

THE EFFECTIVENESS OF LABOUR REGULATION IN PROTECTING INFORMAL WORKERS' WELFARE

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ABSTRACT

The existence and the activity of informal sector in the economic system as a democratic economic reality has played a quite significant role in both social and national development. According the data from the Ministry of Labour and Transmigration in 2015, 43.085 workers in total had been laid off by September 2015, placing 3.370 out of it in Central Java Province and 1.073 out of it in Semarang. Meanwhile, according to the 2014 data from the Chief of Central Statistics Agency (BPS), Suryamin, the percentage of formal workers was only 39 percent out of the total workers, while the remaining 61 percent were informal workers by February 2013. In February 2014, the number of formal workers raised to 40 percent of the total workers while the remaining 60 percent worked as informal workers (sindonews.com 5 May 2014). The data showed that the informal sector was still quite dominant in absorbing work force especially in the urban areas. This study aimed to collect data of the labour regulations which regulates welfare protection for informal workers, describe welfare condition of the workers in informal sector in Semarang, and analyse the effectiveness of the labour act in protecting the informal worker's welfare. The result of the study showed that the labour regulation which regulates the welfare protection for workers has not yet optimally protected the informal workers although its general conditions clearly states that workers include the informal workers. The informal workers' welfare in Semarang is still alarming. Based on the data acquired from the sample of informal workers, their daily income varies from Rp 20,000 – Rp 100,000 per day (90% of which are still below the minimum wage rate in Semarang). The labour regulation was not so effective in protecting the informal worker's welfare because the government has not given priority in the protection of the informal worker's welfare. It is also caused by the restrictions of the Labour and Transmigration Agency officers in labour monitoring, lack of socialization of the labour regulation towards the informal workers and the absence of regulation which specifically rules the normative rights of the informal workers. Therefore, cross-sectional and cross-institutional coordination is required in giving protection and easiness for informal workers.

Key Words: Effectiveness, Informal Workers, Labour Regulation, Welfare

Introduction

The existence and the activities of informal sector in the economic system as a democratic economic reality has played a quite significant role in both social and national development. At least, when development programs have not succeeded in providing job opportunities for the work force, informal sector, with all of its weakness, is able to become provide working alternatives for job seekers. Data from the Ministry of Manpower and Transmigration in 2015 showed that by September 2015, a total of 43.085 workers were laid off, where 3.370 of which came from central Java Province and specifically 1.073 workers came from Semarang.

According to the data from the Central Statistics Agency (BPS), in 2007, the number of informal workers reached 60,6 million people which was much higher than formal workers (25 million people). In 2014, according to the chief of BPS, Suryamin, the percentage of formal workers was 39 percent and the percentage of informal workers was 40 percent by February 2013, while in February 2014, the percentage of formal workers slightly raised to 40 percent and the remaining 60 percent were informal workers (sindonews.com 5 May 2014). The data showed that informal sector was still quite dominant in absorbing workforce especially in urban areas. Moreover, the economic development has not yet been able to solve the classic problem of job opportunities.

The national development aims to establish a wholly prosperous Indonesian citizens. It is in line with Article 27 clause (2) of the Constitution of the Republic of Indonesia which states that every citizen shall have the right to work and to earn a humane livelihood. Corresponding to this welfare matter, the clause stresses that by means of working, each of the citizen, regardless of their gender and their age, deserves to get adequate livelihood for the workers and their family. In addition to the constitution, the government has issued a number of labour regulations, namely Law Number 13/2003 on Manpower, Law Number 21/2000 on Labour Union, Law Number 3/1992 on Social Security for Employees, and so on. However, how effective the regulations can protect informal workers needs to be examined further and more thoroughly.

Meanwhile, the problem of manpower in Indonesia is complicated and has occurred for a quite long period of time. The development orientation focuses on targeting macro-economic development without paying much attention to the life of the poor. The government has, so far, not been able to provide sufficient job opportunities for their people which mostly live under the poverty line. In result, most of the people live by depending their lives on the informal sector activities. The economic

condition which is recently formidable obviously hampers job opportunities in formal sectors. It is predicted that the recently escalating oil price will result on the increasing number of informal workers. The layoffs will cause the shift of the workers from formal sector to informal sector. Meanwhile, the arrangement of the regulations has not much considered the protection for informal workers. The law norm of the manpower's protection focuses more on regulating the employment relationship of formal workers. It is important to reckon that informal sector has become a social security valve and has given significant contribution in creating job opportunities. The government, therefore, deservedly attempts to optimally protect informal workers. The attempt involves both the law and its implementation in the society.

