

## LEGAL CERTAINTY IN LAW NUMBER 8 OF 2016 CONCERNING PERSONS WITH DISABILITIES IN INDUSTRIAL RELATIONS

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### ABSTRACT

Article 1 point 1 of the Law on Persons with Disabilities explains that Persons with Disabilities are any person 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. Based on the description above, the problem is how is the legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities in Industrial Relations? The research method used is normative juridical and empirical juridical. Legal certainty in Law Number 8 of 2016 concerning Persons with Disabilities in industrial relations based on the results of an interview with Mr. Agung as Director of Human Capital PT. Semen Indonesia Group, it can be concluded that there has never been an industrial relations dispute between employees with disabilities and the Company, and to date, there has never been a layoff from the Company. This is by the legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities which requires efforts to regulate law in legislation made by authorized and authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed.

**Keywords:** *legal certainty, persons with disabilities industrial relations, labors*

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### INTRODUCTION

The term industrial relations originate from industrial relation, which is a development of the term labor relations (labor relations or labor-management relations). Labor relations give a narrow impression as if they only concern the relationship between employers and workers. Industrial relations issues cover a very broad aspect, namely socio-cultural, psychological, economic, political, legal and defense, and security aspects, so that industrial relations do not only cover employers and workers but involve the government and society in a broad sense. Thus, the use of the term industrial relations is felt to be more appropriate than labor relations (Wijayanti, 2009).

Industrial relations is a system of relations formed between actors in the process of producing goods and/or services consisting of employers, workers/laborers, and the government which is based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia.

Based on the above understanding, the elements of industrial relations can be mentioned, namely as follows (Wijayanti, 2009):

1. There is a process of production of goods and/or services;
2. There is a system of industrial relations; And
3. Some actors include employers, workers/laborers, and the government.

The formation of an industrial relations system in a country is based on the philosophy of the nation and state. So that in this way, each country has its system of industrial relations based on or philosophy of that country. Likewise, with Indonesia, with the New Order government's

determination to implement Pancasila and the 1945 Constitution purely and consistently, industrial relations must also be based on Pancasila and the 1945 Constitution, so that the term used is more popularly known as Pancasila Industrial Relations. 1945.

Speaking of employment, the urgency of providing the widest possible employment opportunities for persons with disabilities needs to get more attention from the State, especially the policymakers. The term "Persons with Disabilities" became known when Law Number 8 of 2016 concerning Persons with Disabilities was enacted on April 15, 2016. The term Persons with Disabilities replaces the term persons with disabilities used in Law Number 4 of 1997 concerning Persons with Disabilities. Article 1 point 1 of the Law on Persons with Disabilities explains that Persons with Disabilities are any person 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 (Widjaja et al., 2020).

It can be seen that this is a classic problem, namely the increase in the unemployment rate for persons with disabilities is increasing every year. If done Comparison of work in the formal and informal sectors, quite several persons with disabilities work in the informal sector compared to the formal sector (LPEM, 2016). The low percentage of persons with disabilities who do not enter the labor market is because many of them are not enthusiastic enough to enter the labor market which is characterized by a high level of inactivity or the condition that someone who does not enter the labor market does not have the activity of being a housewife or going to school.

The right to work for everyone contained in the Universal Declaration of Human Rights (HAM) is recognized as a primary right in international human rights law and the Covenant on Economic, Social, and Cultural Rights as the right to work emphasizes economic, social, and cultural development. The government needs to fulfill obligations to persons with disabilities because their rights are guaranteed by legal instruments. Persons with disabilities very rarely participate in the private sector and the government sector.

From the description above, legal certainty is needed in Law Number 8 of 2016 concerning Persons with Disabilities in Industrial Relations. Legal certainty according to Jan Michiel Otto defines it as the possibility that in certain situations:

1. Some rules are clear (clear), consistent, and easy to obtain, issued by, and recognized because of (the power of) the nation.
2. Authorities (government) agencies apply these legal rules consistently and also submit and obey them.
3. Citizens in principle adjust their behavior to these rules.
4. Independent, thoughtful (judicial) judges apply these legal rules consistently when they resolve legal disputes.
5. The court decision is concretely implemented (Soeroso, 2017).

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be implemented in a good way. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed (Asikin, 2012).

Based on the description above, the problem is how is the legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities in Industrial Relations? The aim is to study and

find out the legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities in Industrial Relations.

## **METHOD**

Normative juridical and empirical juridical research methods. Normative juridical is a legal research method that examines the legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities in Industrial Relations. 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 (Neuman & Robson, 2014) or in other words, namely research conducted on the actual situation or real situation that occurs in the community to know and find 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. Cement Indonesia Group.

## **RESULTS AND DISCUSSION**

### **Legal Certainty**

Certainty is a matter (statement) that is certain, conditions, or provisions. The law essentially must be certain and fair. Certainly, as a guideline for conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty the law can carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically (Rato, 2010). According to Kelsen, the law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspects, by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain rules of a general nature serve as guidelines for individuals to behave in society, both in relationships with fellow individuals and in relations with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty (Marzuki & Sh, 2021).

