

LEGAL PROTECTION FOR PERSONS WITH DISABILITIES IN SPECIFIC TIME WORKING AGREEMENTS

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ABSTRACT

Law Number 8 of 2016 concerning Persons with Disabilities, explains that persons with disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations in interacting with the environment and other citizens experiencing obstacles and difficulties to participate fully and effectively. In the employment relationship between the company and the workforce, in this case, the problem solver is a promise of work. The work agreement is the basis for the formation of a working relationship. An employment agreement is valid if it fulfills the legal requirements of the agreement and the legal principles of the engagement. In the event that it is made in writing, it must pay attention to the applicable laws and regulations, for example, it regulates work agreements for a certain time. Fixed time work agreement. The problem is how is the legal protection for persons with disabilities in a work agreement for a certain time? Normative juridical and empirical juridical research methods. The perfection is that legal protection for people with disabilities in work agreements for a certain time is adjusted to the needs of the company which is carried out through requirements that have been stipulated in a separate decree, while still observing the applicable company laws and regulations and company laws and regulations. This can be seen from the lack of employee disturbance, such as at PT. Pupuk Indonesia the number of disruptive employees is 24 people, in terms of facilities PT. Pupuk Indonesia has prepared additional facilities for disruptive employees.

Keywords: *legal protection, persons with disabilities, specific time working agreement, work relationship*

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INTRODUCTION

The Indonesian nation realizes that work is a basic need for citizens as mandated in Article 27 paragraph (2) of the 1945 Constitution which states "Every citizen has the right to work and a life worthy of humanity". This has implications for the state's obligation to facilitate citizens so that they can obtain decent work for humanity. Therefore, careful planning is needed in the field of employment to realize the country's obligations.

For more than half a century since the independence of the Republic of Indonesia until now, a number of laws have been produced in the field of labor with the main aim of improving the lives of workers. The change in the law was motivated by the sources of legal events in Indonesia where a number of these laws were not able to completely change workers' lives for the better. A number of laws that are expected to be able to change workers' lives are only able to fill a void or legal vacuum. Therefore, continuous efforts are made by workers and all elements of society who have concerned workers, to the authorities to make changes to a number of these laws (Rachmat, 2017).

Labor is seen as an object. Labor is considered as an external factor that has the same position as supplying customers or buying customers which functions to support the continuity of the company and not as an internal factor as an integral part or as a constitutive element that makes the company (Syamsuddin, 2019). Socio-economically, the position of workers is not free. As a person who has other provisions for life than that, he is forced to work for someone else. It is the employer who basically determines the terms of work, bearing in mind that the

worker's position is lower than that of the employer, it is necessary for the government to intervene to provide legal protection (Arifuddin, 2020).

Labor problems throughout the ages have never been resolved from issues of protection, wages, welfare, industrial relations disputes, development and labor inspection. This is due to the government's systemic weakness in implementing the labor law, there is even a tendency for deviations, other things the problem of coordination and performance between government agencies is not yet optimal and is still very concerning (Asikin, 2012; Saliman, 2023). Every worker has the right to the same opportunities and treatment as stated in Article 5 of Law Number 13 of 2003 concerning Manpower which states "Every worker has the same opportunity without discrimination to get a job." This means that anyone has the right to get the opportunity to get a job, including people with disabilities.

Furthermore, according to Law Number 8 of 2016 concerning Persons with Disabilities, it is explained that persons with disabilities are any person who experiences physical, intellectual, mental, and/or sensory limitations in interacting with the environment and other citizens experiencing obstacles and difficulties to participate fully and effectively. Persons with disabilities are entitled to work opportunities based on Article 53 paragraphs (1) and (2) of Law Number 8 of 2016 which reads:

1. The Government, Regional Governments, State-Owned Enterprises, and Regional-Owned Enterprises must employ at least 2% (two percent) of Persons with Disabilities of the total number of employees or workers.
2. Private companies are required to employ at least 1% (one percent) of Persons with Disabilities of the number of employees or workers.