The main problem in this research could be formulated as follow: How is the effectiveness of the labour regulation in protecting the informal workers' welfare? The problem could be specified into the following research questions:

1. What are the labour regulations which regulate informal worker's welfare protection?
2. How is the welfare condition of the informal workers in Semarang?
3. How is the effectiveness of the labour regulation in protecting the welfare of the workers in informal sector?

Research Methods

This research used empirical juridical approach, study on informal workers in Semarang. The primary data was acquired by means of both interview and direct observations towards a number of informal workers representing various types of business in Semarang and the officers of Manpower and Transmigration Agency. The primary data was supported by secondary data which was acquired through literature study by searching and collecting labour regulations related to informal workers' welfare. The data about the welfare condition of the informal workers was acquired through observation and interview.

Labour Regulations which Regulate Welfare Protection for Informal Workers

Informal worker is an essential factor in generating the economy of a country even in the most difficult crisis. Therefore, it is important to provide protection for those informal workers and their family. The government has issued a number of regulations which aim to provide protection for informal workers. The labour regulations which are now taking into effect can be detailed as follows:

1. The 1945 Constitution of the Republic of Indonesia

The fourth paragraph in the preamble of the Constitution of the Republic of Indonesia explicitly cites the state's second purpose is to enhance general welfare. It implies that the welfare refers to the welfare of all the Indonesian people including the welfare of the informal workers which should be protected because it belongs to the purpose of the establishment of the Republic of Indonesia.

Moreover, the articles of the constitution also contain the detail of the protection for the workers. Article 27 clause (2) of the constitution stipulates that every citizen shall have the right to work and to earn a humane livelihood. Article 28 A of the constitution states that every person shall have the right to live and defend his/her life and existence. Article 28 D of the constitution states that every person shall have the right to work and receive fair and proper remuneration and treatment in employment. Article 28 E (1) of the constitution states that every person shall have be free to choose and to practice the religion of his/her choice, to choose one's education, to **choose one's employment**, to choose one's citizenship, to choose a place of residence within the state territory, to leave it and to subsequently return to it. The constitution becomes the foreground for the government to compose the technical regulation under the constitution.

2. Law Number 13/2003 on Manpower

As stated in the general definitions of the Law Number 13/2003, a person available for a job is every individual or person who is able to work in order to produce goods and/or service either to fulfil his or her own needs or to fulfil the needs of the society.

The explanation of the article states that the definition of the worker according to the law includes both the workers who work outside and within the employment relationship using the power of their own, both physical and psychological, as the production properties. The definition is in line with the definition of worker according to the concept of manpower in general which states that workers are people who has been or is currently working, people who is searching for jobs and people who are doing other businesses.

Among other conditions related to the welfare in the Law on Manpower are:

- a) Every person available for job shall have the right to receive equal treatment without discrimination from their employer
- b) Every person available for a job has the right to acquire and/or improve and/or develop job competence that is suitable to their talent, interest and capability through job training.
- c) Every worker or labourer has the right to receive:
 - 1) Occupational safety and health protection;
 - 2) Protection against immorality and indecency;

- 3) Treatment that shows respect to human dignity and religious values
 - d) Every worker or labourer has the right to earn a living that is decent from the viewpoint of humanity
 - e) Every worker or labourer and their families shall each be entitled to social security of employees
3. The detail of social security for informal workers is outlined in Law Number 24/2011 on the Implementing Agency of Social Security (BPJS) and Presidential Regulation Number 109/2013 on the Stages of the Social Security Programme Membership. Among the provisions are:

The purpose of BPJS for Manpower (BPJS Ketenagakerjaan) for informal workers:

- a. To provide social security protection for the workers who are performing their work outside of the employment relation at the time when the workers lose a part of or a whole income as the result of the risks, such as occupational accident, illness, pregnancy, birth delivery, retirement and death.
- b. To expand the range of participation in workers' social security

The types of BPJS for Manpower Programme and its benefits are as follow:

