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Legal Measures to Ensure the Safety of Loading and Unloading Workers at PT. Belawan Indah (TKBM)

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Abstrak

Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan dan Keputusan Bersama Direktur Jenderal Pembinaan Pengawasan Ketenagakerjaan, Direktur Jenderal Perhubungan Laut, dan Deputi Kelembagaan Koperasi dan Usaha Kecil Menengah Nomor: UM.008/41/2/DJPL- 11, Nomor: 93/DJPPK/XII/2011, dan Nomor: 96/SKB/DEP.1/XII/2011 tentang Ketenagakerjaan Perlindungan merupakan amanah pemerintah untuk melindungi hak-hak pekerja. Tenaga kerja yang melakukan bongkar muat barang ke dan dari kapal di pelabuhan dikenal dengan istilah Tenaga Kerja Bongkar Muat (TKBM) dan merupakan komponen vital sumber daya manusia pelabuhan. Karena perannya yang lebih khusus dalam bongkar muat mesin, TKBM merupakan komponen penting dari SDM yang sangat penting untuk seluruh aktivitas di pelabuhan. Data primer dan sekunder dari literatur dan peraturan perundang-undangan yang relevan digunakan dalam penelitian ini, yang bersifat deksritif analisis dan menggunakan metode hukum empiris dalam penelitian. Berdasarkan temuan penelitian, pekerja di PT. Pelabuhan Belawan Belawan Indah dilindungi secara hukum saat bongkar muat kargo seperti perlindungan terhadap upah, waktu kerja, keselamatan kerja, dan kesejahteraan dan faktor-faktor yang menghambat perlindungan hukum, seperti kapal, cuaca, pelabuhan, peralatan, masih belum dilaksanakan dengan baik.

Kata Kunci : *Tenaga Kerja , Pelabuhan, Bongkar Muat, Keselamatan*

Abstract

Law Number 13 of 2003 concerning Manpower and Joint Decree of the Director General of Manpower Supervision Development, Director General of Sea Transportation, and Deputy Institutional Cooperatives and Small and Medium Enterprises Number: UM.008/41/2/DJPL-11, Number: 93/DJPPK/XII/2011, and Number: 96/SKB/DEP.1/XII/2011 concerning Employment Protection is the government's mandate to protect workers' rights. Workers who load and unload goods to and from ships at the port are known as Loading and Unloading Workers (TKBM) and are a vital component of port human resources. Due to its more specialized role in loading and unloading machinery, TKBM is an important component of human resources which is very important for all activities in the port. Primary and secondary data from relevant literature and laws and regulations are used in this study, which are descriptive analysis and use empirical legal methods in the research. Based on the findings of the research, workers at PT. Belawan Belawan Indah Port is legally protected when loading and unloading cargo, such as protection of wages, working hours, occupational safety, and welfare, and factors that hinder legal protection, such as ships, weather, ports, equipment, are still not properly implemented.

Keyword: *Labor, Port, Loading & Unloading, Security*

INTRODUCTION

The law guarantees and protects the workforce, the rules are established and established that govern the relationship between the employees and the owner of the company as a business person. The law consists of an agreement that takes precedence before the execution of the work; In an engagement, the parties agree to reach an agreement. An agreement made in writing or orally is a legal relationship that binds the parties to their rights and obligations. (Juliati Br Ginting, 2022)

Workers and labourers may prevent unjust treatment by using the legal protections and remedies provided by Law Number 13 of 2003 concerning Manpower. It also guarantees obligations and welfare for workers and laborers. (Mokoginta, Pratama, Sumakul, F., & Obadja, 2022)

The government hired PT. Belawan Indah to oversee port operations, including assisting workers at the Belawan seaport with loading and unloading. Without a special agreement made with the worker, the worker only registers with the Port Authority before starting their work, under the Manpower Law, the Port Authority registers the worker's biodata with the Manpower Office. Legislation in Indonesia refers to port workers as Loading and Unloading Workers (TKBM). They are organized in cooperatives at each port.

