BURDEN OF PROOF IN OVERTIME WAGE CLAIMS

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Abstract

Overtime wage demands occur when the company employs workers overtime, but the workers are not given overtime wages, so the workers are forced to make a report or complaint to the labor inspector, to conduct an examination as a basis for calculating and determining, because overtime wages are a right guaranteed by labor legislation. According to Prof. Dr. H.R Abdussalam, SIK, SH, MH and Adri Desasfuryanto, SH, MH, working hours are 7 (seven) hours a day and 40 (forty) hours a week and in the event that workers work beyond these working hours, then workers are entitled to overtime pay. The research methods use normative legal research. The result of research is reviewed the burden of proof in overtime pay claims, finding that the burden of proof of work attendance should be borne by the employer, not the employee, in accordance with applicable labor regulations. The labor inspector's action in shifting this burden to the employee is considered an abuse of authority and contrary to the principles of good governance.

Keywords: Prosecution, imposition, evidence

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INTRODUCTION

Overtime wages are wages given by employers to their workers as compensation for the performance of workers who work outside the normative working hours in a day, or during weekly breaks, or on official holidays in accordance with statutory regulations. In the event that employers do not pay workers overtime wages, an Industrial Relations Dispute is born about the demand for overtime wages or rights. Rights disputes are disputes arising from the non-fulfillment of rights, due to differences in the implementation or interpretation of the provisions of laws and regulations, work agreements, company regulations or collective labor agreements

Labor working time is known with 2 (two) types, namely:

a. 7 (seven) hours in a day and 40 (forty) hours in 1 (one) week, for 6 (six) working days with provisions, weekly rest 1 (one) day.
b. 8 (eight) hours in 1 (one) day and 40 (forty) hours in 1 (one) week, for 5 (five) working days with the provision of 2 (two) days weekly rest, with the calculation of overtime pay as follows:
c. Wages for overtime work with a pattern of 7 (seven) or 8 (eight) hours for the first hour shall be 1.5 x hourly wage and 2 x hourly wage for the 2nd (second) hour and so on.
d. Wages for overtime work during the weekly break with a work pattern of 7 (seven) or 8 (eight) hours a day are 2 (two) times the hourly wage for the first hour up to 7 (seven) or 8 (eight) hours, and 3 (three) times the hourly wage for 8 (eight) or 9 (nine) hours, and 4 (four) times the hourly wage for 9 (nine) or 10 (ten) hours
e. Wages for overtime work with a weekly rest pattern on short days, First hour to fifth hour, 2 (two) times the hourly wage, 3 times the hourly wage for the sixth hour and 4 (four) times the hourly wage for the seventh hour.

The hourly wage formula is 1/173 of a month's wage.

In the event that the Employer employs workers overtime but the Employer does not pay overtime wages, the Employer may be subject to criminal charges categorized as criminal offenses. Therefore, in the demand for overtime wages, the assertiveness of the Labor Inspector in carrying out his duties is very necessary, because with his assertiveness, the actions of employers who do not pay overtime wages are resolved and workers are spared from extortion

In practice, the demand for overtime wages is a demand that is very difficult to fight for, because labor inspectors whose main task is to carry out supervision, as well as handle complaints, always impose proof on workers who make complaints, whereas considering that work attendance is only with the Employer, it should be the Employer who is burdened to prove work attendance, because how could a party that does not have evidence of work attendance but is burdened to prove work attendance. As a result, the Manpower Supervisor both at the Provincial level and at the level of the Director of Manpower Norms Supervision of the Republic of Indonesia, issued a Stipulation/Re-stipulation by saying that there was no overtime pay with the reason**,** "there are no overtime documents".

According to the author, such an attitude of the labor inspector is an attitude deviating from the principles of propriety, the principles of justice, therefore,the author is interested in making this Journal with the title "burden of proof in overtime wage claims by labor inspectors".

In this journal, the problem is formulated: 1) Who should be obliged to prove work attendance in the event of a claim for overtime pay? and; 2) What are the legal consequences if work attendance is charged to employees?

RESEARCH METHOD

In making this journal, the author uses normative legal research methods, namely legal research by examining library materials or secondary data and empris methods, namely conducting research from real events.

RESULTS AND DISCUSSION

Who is obliged to prove work attendance in the event of a claim for overtime pay?

