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# EQUITABLE LEGAL FORMULATION IN THE REGULATION OF RETIREMENT AGE LIMITS ON PRIVATE WORKERS BASED ON PANCASILA VALUES

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## ABSTRACT

Provisions related to retirement age limitations are not emphasized in the Manpower Law, which causes legal uncertainty for private workers. In addition, the absence of such a determination will cause obstacles for private workers to obtain their rights when they reach old age. This study aims to analyze the absence of firmness in determining the retirement age limit for private workers in the Manpower Law. This research uses a statute approach and conceptual approach. The results of this study explain that there are no regulations that set the age limit for termination of employment (PHK) for private workers. If referring to Government Regulation Number 45 of 2015, it is less appropriate because the regulation emphasizes more on the retirement age limit to obtain pension insurance benefits. Meanwhile, if it only refers to Law Number 13 of 2003 concerning Manpower which mandates the making of employment agreements, collective employment agreements will not be able to provide legal certainty. In fact, a legal principle must be able to implement justice, benefit and legal certainty. If there is no certainty of rules related to the retirement age limit for workers in the private sector in the Manpower Law, then there will be no benefit from these rules and a lack of practical value which is more likely to cause confusion. In the end, it pivots on the occurrence of injustice in the implementation of these rules.

**Keywords:** Age Limit, Retirement Security, Employment, Private Worker, Termination of employment.

## **I. Introduction**

In accordance with the mandate of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that every citizen has the right to work and a livelihood worthy of humanity, every human being has an expectation for a prosperous and comfortable life, which is a fundamental right and must be fulfilled, which emphasizes the concept of equality. These rights come together with demands on the state to provide for the fulfillment of the basic needs of every person. In the concept of a welfare state, the State has an obligation to provide fulfillment of the right to employment.

In Law Number 23 of 2014 concerning Regional Government that employment is a mandatory affair of the regional government that must be implemented. In Appendix Letter G of Law Number 23 of 2014 concerning Local Government that the employment sector which is handed over to the Regional Government consists of: (1) Job Training and Labor Productivity; (2) Labor Placement; (3) Industrial Relations. In terms of the division of affairs between the district / or city local government and the provincial and central governments, it requires a synergy so that labor law certainty can be fulfilled.

The problem is that the regulations governing private employee pensions in Indonesia are regulated in Article 167 paragraph (1) and Article 154 letter c of Law Number 13 of 2003 concerning Manpower, Article 15 of Government Regulation Number 45 of 2015 concerning the Implementation of Pension Insurance Programs. However, none of these legal sources explicitly include the Retirement Age Limit (BUP), which applies to private workers. This causes legal uncertainty for private sector workers and risks abuse by both the company and the workers themselves. In addition, the absence of certainty regarding the retirement age of private sector workers can lead to different arrangements regarding the retirement age limit in each company. Meanwhile, if the retirement age limit is not specifically regulated and is only based on the employment agreement between the worker and the company, it can result in differences between one worker and another and also result in unsynchronization so that workers cannot directly utilize pension guarantees.

This problem is interesting, because the absence of certainty regarding the retirement age limit for private workers in the Manpower Law causes regulations at the regional level to also not dare to expressly include the retirement age limit due to the consideration that the Law has a higher position than regional regulations. Whereas related to problems that concern the regions,

it is the authority of the regional government, either district or city, to overcome them, by looking at the sociological situation where many workers or laborers have problems related to the absence of explicit provisions related to the retirement age limit for private workers in the Manpower Law and regional regulations on Manpower. Therefore, this research explores in a more complex manner that is different from several previous studies that discuss the issue of retirement age limits for workers in the private sector.

Previous research entitled "Legal Certainty of Retirement Benefits According to Law No. 13 of 2003 with Law No. 11 of 2020 concerning Job Creation Cluster IV and Government Regulation No. 45 of 2015" (Nelson Manalu, et.al, 2021) discusses the regulations underlying the retirement age limit for private workers and related mechanisms for resolving the retirement age limit and focuses on using a statutory approach. Another entitled "Legal Comparison of the Retirement Age Limit for Workers in the Private Sector in the Labor Law System in Indonesia and Malaysia" (Rudy Indratno, et.al, 2019) shows a comparison related to the regulation of the retirement age limit for limited private workers with the country of Malaysia.

