 of 2014 concerning Regional Government has shifted several affairs that were originally carried out by district / city governments to the authority of the

provincial government, one of which is the authority related to the implementation of Labor Supervision, this causes access to Labor Supervisors to be not easy and not fast because Labor Supervisors are no longer how many in each district / city.

From the results of research in several regions, it indicates that the implementation of Labor Supervision after the enactment of Law No. 23 of 2014 concerning Regional Government, has not been able to change the performance of Labor Supervision for the better. Based on the results of research conducted by researchers in West Java Province, the following things were found:

- a. Based on information from trade unions, that the delegation of the authority to supervise labor from the Regency / City area to the Provincial area, makes the reporting of labor violations ineffective, considering the location of Labor Supervisors is increasingly far from the workplace in the Regency / City area.
- b. The existence of limited Labor Supervisory Employees caused by, the availability of Human Resources in each region, the rapid movement / transfer of labor supervisory employees, the large duties and responsibilities of supervisory employees, the limited budget for sending new supervisory employees to attend education and training and the uneven functional allowances of supervisory employees in each region.
- c. Currently, the ratio of available supervisory employees to the number of companies that must be supervised is still not ideal. Based on the Economic Census, the number of companies operating throughout Indonesia is 26 million, while the available supervisory employees are 1,517 people.
- d. In the current Labor Supervision Institution, there is no uniformity in the use of terminology used and there is no even distribution of supervisory employees in each region. As in West Java, the term Regional Technical Implementation Unit namely UPTD is used, in East Java the Labor Supervision Institution is in the form of Regional Coordinator namely KORWIL and in Central Java in the form of Supervisory Unit namely SATWAS, and there are also institutions that do not have a form. This has an impact on the authority of supervisory employees in carrying out supervision, as well as the professionalism of supervisory employees. In addition, the condition of the balance of labor supervisory employees in several regions is still uneven, such as in South Sumatra Province, there are only 50 supervisors in one province and there are still no UPTD, KORWIL or SATWAS formed. On the other hand, Karawang Regency, one of the regencies in West Java Province, has 60 supervisory employees, and has a UPTD in its area.
- e. The current implementation arrangements tend to be unclear. For example, in the past if there was a court decision related to Industrial Relations Disputes namely PHI, at the bottom of the decision it was clearly written that "The PHI decision is under the supervision of the Labor Supervisor", so as to clarify the authority of the Labor Supervisor as the executor of the decision. However, currently there is no longer a note from PHI, causing confusion for Labor Supervisors who were originally the executors of PHI decisions, with the absence of the words "Under the supervision of the Labor Supervisor", it can be interpreted that the executor is the clerk. Some notes from the results of the above research, that the implementation of the supervisory function in the regions has experienced various obstacles which are quite difficult to fulfill the mandate of Law Number 23 of 2014 and Minister of Labor Regulation Number 33 of 2016 in conjunction with Minister of Labor Regulation Number 1 of 2020 concerning Amendments to Minister of Labor Regulation Number 33 of 2016.

CONCLUSION

The Institutional System of Manpower Supervision on the fulfillment of workers' rights in Industrial Relations, has changed with the repositioning of Labor Supervisors in Indonesia, causing the authority to supervise labor to become the authority of the provincial government, while the district / city government does not have any authority at all in terms of Labor Supervision. The repositioning of Labor Supervisors causes the provincial government, especially the Labor Institution, to be able to show improvements in the performance of Labor Supervision Institutions, especially improvements in the implementation of Labor Audits in companies. In Labor

Supervision, the implementation of audit has an important meaning, and a strategic position, because the good or bad performance of Labor Supervision is determined by the quality of the audit carried out.

In carrying out the function of Labor Supervision in the regions, there are various problems that make it quite difficult to fulfill the mandate of Law Number 23 of 2014 and Minister of Labor Regulation Number 33 of 2016 in conjunction with Minister of Labor Regulation Number 1 of 2020 concerning Amendments to Minister of Labor Regulation Number 33 of 2016.

Suggestion

The government must reorganize the regional apparatus organization by conducting a review of the delegation of authority granted by Law No. 23 of 2014. Then for the efficiency of the implementation of Labor Supervision requires returning the Labor Supervision function to the Regency / City.

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