The company's bylaws are regulations made in writing by the authorities that include the requirements and procedures for running a business. The corporation creates its own

rules, which are written, permitted to use foreign languages, and updated and approved by authorised authorities every two years. At the very least, the company's policies outline the rights and responsibilities of the employer, employees, the company's rules, the period of validity of the regulations, and the collective bargaining agreement. Company regulations must also be better than laws and regulations. Workplace circumstances that are not governed by laws and regulations must also be governed by this rule.

The government has stipulated Law Number 13 of 2003 concerning Manpower to protect the workforce. (Hakim, 2016) This is done to protect the basic rights of the workforce and ensure that everyone has equal opportunities and is treated fairly. In addition, to safeguard the well-being of employees and their families, the ultimate goal of this initiative is to prevent discrimination. (Matindas, 2018) Law Number 13 of 2003 concerning Manpower contains several articles that serve as standards for the legal protection of workers, including Articles 77 to 85 concerning Working Time, Articles 86 to 87 concerning Occupational Safety and Health, Articles 88 to 98 concerning Wages, and Articles 99 to 101 concerning Welfare. The protection of workers' rights is also governed by Article 28D, paragraph 2 of the 1945 Constitution and Article 38, paragraphs (1), (2), (3), and (4) of Law Number 39 of 1999 respecting Human Rights. (Basofi & Fatmawati, 2023)

RESEARCH METHOD

The research conducted uses empirical juridical, which is descriptive. One way to see the reality of law in society is through empirical juridical research. Analytical descriptive research focuses on laws and regulations related to legal theories that are the subject of research. This study is based on the findings of field interviews. This research aims to define, characterise, and analyze the information obtained systematically and accurately about legal remedies to protect the workforce working outside the port workload.

This research studies various aspects such as how PT. Belawan Indah (TKBM) legally protects loading and unloading workers at Belawan port, as well as policies and approaches to determine the compensation workers receive. Article 7 paragraph 2 letters a and b of Law Number 13 of 2003 concerning Manpower states that seven (seven) hours is the standard working day. 40 (40) hours and 1 (one) day One week is equivalent to eight hours, or six working days in one week. There is one day in forty hours. One week for five working days in one week, as well as health and safety.

Literature studies and field studies collect data in the same way. They are then sorted and put into a single thing, categories, and basic descriptions, so that the problems can be separated and elaborated by qualitative analysis.

RESULT AND DISCUSSION

A. Contract on the Use of Labour for Loading and Unloading (TKBM)

The terms "contract" or "contract" in English and "woveerenkomst" in Dutch are also often used to refer to covenant in a more general meaning. (Ardi, 2016) Since the heart of both words is an event in which the parties agree on the conditions and are obligated to follow through on them, they are synonymous. This creates a legal relationship known as an engagement (verbinthesis). The Civil Code's Article 1313 provides a broad description of an agreement. A contract formed by one or more parties against one or more others is called an agreement.

When one party makes a commitment to the other, and both parties are bound by the terms of the agreement, this is called an agreement. In this sense, the roots of labour law are employment and labour agreements.

Persons and legal entities are two types of legal subjects. "Everyone is capable of making an engagement, if he is not declared capable by law," as stated in Civil Code Article 1329. Accordingly, each person is presumed to possess the ability or competence to provide permission in line with the guidelines outlined in this article. (Wirahutama, 2018) This gives everyone the freedom to do legal acts stipulated by law.

The concept of consensuality, which states that agreements and commitments result from the completion of the agreement, is the foundation for the employment agreement between the employee and the employer.(Gumanti, 2022) The aforementioned outcome aligns with the terms of Article 1320 of the Civil Code concerning the legal terms of the contract; With each party's rights and responsibilities established, a legal connection is therefore created between the parties, and the agreement forms the foundation of the engagement.

Based on the above understanding, PT. Belawan Indah makes a joint agreement with the stevedore before starting their employment relationship, only the collective agreement can be used as the basis for a general agreement, it is not essential for the stevedore's employment to consider the data contained in the collective agreement.