In the employment relationship between companies and workers, in this case, persons with disabilities, there is a work agreement. The work agreement is the basis for the formation of a working relationship. An employment agreement is valid if it fulfills the legal requirements of the agreement and the legal principles of the engagement (Wijayanti, 2009). A work agreement is an agreement between a worker/laborer and an entrepreneur or employer which contains working conditions, rights, and obligations of the parties. The work agreement does not require a specific form, it can be made in writing signed by the parties or orally. In the event that it is made in writing, it must pay attention to the applicable laws and regulations, for example, it regulates work agreements for a certain time. Fixed time work agreement.

From the description above, the researcher will examine legal protection for persons with disabilities in work agreements for a certain time, legal protection here is protection of dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions of arbitrariness. The elements in the definition of legal protection are the form or form of protection or the purpose of protection, the legal subject and the object of legal protection.

The problem is how is the legal protection for persons with disabilities in a work agreement for a certain time? The aim is to study and find out the legal protection for persons with disabilities in work agreements for a certain time.

METHOD

Normative juridical and empirical juridical research methods. Normative juridical is a legal research method that examines legal protection for persons with disabilities in work agreements for a certain time. Meanwhile, empirical juridical, namely legal research regarding the

enactment or implementation of normative legal provisions in action on any particular legal event that occurs in society (Kartini et al., 2022) or in other words, namely research conducted on the actual situation or real situation that occurs in the community with the intention of knowing and finding the facts and data needed, after the required data is collected then leads to problem identification which ultimately leads to problem-solving. The types of data used are primary, secondary, and tertiary data. Data collection uses a literature study and interviews with the Director of Human Capital PT. Pupuk Indonesia Jakarta.

RESULTS AND DISCUSSION

Legal Protection

According to Fitzgerald, as quoted by Satjipto Raharjo, the origin of this theory of legal protection stems from the theory of natural law or the school of natural law. This flow was pioneered by Plato, Aristotle (a student of Plato), and Zeno (founder of the Stoic school). According to the flow of natural law states that the law originates from God who is universal and eternal, and between law and morals cannot be separated. The adherents of this school view that law and morals are a reflection and regulation internally and externally of human life which is manifested through law and morals (Soetami, 2005).

Furthermore, Fitzgerald explained Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born from a legal provision and all legal regulations given by the community which are basically community agreements to regulate behavioral relations between members of the community and between individuals and the government who are considered to represent the interests of the community (Hariyanto, 2013).

Legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be given by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party. According to Khoiri (2017), legal protection is an action or effort to protect society from arbitrary acts by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings (Santoso, 2019). According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social life among human beings.

Legal protection is all efforts to fulfill rights and provide assistance to give witnesses and/or victims a sense of security, legal protection for victims of crime as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

Fixed Time Work Agreement

Labor law protection aims to ensure the basic rights of workers, and guarantee equality and any discrimination to achieve the welfare of workers and their families while still paying attention to developments in the business world and the interests of employers. Laws and

regulations related to labor protection are Law Number 13 of 2003 concerning Manpower and its implementing regulations in the field of manpower.

According to Law Number 13 of 2003 concerning Manpower, a work contract or work agreement is an agreement between a worker/worker and an employer or employer which contains working conditions, rights, and obligations of both parties. A work agreement in the civil sphere is defined as a work agreement, which can be interpreted as an agreement in which the worker binds himself to the employer, for a certain time and works in return for wages (Hariyanto, 2013). This college agreement has three elements, namely the existence of wages given, the existence of work, and the existence of orders given by the employer to workers. One work agreement is a work agreement for a certain time, namely a work agreement between workers/laborers and employers to enter into a working relationship for a certain time or for a certain job (Fithriatus Shalihah, 2017).