To discuss this problem, the author discusses it through an approach

a. Law No. 30 of 2014, on Government Administration Law.
b. Law No. 8 of 1997, documents
c. Labor laws and regulations, in the form of:
    1. Article 6 paragraph (4) of Law No. 3 of 1951;
    2. Article 7 paragraph (1) of Law No. 7 of 1981;
    3. Permenaker No. 33 of 2016 which has been amended to Permenaker No. 1 of 2020.

Approach from Law No. 30 of 2014

Based on Law No. 30 of 2014, article 1 paragraph (2), article 3 letters (a), (b), (c), (e), (f) and letter (g) and 7 paragraph (1) , the author can conclude that the one who is obliged to prove the work attendance document in the demand for overtime pay is the employer, because based on :

Article 1 point 2 of Law No. 30 of 2014, Government functions are functions in carrying out government administration which includes regulatory, service, development, empowerment and protection functions. Therefore, considering that the work attendance of workers is only with the Employer, then based on the government function as stipulated in article 1 point 2 of Law No. 30 of 20024, the labor inspector as a government apparatus, must impose proof of work attendance on the company.

Article 3 (a), (b), (c), (d), (e) and (f), the objectives of the Law on Government Administration are:

a) Creating an orderly administration of government administration.
b) Creating legal certainty.
c) Prevent abuse of authority.
d) Providing legal protection to citizens and government officials.
e) Implementing the provisions of laws and regulations and applying AUPB.
f) Provide the best possible service to citizens.

Thus, based on the objectives of the Government Administration Law as stated in Article 3 of Law No. 30 of 2014, the Labor Inspector in handling overtime wage claims, must refer to Article 14 paragraph (1) of Decree No. 33 of 2016 and Article 11 of Law No. 8 of 1997, so that administrative order, legal certainty, prevention of abuse of authority, legal protection, good service and legal protection of the community, then the Labor Inspector should impose proof of work attendance on the company.

Article 7 paragraph (1), Government officials are obliged to organize government administration in accordance with the provisions of laws and regulations, government policies, and AUPB. Therefore, to achieve good government administration, the burden of proof must be guided by existing laws and regulations and general principles of good governance, namely guided by article 14 paragraph (1) of Permenaker No. 33 of 2016 and article 11 of Law No. 8 of 1997, so that if there is a claim for overtime pay, the obligation to prove work attendance becomes the obligation of the Company.

Approach from Law No. 8 of 1997

According to article 11 of Law No. 8 of 1997, Records as referred to in article 5, bookkeeping evidence as referred to in article 6, and financial administrative supporting data as referred to in article 7 paragraph (2) letter (a) must be kept for 10 (ten) years from the end of the company's financial year concerned. Thus, in the event that there is a claim for overtime pay, the company must be charged with proving the work attendance because the work attendance is in the storage or control of the employer.

Labor laws and regulations

Article 6 paragraph (4) of Law No. 3 of 1951 Employers' actions that do not provide work attendance to supervisors when conducting inspections and or tests, can be considered as acts of obstructing labor inspectors from conducting inspections or tests. Therefore, in the event that the Employer does not want to provide the work attendance of its employees to the labor inspector, when the inspector conducts an examination or test, the labor inspector can carry out criminal proceedings against the Employer based on article 6 paragraph (4) of Law No. 3 of 1951. Thus, based on article 6 paragraph (4) of Law No. 3 of 1951, it can be concluded that the one who is obliged to prove work attendance is in the event that there is a claim for overtime pay is the Employer

According to Article 7 paragraph (1) of Law No. 7 of 1981, employers or administrators are required to report annually in writing regarding employment to the Minister or a designated official. Thus, through the company's annual mandatory report, labor inspectors can find out how much the employee's wages are, what is the status of the employee's employment relationship, how many employees and how the employee's work pattern is, whether using a 2 (two) shift pattern or using a 3 (three) shift pattern. From the wording of Article 7 paragraph (1) of Law No. 7 of 1981, if a conclusion is drawn, it is the employer who is obliged to prove work attendance if the worker demands overtime pay.