Employment connections are particularly governed by labour law under Law Number 13 of 2003, that a valid employment agreement must meet the following four requirements:(Syahputra Nasution, Suhaidi, & Marzuki, 2021)

1. Agreements for Fixed-Time Work (PKWT).
2. Permanent Employment Contract (PKWTT)

Law Number 12 of 2003 respecting Manpower, Articles 64 to 66, governs the system of wholesale work that may be produced or contracted out. That the company can hire

another company to perform part of the work through a written agreement on the wholesale of work or the provision of services to workers or laborers.(Kunarti, 2009) Nonetheless, some businesses would rather recruit staff members via an outsourcing method. Usually, this results from the company's aim of adopting an outsourcing system to lower manufacturing costs.(Fauzi, 2006)

The outsourcing approach is extensively criticised by certain labour law experts since the employer firm is not directly accountable for the legal rights of the workers involved, even if human resources (HR) operating in the company in question should be funded cheaply. Thus, a few conditions are established to safeguard the hired workers and lessen the adverse effects of outsourcing.

In order for the worker or laborer concerned to remain protected and not to be excessively exploited, the employer or worker service provider must fulfil the following requirements:(Pohan & Hasibuan, 2021)

1. A worker service provider company is a type of business incorporated that has a license from an authorized institution.
2. It is not allowed to use workers or employees who are placed to carry out basic activities that are not related to the production process.
3. Placed workers have a clear employment relationship with their service providers, thus providing the best employment protection in accordance with minimum employment standards.
4. The employment relationship must be outlined in a formal agreement that covers all of the parties' rights and responsibilities in compliance with labour laws and regulations.

The existence of protections and conditions for work working at the employer must be considered in the activities, must be at least proportional to the working conditions and employment protection stipulated by the employer company or stipulated by the applicable laws and regulations.(Nursalim & Suryono, 2021)

The sort of employment connection in issue is governed in the execution of work by a written employment agreement between the firm that employs the worker and the company that accepts the worker. This employment agreement may last for a certain period of time, subject to applicable requirements.(Tampongangoy, 2013) If the provisions as a legal entity and the written agreement are not met, the legislation will decide the employment or labour relationship status with the employer firm. The employment relationship between employees and the employer firm changes as a consequence, and it may take the shape of a short-term or long-term employment contract, depending on the form of the original employment agreement (The Manpower Law Number 13 of 2003,

Articles 64 and 65). (Hermanto & Siregar, 2020)

An employment agreement (*arbeidsovereenkomst*) is the only way to carry out a legal relationship in carrying out work (*overeenkomsten aan het werk te doen*) but it can also be done through a service-performance agreement (*overeenkomst tot het verrichten van enkelediensten*) or a work wholesale agreement (*aanneming van werk*). It is based on partnership agreements, which come in different forms, corporate agreements (business agreements), and public service agreements (*publiekrechtelijk verhouding* or *social relatie*), which are essentially agreements to perform work by and between two or more parties. In some other laws and regulations, the legal relationship of doing work is also known as another form (*contract innominaat*).

Legal relationship between agreements and legal provisions: The current Employment Law regulates agreements to do work. Almost most of the material focuses on labor agreements, namely: Employment relations or employment agreements, which are more often referred to as industrial relations actually, there are no rules that regulate the legal relationship of doing work for Workers Outside Employment Relations (TKLHK), however, the law that regulates labor social security (*jamsostek*) for workers who are less fit to work (TKLHK) has been established.

Workers Outside Employment Relations (TKLHK) do not operate in accordance with these provisions, because, The Law Number 3 of 1992's Article 4 Paragraph 2 states, the implementing regulations have not been made. However, the Labor Law specifically regulates labor in an employment relationship called a worker or laborer, as it is referred to, the type of employment agreement, the conditions of the work relationship, the parties' rights and responsibilities, and the manner in which industrial disputes are resolved.

Article 50 of Law Number 13 of 2003 defines an employment relationship as a legal arrangement based on an employment agreement, whose elements include the existence of work, direction, salary, and a certain time (Article 1 number 15 and Article 50 of the Labor Law Number 13 of 2003, together with Article 1601a BW).

