

The Expansion of The Scope of Employment Crimes the Legal Protection of Workers in Indonesia

By

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Abstract

The protection of the basic rights of workers provided in 'Law No. 13 of 2003 on Employment' in Indonesia, if violated shall be punished with the appropriate criminal sanctions and justice. Problematically, there are only rare cases of employment crimes that have been handled by the law of enforcement, let alone reach up to the level of criminal courts. Many cases of employment crimes are not investigated by the Department of Manpower for various reasons. Reports of employment crimes are rejected by the police, as well as by various matters not stipulated in Law No. 13 of 2003 on Employment. This hinders the enforcement of workers' protection laws in Indonesia, as envisaged by the Law No. 13 of 2003 on Employment. Employment laws (*arbeids-recht*) in essence, whether viewed both historically or teleologically, is to protect the fundamental rights of workers, therefore the factors inhibiting law enforcement of employment crimes must be minimised or even eliminated so that the values of protecting the basic rights of workers are not sacrificed by such inhibitory factors.

Keywords: Expansion; Scope; Employment Crimes in Indonesia; Legal Protection for Workers

1. Introduction

Principally, the legal relationship between employers and workers is civil in nature. Duties and breach of terms are detailed out in contracts and resolved through civil resolution method. In other words, private law mainly governs the employment relationship rather than public law. Criminal sanction is hardly used in the enforcement of labour rights especially in developing economies.

The principal aim of private law in protecting workers' rights are well entrenched in legislation. This is because of the unequal relationship between employers and workers, stemming from the pre-contractual stage until to the implementation and realisation of the agreed employment contractual terms. Although the legal position of worker are obvious, the workers' socioeconomic standing is much weaker compared to employers. Thus, legal certainty on criminal enforcement requires a precise definition for persons to reasonably understand what it exists of. This entails two issues: the crime has to be specifically and coherently based on criminal elements of the behaviour, as the *corpus delicti* requires, and persons should be able to know what it entails before they possibly might undertake it, as follows from the *lex certa*-principle of legal certainty (Coster van Voorhout, 2007; Wijayanti, 2010).

(As the new labour law scholars have argued compellingly, moments of regulatory failure or ossification may provide an exciting moment for attorneys, activists, and scholars to shape new legal regimes and political spaces. It would be difficult to dispute that changing economic, social,

and political factors that have made much of the NLRA model outdated or outmoded. But the Act offers a range of important lessons that courts and legislators should remember, even as Labor lawyers and scholars begin to look elsewhere. Perhaps most important is the recognition that organized and organizing workers should be treated as democratic units, not criminal conspiracies. The main objective of the labor law (Levin, 2016) (*arbeidsrecht*) is essentially the same as the purpose of the law in general, namely realizing "justice". In labor law is to realize justice between employers and workers / laborers (*arbeider*) (Soepomo, 1995).???PERENGGAN INI TIDAK BEGITU JELAS MAKSUDNYA; LEBIH BAIK DIGANTI DENGAN MENERANGKAN MAKSUD/TUJUAN ARTIKEL INI DITULIS.

State intervention is characterised by the existence of coercive / imperative provisions (*dwingen*), which if not met by the state acts with criminal threats. Therefore, the protection of workers is inevitable (. All the tools of employment law should be optimised to protect the rights of workers. Employment law (*arbeidsrecht*) in addition to being private (civil) also involves state intervention, because employment law is also public (criminal) (Agusmidah, 2010). The labour movement and its members have long suffered from extortion, thievery, and fraud. Corrupt labour officials have used union power to extort money from businesses (Soepomo, 1995).

2. The Basis for Consideration of Repressive Measures in Law No. 13 of 2003

The protection of workers is intended to guarantee the basic rights of workers and ensure the equality of opportunities and treatment without discrimination on any basis to realize the welfare of workers and their families while keeping an eye on the progress of the business world. With the same intent the second paragraph of the General Explanation of Law No. 13 of 2003 on Employment says:

"Employment development must be regulated in such a way that the fundamental rights and protections for workers are fulfilled and at the same time can create conducive conditions to the development of the business world Considerans "weighing" in the UUK is a subject of thought that contains philosophical, sociological, and juridical elements that are the consideration and reason for the formation of Law No. 13 of 2003 on Employment. The philosophical element, in the "weighing" section of letters a and b and the first paragraph of The General Explanation of Law No. 13 of 2003 on Employment, is said to be:

"That employment development as an integral part of national development based on Pancasila and the 1945 Constitution, implemented in the framework of the development of the Indonesian people as a whole and the development of Indonesian society entirely to improve the dignity and self-esteem of the workforce and to create a prosperous, fair, wealthy, and equitable society, both material and spiritual"

"That in the implementation of national development, the workforce has a very important role and position as actors and the objective of development."

