

Pension Plan (JHT) by the Government in the Manpower Sector Based on the Concept of the State of Law in the City of Tangerang

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Abstract

The government in the field of manpower has issued a new regulation regarding Pension Plan (JHT) for workers/laborers when they enter retirement age, experience total disability and die. In the new regulation issued by the Minister of Manpower, it has changed the application of JHT for workers to obtain the benefits of JHT payments after reaching the age of 56 (fifty six) years. JHT which is issued based on the Regulation of the Minister of Manpower of the Republic of Indonesia Number 2 of 2022 concerning Procedures and Requirements for Payment of Pension Plan Benefits, causes workers/laborers to lose their normative rights to work and a decent life in accordance with the objectives of labor law. The research method used is a normative legal research method, namely research on library materials which are basic data in science classified as secondary data. . Normative legal research serves to provide juridical arguments when there is a vacuum, ambiguity, and conflict of norms. Development in the field of manpower is basically in accordance with the objectives of the law, namely justice, order and benefit for the welfare of workers and their families. This is done because development in the field of manpower involves harmonious industrial relations between the government, employers, and workers. In the concept of a state of law, the provision of Pension Plan (JHT) benefits, the government in the field of manpower should provide legal protection for workers/laborers.

1. Introduction

Employment law in essence has regulated harmonious industrial relations in a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The concept of a state of law that applies in Indonesia is a state based on Pancasila, namely legal provisions based on the precepts of divinity, humanity, unity, democracy and justice. The state of law regulates and provides protection for one of the fields of employment in the form of Pension Plan (JHT) which is based on the ideology of the Indonesian state. A state of law that always provides protection carried out by the government for all the people.

Aspects of legal review of Pension Plan (JHT) with the enactment of "Regulation of the Minister of Manpower of the Republic of Indonesia Number 2 of 2022 concerning Procedures and Requirements for Payment of Pension Plan" after the worker is 56 (fifty six) years old, has a conflict of law rules against workers/ workers who need social security in the form of allowances for living provision due to loss of job/unemployment before reaching retirement age/ age 56 (fifty six) years.

JHT for workers/ laborers should not wait until the worker/ laborer is 56 (fifty six) years old, at which point the worker/ laborer can receive payment of benefits within the waiting period as regulated by bipartite regulations within the company, namely work agreements, collective labor agreements. , and company regulations. The newly issued Minister of Manpower Regulation concerning JHT has problems when the laid-off workers have not yet reached retirement age. Layoffs of workers/laborers can be carried out by the worker's own will, layoffs by the company, and layoffs by law, without waiting for the worker/labourer to be 56 (fifty-six) years old, as regulated in Law Number 13 of 2003 concerning Manpower.

The power of law enforcement in the applicable legal principle should be and the law that applies is actually "das sollen and das seine", then the ministerial regulation that regulates JHT cannot be enforced regarding the rampant action of workers/labor unions to reject the enactment of the ministerial regulation mentioned above. In the concept of the rule of law, the law should be able to provide protection to workers when they are no longer able to carry out a working relationship. Implementing a working relationship is the right and obligation of workers with the company, where workers are unable to work beyond their faults, due to retirement age, total disability, and death.

2. Research Method

To answer the problems that have been formulated, the type of research method used is the normative legal research method, namely research on library materials which are basic data which in science are classified as secondary data. Normative law research serves to provide juridical arguments when there is a

vacuum, ambiguity, and conflict of norms.¹ The form of research used in this study by its nature is descriptive research because it provides data that may be researched about humans, circumstances, or other phenomena with the aim primarily to reinforce hypotheses, strengthen old theories, or to develop new theories. The data obtained both primary data and secondary data were compiled and analyzed. The primary data relates to the theory of industrial relations between companies and workers and/or trade unions. Meanwhile, secondary data was obtained from interviews with sources and informants.²

3. Results and Discussion

a. Pension Plan for Workers by the Government in the Manpower Sector.