- a. Occupational Accident Security Programme (JKK), which covers the transportation expense for the workers who suffer from occupational accident, medical treatment expense, rehabilitation expense, temporary wage cover while they are unable to work, partial disability compensation, total permanent disability compensation, death compensation (according to the label), funeral expense, periodical compensation for death and total permanent disability.
- b. Death Security Programme (JK), which covers funeral expense and periodical compensation
- c. Old Age Security Programme (JHT), which covers all the contributions along with the interest

The membership of this programme are outlined as follow:

- a. Participants must voluntarily enrol to this program
- b. Participants must be 55 years old at maximum
- c. Participants must be able to participate in BPJS for Manpower step by step by choosing the programme in accordance their need and capability
- d. Participants must enrol directly to the BPJS or through the available organization

The nominal of the TH LHK contribution is determined based on a particular nominal according to the workers' income based on the regional minimum wage.

Table 1: The Amount of Jamsostek Contribution

No	Programme	Percentage
1.	Occupational Security	1% (based on a particular nominal according to the income)
2.	Old Age Security	2% (based on the wage group)
3.	Death Security	Rp 6.800

Source: data from BPJS

Unlike the formal workers whose Jamsostek contribution is mostly covered by the company/employer, for informal workers/TKLHK, the Jamsostek contribution shall be paid by the workers themselves.

Welfare Condition of the Informal Workers in Semarang

The condition of the informal workers' welfare in Semarang is still concerning. According to the data form the examined informal workers, their daily wages ranged from Rp 20.000 – Rp 100.000 per day (90% below the regional minimum wage). The regional minimum wage in Semarang in 2015 was Rp 1.685.000 per month which made it around Rp 67.00 per day.

According to Article 1 clause 3 of the Law Number 13/2003 on Manpower, a worker is every person who works for a wage of other forms of remuneration. Other forms of remuneration in this definition refers to the remuneration given by the employer to his/her workers in the form of fresh money, daily needs, facilities such as medical facilities, accidental facilities, and other bonus.

Meanwhile, the working hours for informal workers ranged from 7 to 12 hours per day (60% longer than the determined working hours). For the employees who work more than 6 days per week, the working hour was 7 hours per day which makes it 40 hours per week while for the employees who work 5 days per week, they should work for 8 hours per day which makes it 40 hours per week (Law Number 13/2003 on Manpower Article 77 clause 1)

Table 2: Recapitulation of the Data of the Investigated Informal Workers

No.	Name/Age/Status	Occupancy	Income/ Month	Remuneration	Daily working hour (hour)
1.	Sukamto/36 Married	Fisherman	Rp 3.125.000,-	None (N)	10
2.	Gianto/43/Married	Fisherman	Rp 1.875.000 – Rp 2.500.000	N	8
3.	Intan/22/Single	Shop assistant	Rp 600.000	N	6
4.	Yanti/23/Married	Photo copy assistant	Rp 800.000 – Rp 1.300.000	Meals, housing, THR	12
5,	Tri Oktavia/40	Shopkeeper	Rp 1.250.000 – Rp 2.000.000	N	11
6.	Azis/	Peci Vendor	Rp 1.250.000	N	12
7.	Gio	Clothes vendor in the market	Rp 3.500.000	N	10
8.	Ana/21	Iced Juice Vendor	Rp 800.000 – Rp 1.000.000/month	THR	12
9.	Anwar/39	Watch reparations	Rp 1.250.000 – Rp 2.500.000	N	7
10	Makruf/36	Food vendor	Rp 1.750.000	N	10
11	Nur rahmawati/22/ Single	Hand phone shop assistant	Rp 800.000	THR	8
12	Khotimah/55/ Single	Laundry	Rp 700.000	THR	7

Source: the examined data

Aside from the wage, 100% of the total workers did not receive transportation allowance, 90% of the workers did not receive meal allowance, 75% of the workers did not receive religious festivity allowance (THR) and 25% of the workers did not enrol in the national social security for workers programme. The following table presents the welfare condition of the examined informal workers.

The Effectiveness of Labour Regulation in Protecting Workers' Welfare in Informal Sector

The purpose of the Law Number 13/2003 on Manpower in Article one number 31, workers' welfare is a fulfilment of physical and spiritual needs and/or necessities (of the worker) either within or outside of employment relationships that may directly or indirectly enhance work productivity in a working environment that is safe and healthy.