The law makers of Law No. 13 of 2003 on concerning Manpower realizes that employment development must be based on the values of Pancasila, namely: belief in God, humanity and justice as dominant values. Then the values of unity and democracy becomes one aspect of a whole with the other values. The position of workers / laborers is viewed from a socioeconomic angle far below the employer, so the protection of workers / laborers is a necessity.

The sociological element, in the section "considering" letters c and d Law No. 13 of 2003 on Employment, says:

"That, with the role and position of the workforce, it is necessary to develop manpower to improve the quality of the workforce and their participation in development and enhance the protection of workers and their families in accordance with human dignity."

The law makers of Law No. 13 of 2003 on Employment realizes that the large role and position of workers / laborers is in national development. Therefore, in the development of employment, the protection of the basic rights of workers / laborers must be fulfilled / guaranteed in accordance with human dignity.

While the juridical element, in the section "weighing" the letter 'e' Law No. 13 of 2003 on Employment is said to be:

"That some laws in the field of employment are considered no longer in relevant with the needs and demands of employment development, therefore need to be revoked and / or withdrawn."

The regulation of criminal acts and criminal offences in Law No. 13 of 2003 on Employment is an important instrument for workers to protect their rights. With this regulation, PPK/PPNS is no longer focused on resolving industrial relations disputes (PPHI), but on the criminalization of employment. The enforcement of the law for the protection of workers / laborers with repressive measures in the Law No. 13 of 2003 on Employment is much better compared than the previous legislation.

In Article 17 of the Closing Provisions of Law No. 14 of 1969 concerning The Principles regarding manpower/labor:

1. The criminal sanctions are factual;
2. The punishment is very light, as is the fine/penalty;
3. The criminal qualifications in the presence of the word "or" means alternative; and
4. All of the crimes are all **criminal offences**

Furthermore, compared to the criminal provisions in Law No. 13 of 2003 on Employment are as follows:

1. The criminal sanctions are Imperative
2. The threat of punishment is severe, as is the fine/penalty;
3. Criminal qualifications with the word "and/or" means cumulative alternatives. The judge in his discretion can choose both (cumulative) namely, impose sentence of imprisonment / confinement at the same time (plus) with the criminal fine/penalty, or choosing one of the (alternative) namely imposing imprisonment / jail or maximum fine / penalty only; and
4. Criminal acts are criminal acts of crime and criminal offense

3. Enforcement of The Employment Crimes Law

3.1. The Nature of Criminal Law in Employment Crimes

Criminal law regulates the relationship between the state and the individual or regulates legal interests. Therefore, what is to be protected is the public interest of the state with its law

enforcement tools becoming dominant. Workers / laborers are highly dependent on employers, who are viewed within the socioeconomic angle as far above that of workers / laborers. The position of such employers is vulnerable to arbitrary actions against workers / laborers. To avoid this arbitrariness, the state through law enforcement must seek to enforce the law on employment crimes (*strafbaar feit*) (Ali, 2011; Moeljatno, 2008).

The enforcement of the law on employment crimes (*strafbaar feit*) strives for real action as the function and norms of the employment crimes are real. Reviewed from the point of view of the subject (in terms of law enforcement), law enforcement in writing is interpreted in a narrow sense, namely as an effort of law enforcement officials - ppns supervisors of the labor service, police investigators, prosecutors and judges - to guarantee and ensure that the rule of law is to run as it should.

