

RE-EXAMINATION OF THE DETERMINATION OF LABOR SERVICE SUPERVISORS REVIEW FROM THE PERSPECTIVE OF LAW NO. 30 YEAR 2014

*Husni Thamrin, Nason Nadeak
STIH Awang Long, Samarinda
husnithamrin180865@gmail.com*

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Abstract

The re-examination of the determination of the Provincial Labor Inspector as regulated in article 28 paragraph 3 of the Regulation of the Minister of Manpower of the Republic of Indonesia No.33 of 2016, which has been changed to Regulation of the Minister of Manpower of the Republic of Indonesia 1 of 2020, is legally no longer valid. Apart from being based on Law no. 30 of 2014, there are also several legal references as the basis for rejecting the re-examination of the determination as regulated in Article 28 of the Regulation of the Minister of Manpower of the Republic of Indonesia No. 33 of 2016, which has been changed to Regulation of the Minister of Manpower of the Republic of Indonesia No. 1 year 2020.

Keywords: re-examination, determination, supervisors

INTRODUCTION

Based on article 1 paragraph 3 of the 1945 Constitution¹, Indonesia is a state of law, so as a consequence of a state based on law, all people's behavior must be based on law, so that human relations with other humans or humans with other legal subjects can work properly so that order and justice can be felt by one human being with another human being. Likewise in the field of manpower, so that the relationship between a company and its workers can be realized in harmony, of course the company and its workers must submit and obey the labor rules that have been set by the government.

It is undeniable, even though the labor regulations regulate in detail about the rights and obligations of the company, there must still be actions by the company that violate the provisions of the labor laws and regulations, in fulfilling their obligations to workers, and so do the workers, even though the workers already know what is going on.

In his obligations as a worker, there are still workers committing violations, so that what is called an "Industrial Relations Dispute" occurs.

In order to avoid the occurrence and recurrence of violations of labor law, the presence of the Supervisory Officer of the Manpower Office is very much needed to find out whether the company has complied with the labor laws and regulations properly or not². In the event that a company is found that has not complied with the labor laws and regulations to pay for the normative rights of workers, among others, paying wages below the provincial minimum wage or not paying overtime wages, the Labor Inspectorate will conduct an inspection and if it is found that there is a lack of fulfillment of the rights of the Worker/ Workers, labor inspectors are obligated to carry out the calculations contained in the "Determination"³.

The decision issued by the supervisory employee, both the company and the workers, may not necessarily be able to accept it properly, this is because the company or the worker feels that there was an error made by the supervisor so that the worker or company feels aggrieved by the stipulation, so for those who have not been able to receiving the stipulation, has the right to request the calculation and re-stipulation to the Minister of the appointed official.

In 2014, the Government of Indonesia issued Law no.30 of 2014, concerning Government Administration which regulates the refinement of changes to decisions issued by officials, as stipulated in article 63 paragraphs (2) and (4), revocation of decisions is regulated in article 64, cancellation of decisions stipulated in article 71 paragraph (1) and regulates Administrative Efforts in article 75 paragraph (1) article 76. On this matter, the writer feels the need to write, "whether the

¹ 1945 Constitution, article 1 paragraph (3).

² Regulation of the Minister of Manpower of the Republic of Indonesia No. 33 of 2016, article 3 paragraph (1).

³ Regulation of the Minister of Manpower of the Republic of Indonesia No.1 of 2020, article 28 paragraph (1).

appointment of labor inspectors still needs to be recalculated to the Minister or the appointed official after Law no. 30 of 2014 "4.

RESEARCH METHOD

The research entitled, "Re-examination of the Manpower Supervisory Appointment from the perspective of Law Number 30 of 2014", uses the normative legal research method, which comes from English, namely normative legal research, where according to Soejono Soekanto and Sri Mamuji, normative legal research also called library research, namely legal research carried out by examining library materials or data.

Secondary⁵, focusing on the application and analysis of the laws and regulations relating to government administration and the State Administrative Court Law.