The development of manpower aims at:

- Empowering and making efficient use of the workforce optimally and humanely;
- Creating equal opportunity and providing manpower (supply of workforce) that suits the need of national and provincial/municipal developments;
- Providing protection to the workforce for the realisation of welfare;
- Improving the welfare of the workforce and their family

However, by looking at the real condition of the welfare of the informal workers as previously shown in the result of the research, it could be seen how the labour regulation has not been able to protect the welfare of the informal workers. It can also be seen from the small number of the informal workers who were protected by the national social security as shown in the following table:

Table 3: Target Achievement of BPJS for Manpower Membership (JKK, JK, JHT) of the Informal Workers in 2015

NO	BRANCH OFFICE	TARGET	REALISATION	ACHIEVEMENT
1	Semarang Pemuda	65.802	2.309	3,51%
2.	Semarang Kaligawe	24.028	4.005	16,67 %

Source: BPJS Ketenagakerjaan Kota Semarang

Based on data in the previous table, it can be seen that the informal workers who were protected by social security for workers were still very few. Therefore, a number of efforts need to be done to make more informal workers feel secured because they are covered by the social security protection for workers, among which are occupational accident security, death security and old age security.

The effectiveness is generally viewed as both operative and operational purpose achievement level. Thus, the effectiveness is basically the achievement level of the organisational goals and target which have been set out ahead of time. Effectiveness refers to how well the work is done and how far a person produces the expected output. It can be said that a work can be considered effective when it can be well done according to the set out plan without considering the time, energy and so on. The effectiveness of an organisation can also be measured using the following criteria:

- a. The clarity of the goals
- b. The clarity of the target achieving strategy
- c. The stable analysis and policy making process
- d. Properly constructed planning
- e. Precise program arrangement
- f. The availability of facilities
- g. Educative monitoring and controlling system

Based on the previous theory, the goal is obviously to provide welfare for the informal workers. However, the implementation of the programme was still using not quite appropriate strategy, unjust policy making process, and lack of monitoring which resulted on failure in optimizing the effectiveness of the existing labour regulations.

The failure in optimizing the effectiveness of labour regulation in protecting the informal workers was caused by the following factors:

- a. The government has not optimally given a priority in protecting the informal workers
- b. The limited number of the Manpower and Transmigration Agency officers in labour monitoring (9 supervisors for 3957 companies) and lack of labour socialisation for informal workers
- c. There has not been any regulation which specifically regulates the normative rights for informal workers.

Conclusion

Based on the result of the research and the analysis on the effectiveness of the labour regulation in protecting the informal workers' welfare (a study on the informal workers in Semarang), it can be concluded that:

1. The labour regulations which regulate welfare protection for informal workers are outlined in the fourth paragraph in the preamble, Article 27 clause (2) and Article 28 D of the 1945 Constitution of the Republic of Indonesia. The regulation is also outlined in the Law Number 13/2003 on Manpower. However, the law has not optimally regulated the matters related to informal workers although its general provisions clearly state the definition of workers which includes informal workers. The social security of the informal workers is regulated in the Law Number 24/2011 concerning BPJS and the Presidential Regulation Number 109/2013 on the Stages of the Social Security Programme Membership.
2. The welfare condition of the informal workers in Semarang is still very concerning. Based the acquired data of the sample of informal workers, their daily wages range around Rp 20,000 – Rp 100,000 per day (90% below the regional minimum wage), while their working hours range from 7 to 12 hours per day (60% longer than the determined working hour). In addition, all of the workers do not receive transportation allowance, 90% of the workers do not receive meal allowance, 75% of the workers do not receive THR and 25% of the workers do not enrol in the social security programme.
3. The labour regulations are not quite effective in protecting the informal workers' welfare because the government has not much prioritised the protection towards the informal workers, the number of the Manpower and Transmigration Agency officers is not enough for labour monitoring (9 supervisors inspecting 3957 companies), lack of socialization of the labour regulations towards the informal workers and there has not been any regulation which specifies the normative rights of the informal workers.

Suggestions

1. Cross sectional and cross institutional coordination is required to protect and provide easiness for informal workers
2. A new regulation needs to be arranged to specifically protect the informal workers

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