In ensuring the enforcement of the law, law enforcement officials are allowed to use force. Meanwhile from the point of view of the object (legal aspects), the understanding also includes a broad meaning, namely law enforcement also includes the values of Pancasila that live in society and the values of justice contained in the sound of formal rules.¹

The formation and implementation of criminal law (employment) is closely related to the existence of the state agency. The deviation of the employers who can be convicted is declared by the labor law-making body, while the prosecution of the case is carried out by the prosecutorial body (Sakidjo & Poernomo, 1990). Van Hamel argues, carrying out criminal law (employment) is entirely in the hands of the Government (Sakidjo & Poernomo, 1990). Violation of the Labor Law is essentially a violation of *public order* against the collective body of citizens.

4. The Function of Criminal Law in Employment Crimes

The functionalization of criminal law as a last resort (*ultimum remedium*) to obey and comply with the law is no longer effective. Supervision conducted by PPK is a preventive effort so that employers comply with the rights of workers / laborers. The function of criminal law (criminalization) of employment crimes is no longer always a function of subsidies-artias, as it has been always attached to criminal law. The pressures and suffering of workers / laborers who have an important role and position as actors and development goals in the implementation of national development cannot be underestimated by law enforcement (Abdul Khaliq, 2002).

However, these encourage different national definitions and thus not harmonization. The latter is, however, crucial. Not because it is an end in of itself, but because it (a) avoids that traffickers can make use of gaps in the legislation of other countries or other types of legislation, and (b) enables unique measures for an effective combat. First, criminal legislation

¹ http://www.jimly.com/makalah/namafile/56/Penegakan_Hukum.Pdf

Law enforcement is viewed from the point of view of the subject in a broad sense, namely the law enforcement process that involves all legal subjects in every legal relationship. Anyone who implements normative rules or does something or does not do something based on the norms of the applicable law, means that he is carrying out or enforcing the rule of law. Law enforcement is viewed from the point of view of its object in a narrow sense, namely law enforcement only concerns the enforcement of formal and written regulations. Therefore, the translation of the word lawenforcement into Indonesian uses the word 'law enforcement' in a broad sense and the term 'rule enforcement' can also be used in a narrow sense. This distinction between the formality of the written rule of law and the scope of the value of justice it contains has even emerged in English itself with the development of the term 'the rule of law' versus 'the rule of just law' or in terms of 'the rule of law and not of man'. ' versus the term 'the rule by law' which means 'the rule of man by law' In the term 'the rule of just law' The term 'the rule of law and not of man' is intended to emphasize that in essence the government of a modern legal state it is done by law, not by people. The opposite term is 'the rule by law' which is meant as government by people who use the law as a mere tool of power.

on human trafficking for labour exploitation necessarily also poses problems in other legal areas such as labour, migration, and human rights law. These problems inescapably exist worldwide, but are even more complicated within the EU due to its unique nature (Coster van Voorhout, 2007).

There must be a law enforcement revolution against employment crimes. The rights of workers / laborers are a human right that can not be violated, sacrificed for any reason, including a narrow understanding of the phrase, "to pay attention / realize the development of the business world or investors", reasons that are often conveyed on various occasions by stakeholders (*stakeholders*). The stigmatization of punishment on employment crimes should evolve in a positive direction, especially in the era of globalization which has given the increase to the complexity of labor problems that often justify various ways to achieve the company's goals.

Sudarto distinguishes between the functions of criminal law in general and in particular that can be implemented related to the sentencing of employment crimes, namely: in general, is to regulate social life between employers and workers / laborers, and in particular, is to protect the rights of workers / laborers against unlawful acts with the threat of criminal sanctions stipulated in Law No. 13 of 2003 on Employment which is more severe than other laws.²

5. Basic and Purpose of Criminalization of Employment

5.1. Basic Criminalization of Employment

In the field of law there is adage, the law must be strengthened by sanctions. Sanctions to strengthen legal norms are with criminal sanctions. This adage also seems to be adopted in criminal provisions in employment law. The legal norms of Law No. 13 of 2003 on Employment are strengthened by much tougher criminal sanctions. This suggests that it is necessary to synergize the enforcement of labor protection laws with the criminalization of employment. Although in accordance with the nature of criminal sanctions as the toughest sanctions compared to other types of sanctions in the field of law, but the basis of criminal law or criminalization of labor crimes must be in accordance with the values of Pancasila that maintains a balance of interests between employers and workers / laborers. The purpose of criminalization of employment crimes is one of the important keys in the criminal prosecution itself, or it can be said, that criminal prosecution must be in line with the purpose of criminalization of employment (Ali, 2011).³

