

Legal Protection for Freelance Daily Employee in Salt Pond Madura

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Abstract-- *This study aims to determine and analyze the forms and legal remedies for legal protection for casual daily laborers in salt ponds Madura. This normative legal research uses a statutory approach. Research shows that daily paid workers in salt ponds Madura work more than 21 days in a month for more than 3 consecutive months with wages below the minimum. Daily paid workers in Madura salt ponds have launched the right to demand changes to the status and rights of workers' wages below the minimum wage. Implications of the study is that the government should immediately make laws or policies to protect non-permanent employees in salt ponds with a minimum wage of at least earned the right.*

Keywords- *legal protection; daily paid workers; salt ponds*

I. INTRODUCTION

Work done by each person to earn an income to meet their needs. Not all people get adequate compensation for the work he has done [1]. There are jobs that are not in accordance with the competency of workers [2]. There is significant work being rewarded in return for work done, not in accordance with legal regulations [3].

One type of jobs that exist in Indonesia are daily paid workers in the salt ponds in Sumenep, Madura Island, East Java. Sumenep has located at the eastern end of Madura Island, located between 113032'54" - 116016'48" East and 4055' - 7024' South Latitude. Sumenep Regency has an area of 2,093.47 km², consisting of 25 districts. The total population of Sumenep in 2010 was 1,041,915, consisting of 495,099 men and 546,816 women. The labor force is 872,031 people, consisting of 407,686 men and 464,345 women. From the labor force, there are 654 345 people of working population [4].

Non-permanent employees are often not getting the maximum legal protection [5]. Most of them are poorly educated and do not know their rights based on labor law. Similarly, the conditions of workers in general in Indonesia are informal, yet also a good protection of the law [6]. Daily paid workers are informal workers who are marginalized groups [7]. The protection of casual daily workers in Surabaya

has not received the rights as they should be according to the provisions of labor law [8].

In general, the protection of workers has existed in the 1945 Constitution. Getting a job and a decent living for humanity has been defined as the right of every citizen by Article 27 paragraph (2) 1945. This protection is further elaborated in the Law 13/2003 on manpower and its implementing regulations. Specifically, for non-permanent employees have the provision from the Minister of Manpower and Transmigration No. 100 of 2004 on the implementation of the provisions of employment agreements on specific working hours, as a follow-up of Article 59, paragraph 8 of Law 13/2003.

Unfortunately, despite a law that gives protection to the workers, at the level of the Act, there are vertical and horizontal inconsistencies in implementation. Overlapping and legal vacuum exist in this area of employment. Many workers' rights are missing partially or wholly. Even for the rights, sometimes workers have to give up their souls.

As well as the daily paid workers who work with getting in return for a wage which is less than the minimum wage provisions of the Regency or City.

II. PROBLEMS

From the above description can be formulated problem, namely: 1. What form of legal protection for daily paid workers in the salt ponds in Sumenep Madura? 2. What legal remedies that can be done by workers to fight for their missing rights?

III. RESEARCH METHOD

Normative legal research is research based on the law as a unified system of norms[9][10]. The system is linked with the principles of norms, principles, rules, norms, the rule of law in legislation, court decisions already inkraacht van gewijsde, contracts, and doctrine [11][12]. Normative legal research based on the legal problems as a system of norms that are used to provide legal justification for an event occurred [13]. Making the norm as a study center. The

statutory approach is intended to examine all legal regulations related to daily paid workers as stipulated in Law 13/2003 jo. Kepmenaker 100/2004.

IV. DISCUSSION

1. Daily paid workers in salt ponds Sumenep Madura

Daily paid workers can be found in the salt pond area in Sumenep Regency, Madura, East Java Province, Indonesia. Indonesia is an archipelago, a country surrounded by the sea. The workforce of the Indonesians are varies, including being farmers. The categories of farmers are divided into two, namely rice or field and pond farmers. Farmers can be either fish or salt ponds.

Salt is one of the most important commodities for household needs or industry [14][15]. For household purposes, salt is used for consumption[16]. Meanwhile, in industrial needs, salt is used for the production process.

In 2020, it is estimated that salt production from East Java has contributed 50% to national production. This will increase to 1.2 million tons. Nationally, the amount of salt that needs 4.2 million tons consisting of 1.6 million tons for domestic consumption and 2.6 million tonnes for the industry

The need for salt will continue to occur. Salt does not have a replacement item. The demand for salt is elastic. Continue to happen, anyway, is not reduced [17].

This theory is different from the reality that occurs in agricultural land in Sumenep salt ponds. Sumenep salt is piled up a lot because PT Garam is not willing to buy the salt from the farmers. Especially during the Covid-19 pandemic[18][19] [20]. The government has not properly managed the salt trading system. The price of harvesting salt seems to be under a game of salt middlemen.