According to Article 14 paragraph (1) of Permenaker No. 33 of 2016, In carrying out supervisory or testing tasks, labor inspectors have the right to request information from:

a. Employer and/or manager;

b. Workers/laborers;
c. Management of the employers' organization;
d. Management of trade unions/labor unions;
e. OHS Expert and/or;
f. other related parties;

Based on article 14 paragraph (1) of Permenaker No. 33 of 2016, in carrying out the task of examining or testing, on demands for overtime wages, labor inspectors have the right to request information from, employers or administrators, but in the event that in providing information the entrepreneur regarding overtime wages, which explains that workers do not do overtime, then the entrepreneur is obliged to prove the work attendance of his workers to the Labor Inspector, because the entrepreneur's information can only be considered correct, if it is supported by work attendance. Thus, it can be seen, that the one who is obliged to prove work attendance if there is a claim for overtime pay is the Employer, not the worker.

Based on the legal approach of Law No. 30 of 2014, Law No. 8 of 1997, labor laws and regulations, the burden of proving work attendance for overtime wage claims, must be borne by the Employer.

What are the legal consequences if the labor inspector imposes the burden of proving work attendance on employees?

In discussing the legal consequences if labor inspectors impose proof of work attendance on employees, the author discusses it with 2 (two) legal approaches, namely:

a. Approach through the Administrative Justice Code
b. Approach through labor laws and regulations.
c. Approach through the Civil Code (KUHPerdata).

Approach through the Administrative Justice Code

According to article 53 paragraph (2) No. 9 of 2004, State Administrative Bodies or Officials in issuing decisions or determinations must be based on statutory regulations and general principles of good governance. Therefore, if the labor inspector either at the Provincial level or the Ministry of Manpower level imposes proof of work attendance on the employee, and as a result the employee cannot prove it, the inspector issues a calculation and determination or recalculation and determination, stating, there are no overtime documents, so there is no overtime pay, then it can be ascertained that the determination is contrary to laws and regulations and general principles of good government, so that based on article 53 paragraph (1) of Law No. 9 of 2004, the aggrieved party can challenge the determination to the State Administrative Court, with a demand that the determination be revoked and a new determination issued.

Labor laws and regulations

In this discussion, the author refers to article 14 paragraph (1) and article 26, Permenaker 2016. According to article 14 paragraph (1) of Permenaker No. 33 of 2016, in the event of a claim for overtime pay, employees are not required to prove work attendance, because work attendance is only with the company, and if the company is not willing to provide work attendance, the labor inspector is sufficient to conduct an examination or request information from employees, from trade unions/labor unions or from other related parties. Therefore, in the event that there is an error by the labor inspector in the burden of proof in the claim for overtime pay, the labor inspector may result in sanctions as stipulated in article 8 of Government Regulation No. 94 of 2021.

According to Article 26 of the Minister of Manpower Regulation No. 33 of 2016, in conducting supervision, the supervisor in conducting the inspection, there are errors or irregularities, so that the inspection results are considered incorrect, then as a result of these errors, the supervisor conducts a re-examination.

Approach through article 1365 of the Civil Code

The actions of the Labor Inspector who imposes proof of work attendance on workers even though the work attendance is only with the Employer, and according to the Government Administration Law, such actions violate the principle of propriety, so that thus when viewed from the point of view of the Civil Code, the actions of the Labor Inspector can be categorized as, "unlawful acts", as stipulated in Article 1356 KHUPerdata, because the act of imposing proof is prohibited by the Government Administration Law.

A tort is any unlawful act by which damage is caused to another person, obliging the person whose fault caused the damage to compensate. The elements of tort are:

a. Unlawful act (onrechtmatigedaat)
b. There must be an error.
c. There must be a loss incurred.
d. There is a causal link between the act and the loss.

Thus, the legal consequences of the burden of proof of work attendance imposed by the Labor Inspector to employees, so that the determination is contrary to article 53 paragraph (2) of Law No. 9 of 2004, then the legal remedies that can be taken by workers are:

a. File a lawsuit with the State Administrative Court based on Article 53 paragraph (1) and paragraph (2) of Law No. 9 of 2004;
b. Submitting a re-examination as stipulated in article 26 of Permenaker No. 33 of 2016, which has been amended to Permenaker No. 1 of 2020;
c. File a lawsuit for compensation under Article 1365 of the Civil Code.

CONCLUSION

Since the work attendance is only at the Employer's disposal, the burden of proving work attendance for overtime pay claims must be borne by the Employer. The labor inspector's action of imposing the burden of proof of work attendance on employees is in violation of various laws and regulations and general principles of good governance. The act of labor inspectors imposing the burden of proving work attendance on employees is an abuse of authority.

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