6. The Purpose of Enforcement of Criminal Crimes

The purpose of criminal law (*strafrechtscholen*) or of punishment is to protect and maintain the order of law in order to maintain security and public order as a whole (for the public as a *whole*). Criminal law does not only see the suffering of the victim or the suffering of the convicted (*not only for the person injured*), but sees the tranquility of society. The purpose of criminalization of employment is associated with the teachings of modern traditions, namely protecting the rights of workers / laborers who are socioemically weak against arbitrariness (criminal acts) committed by employers. The theory that justifies the prosecution

² <http://www.seputarilmu.com/2016/01/pengertian-tujuan-dan-fungsi-hukum.html>

³ http://www.kompasiana.com/achmadsabil/dasar-hukum-dasar-pemidanaan-dan-tujuan-pemidanaan_585cd8a01497739844f04c5d, Posted: 23 December 2016 2:56 PM, and Updated : 23 December 2016. Accessed: September 5th, 2017

of labor crimes is not an absolute theory (*vergeldingstheorie*) (Marpaung, 2012; Prasetyo, 2013) that imposes employment crimes in retaliation to employers for committing crimes to workers / laborers, but the theory of purpose, theory of prevention or relative theory (*doeltheorie*) (Marpaung, 2012) that prevents (*prevent*) mistakes in the future (Prasetyo, 2013).

7. Employment Crimes in Law No. 13 of 2003

7.1. Felony Crimes

Criminal offences in Law No. 13 of 2003 concerning Employment are contained in the provisions of Article 42 paragraph (1) and paragraph (2); Article 68; Article 69 paragraph (2); Article 74; Article 80; Article 82; Article 90 paragraph (1); Article 143; Article 160 paragraph (4) and paragraph (7); and Article 167 paragraph (5).⁴

The criminal provisions for the above-stipulated crimes are contained in:

Article 183 paragraph (1), which reads:

"Anyone who violates the provisions as referred to in Article 74 shall be subject to a prison sentence of at least 2 (two) years and a maximum of 5 (five) years and/or a fine of at least Rp.200,000,000.00 (two hundred million rupiah and a maximum of Rp.500,000,000.00 (five hundred million rupiah)."

Article 184 paragraph (1), which reads:

"Anyone who violates the provisions as referred to in Article 167 paragraph (5) shall be subject to a prison sentence of at least 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp.100,000,000.00 (one hundred million rupiah) and a maximum of Rp.500,000,000.00 (five hundred million rupiah)."

Article 185 paragraph (1), which reads:

"Anyone who violates the provisions as referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143 and Article 160 paragraph (4) and paragraph (7), shall be subject to imprisonment of at least 1 (one ,) year and maximum 4 (four) years and/or a fine of at least Rp.100,000,000.00 (one hundred million rupiah) and a maximum of Rp.400,000,000.00 (four hundred million rupiah).

8. Felony Offences

Criminal offences of violations in Law No. 13 of 2003 concerning Employment are contained in the provisions: Article 35 paragraphs (2) and (3); Article 37 paragraph (2); Pasa 44 verse (1); Article 45 paragraph (1); Article 67 paragraph (1) Article 71 paragraph(2); Article 76; Article 78 paragraph (2); Article 79 paragraphs (1) and (2); Article 85 paragraph (3); Article

⁴ Article 43 Clause (1) of the law of the Republic of Indonesia number 21 year 2000 concerning Trade Unions / Labor Unions, which reads:

"Anyone who hinders or forces a worker / laborer as referred to in Article 28, shall be subject to a maximum imprisonment of 1 (one) year and maximum of 5 (five) years and / or a minimum fine of Rp 100.000.000,00 (one hundred million rupiah) and a maximum of Rp 500,000,000.00 (five hundred million rupiah)."

Article 43 clause (2) of the law of the Republic of Indonesia number 21 year 2000 regarding Trade Unions / Labor Unions , which reads:

"The crime as referred to in clause (1) is a criminal offense"

144; Violation of Article 14 paragraph (2); Violation of Article 38 paragraph (2); Article 63 paragraph (1); Article 78 paragraph (1); Article 108 paragraph (1); Article 111 paragraph (3); Article 114; Article 148; Article 93 paragraph (2); Article 137; and Article 138 paragraph (1).