The urgency of this problem is because there is a legal vacuum related to the regulation of retirement age arrangements, what legal formulation is appropriate to provide solutions to the problems of private workers in determining the retirement age in accordance with the values of Pancasila. How is a fair legal formulation in regulating the retirement age limit for private workers based on the values of Pancasila.

## **II. Methods**

The type of research in this study uses doctrinal legal research which is commonly called normative legal research. Normative legal research is research that systematically produces rules governing certain legal categories, analyzes the relationship between certain rules, explains difficult areas, and may predict future developments (Peter Mahmud, 2016: 32-33). The approach method that will be used in this research is statute approach, conceptual approach. The type of legal material used in this research is secondary data consisting of Primary Legal Materials, Secondary Legal Materials. The technique of collecting legal materials that will be used in this research is legal research, which means collecting all legal materials in accordance with the approach in legal research.

### **III. Result and Discussion**

#### **A. The Urgency of Setting the Retirement Age Limit for Workers in the Private Sector in the Manpower Law**

The existence of a retirement age limit will provide legal protection for private workers, in order to provide legal certainty and ensure the implementation of rights and obligations between workers and companies. The definition of legal protection according to Satjipto Raharjo, namely: "Legal protection is a form of protection for human rights (HAM) that are harmed by others and the protection is given to the community so that they can enjoy all the rights granted by law" (Satjipto Raharjo, 2000: 55). It can be easily understood that protection is given to workers/laborers in the form of a regulation that can provide justice, benefit and certainty. One form of legal protection that can be provided is through the pension guarantee law. With the existence of pension guarantees, it is hoped that workers/laborers who are no longer working can still maintain a decent life.

Regarding retirement age, it has a major effect on the receipt of benefits from the participation of workers/laborers in the pension insurance program. The Manpower Law is the main reference or regulatory guidance in terms of employment in Indonesia. However, the Manpower Law does not regulate the retirement age limit for workers in the private sector, this will have a detrimental impact on workers or companies. Where, the company will be confused in determining the age limit of workers in the employment agreement and on the other hand workers do not get certainty from these rules.

If you look deeper, the Manpower Law only contains provisions related to Termination of Employment (PHK) due to retirement, but does not regulate the retirement age limit. Termination of employment occurs when the employment agreement has expired or terminated, thus the legal relationship between workers and employers has ended. The legal relationship that occurs between workers and employers is a working relationship that occurs because of the employment agreement entered into by the two parties (Arinto Nugroho., Et.al: 5). With the end of the employment agreement between the parties, it automatically causes the rights and obligations that have been owned will also end.

The rules regarding layoffs and pensions are regulated in Article 167 paragraph (1) and Article 154 letter c of Law Number 13 Year 2003 concerning Manpower, namely: Article 167

paragraph (1): "Employers may terminate the employment of Workers/Laborers due to retirement age and if the Employer has included Workers/Laborers in a pension program whose contributions are fully paid by the Employer, the length of service in accordance with the provisions of article 156 paragraph (3), but are still entitled to compensation in accordance with the provisions of article 156 paragraph (4)". Article 154 letter c: "The worker/laborer reaches retirement age in accordance with the provisions in the work agreement, company regulation, collective bargaining agreement, or laws and regulations".

Meanwhile, the retirement age limit is based on provisions concerning old age, such as the Regulation of the Minister of Manpower of the Republic of Indonesia Number PER-02/MEN/1995 concerning Normal Retirement Age and Maximum Retirement Age Limit for Participants of Pension Fund Regulations. (Hereinafter referred to as Permenaker Retirement Age). Article 2 of the Permenaker on Retirement Age states that the normal retirement age is 55 years old and the maximum is 60 years old, but this only applies to pension fund participants mandated in Law Number 11 of 1992 concerning Pension Funds.

If the retirement age limit becomes a cause for termination of employment by operation of law, if it is not stipulated in the employment agreement. It will be a termination of employment proposed by the worker/laborer himself/herself. In some cases, the reason why the company does not include the retirement age limit in the employment agreement is because the employer does not want to pay severance pay for the worker. This is because in termination of employment (PHK) by law, workers have the right to get severance pay and employers have an obligation to pay it. Whereas in termination of employment (PHK) by workers, employers have no obligation to pay severance pay and workers do not have the right to request it because they have submitted their resignation.