On August 30, 2019, there was a demonstration or demonstration from salt pond farmers in Madura. Salt from Sumenep Madura did not meet the standard as consumption salt. Consumption of salt, NaCl content must conform Indonesian National Standard (SNI), which contains NaCl levels above 94.7% and for industrial salt, NaCl concentration should be above 97%.

Non-receipt of salt from Sumenep, whether influenced by rumors circulating that the quality of Kupang salt better than in Sumenep? Is this true? How is the government's effort to maintain the quality of Sumenep salt? This question caused a polemic related to the salt investment in East Nusa Tenggara of Rp110 billion [21]. This investment will continue to grow. This is because Indonesia and

Mozambique have completed the process of negotiating the Preferential Trade Agreement (PTA) regarding salt investment in East Nusa Tenggara which is targeted to manage up to 600 - 60,000 hectares.[22]

Furthermore, how the fate of the workers at the salt ponds Sumenep, Madura? Work relations between workers and salt pond farmers are carried out verbally in the form of an agreement for daily paid workers. Workers would earn if they were working. Instead it will not get wages if they do not work in the salt ponds. The principle of no work no pay[23] applies to them[24].

The working time of a daily paid worker in general is six working days in a week. In one month they worked for 24 working days. Their working hours is divided into three times in each day [25] as follows: In the morning from 3 AM to 6 AM; In the morning from 7 AM to noon at 12 AM; During the day starting from 1 PM until evening to 4.30 PM.[26]

This working time can change according to conditions in the field. It depends on the amount of salt in the pond. They can work longer if there are a lot of salt, or vice versa can be shorter when the amount of salt is little.

Against this working time, daily paid workers get a wage of Rp. 385,000 per week. Within one month daily paid workers in salt ponds will receive a salary of Rp. 1,540,000. The minimum wage in Sumenep Regency is Rp. Rp. 1,954,705. The amount of wages received by daily paid workers based on the minimum wage of Sumenep Regency is Rp. 1,954,705 minus the average wage of daily paid workers in one month of Rp. 1,540,000. The result is less than Rp. 404,705. Aside from wages, they do not get anything in return, such as, social security, holiday allowances, sabbatical.

The rights of casual daily workers who are below the minimum wage still do not ensnare workers when compared to the situation of Covid-19 pandemic [27][28] [29], social restrictions are carried out on a large scale or local scale. Many salt ponds are closed or not hire workers, in addition there is no guarantee of sales market for the harvest of salt ponds.

2. Form of legal protection for daily paid worker

Law 13/2003, divides the types of agreements into two, namely a certain time work agreement and an unspecified time work agreement. There are conditions for a certain time work agreement, which is regulated in Article 59 paragraph (8) of Law 13/2003, namely: a labor contract within the specified time can only be made for certain types of work, which according to the type and nature of the

work are based on the stipulated time provisions, namely: a type of work that has a temporary nature; a type of work that is desired to be completed within a maximum period of 3 (three) years; a job that is seasonal in nature; or a job related to a new product, a new activity, or an additional product that is still in the experimental or exploration stage [30].

A work contract with the time specified by the parties cannot be made for work that is permanent in nature. The contract of employment with the time specified by the parties can be extended or renewed. A work contract with a period determined by the parties based on a certain period of time can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year. Employers who intend to extend the work agreement for a specified period of time, not later than 7 (seven) days before the end of the work agreement for a specified period of time has notified the intention in writing to the worker / laborer concerned. Renewal of a work agreement for a specified period of time can only be made after a grace period of 30 (thirty) days has expired. This renewal of a work agreement for a specified period of time may only be made 1 (once) and a maximum of 2 (two) years. A work contract with the time specified for a specified period of time does not meet the provisions as referred to in paragraph (1), paragraph (2), paragraph (4), paragraph (5), and paragraph (6), so by law it becomes an indefinite work agreement. Other matters that have not been regulated in this article will be further regulated by a Ministerial Decree.

The provisions of Article 59 paragraph (9) shall be further regulated in the Ministry of Labor Decree 100/2004. The arrangement for daily paid workers is in Article 10-12, namely for the type of work determined by the party, changing the time and volume of work and wages based on attendance can be done with a casual daily work agreement; Wages paid by casual daily workers, paid daily in accordance with paragraph (1) are made based on the length of time the worker has worked less than 21 (twenty one) days in 1 month; A casual daily worker who works for 21 (twenty one) days or more for 3 (three) consecutive months or more, then the agreement changes to a work agreement without being limited by the specified time, meaning that he changes to a permanent worker, without a certain time limit.

The provisions governing a casual daily work agreement are an agreement based on a certain type of work whose nature changes in terms of time and volume of work and wages based on attendance, a working relationship can be carried out based on a casual daily work agreement.

The casual daily work agreement can only be applied to the type of work agreement made for working hours where the number of working days is less than twenty one days in a month. If the provisions governing the number of working days of an employee based on a casual daily work agreement, the number of working days in a month exceeds twenty one days, or is carried out for three consecutive months, then the free daily work agreement is legally deemed to have changed to a work agreement for a specified time.