Legal certainty normatively is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense of not causing doubts (multiple interpretations) and logical. It is clear in the sense that it becomes a system of norms with other norms so that they do not clash or cause a conflict of norms. Legal certainty refers to the enactment of laws that are clear, permanent, consistent, and consistent, the implementation of which cannot be influenced by subjective circumstances. Certainty and justice are not just moral demands but factually characterize law. A law that is uncertain and does not want to be fair is not just a bad law (Hasan, 2020).

According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules makes individuals know what actions may or may not be carried out, and second, in the form of legal security for individuals from government arbitrariness because the existence of general rules individuals can know what the State may charge or do to individuals (Efendi, 2016).

## **Industrial Relations**

In Article 1 number 16 of Law Number 13 of 2003 concerning Manpower, it is stated that: Industrial relations is a system of relations formed between actors in the process of producing goods and/or services consisting of employers, workers/laborers, and the government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia.

According to Lalu Husni: In the production process at companies, the parties directly involved are workers/laborers and employers, while the government is included as a party to industrial relations because it has an interest in creating harmonious working relations as a condition for the success of a business so that productivity can increase which will ultimately be able to drive economic growth and can improve the welfare of all levels of society (Ardiyanto et al., 2020).

The relationship between workers/laborers and employers is legal, namely, a relationship that arises from a work agreement. As a legal relationship, the parties involved are burdened with certain rights and obligations. In its development, the working relationship developed into industrial relations in line with the adoption of the welfare state type. This means that industrial relations are no longer seen as limited to the relationship between workers and employers, but already involve the interests of third parties which are introduced as public interests that must be protected by the government. Thus, it can be said that industrial relations are legal relationships consisting of three parties, namely workers, employers, and the government. If the process of the birth of the legal relationship is examined, it will be found that the relationship is a relationship in the context of the process of production of goods and services.

Based on this description, industrial relations are often formulated as a relationship in the production process that involves three components, namely workers, employers, and the government. If an industrial relationship is understood as a working relationship, namely a legal relationship that arises from an agreement, then it should also be understood that industrial relations will give birth to rights and obligations for the parties involved in it.

## **Disabilities**

The term disability is used to indicate someone who has a disability from birth which is called a disability and is permanent (Michael, 2020). What is known to the public regarding disability or disability is someone with a disability. This directly interprets that a person with a disability is someone who has lost some of his limbs. Quoted from the article that was in the Convention on the Rights of Persons with Disabilities (CRPD) in New York, United States in 2007 agreed that a person with disabilities is someone who has physical, mental, or intellectual limitations for a relatively long period and has difficulty blending into society (Vincentia, 2020). However, the term disability is replaced by disability by academics and the public not to offend persons with disabilities, because this must be considered when dealing with persons with disabilities so as not to feel hurt by words. A person with disabilities is someone who is physically or mentally weak compared to other individuals, so we provide special treatment in dealing with disabilities so that the legal umbrella obtained for disabilities is more specific. In reality, the handling of disabilities has not been fully realized either. This is because there is still a lack of public awareness regarding regulations issued by the government regarding disability, disability rights, and things that need to be done for disabilities. On the other hand,

there are not a few persons with disabilities who become victims of violence so persons with disabilities experience their fear of moving and have minimal self-confidence.

### **Legal Certainty Law Number 8 of 2016 concerning Persons with Disabilities in Industrial Relations**

The right to get a job belongs to every Indonesian citizen, including citizens with disabilities. Even though the Constitution provides equal rights for citizens, the opportunity for persons with disabilities to get a job is very low compared to the general public. The 1945 Constitution of the Republic of Indonesia states that "Every person has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment", making the protection of the rights of persons with disabilities one of the constitutional rights that must be upheld by the Indonesian government.

The enactment of Law Number 8 of 2016 concerning Persons with Disabilities provides significant job opportunities for persons with disabilities. This law provides guarantees for persons with disabilities to get jobs organized by the government or private parties as stated in Article 53 paragraphs (1) and (2). Article 53 paragraph (1) states that the Government, Regional Government, State-Owned Enterprises, and Regional-Owned Enterprises are required to employ at least 2% (two percent) of persons with disabilities from the total number of employees or workers. In paragraph (2) it states that private companies are required to employ at least 1% (one percent) of persons with disabilities from the number of employees or workers.

According to the Big Indonesian Dictionary, disabled is defined as a person who bears (suffers) something. While disability means disability or disability (Efendi, 2016). The term disability comes from English with the origin of the word different ability, which means that humans have different abilities. The term is used as a substitute for the term persons with disabilities which has a negative sense of value and seems discriminatory. The term disability is based on the reality that every human being is created differently. So that there is only a difference, not a disability or abnormality (Iqbal & Tri Anggraini, 2019).

In Article 1 paragraph 1 of Law Number 8 of 2016 concerning Persons with Disabilities, it is stated that "Persons with disabilities are any person 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. In Article 1 paragraph 8 of Law Number 8 of 2016 concerning Persons with Disabilities, it states that "accessibility is the facilities provided for persons with disabilities to realize equal opportunity".