Analyzing the explanation above, it is found that the lack of the principle of *Aequum et bonum est lex legume*, which in a legal method must implement justice, benefit and legal certainty. Justice is a basic value, benefit is a practical value and certainty is an instrument value (Zainal. Eddy, 2021). If explored, there is no certainty of rules or laws related to the retirement age limit for workers in the private sector in the Manpower Law. If there is no certainty of a regulation which is the main reference in the implementation in the community, the benefits of the article will not be obtained, the lack of practical value is more likely to cause confusion. In the end, it pivots on the occurrence of injustice in the implementation of these rules.

So it can be seen that, legislation on employment in Indonesia has not clearly regulated the retirement age limit for private workers. This has an impact on the beneficiaries of pension insurance. The retirement age in Article 154 letter (c) of the Manpower Law is agreed according to a work agreement, collective labor agreement, company regulation, or statutory regulation. This will lead to differences in retirement age arrangements in each company so that it has an impact on the submission of claims or receipt of pension insurance benefits due to the absence of arrangements regarding retirement age limits, while the receipt of pension benefits which increase by 1 (one) year or tiered every 3 (three) years as stated in Article 15 of the PP on Pension Insurance, as follows:

(1) "For the first time, the retirement age is set at 56 (fifty-six) years.

(2) Starting January 1, 2019, the Retirement Age as referred to in paragraph (1) shall be 57 (fifty-seven) years.

(3) The Retirement Age as referred to in paragraph (2) shall further increase by 1 (one) year for every 3 (three) years thereafter until the Retirement Age reaches 65 (sixty-five) years.

If the retirement age limit is not stipulated in the Manpower Law, the impact will be that there will be a gap between workers who have retired according to work agreements, collective labor agreements or company regulations but have not been able to withdraw benefits from the pension insurance program because their age is different from the age of obtaining pension insurance benefits in Article 15 of the PP on Pension Insurance. Private workers who have entered retirement age are allowed to continue to be employed and the company does not violate the rules. The Indonesian labor law does not regulate it, but if there is no limit to the retirement age then how long will workers continue to work. Workers who have entered old age should be able to enjoy their old age and feel the results of their hard work in working so far.

On the other hand, employment agreements are one of the bases of labor relations that give rise to legal agreements or relationships for the parties, giving birth to rights and obligations. In order to create an ideal concept, government intervention or intervention is required. The legal relationship arising from the employment agreement will give birth to rights and obligations for each party. So in making an agreement, it should be based on the general principles contained in the law of agreements, namely: The principle of freedom of contract, the principle

of consensualism, the principle of *pacta sunt servanda*, the principle of good faith, the principle of personality (Salim H.S, 2010: 9). Also other principles are: The principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, the moral principle, the principle of propriety, the principle of custom, and the principle of protection. All principles in the law of agreements must be applied as a whole, because they are related to one another, in other words, at the same time one principle must be framed with other provisions so that an agreement can take place proportionally and fairly (Niru Anita Sinaga, 2017).

In the content of the substance of company regulations and work agreements, those made must not conflict with existing labor agreements or Collective Labor Agreements (KKB)/Collective Labor Agreements (PKB). From company regulations and work agreements, an ideal concept is obtained, namely that they must fulfill the legal requirements of an agreement contained in Article 1320 of the Civil Code, determining 4 conditions for the validity of an agreement, namely: 1. The agreement of both parties; 2. Capacity to perform legal acts. 3. The existence of an agreement object. 4. The existence of a *halal causa*.

The ideal concept of company regulations and employment agreements can also be obtained when formed based on the Pancasila theory of justice. This also applies when forming a legal policy, because justice is an important point in addition to the elements of certainty and expediency. Pancasila justice is contained in the fifth principle, which reads "Social Justice for All Indonesian People". In the 5th Precept of the Indonesian fundamental norm provides a direction in the form of achieving justice and contains values which are the goals of the State as a goal in living together. Therefore, the fifth precept contains the value of justice that must be realized in the common life (social life). Justice is based on and imbued with the essence of human justice, namely justice in human relations with themselves, humans with other humans, humans with their communities, nations and countries and human relations with God. The Pancasila theory of justice is also related to the concept of a welfare state, where the state has an obligation to make as many of its citizens happy as possible. This is to achieve social justice for all people, without any differences. One of them can be poured, into the implementation of Regional Labor Regulations, which must be able to have a positive influence on society in terms of improving the quality of community welfare in the fields of social, economic, education, health and so on. In addition, to realize and foster a joint commitment between local government programs and companies so that they can be carried out systematically and

continuously in the context of accelerating development. And it is hoped that with the continuity between the government and the company, it can realize prosperity for the community.

