

Regulation to Mining's Labors

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Abstract— The role of law in the context of employment is something that can protect and as a form of government responsibility in protecting citizens (State responsibility to protect), provide security, peace and orderly to achieve prosperity and justice of each person. In the context of this study, it is not only for the Indonesian workers, but also for the foreign workers (TKA). In fact, there are so many workers come from abroad to come and work in the mining sector in Indonesia.

In this study, we see the problem of labor issues that continue to occur in Indonesia. Therefore, looking at such complex employment problems, it certainly requires a complex and systematic problem solving, and one of them is published by Presidential Decree no. 20 Year 2018 on the Use of Foreign Labor. The Presidential Regulation aims to simplify procedures without eliminating the principle of selective use of foreign workers, such as to occupy certain positions as experts.

With the simplification of procedures, it will increase competitiveness, economic growth, investment, the certainty of business, reduces high economic costs, and administrative efficiency.

Keywords— equality, foreign workers, regulation

I. INTRODUCTION

A. Background

Being a citizen of the Republic of Indonesia, according to the 1945 Constitution of the Republic of Indonesia, has a very important meaning in the legal system and government. In the perception of the 1945 Constitution of the Republic of Indonesia recognizes and respects the human rights of every human being within the territory of the Republic of Indonesia.

In addition, there are also provisions concerning the guarantee of certain rights that apply only to citizens or at least to the citizens given particularity or certain privileges. For example, the work of reciprocity creates an obligation for the state to fulfill the special rights for Indonesian Citizens. Strictly said, the certain rights which can be categorized as citizens' constitutional rights are: every citizen is entitled to decent work and livelihood for humanity (Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia).

Indeed, employment development as an integral part of national development based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, is implemented in the context of the development of the Indonesian people as a whole and the development of the Indonesian people wholly to improve the dignity, and self-esteem of the workforce and to create a prosperous, fair, welfare and equitable society, both material and spiritual.

Unfortunately, the constitutional guarantees unable to stem the existing unemployment rate. It should be acknowledged that the labor migrants who are engaged in mining Indonesia are absorbed in many industries and mining in Indonesia. However, it is unfortunate because most of the mining industry has now closed or bankrupt. As a result, many laborers stop working. In addition, the number of companies that closed resulted in decreasing the employment opportunities. On the other hand, the number of labor force continues to increase along with the increase in population. Especially the mining workforce dominated by junior high school graduates, not to mention the ongoing wave of job losses and labor rights violations.

This reality, of course, increase to local employment problems in Indonesia. Despite the awareness, developing countries like Indonesia in general, have a much higher unemployment rate. This happens because the size of the informal sector is still quite large as one of the livelihood field for the uneducated workforce. The informal sector is considered a safety valve for unemployment.

The current employment problem in Indonesia has reached a fairly alarming condition marked by large unemployment and underemployment, relatively low income and un-spread. On the other hand, high unemployment and underemployment are wasteful resources and potential, burdensome families and communities. The main source of poverty can promote an increase in social and criminal unrest, and can hamper development over the long term.

This real condition is getting worst by increasing the foreign workers who enter into labor in the mining sector in Indonesia, especially with the issuance of Regulation of the President of the Republic of Indonesia Number 20 Year 2018 on the Use of Foreign Workers. This legal instrument is considered to give "legal justification" to the presence of Foreign Workers (TKA). Since this Presidential Regulation is considered so easy for the entry of Foreign Workers

(TKA) to Indonesia. In fact, this provision shows very discriminatory, because it regulates in detail the terms of the presence of foreign workers, including the obligation to provide social security of employment. While on the other hand, it is inversely proportional to the situation and conditions of local labors (TKL) in Indonesia.

B. Problem Formulation

- 1) How to make regulations for Foreign Workers (TKA) in Indonesia in order to not discriminative with Local Workers (TKL)?
- 2) How to create equality of workers in the mining sector with more stringent regulations that can reflect the value and sense of justice?

C. Research Methods

The writing of this journal used normative juridical research methods by using the Statute Approach and conceptual approach.

II. DISCUSSION

A. Foreign Workers

In Big Indonesian Dictionary, foreign worker hereinafter abbreviated as Foreigner is defined as foreign citizen of visa holder with the intention to work in Indonesian territory. While the accompanying workforce is the Indonesian workforce appointed and prepared as a companion in the framework of technology transfer and the transfer of justice.