The criminal provisions for the above offences are:

Article 186 paragraph (1), which reads:

"Anyone who violates the provisions as referred to article 35 paragraph (2) and paragraph (3), Article 93 paragraph (2), Article 137 and Article 338 paragraph (1), shall be subject to a prison sentence of at least 1 (one) month and a maximum of 4 (four) years and/or a fine of at least Rp.100,000. 000.00 (one hundred million rupiah) and a maximum of Rp.400.000.000,00 (four hundred million rupiah)."

Article 187 paragraph (1), which reads:

"Anyone who violates the provisions as referred to article 37 paragraph (2) Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1) and paragraph (2), Article 85 paragraph (3), and Article 144, shall be subject to a prison sentence of at least 1 (one,) month and a maximum of 12 (twelve) months and/or a fine of at least Rp. 10,000,000.00 (ten million rupiah) and a maximum of Rp.100,000,000.00 (one hundred hundred million rupiah)."

Article 188 paragraph (1), which reads:

"Anyone who violates the provisions as referred to article 14 paragraph (2.), Article 38 paragraph (2). Article 63 paragraph (1), Article 78 paragraph (1), Article 108 paragraph (1), Article 111 paragraph (3) Article 114, and Article 148, shall be subject to a penalty of at least Rp.10,000,000.00 (ten million rupiah) and a maximum of Rp. 50,000,000.00 (fifty million rupiah)."

Then, in Article 189 of Law No. 13 of 2003 concerning Manpower, it is stated that the imposition of such sanction does not eliminate the obligation of employers to pay the rights and / or compensation of workers / laborers. The criminal provisions of Law No. 13 of 2003 on Employment above are a guarantee for the protection of the rights of workers / laborers from the power / strength of employers.

The author's research on 2019 and 2020 found a lot of violations of Employment Norms, as shown in the table below:

Table 1. *The number of case violations of employment norms in Indonesia in 2019 and 2020*

No.	description	year	information
1	Companies committing violations	2019	21,000 companies
		2020	19,000 companies
2	Violations of employment norms	2019	35,000 people
		2020	21,000 people
3	Violations of HSE norms	2019	13,000 people
		2020	5,000 people

Source: Data and Information Center (Pusdatin) Ministry of Manpower Indonesia

"These violations have been followed up by the Labor Inspector with persuasive, non-judicial repressive measures, and judicial repression. So that the normative rights of workers / laborers can be fulfilled and ultimately increase work productivity.⁵

The Government of Indonesia hopes that with the enactment of Law No. 11 of 2020 on concerning Job Creation and its implementing regulations, which are instruments supporting ease of investment and job creation, all levels of the Ministry of Manpower, including the Labor Inspector, are required to continue to socialize and disseminate information to all *stakeholders*.

Table 2. *The amount and constraints of Labor Inspectors until the semester of 2021*

No.	description	sum
1	Labor Inspectors throughout Indonesia	1,686 people
2	Companies registered with the Ministry of Manpower until 2021	343,000 companies
3	Employment recorded in BPJS Ketenagakerjaan	9.4 million people

Source : Data and Information Center (Pusdatin) Ministry of Manpower Indonesia

Indonesia still faces obstacles in labor inspection. The obstacle and constraints is that the number of Labor Inspectors is not proportional to the number of objects of supervision.⁶

8.1. Examples of employment crimes cases

One example of a case that has been handled by the author, as the recipient of¹⁵ power of attorney under the Legal Aid Foundation (YLBH) Rogate of 12 security personnel (*security*) as an attorney based on a special power of attorney on May 16, 2016 for alleged employment crimes committed by a security service company / guard services (hereinafter referred to as "PTX") in batam city which places 12 security guards to the employer, namely a large private bank in the city of Batam. Employment crimes allegedly committed by PT. X to the security guards above as follows:

1. Wages have been paid below the minimum wage since the beginning of 2015, not in accordance with the provisions of Article 90 paragraph (1), "Employers are prohibited from paying wages lower than the minimum wage....."¹⁶ Criminal provisions in Article 185 paragraph (1), "Anyone who violates the provisions as referred to in Article 90 paragraph (1) shall be subject to a prison sentence of at least 1 (one) year and maximum 4 (four) years and/or a fine of at least Rp.100,000,000.00 (one hundred million rupiah) and a maximum of Rp.400,000,000.00 (four hundred million rupiahs); and in Article 185 paragraph (2) stated, "Criminal acts as referred to article 185 paragraph (1) is a criminal act."