Equality of opportunity according to Article 1 paragraph 2 of Law Number 8 of 2016 is "justice which provides opportunities and/or provides access for persons with disabilities to channel their potential in all aspects of administering the State and society". In Article 9 of Law Number 8 of 2016 concerning Disabilities it has been explained that "the right to justice and legal protection for disabilities includes the rights: to equal treatment before the law, to be recognized as a legal subject, to own and inherit movable or immovable property, to control financial matters or to appoint people to represent their interests in financial matters, to gain access to banking and non-banking services, to gain accessibility in judicial services, to all protection from pressure, violence, persecution, discrimination, and or deprivation of property

rights, to elect and appoint people to represent all interests in civil matters and inside and outside the court, their intellectual property rights are protected.

Article 18 of Law Number 8 of 2016 Concerning Persons with Disabilities that: Accessibility rights for persons with disabilities include the following rights:

1. Gain accessibility to take advantage of public facilities.
2. Obtain proper accommodation as a form of accessibility for individuals.

Adequate accommodation according to Article 1 paragraph 9 of Law Number 8 of 2016 is "appropriate and necessary modifications and adjustments to ensure the enjoyment or implementation of all human rights and fundamental freedoms for persons with disabilities on an equal basis".

For persons with disabilities about industrial relations, industrial relations are the relations of all parties who are involved or have an interest in the process of producing goods or services in a company (Santoso, 2019).

According to Bethel and Others, industrial relations are part of management relating to the company's workforce, whether machine operators, skilled workers, or managers (Santoso, 2019). The company's workforce, thus, is classified as management and workers or employers and employees and industrial relations can be treated as relations between employers and workers. Whereas based on Law Number 13 of 2003 concerning Manpower article 1 number 16 it means "Industrial Relations is a system of relations formed between actors in the process of producing goods and/or services consisting of elements of entrepreneurs, workers/laborers, and the government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia" (Husada, 2019).

From the several definitions above, the researcher concludes that industrial relations are relations that are the result of "work relations" in an industrial company. Thus, the relationship between employers and workers in an industry. Two parties, employers and workers are needed, without this relationship there will be no industrial relations and it is the industry that provides arrangements/regulations for industrial relations. The Labor Law regulates industrial relations. The provision explains the role of the government, workers, and employers in carrying out industrial relations.

This law also regulates the basic rights of employers and workers/laborers, such as: 1) The right to form and become members of a trade/labor union (workers' rights); 2) The right to strike (workers' rights); 3) The right to form and become a member of employers' organizations (employers' rights); 4) The right to close the company (company right).

Regarding the legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities in industrial relations, the researcher interviewed Mr. Agung Wiharto as Director of Human Capital PT. Semen Indonesia Group, regarding the form of cooperation between companies and persons with disabilities, is through the CSR program, PT. SIG built a partnership with one of the special schools in Gresik, namely SLB Kemala Bhayangkari 2. The form of cooperation included providing a Culinary Center stand in a strategic area for street vendors on the Company's land (near the Semen Indonesia Main Building, Gresik).

Then regarding the SOP of companies specifically for people with disabilities, according to Mr. Agung said that PT. SIG treats Persons with Disabilities in the workplace on an equal footing with other Employees, so the SOP for work is also the same as for other Employees. Furthermore, related to industrial relations, has there ever been a dispute between the company

and employees with disabilities? If so, how is the settlement of industrial relations disputes? Mr. Agung said that to date, there has never been an industrial relations dispute between employees with disabilities and the Company, and to date, there has never been a layoff from the Company.

Then what are the obstacles encountered while employees with disabilities work at PT. SIG, Mr. Agung said that according to information from the related work unit, there were no significant obstacles because the placement of the work area for employees with disabilities had been considered beforehand. The existing workforce with disabilities is deaf and deaf, therefore, the type of work performed is adjusted so that there are no significant obstacles. For example, not working as an operator in a factory, not working with high mobility for those who walk still need a walker, and not working externally for the deaf. The number of employees with disabilities is 7 people. Then is there discrimination against persons with disabilities, Mr. Agung said that there is no discrimination against employees with disabilities. Mr. Agung emphasized that colleagues with disabilities receive the same treatment and opportunities but with due regard to the suitability between the company's needs and the abilities concerned.

From the results of the interview above, that PT. SIG has provided legal certainty in Law Number 8 of 2016 concerning Persons with Disabilities in industrial relations. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed.

## **CONCLUSION**

Legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities in industrial relations that based on the results of an interview with Mr. Agung, it can be concluded that there has never been an industrial relations dispute between employees with disabilities and the Company and to date, there has never been a layoff from the Company. This is by the legal certainty of Law Number 8 of 2016 concerning Persons with Disabilities which requires efforts to regulate law in legislation made by authorized and authoritative parties so that these rules have a juridical aspect that can guarantee certainty that the law functions as a rule that must be obeyed.

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