Despite numerous studies of the influx of foreign labor, employment opportunities, and wage rates in a country, there are still many debatable issues with respect to the results of such research. On the one hand, some researchers suggest that the influx of foreign workers has increased economic growth, employment, and wage rates. Meanwhile, on the other hand, some researchers argue that the influx of foreign workers actually gives the opposite effect because the entry of foreign workers inhibits economic growth, employment opportunities and the level of local labor wages. This can happen because the level of education and skills of foreign workers is lower than the local workers. Here, the foreign workers have characteristics as a substitute in the production process. In contrast, in the original case, the researchers argued that foreign workers were viewed as complementary in the production process.

In general, studies that have been conducted in various countries focus on two main phenomena, namely first, aggregate studies on the influence of foreign labor (TKA) entry into economic growth, employment, and wage levels. The second, the micro studies (partial) concerning factors affecting industrial demand for foreign workers. In this case, the macro assessment of the influence of foreign workers' entry into economic growth, employment, and wage rates in a country lacks a satisfactory explanation of why firms industry in a country employs foreign workers more than other countries? Meanwhile, micro studies (individuals) generally examine and analyze employers' behavior patterns in choosing foreign workers based on the costs and individual characteristics of the foreign workers themselves, such as age, gender, education, and skills (Gamer & DeJong, 1981).

This paper discusses the influence of the entry of foreign workers to the existing mining industry in Indonesia, employment opportunities for Indonesian Workers (TKI) is done through the demand side of the labor market in the country of destination. To achieve these objectives, first of all, I discussed the impact of the entry of foreign workers to economic growth. It was then followed by the impact of foreign worker entry on employment and wage levels. Having expressed the impact of the influx of Indonesian labor (TKI) on the growth of output, employment opportunities, and wages in the industrial sector in Malaysia, the description will be closed by raising the conclusions and policy implications.

B. Foreign Workers and Mining Sector

Changes in the economic structure of the agricultural sector to the mining sector have long been regarded as one of the factors causing the entry of foreign workers into the labor market of a country (Piore, 1979). Changes in the structure of the Indonesian Workers (TKI) have led to the emergence of dualism in the labor market, namely the primary labor market (especially in the industrial sector) characterized by generally stable job characteristics, high wages, pleasant working conditions. While the secondary labor market, for example in the agricultural sector, has the opposite characteristics of uncertain jobs, low wages, unpleasant working conditions and jobs at risk.

The interesting hypothesis presented about these foreign workers is the higher of economic development achieved by a country, the more opportunities available for employment opportunities for foreign workers. The changing of worker structure lead to a better working atmosphere cause local workers (TKL) to be more interested in working in the primary labor market, while unfilled work in the secondary labor market is an opportunity for foreign workers to enjoy. Therefore, changes in the economic structure of the agricultural sector to the industrial sector are often regarded as one of the important factors affecting the entry of foreign workers into the labor market of a country.

The experience in the United States shows that changes in the structure of labor from the agricultural sector to the industrial and service sectors have led to the massive entry of foreign workers into the labor market.

Employment opportunities available in sectors not preferred by local workers have been dominated by foreigners from countries such as Canada, Mexico, Cuba, China, Japan, India and the Philippines (see Borjas, 1994 and Fry, 1996). The entry of these foreign workers has had a significant impact on economic growth, employment opportunities, and levels.

Although there have been many studies on the exposure of foreign workers to mining growth, there is still debate among various experts (see Simon, 1988, Flores, 1997, Oscar, 1997, Osili, 2007). On the one hand, there are those who argue that the influx of foreign workers has a positive influence on economic growth, such as studies conducted by Dikson (1975) and Norman and Meikle (1985) in Australia. On the other hand, some argue that the influx of foreign workers has a disadvantageous effect on economic growth, employment, and wage rates for local workers. This situation occurs when the education and quality of foreign workers is lower than the local workers (Jodge and Mancurz, 1984).

The first opinion is generally argued that foreign workers encourage economic growth through increasing public demand for goods and services generated and the formation of capital that occurs in the country (Greenwood and McDowell, 1986; Simonet al., 1993).

This opinion is generally based on Say's law which suggests that supply will always create a demand (supply create its own demand). While other opinions suggest that the influx of relatively many foreign workers will hamper economic growth due to low education and quality of their resources. In fact, some experts also argue that the entry of foreign workers like this will only cause problems in the social, economic and political fields in the recipient country of TK.A because many of them are illegally entered (Orjithan, 1985, Alfitra Greetings, 1994).