This also includes work agreements for a certain time for persons with disabilities. Persons with disabilities have the same position, rights, and obligations as non-disabled people. Respect for and fulfillment of workers' rights is a principle of justice in labor law. Persons with disabilities should not be treated discriminately (Rochmawati et al., 2016). As stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia every citizen has the right to work and a decent living for humanity. Then in Article 67 of Law Number 13 of 2003 concerning Manpower, it is stated that employers who employ persons with disabilities are obliged to provide protection according to the type and degree of their disability.

Legal Protection for Persons with Disabilities in a Fixed-Time Work Agreement

With the presence of law in social life, it is useful to integrate and coordinate interests that are usually in conflict with one another. Therefore, the law must be able to integrate them so that conflicts of interest can be minimized. The definition of legal terminology in Indonesian according to KBBI is regulations or customs that are officially considered binding, which are confirmed by the authorities or the government, laws, regulations, and so on to regulate community life, standards or rules regarding certain natural events, decisions or considerations determined by judges in court, or verdicts (Shalihah, 2017).

Opinion regarding understanding to understand the meaning of law stated by Dr. O. Notohamidjojo, SH Law is the entirety of written and unwritten regulations which are usually coercive for human behavior within state society as well as between states which are oriented towards two principles, namely justice and efficiency, for the sake of order and peace in society (Sri Hayati, 2019).

In the Big Indonesian Dictionary, protection comes from the word protect which means protecting, preventing, defending, and fortifying. While Protection means conservation, maintenance, guard, asylum, and bunker. In general, protection means protecting something from things that are dangerous, something that can be in the form of interests or objects or goods. In addition, protection also contains the meaning of protection given by someone to someone who is weaker. Thus, legal protection can be interpreted as protection by law or protection by using legal institutions and means. However, in law, the definition of legal protection is all efforts made consciously by everyone as well as government and private institutions aimed at securing, controlling, and fulfilling the welfare of life in accordance with existing human rights as stipulated in Law Number 39 of 1999 concerning Human Rights.

In other words, legal protection is an illustration of the function of law, namely the concept that the law can provide justice, order, certainty, benefit, and peace. The opinions quoted from several experts regarding legal protection are as follows:

1. According to Satjito Rahardjo legal protection is an effort to protect a person's interests by allocating a human right to him to act in the context of his interests.
2. According to Setiono, legal protection is an action or effort to protect the public from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings.
3. According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social life between fellow human beings.
4. According to Philipus M. Hadjon, it is always related to power. There are two governmental powers and economic powers. In relation to government power, the issue of legal protection for the people (those who are governed) against the government (those who govern). In relation to economic power, the issue of legal protection is protection for the weak (economy) against the strong (economy), for example protection for workers against employers.

Basically, legal protection does not differentiate between men and women. Indonesia as a constitutional state based on Pancasila must provide legal protection to its citizens, therefore this legal protection will give birth to recognition and protection of human rights in its form as individual beings and social beings within the framework of a unitary state that upholds the spirit of kinship in order to achieve common prosperity (Wijayanti, 2009).

Legal protection for workers aims to ensure the continuity of the working relationship system without pressure from the strong to the weak. Juridically Article 5 of Law Number 13 of 2003, provides protection that every worker has the right and has the same opportunity to get a job and a decent living regardless of gender, ethnicity, race, religion, and political beliefs according to the interests and abilities of the workforce concerned, including equal treatment of persons with disabilities. Meanwhile, Article 6 of Law Number 13 of 2003 requires employers to provide the rights and obligations of workers or laborers regardless of gender, ethnicity, race, religion, and political beliefs. The scope of protection for workers/laborers according to Law Number 13 of 2003, among others, in broad outline includes:

1. Protection of wages, welfare, and social security of the workforce;
2. Occupational safety and health protection;
3. Legal protection to form and become a member of a union; Workers/labor unions;
4. Protection of the fundamental rights of employees/labour to negotiate; with entrepreneurs.

