THE INFORMAL SECTOR: A DILEMMA AND A SOLUTION

ABSTRACT

The level of compliance of employer with Law number 13 of 2003 on Manpower, has been only 30 out of 100 percent of all work relationships between employers and employees. The paradigm used in this study is called “post positivism”. This research is based on descriptive analysis. This research is a study that combines both normative legal research (doctrinal) and empirical research (non-doctrinal). The data in this study includes both primary and secondary data. This problem is caused because the substance of the manpower law does not differentiate between the ability of individual employers, partnerships or legal entity. The redefinition of work relationship regulated by Law number 13 of 2003 on Manpower, has defined ‘working relationship’ for both formal and informal sectors, and now has become the right choice for raising the level of compliance by businesses.

Key words: employees, informal sector, working relationship
EXISTING RELATIONSHIP PATTERNS BETWEEN EMPLOYER AND EMPLOYEE IN THE SOCIETY

INTRODUCCION

Reference: 4 Pasal 1 angka 5 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan
EMPLOYMENT RELATION
Based on Act No.13 Year 2003 on Manpower

An agreement made between a worker/labourer and an entrepreneur or an employer that specifies work requirements, rights and obligation of the parties.
(Act No. 13 Year 2003 on Manpower)

Any person who works and receives wages/remuneration

Employer

Work Agreement

Employee

Work

Wage

Order

Individual\(^{5,6}\)

Partnerhips \(^{5,6}\)

Legal Entity\(^{5,6}\)

UD, PD, UMKM

Civil Partnership, CV, Firm, BOB, UMKM

Koperasi, PT, BUT

References:

\(^{5}\)Naskah akademik Badan Pembinaan Hukum Nasional Tahun 2009, RUU tentang Badan Usaha Bukan Badan Hukum disusun oleh Tim dibawahi Pimpinan Prof. Dr. Djuhaendah Hasan.S.H

\(^{6}\)Naskah Akademik, Pusat Perencanaan Pembangunan Hukum Nasional Badan pembinaan hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia tahun 2013 tentang RUU Persekutuan perdata, Persekutuan Firma Dan Persekutuan, hlm 17-23
1. Unable to Comply
2. Not Complying

A). Why is the level of compliance of business owners with the laws governing manpower so low?
B). Can the informal sector become a solution in the effort to improve compliance of businesses with the laws governing manpower and employment?

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Reference: 'Laila Nagib, dkk; Hasil Kajian Undang-Undang Nomor 13 tahun 2003 tentang Ketenagakerjaan oleh Lembaga Ilmu Pengetahuan Indonesia (LIPI), 2011
A. The cause of the low level of compliance of employers with Act number 13 of 2003 on Manpower

Unable to Comply

The working relationship in Act No.13/2003 does not distinguish the ability of individual employers alliances with legal entities

Worker's normative rights are not fulfil

Not Complying

works / business sectors not yet / difficult to regulate by Act No. 13/2003 as in the transportation sector

THEORY ANTINOMY

“Balance or Compatibility”

Equalization of financial capability of individual employers with partnerships and legal entities has led to inconsistencies or imbalances

Sri Adiningsih

Small Business
- Capital < 1 billion
- 99.85% from total business unit
- Absorb 88.59% man power.

Medium Scale business
- Capital between Rp. 1 billion until Rp. 50 billion
- 0.14% from total business unit
- absorb 10.83% man power.

Big Scale business
- Capital > 54 billion
- 0.01 % from total business unit
- Absorb 0.56% man power.

Act No. 20/2008 Micro, Small and Medium Enterprises

Micro Enterprises
- Net assets < 50 million

Small Enterprises
- Net assets between Rp. 50 million until Rp. 500 million

Medium Enterprises
- Net assets between Rp. 500 million until 10 billion

Act No. 40/2007 Limited Liability Companies

- Assets > Rp 50 billion

Need regulations which differentiate the definition of companies based on their amount of capital

References:
9 Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas
9 Undang-Undang Nomor 20 Tahun 2008 Tentang Usaha Mikro, Kecil, dan Menengah
10 Sri Adiningsih (2011). Regulasi dalam Revitalisasi Usaha Kecil dan Menengah di Indonesia, p.3

"Balance or Compatibility"
B. Efforts to Enhance Compliance of Companies with Act number 13 of 2003 on Labor, by Regulating the Informal Sector Set and its Dilemma.

1. Redefining Working Relationship Substantion\textsuperscript{13} on Act. 13/2003 on Manpower

- **Formal Sector**: Relationship between employers which are legal entities with their employees based on an employment agreement, which has elements regarding work, wages, and commands.

- **Informal Sector**: Working relationship which is established between workers and individuals or persons who are operating a joint venture, that is not a legal entity, and on the basis of mutual trust and agreement, in which there is received pay and/or remuneration or profit sharing.

2. Legal Consequences

- 1. The protection of employees rights and employers obligations.
- 2. Work regulations and the rights of workers in both formal and informal.

References:
1. One of the causes of non-compliance is that individual employers, partnerships and legal entities have different levels of ability determined by varying capital and owned wealth, such that legal obligations regulated governed by Law number 13 of 2003 on Manpower, must also be distinguished.

2. Redefining ‘working relationship’ as regulated by Law No. 13 of 2003 on manpower, would bring about an increase of company compliance in both the formal and informal sectors. The prerequisite is that the protection of workers' rights and also working requirements must be clearly determined so that they can be accepted by employers and employees. This is the dilemma.

REFERENCES

- Law number 13 of 2003 on Manpower, enacted in 2003
- Sri Adiningsih (2011). Regulasi dalam Revitalisasi Usaha Kecil dan Menengah di Indonesia, p.3