Belawan Port uses a wholesale wage system which is based on the number of goods shipped, The principle of wholesale wages says that TKBM gets a higher salary if the loading and unloading work can be completed faster than the average wage standard.(Agus, 2015) If the wholesale wage system is implemented, TKBM can be motivated to do more work. The loading and unloading performance of TKBM at the port of Belawan currently has met and even exceeded the agreed performance standards, except for certain goods that are casuistic.

Welfare: Each TKBM registered every year receives occupational safety equipment (K3) such as work clothes, shoes, helmets, gloves, masks, holiday allowances (THR), as well as the function of Social Security. The four parts of the Social Security program are Health Care Insurance (JPK), Old Age Insurance (JHT), Death Insurance (JK), and Work Accident Insurance (JKK). According to the minimum wage standard, the disparity between the quantity of TKBM and the capacity to pay the premiums for old age insurance and death insurance causes the value of the compensation of the two guarantees to be relatively small at this time.

In the implementation of Government Regulation No. 61 of 2009 concerning Ports, which replaces Government Regulation No. 69 of 2001 concerning Ports, the regulations and regulations regarding TKBM have been regulated since the beginning in the Regulation of the Minister of Transportation.

The loading and unloading workforce does not meet the conditions of the employment relationship mentioned above. Since there is no employment agreement either oral or written, the legal relationship between TKBM and the TKBM Cooperative and/or other companies (including the Loading and Unloading Service Provider Company) is not considered an employment relationship. As a result, this is related to the legal relationship of work wholesale. The Manpower Law does not regulate this type of legal relationship (wholesale of work by TKBM).

B. Legal Remedies Against Loading and Unloading Workers

Legal remedies in the wholesale work system without a specified time. Furthermore, the labor law should set an age limit for loading and unloading workers, so the government revised the Permenhub. "The government should protect, not even issue a Regulation of the Minister of Transportation that only harms TKBM which has been operating at the port for 25 years". The welfare of TKBM workers, legal certainty that applies justice.(Nuraini, 2018)

Belawan Port and Customs Process: Two main factors affect loading and unloading efforts at Belawan port:(Anita & Asmadewa, 2017)

1. Juridical obstacles, include difficulties related to regulations that, either directly or indirectly, may harm the other party, For example, in cases where the employee is not allowed to work, so the employee demands compensation for layoffs, as outlined above, We argue that he should return to his position as a member of the TKBM Cooperative, which is a legal relationship of the corporation. Because TKBM is not an employment relationship and is not based on a general employment agreement, it

cannot be fulfilled in accordance with the provisions stipulated in the Manpower Law, especially those related to severance pay rights and termination of employment.

2. In a technical sense, regarding challenges encountered while carrying out its tasks, which include the following acts, in compliance with the terms of the collective agreement: When the ship is completed unloading, some parties have gone over the tolerance limit, and storage operations are not at their best, whether this is before the ship docks, during the dismantle process, or after the ship is landed if the disassembly is done roughly. In this instance, he is accountable for carrying out all the tasks that were agreed upon with the other party to pursue the prosecution, whether in the form of claims to the District Court or damages, as an executor of the contract.

Attempts to obstruct or obstruct the termination of employment (PHK) without providing severance compensation to laid-off workers have arisen as a result of obstacles that can be juridically stated this shows that there is a tendency (elements) of the employment relationship, especially if they are not members of the TKBM employee and are not members of the TKBM Cooperative. The terms of the work relationship may be followed in addressing or resolving this, as indicated by Article 1601c BW. All you need to do is determine which one is closest to the most typical relationship. (Iriyanto, Hukum, Ilmu, Dan, & Surabaya, 2021)

Obstacles technically include obstacles that arise during the process of fulfilling work (obligations) in accordance with what is outlined in the collective agreement. The implementation of its obligations includes the following activities: before the ship is docked, during the dismantling process or when the ship is docked if the dismantling process is carried out carelessly, to claim compensation or sue the District Court.