A study conducted by Simon (1988) in the states of California and Los Angeles USA found that the entry of foreign workers has provided substantial benefits to the growth of outputs of various industries in both states. While its negative influence on local workers is very small and it is generally concentrated to local workers originating from Latin America. The high influence of the exploitation of foreign workers towards economic growth according to Simon is mainly due to the high growth of labor in both areas. During the 1970-1980 period, labor had grown by 46.1% in California and 52.7% in Los Angeles. This increase in labor growth was the effect of a 5.2% reduction in wages caused by the inclusion of foreign workers into the labor market in both states.

Studies conducted by Norman and Meikle (1985) in the same country support the findings of Dickson (1975). By using econometric analysis, it was found that the inclusion of foreign workers could increase the employment opportunities for local workers far beyond the negative impacts caused by the foreign workers. The creation of employment opportunities is not only done by foreign workers together with local workers by forming joint ventures, but also can be done by foreign workers themselves independently. Therefore, Norman & Meikle (1985) believed that the complementary form of the relationship between foreign workers and local workers has provided substantial benefits in driving the country's growing rate of mining growth.

In contrast to Dickson's (1975) and Norman & Meikle (1985) studies, a study conducted by Greenwood & McDowell (1986) in the United States found the opposite situation. The entry of foreign workers had a negative and significant impact on wage rates and job opportunities for the local workers. According to them, the entry of foreign workers is more substituting to the local workers because the interests of foreign workers to get involved and become union members or workers in the country is very less. They generally work on non-permanent jobs and even many of them are working illegally. This situation causes various demands of local workers to improve their welfare is inhibited. Therefore, Greenwood & McDowell (1986) believed that foreign workers, especially unauthorized foreign workers have reduced job opportunities and rates of local workers.

A study conducted by Baker (1987) in Australia and a study conducted by Baker & Benjamin (1994) in Canada supported the results of a study conducted by Greenwood & McDowell (1986) above. The entry of foreign workers into

the country's labor market can hamper the mining sector, employment and wage rates for TKL because the foreign workers benefit from capital used without paying them. This means that foreign workers make use of public facilities in a country without them having to pay taxes, whereas taxes are used to build such public facilities. This situation will cause a limited amount of capital available to local workers. Therefore, both experts believe that the entry of foreign workers can hamper economic growth, employment opportunities, and increased wage rates received by local workers in the country.

III. CONCLUSION

A. Conclusion

1. The Constitution of the State affirmed, every citizen is entitled to a "decent living" as stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Indeed, the implementation is that every citizen shall be entitled to obtain a job including a worker. Therefore, the State must attend to respect and to protect them. Indonesia is a State of Law (*rechtstaat*), then the recognition and protection must be done constitutionally and through legal procedures to avoid and violate fundamental rights.
2. The rule of law expressly states that "all men have equal standing before the law". This means that there is no difference between a single legal subject and another legal subject before the law. Because it is very contradictory to the existence of Presidential Regulation No. 20 of 2018. Where it has given increasingly complex social implications, because it affects the rule of law and the effectiveness of law enforcement.
3. The mining problem is closely related to the division of authority between the government (Central, Provincial and District/City). The sovereignty of the State in a unitary state both outward and inward is entirely in the hands of the Central Government. Nevertheless, the Central Government must submit a delegation of some of its powers and authorities to the region based on the principle of decentralization.

B. Suggestions

1. The Regional Government must immediately have strict legal regulations to the foreign workers in order not to cause potential conflicts with highly vulnerable the local labor.
2. Regarding Mining Regulation Aspect, it is necessary to make various efforts to conduct a critical review on the aspect of regulation/legislation concerning Mining, especially regarding the presence of Foreign Workers (TKA). For that reason, it is necessary to assign the central and regional governments that govern foreign workers and local workers in order to avoid disputes at the location (in the regions). Especially matters relating to norms, standards, procedures and criteria (NSPK) along with the mechanism and its legal consequences.
3. All bureaucrats within the scope of the Municipal and Regency Governments in particular in regard to mining management should have a professional

attitude in performing their duties in order to create equality conditions between foreign workers and local workers. Sanction mechanism Supervision to strengthen the mining supervision system should be prepared a new sanction mechanism for the apparatus of the mining supervisor. Sanction mechanisms for mining supervisors are provided to avoid inconsistent monitoring practices undertaken at the local government level with supervisory standards established by the central government.

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