The Pension Plan(JHT) issued by the minister of manpower should be guided by the applicable laws and regulations in the field of manpower, especially in carrying out the development of the Indonesian nation to be able to realize the value of welfare as referred to in the fifth principle of Pancasila, namely social justice for all Indonesian people. This is in accordance with the employment legal basis in Law Number 13 of 2003 concerning Manpower in the considering section (a) which states:

"that national development is carried out in the context of developing Indonesian people as a whole and the development of Indonesian society as a whole to create a prosperous, just, and prosperous society that is equitable, both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In paragraph (b) : that in the implementation of national development, the workforce has a very important role and position as development actors and objectives".

The rule of law that always provides protection by the government to all the people, as stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, stipulates the goals of the Republic of Indonesia, namely: "to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote the general welfare. educating the nation's life and participating in carrying out world order based on freedom, eternal peace and social justice."³

In Law Number 40 of 2004 concerning the National Social Security System, it further states in its consideration section as follows:

"Part (a): that everyone has the right to social security to be able to fulfill the basic needs of a decent life and increase their dignity towards the realization

¹ Pasek Diantlia,I Made, *Metodologi Penelitian Hukum Normatif,Dalam Justifikasi Teori Hukum*, (Jakarta : Prenada Media Group,2016), hlm. 12.

² Sehat Damanik, *Hukum Acara Perburuhan, Menyelesaikan Perselisihan Hubungan Industrial, Cet IV*, (Jakarta : Dss Publishing, 2007), hlm. 21.

³ Alinea keempat Pembukaan Undang-Undang Dasar Negara Republik Indonesia 1945

of a prosperous, just and prosperous Indonesian society; part (b): that in order to provide comprehensive social security, the state develops a National Social Security System for all Indonesian people.”⁴

Efforts to implement the regulation of the minister of manpower which regulates Pension Plan (JHT) at the Manpower Office of Tangerang City are guided by the Regulation of the Mayor of Tangerang Number 133 of 2021 concerning Position, organizational structure, Duties and Functions and Work Procedures of the Manpower Office, then the implementation of regulations regarding JHT is adjusted to The duties of the Manpower Office in the section considering letter (a) state:

” that in order to realize effective governance to improve the performance of government and public services, an organization simplification is carried out in accordance with Article 2 paragraph (1) of the Regulation of the Minister for Empowerment of State Apparatus and Bureaucratic Reform Number 25 of 2021 concerning Simplification of Organizational Structure in Government Agencies; letter (b) states: that in order to implement the policy of simplifying the bureaucracy within the Tangerang City Government, it is necessary to arrange the position, organizational structure, duties and functions as well as the work procedures of the Manpower Office.

With the emergence of labor disputes in the provision of JHT which is applied to workers/laborers when they are of retirement age, Termination of Employment (PHK), and total disability, then the government's policy in implementing JHT is returned to the regulation of the Minister of Manpower that has been in force previously, namely Regulation of the Minister of Manpower Number 19 of 2015 concerning Procedures for Payment of Pension Plan Benefits (JHT) re-enacts the provision of JHT to workers at the time of retirement, termination of employment, and total disability

With the return of the policy of the minister of manpower based on the previous regulations, the granting of JHT to workers/laborers does not wait until they are 56 (fifty-six years old).

The union's response to the Regulation of the Minister of Manpower of the Republic of Indonesia Number 2 of 2022 concerning Procedures and Requirements for Payment of Pension Plan Benefits Rejects the Minister of Manpower on Claims for Pension Plan at the Age of 56 Years. The Association of Indonesian Trade Unions (Aspect Indonesia) rejected the Regulation of the Minister of Manpower (Permenaker) of the Republic of Indonesia Number 2 of 2022 concerning Procedures and Requirements for Payment of JHT Benefits. The government's steps are considered detrimental to workers because they withhold Pension Plan (JHT) money which previously could be immediately disbursed. There is no reason to withhold workers' money, because the JHT that

⁴ Bagian Pertimbangan huruf a,b,dan c, Undang-Undang Nomor 40 Tahun 2004 tentang Jaminan Sosial Nasional

is managed is funds belonging to customers, namely workers, not the government.