LEGAL MATERIALS COLLECTION TECHNIQUES

The technique of collecting legal materials in this study, the author uses a literature study, which is a method that uses searching for books related to the issues raised as secondary data.

RESULTS AND DISCUSSION

Based on article 1 of Law no. 3 of 1951, one of the objectives of the establishment of the Supervision Section at the Department or Department of Manpower is to oversee the enactment of labor laws and regulations in particular⁶. Therefore, the role and function of the Labor Inspectorate in enforcing labor laws and regulations is very necessary, so that a labor inspector should be a person who controls the labor laws and regulations as well as a person who has high integrity, so that he is not easily tempted by the persuasion of other parties. However, as a human being, the labor inspector is also not free from mistakes, therefore, regarding the determination of the supervisor who feels there is an error or mistake.

Need to be discussed or researched, does the re-examination still have to be submitted to the Minister or to an appointed official (Central labor inspectorate) or is it sufficient to make changes with the revocation of the stipulation, by the official issuing the stipulation?

Before answering this question, the writer first explains the meaning of Determination. The author has read a lot of labor law literature, but until now what the meaning of stipulation or the limits of stipulation is has not been found, therefore the author tries to find the meaning of the stipulation from article 28 of the Regulation of the Minister of Manpower of the Republic of Indonesia no. 33 of 2016, which has been changed to Regulation of the Minister of Manpower of the Republic of Indonesia No. 1 year 2020, more or less as follows. Determination is the result of an inspection by the labor inspector, which is carried out on a plan or on a complaint, which contains a number of shortfalls in the payment of labor rights by the company as well as an order to pay the company. Seeing the meaning of this stipulation, the author argues that this stipulation is the same as , "decision", or the actions of State Administration Officials regulated in Law no. 30 of 2014 article 1 number 77, as well as in Law no. 5 of 1986 which has been changed to Law no. 9 of 2004 and later changed again to Law no. 51 of 2009⁷, which contains elements, written, issued by officials, in the context of administering government, concrete, individual, and final.

With the issuance of Law no. 30 of 2014, concerning Government Administration, which in this Law has determined how to change, revoke, postpone, and cancel the decisions or actions of the State Administration Agency and/or government officials, so that with the existence of Law no. 30 of 2014, can answer, if it is suspected that a Provincial Manpower Supervisory Determination contained an error, it still needs to be re-examined by the ministry? and how should it be done to correct the stipulation of the Provincial Manpower Supervisory Board which is deemed to have contained such errors?

a. Does the stipulation of the Provincial Manpower Supervisory Board still need to be re-examined by the Ministry?

⁴ Ibid., article 28 paragraph (3).

⁵ Dr. H. Salim HS, SH, MS Erlies Septiana Nurbani, SH, LL.M, 2016, Application of Legal Theory in Thesis and Dissertation Research, PT. RajaGrafindo Persada, Jakarta p.12.⁶ Law No. 3 of 1951, article 1 paragraph (1) letter (a).

⁶ Law No. 30 of 2014, article 1 number (7).

⁷ Law No. 5 of 1986, Law no. 9 of 2004, Law no. 51 year 2009 article 1 point 3.

According to Law no. 30 of 2014, which is regulated in Article 63, Article 64, Article 65, Article 66⁸, in the event that an error is found in a decision or action of a Body or Official, the decision can be changed, revoked, postponed or cancelled, just adjust it to the error contained in the Act. the decision, whether the decision meets the requirements to be amended as regulated in article 63, or meets the requirements to be revoked as regulated in article 64, or fulfills the requirements to postpone as regulated in article 65, or also meets the requirements for cancellation as stipulated in article 66. Therefore, in a decision is rejected by one of the parties, the stipulation should be revoked on the grounds:

- a. Making a stipulation has a defect in authority.
- b. Making the determination there are procedural defects.
- c. Determination of a substance defect.