In this welfare state concept, it is used to analyze the intervention and role of the state, government and local government in the formation of laws and regulations in order to create a prosperous society through the formation of local regulations. The basic idea of the Welfare State as put forward by Watts, Dalton and Smith, dates back to the 18th century when Jeremy Betham (1748-1832) explained the idea that the government has the responsibility to ensure the greatest happiness (Welfare) of the greatest number of their citizens, meaning that the government is obliged to make as many citizens happy as possible. This is where the role of the local government is to be able to utilize the authority of regional autonomy in the formation of regional regulations related to employment in accordance with the sociological conditions of the region and dare to provide certainty of retirement age limits for private workers in order to carry out the principles of Good Governance.

In the most basic concept of Good Governance, there are main roles that interact with each other and carry out their respective functions, namely the state or government (state), the private sector or the business world (private sector) and society (society). Government institutions function to create a conducive political and legal environment, while the private sector creates jobs and income, while the community plays a role in building social, economic and political interactions including inviting community groups to participate in economic, social and political activities ( Hetifah Sj Sumarto, 2004, p. 73). Regarding the Good Governance above, Law Number 23 of 2014 concerning Regional Government Article 58 states that in organizing regional government, it is guided by the principles of state governance which consist of: a. legal certainty; b. orderly state administration; c. public interest; d. openness; e. proportionality; f. professionalism; g. accountability; h. efficiency; i. effectiveness; and j. justice.

Regarding the determination of the retirement age limit, between Law No. 13 of 2003 concerning Manpower when linked to Government Regulation No. 45 of 2015, it is clear that there is no synchronization with the reason that Government Regulation No. 45 of 2015 is not expressly regulated as part of the Manpower Law which regulates pensions. Then it is proven in theory that according to the Manpower Law it will be fully borne by the company, but



according to Government Regulation No. 45 of 2015 workers are required to pay pension contributions, this is a contradiction in the hierarchy of laws. That legally between the law and the regulations below must be mutually binding. Where explained in the principle of *lex superior derogate legi inferior*, namely the law whose hierarchy is higher replaces the higher law. This means that if there is a conflict between laws and regulations, the regulations above will be used. This is in accordance with what Hans Kelsen stated that legal norms are tiered and layered in a hierarchical order. That the unsynchronized arrangements regarding pension benefits for workers certainly cause losses both on the employer's side and will cause uncertainty for workers/laborers when they reach retirement age. So legally it will make it difficult for workers/laborers to obtain their rights.

However, Article 15 of PP 45/2015 can be used as a protection effort if there is a mismatch between the retirement age to stop working and the retirement age to receive pension insurance benefits. If the employer does not use the provisions of Article 15 of the PP on Pension Insurance as a determination of the retirement age in his company, a sanction cannot be given. This is based on the absence of coercion or sanctions if it does not follow the retirement age in Article 15 of the PP on Pension Insurance, so there needs to be a role for the Government to mediate this problem by revising a number of regulations related to the retirement age limit for private workers.

#### **IV. Conclusion**

The concept of retirement age that continues to be tiered in the PP Jaminan pensiun and the concept of retirement age in the Labor Law are different. The concept of retirement age in the PP on Pension Insurance is only limited to the age at which pension benefits arise, while the concept of retirement age in the Labor Law is the age when the worker is dismissed by the company either upon request or in accordance with the agreement. Meanwhile, the provision of retirement age for private workers in Indonesia still has no regulation, making workers often experience losses due to this. The regulation of retirement age for workers should be clearly and firmly regulated in a law, because with the law, companies and employers can be given sanctions if they do not comply. Retirement age provisions need to be regulated in company regulations and employment agreements in the company. With the clarity of the retirement age, justice according to the values of Pancasila in the working relationship between workers and companies can be realized.

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