Workers are one of the most important components, it cannot be imagined if a worker does not have a job either because of a disability or because of his age factor that is not accepted by a company. The trade unions urged the government to cancel the Minister of Manpower Regulation No. 2 of 2022, and return to the Minister of Manpower Regulation No. 19 of 2015. JHT benefits for Participants who reach retirement age

b. The form of Pension Plan (JHT) protection is based on the concept of a state of law.

The concept of the rule of law basically stems from an idea where the legal system implemented should form a system that guarantees legal certainty and still provides protection of human rights. The basic concept or essence of the rule of law is that all behavior in every aspect of human life in the life of society, nation and state must be based on laws designed and made by legislators. Furthermore, every citizen in a state of law has the same position under the law. The principle of legality in a state of law is that every state action must be based on law. The laws and regulations that have been enacted in advance are the limits of the state's power to act. The basic law which contains legal principles and legal regulations must be obeyed by the government.

Legal protection for workers is also regulated in the Indonesian constitution, namely the 1945 Constitution of the Republic of Indonesia which states that "the State of Indonesia is a state of law".⁵ That the highest power in a country is based on law. A constitutional state based on Pancasila as stated in Article 27 of the 1945 Constitution of the Republic of Indonesia paragraph (1) that: "all citizens have the same position in law and government". Similarly, Article 27 paragraph (2) states that "every citizen has the right to work and a decent living for humanity."

The government's policy in the field of manpower which has issued the decree of the minister of manpower number 2 of 2022 concerning the Procedures and Requirements for the Payment of Pension Plan Benefits is contrary to the spirit of Law Number 13 of 2003 concerning Manpower. In the order of legislation in Indonesia, the regulation of the minister of manpower may not conflict with the regulation above, namely the Manpower Act.

"The implementation of social security by the Government for all its people, as mandated by the Constitution is a social security tool to raise funds in order to overcome socio-economic risks such as illness, death, and old age. The

⁵ Sudargo Gautama, *Pengertian tentang negara hukum*, (Bandung: Alumni, 1983), hlm 3

existence of good social security ensures that the people can live in peace, security and prosperity in a just and equitable manner".⁶

The purpose of labor law as an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, where the purpose of labor law is to achieve social justice for the lives of workers and their families. In the concept of a state of law, the purpose of law in Indonesia is to achieve justice, order and the greatest benefit for all people. Then it is carried out in the context of developing Indonesian people as a whole and the development of Indonesian society as a whole to increase the dignity, dignity and self-esteem of the workforce and to create a prosperous, just, prosperous society and equitable material and spiritual rights. Manpower development must be regulated in such a way that the basic rights and protections for workers and workers/laborers are fulfilled and at the same time can create conducive conditions for the development of the business world.

4. Conclusion

Pension Plan (JHT) in the concept of a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia is the basic legal norm to protect Indonesian citizens in the field of employment, especially the aspect of protection for workers/laborers in achieving justice, order, and the benefits of carrying out industrial relations. . In addition, the Government's policy in the field of manpower which has issued a decree of the minister of manpower number 2 of 2022 concerning Procedures and Requirements for Payment of Pension Plan Benefits violates the normative rights of workers who have not entered retirement age and do not implement the Old (JHT) based on the Law. Number 13 of 2003 concerning Manpower. Lastly, legal protection for workers in the Pension Plan (JHT) as an effort to achieve the objectives of labor law in achieving welfare for workers and their families. The workers urged the government to cancel Permenaker No. 2 of 2022, and return to Permenaker No. 19 of 2015. Provide a clear and concise conclusion. Do not repeat the Abstract or describe the results of the research. Give a clear explanation regarding the possible application and/or suggestions related to the research findings.

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⁶ Zaelani, *Komitmen pemerintah Dalam Penyelenggaraan Jaminan Sosial Nasional*, *Jurnal legislasi Indonesia*, (Vol 9, No.2), 2017.

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