Thus, in the opinion of the author, in the event that there is an error or error in the determination of the determination of the Provincial Labor Inspector, the recalculation to the Ministry does not need to be carried out again and should be carried out through the process of "revocation", only as regulated in Article 64 of Law No. 30 of 2014.

Apart from being based on Law no. 30 of 2014, there are also several legal references as the basis for rejecting the re-examination of the determination as regulated in Article 28 of the Regulation of the Minister of Manpower of the Republic of Indonesia No. 33 of 2016, which has been changed to Regulation of the Minister of Manpower of the Republic of Indonesia No. 1 year 2020, namely:

1. Law No. 5 of 1986, which has been changed to Law no. 9 of 2004, and then changed again to Law no. 51 of 2009, concerning the State Administrative Court, as well as Law no. 23 of 2014, concerning Regional Government, where according to Law no. 5 of 1986, which has been changed to Law no. 9 of 2004, and then changed again to Law No. 51 of 2009, article 53 paragraph 110, which says, against a State Administrative Decision that is considered detrimental, the party who feels aggrieved, can file a written lawsuit to the State Administrative Court to be declared null and void with or without a claim for compensation and/or or rehabilitation.
2. Law No. 23 of 2014 article 9 paragraph 3 and paragraph 4, article 11 and article 12 paragraph 211, says that the central government has handed over labor issues to the provincial government which is described in appendix G, regarding the division of government affairs in the labor sector, sub-sector of labor inspection.
3. According to the order of Indonesian legislation known as *Stufen bau des recht*, that law is hierarchical in nature, meaning that the lowest level of statutory provisions may not conflict with provisions of a higher degree. Minister of Manpower No. 33 of 2016 which has been changed to Minister of Manpower Regulation No. 1 of 2020, its position is lower than that of Law no. 5 of 1986, which has been changed to Law no. 9 of 2004, then amended again by Law no. 51 of 2009, from Law no. 23 of 2014, also from Law no. 30 of 2014, then the provisions contained in the Ministerial Regulation.

Employment No. 33 of 2016 which has been changed to Minister of Manpower Regulation No. 1 of 2020, which is contrary to Law no. 5 of 1986, which has been changed to Law no. 9 of 2004, then amended again by Law no. 51 of 2009, from Law no. 23 of 2014, also from Law no. 30 of 2014, legally not applicable.

b. Who should make improvements to the Provincial Manpower Supervisory Appointment?

Whether a re-examination still needs to be carried out on the stipulation of Provincial Supervisors has been answered from the provisions of Article 64 of Law no. 30 of 2014, then to answer who should be entitled to make improvements to the determination of the Provincial Manpower Supervisory Agency, the author relies on article 64 paragraph 3 letter (a), (b), (c) Law no. 30 of 2014, namely:

1. Government officials make decisions.
2. The official's superior makes the decision.
3. By order of the Court

CONCLUSION

Re-examination of the determination of the Provincial Labor Inspector as regulated in article 28 paragraph 3 of the Regulation of the Minister of Manpower of the Republic of Indonesia No. 33 of 2016, which has been changed to Regulation of the Minister of Manpower of the Republic of Indonesia 1 of 2020, is legally no longer valid, because:

⁸ Op.cit., Article 64, Article 65, Article 66.

1. Based on article 9 paragraph 3 and paragraph 4, article 11 and article 12 paragraph 2, Law no. 23 of 2014, the affairs or fields of labor inspection by the central government have been delegated to the provincial government.
2. Based on article 64 of Law no. 30 of 2014, the revocation of decisions is carried out by government officials who make decisions or superiors of officials who make decisions.
3. Based on Article 53 paragraph 1 of Law no. 5 of 1986, which has been changed to Law no. 9 of 2004, then amended again by Law no. 51 of 2009, says, against a State Administrative Decision that is considered detrimental, the party who feels aggrieved can file a written lawsuit to the State Administrative Court to be declared null or void with or without a claim for compensation and/or rehabilitation.
4. According to the Indonesian Legislative Order, the lower order of legislation may not conflict with the legislation of a higher position.

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