Entrepreneurs who engage in working relations by employing workers / laborers in certain jobs whose characteristics vary in time and volume of work and wages based on attendance, are obliged to make a written casual daily work agreement with the workers / laborers. At a minimum, the components of the casual daily work agreement must be based on a list of workers / laborers doing work that at least contains: name / address of the company or employer where the work is carried out; name / address of the worker / laborer doing the job; type of work performed (must have a changeable nature, depending on the volume and wages according to attendance); there is a mention of the amount of wages and / or other benefits in the casual daily work agreement. And what is more important than the requirements at the stage is that a list of workers / laborers is made by the employer which is submitted to the local agency responsible for manpower affairs no later than seven working days from the time the worker / laborer is hired. From the provisions of Article 10-12 Kepmen 100/2004, jo. Article 59 of Law 13/2003, it can be seen that casual daily laborers must be categorized as daily paid laborers if they work less than 21 days in a month. It cannot be more than 3 consecutive months and must be done in written form. If they violate this provision, the casual daily worker will be turned into a work agreement for a specified time. (Article 10 Kepmenaker 100/2004 in conjunction with Article 59 of Law 13/2003).

The results of the study prove that the casual daily laborers in the Madura salt pond work more than 21 days in a month. Seeing this rule, the condition of daily paid laborers in the Sumenep Madura salt pond has violated the provisions of Article 10 Kepmenaker 100/2004 in conjunction with Article 59 of Law 13/2003, so it must be turned into a work agreement for a certain time. The question that arises then, how is the law enforcement? cannot be implemented yet, because law enforcement depends on the effectiveness of labor inspection staff.

Furthermore, large-related wage daily paid workers in salt ponds Sumenep, Madura that get less difference, it is contrary to Article 90 of Law

13/2003 jo 185. Employers are prohibited from paying wages lower than the minimum wage. This provision cannot be fully implemented in Indonesia. There are many obstacles in law enforcement over the prohibition of paying wages below the minimum wage. There are pros and cons to applying the concept of prohibiting paying wages below the minimum wage. For parties who agree that the payment of wages below the value of the minimum wage is a labor crime, hence the point of view of the criminal law. When the criminal element of paying wages below the minimum wage is fulfilled, the perpetrator, in this case an entrepreneur, can immediately conduct an investigation into the suspicion of a criminal case. [31]

On the other hand, for parties who do not agree to pay wages below the minimum wage, this is based on the fact that labor law is functional. There are criminal, civil and administrative sides.[32] Wages are considered to be included in the private sphere. If the worker agrees to be paid less than the minimum wage, and the agreement is registered with the industrial relations court, it is considered as not a criminal offense. There is a release of rights from workers to demand that the minimum wage is equal to the minimum wage [33].

This relinquishment of rights also happened to workers in a salt pond in Madura. They are paid less than the minimum wage. They are not demanding. They consider that the wages given are fair. In this case, workers better understand the conditional state of income [34]. The absence of claims for rights from workers in the Madura salt ponds makes this violation not considered an act against the law [35].

The Employers are prohibited from paying wages lower than the minimum wage referred to in Article 89. Entrepreneurs who are unable to pay the minimum wage as referred to in Article 89 may be subject to suspension. The procedure for postponement as referred to in paragraph (2) shall be regulated by a Ministerial Decree (Article 90 UU 13/2003).

Whoever violates the provisions referred to in Article 42 paragraph (1) and paragraph (2), Article 68 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraph (4) and paragraph (7), will be subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and / or a fine of at least IDR 100,000,000.00 (one hundred million rupiah) and a maximum of IDR 400,000,000, 00 (four hundred million rupiah). The criminal act as meant in paragraph (1) is a criminal act. Legal Remedies for daily paid workers who lose their rights (Article 185 UU 13/2003).

Legal remedies for non-permanent employees who lose their rights, may conduct negotiations, mediation or industrial relations to court. But it was not done by daily paid worker in salt ponds Madura.

Verbal negotiation occurs on workers who cannot work because there is enforcement of PSBB and employers to call back on workers to work longer for the condition has been declared safe from Covid-19 with reference to the provisions of Article 93 (3) of Law 13/2003, namely: For four (4) months, paid 100% (one hundred percent) of the wages; For four (4) months of the second, paid 75% (seventy five percent) of the wages. For four (4) of the third month, paid 50% (fifty percent) of the wages.

V. CONCLUSION

Daily paid workers in salt ponds Madura work more than 21 days in a month for more than 3 consecutive months with wages below the minimum. Daily paid workers in salt ponds Madura have launched the right to demand changes to the status and rights of workers' wages below the minimum. Implications of the study is that the government should immediately make laws or policies to protect daily paid workers in salt ponds Madura to get the minimum wage as their right.

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