1. Internal Factors.

- a. Loading and Unloading Workers (TKBM) function as dockers during loading and unloading activities. Loading and unloading companies and businesses related to loading and unloading activities usually use this TKBM, however, the principle contained in the Manpower Law Number 13 of 2013, to guarantee job completion, the TKBM work form system must be put into place in compliance with the Manpower Law.
- b. Due to the lack of a clear legal remedy to safeguard the stevedore, a separate agreement between the employer and the employee is required. There is no clear law regulating loading and unloading labor, which means that there is no agreement in force, which meets the requirements of the Labor Law for parts of different types of contracts, such as fixed-time employment contracts, indefinite-

time employment contracts, outsourcing (outsourcing), commercial contracts. So, if there is a labor conflict, it can cause damage, either between employees and their employers, or between employees and their own employees, or report to the Directorate if workers and the enterprise are at odds. This report is usually carried out through deliberation before being reported to the directorate.

1. External Factors

- a. Due to the fact that workers prioritise their earnings above legal interests, loading and unloading labour has an impact on the majority of the economy.
- b. Both the Regulation of the Minister of Transportation concerning Loading and Unloading Activities and Law Number 13 of 2003 concerning the Manpower Law have weaknesses, because of the weaknesses and shortcomings related to the Manpower Law and the Regulation of the Minister of Transportation, it becomes a barrier to the determination of a definite law.

Based on Article 1601c BW, the provisions of the Labor Law can be enforced if a legal relationship of doing work can be ascertained as an employment relationship and contains elements of an employment relationship based on an employment agreement. In the same way, workers and laborers are entitled to compensation for layoff money if there is a reason for layoff that requires the employer to pay compensation, as well as if you pay "layoff money" in accordance with Law Number 13 of 2003's Article 156, paragraph (1), severance pay, service period award money, and compensation money.

If the elements of the labor relationship are fulfilled but the rights of workers or laborers are still not heeded, the stevedores must have the right to sue in accordance with the provisions and procedures listed in Article 3 of Law Number 2 of 2004.(Sari, 2023) It should be reaffirmed about the workforce that handles loading and unloading goods so that a special and definite agreement is formed.

Law Number 12 of 2003, Articles 64 to 66, which discusses the definition of outsourcing, regulates how outsourcing is carried out. Through a work wholesale agreement or the written supply of labour or worker services, businesses may assign a portion of their work to other businesses.

The Decree of the Minister of Manpower and Transmigration No.100/MEN/IV/2004 states that PKWT, or PKWTT, is an employment contract that creates a working connection between an employer and employee for a certain amount of time..(Kusuma, Ratna M.S, & Irawati, 2020)

Legal action has been taken against TKBM's technical obstacles, which are typically the result of worker negligence or equipment damage during the loading and unloading

process. The cooperative's primary rights and responsibilities have been governed by mutual agreements, which include the imposition of fines, suspensions, or terminations for noncompliant employees. if the prosecution and the court reach a settlement.

CONCLUSION

The system for loading and unloading goods at Belawan port uses wholesale work to achieve the completion target based on the number and volume of goods. The Port Authority (OP) supervisor oversees this operation, and the squad commander oversees and directs each loading and unloading operation. Workers must register with the Port Authority in order to have permanent legal protection since it is a cargo loading and unloading system. The kind of employment connection that needs to be made especially for TKBM does not require a particular agreement that. To be clear, a loading and unloading agreement is also consensual, which means that both parties must agree before a loading and unloading implementation agreement can be created. The parties' agreement is evident from each party's behaviour if the loading and unloading agreement is not followed in accordance with the mutually agreed timetable, for instance, by giving the goods to be loaded to the loading and unloading company in a designated warehouse, the quantity of loading and unloading companies (PBM) at various ports, the abrupt cancellation of ship departure by the chartered party, and the volume of fixed work and other PBM do not always use APBMI (Indonesian Loading and Unloading Companies Association) rates. The ongoing bureaucratic process causes untimeliness, so service users have to switch to another PBM when the agreement will be tied. There is no clear relationship between work activities and the system, which exists in the agreement (which is more flexible) and is subject to change due to good relations between interested parties.

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