Regarding work opportunities for workers with disabilities, in Law Number 4 of 1997 as amended into Law Number 8 of 2016 concerning Persons with Disabilities, Article 13 states "every person with disabilities has the same opportunity to get a job according to the type and degree of disability". Then it is also explained in Article 14 that "state and private companies provide equal opportunities and treatment to persons with disabilities by employing persons with disabilities in their companies according to the type and degree of disability, education whose number is adjusted to the number of employees and/or company qualifications".

The term "Persons with Disabilities" in Law Number 8 of 2016 concerning Persons with Disabilities is defined as, "everyone who experiences physical, intellectual, mental and/or sensory limitations for a long time in interacting with the environment may experience obstacles and difficulties to participate fully and effectively with other citizens based on equal rights". This concept is the result of discussing Law Number 8 of 2016 concerning Persons with Disabilities, as part of an effort to adopt the principles of the Convention on the Rights of Persons with Disabilities (Convention on the Rights for Persons with Disabilities - CRPD) in positive law as well as government bureaucracy in Indonesia. However, Law Number 8 of 2016 concerning Persons with Disabilities is not the first law to use the term persons with disabilities, but Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities.

In Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities, the term is used as a translation in Indonesian for the term persons *with disabilities* used in the CRPD, after Indonesia co-signed it in 2006. It was this CRPD that later became the basis for renewing perspectives and principles in respecting, protecting, and fulfilling the rights of persons with disabilities in Indonesia to date. However, it must be acknowledged that the term "Persons with Disabilities" is not the only one used in Indonesia. There are other terms such as "Disabled", "Special Needs", or "Persons with Disabilities". Other terms that are also often used are mentions based on various disabilities such as using the word "tuna", or more specifically with the terms "deaf", "blind", "people with mental disorders", and other terms originating from regional languages in Indonesia. The development of this term must be respected and supported by its development sociologically, in order to create comfort in its use as a medium of communication, along with the need to continue to develop perspectives on disability based on the CRPD.

The term meaning "Persons with Disabilities" also needs to be seen in terms of its scope, or it is also commonly referred to in the range of disabilities. In Article 4 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities, the variety of disabilities is divided into four, namely physical disability, intellectual disability, mental disability, and/or sensory disability. Apart from that, in Article 4 paragraph (2) of Law Number 8 of 2016 concerning Persons with Disabilities, the scope of disability is also seen based on the number of obstacles, whether single disability, multiple (two types of disabilities), or multiple (more than two types of disabilities). In the explanation of Article 4 paragraph (1) of Law Number 8 of 2016 concerning Persons with Disabilities it is explained one by one the various types of disabilities, and mentions examples of conditions by using the term "among other things" which means not limited to what is stated in the explanation. This was done to accommodate the concept of disability used in the CRPD, which is flexible, does not lock in certain conditions, and makes it an open concept, so that it can continue to evolve from time to time.

In article 1 paragraph 2 of the CRPD it is stated that,

"Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which when interacting with various barriers, may hinder their full and effective participation in society on an equal basis with others."

From that concept, the CRPD does not limit what conditions are included as disabilities. That way, the concept will continue to evolve with the times, and be influenced by many aspects that continue to evolve. In addition to the variety, the scope of disability can also be

seen from the level of handicap, namely mild (*mild*), currently (*moderate*), and weight (*severe*). This category is used by statistical data published by the Central Bureau of Statistics, specifically in the 2020 National Socioeconomic Survey (Susenas) used in this research report. The light, moderate, and severe scopes used in the 2020 Susenas in describing the conditions of persons with disabilities in Indonesia use data collection using the Washington Group model, which formulates questions in its questionnaire based on the obstacles experienced by a person.

The obstacles in question are as follows:

1. Experiencing difficulty/impaired vision
2. Experiencing difficulty/hearing loss
3. Has difficulty/impaired walking or climbing stairs (mobility)
4. Having difficulty/interference using damn moving hands/fingers
5. Experiencing difficulty/disturbance in terms of remembering or concentrating
6. Experiencing difficulty in controlling behavior and or emotions
7. Experiencing difficulty/impaired speaking and/or understanding/communicating with others
8. Experiencing difficulty/disturbances in taking care of oneself (such as bathing, eating, dressing, defecating, urinating).

The scope that is also often used by the Washington Group is "some difficulty", "a lot of difficulties", and "unable to do it"(Suhartoyo, 2014).

From the description above regarding the term persons with disabilities, in hiring a job it must be based on a work agreement between the company and the worker, in this case the work agreement between the worker and the employer to enter into a working relationship for a certain time and for a certain job.

Results of interviews with the Director of Human Capital PT. Pupuk Indonesia, Ms. Tina Kemala, the forms of work agreements for a certain time with employees with disabilities at Pupuk Indonesia are quite diverse, some are outsourced workers, PKWT employees and some are PKETT (organic). This is because it depends on the type of work, and indeed there are process stages that must be passed by employees related to their work contracts. The following is the data of PI Group employees with disabilities:

Table 1. Data of PI Group Employees with Disabilities

No.	Entity	Total	Disabled Type								Status			
			Disabled	Deaf	Blind	Unsocioable	Mute	ADHD	Autism	Deaf-Mute	PKETT	PKWT	TKNO	
1.	PI	3	1		1					1				3
2.	PKG	3									3			3
3.	PKC	5	5									1		4
4.	PKT	9	4	2		1	1	1				4		5
5.	PIM	2	2									1		1
6.	PSP	1		1										1
7.	PIN	1	1										1	
8.	Rekind	0												
9.	Pilo	0												
10.	PIU	0												
11.	PIP	0												
	Total	24	13	3	1	1	1	1	1	1	3	6	1	17

Source: www.pupuk-indonesia.com

- PKETT : Unspecific Time Work Agreement
- PKWT : Specific Time Work Agreement
- TKNO : Non-Organic Labor

From the table above, the status of the employment agreement for a certain time is only 1 person in the PIN entity with 1 employee with a disabled person. While the work agreement for an unspecified time is 6 people in the PKC, PKT and PIM entities.

Then related to the form of partnership/partnership, Ms. Tina said that in terms of the provisions already exist, but until today there have been no employees with disabilities who are included in this work group, because it depends on the type of work.

Furthermore, regarding SOPs for companies specifically for persons with disabilities, Ms. Tina said that PI Group does not differentiate the HR management process for employees with disabilities. They are included in the employee group, so that starting from the recruitment process, performance appraisal, competency development, retaining process they get the same mechanism. The definition of an employee in a company includes employees with disabilities (because it doesn't differentiate between them), what is specific is the additional facilities for employees with disabilities such as access, elevators that also have Braille letters, and so on.

Based on the results of the researchers' observations that the number of disabled people in the PI Group totaled 24 people, consisting of 13 disabled people, 3 deaf people, 1 blind person, 1 hearing impaired person, 1 speech impaired person, 2 ADHD and Autistic people and 3 deaf and speech impaired people.

From the results of the interview above, it is clear that legal protection for persons with disabilities in work agreements for a certain time is adjusted to the needs of the company, which is carried out through the requirements set out in a separate decree, while still paying attention to the applicable laws and regulations and company regulations. Ideally, every company should employ at least one person with disabilities who meet the job requirements and job qualifications as an employee for every 100 workers in the company.

CONCLUSION

Legal protection for persons with disabilities in work agreements for a certain time is adjusted to the needs of the company which is carried out through requirements that have been stipulated in a separate decree, while still observing the applicable laws and regulations and company regulations. This can be seen from the lack of employees with disabilities, such as at PT. Pupuk Indonesia has 24 employees with disabilities, in terms of PT. Pupuk Indonesia has prepared additional facilities for employees with disabilities.

Normatively, there are actually several legal instruments that have been issued to protect the right of persons with disabilities to work. Like Law Number 13 of 2003 concerning Employment which "forbids" discrimination against persons with disabilities. However, in reality, what happens and is faced by persons with disabilities is not as good as regulated by law or other regulations.

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