⁵ This was conveyed by The Minister of Manpower Ida Fauziyah in a written statement to Media Indonesia, Thursday 25 March 2021 in Jakarta.

⁶ <https://www.jpnn.com/news/menaker-beberkan-kendala-pengawasan-ketenagakerjaan-tetapi> Accessed date 18 Mai 2021

¹⁵ Together Wulan May Firina,

¹⁶ See, Article 41 Clause (1) Government Regulation number 78 year 2015 about Wages, "The governor sets the minimum wages as a safety net." In conjunction with Article 6 clause (1) of the Regulation of the Minister of Manpower and Transmigration number 7 year 2013 concerning Minimum Wages, "The Governor Set the minimum wages" Jo Article I letter 1 Decree of Manpower and Transmigration number Kep. 231/Men/2003 concerning Procedures for Postpoining the Implmentation of the Minimum Wages, "The Minimum wages is the minimum wage set by the Governer", in conjunction with Article 15 clause (1) of the regulation of the Minister of Manpower and Transmigration number 7 year 2013 (State Gazette of the Republic of Indonesia year 2013 number 1239), "Employers and Businessmen are prohibited from paying wages lower than the minimum wage that has been set"

2. Overtime wages are not paid in accordance with Article 78 paragraph (2), "employers who employ workers / laborers exceeding the working time must pay overtime wages. ¹⁷ Criminal provisions of Article 187 paragraph (1), shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine of at least Rp 10,000.000.00 (ten million rupiah) and a maximum of Rp.100,000,000.00 (one hundred million rupiah)" ; and Article 187 paragraph (2) says, "*The crime as referred to in Article 187 paragraph (1) is a criminal offence.*"
3. Certificate of illness (Medical Certificate - *MC*) given legally by the clinic doctor BPJS is not recognized and the employer does not pay security wages for their absence due to illness. Provision of Article 93 paragraph (2) letter a, "..... employers are obliged to pay wages if workers / laborers are sick so and unable to conduct work". ¹⁸ Criminal provisions of Article 186 paragraph (1), "Anyone who violates the provisions of Article 93 paragraph (2) shall be subject to a prison sentence of at least 1 (one) month and a maximum of 4 (four) years and / or a fine of at least Rp rp.100,000,000.00 (one hundred million rupiah) and a maximum of Rp.400,000,000.00 (four hundred million rupiah)". Article 186 paragraph (2) is said, "The crime as referred to in Article 186 paragraph (1) is a criminal offence.

Related to the first crime, namely paying wages below the minimum wage. PTX, which has been in business for a long time, has an organizational structure that should know the rules / procedures of suspension if it has not been able to pay wages in accordance with the minimum wage. As it turns out, the bank as an employer or service user strictly requires PTX as a partner (*vendor*) security service provider to be employed. Therefore, the employer company (the bank) are to pay the wages of security personnel in accordance with the applicable minimum wage provisions. Likewise, the national Police Headquarters (Mabes Polri) as the institution which gave the license, the licensee^{of 19} PTX is less strict, on various conditions must be met, especially the protection of the welfare rights of the Security whom are employed.

Article 90 paragraph (1) of Law No. 13 of 2003 on Employment says, "Employers are prohibited from paying wages lower than the minimum wage", and Article 90 paragraph (2), "For companies that cannot afford the minimum wage can be suspended. The suspension procedure, the company is unable to pay the minimum wage by referring to Article 4 to Article 9 of the Decree of the Minister of Manpower and Transmigration Number: Kep.231/Men/2003 on Procedures for Suspension of The Implementation of the Minimum Wage.

The example of the above case is interesting, because it runs very slowly and seems convoluted. PPK / PPNS does not conduct investigations to then be handed over to the public prosecutor in seeking the enforcement of the law on employment crimes. In fact, PTX has committed a criminal crime of employment. In fact, if PTX is unable to pay the minimum wage

¹⁷ see, Article 33 of Government Regulation number 78 year 2015 concerning Wages (State Gazette of the Republic of Indonesia year 2015 number 237, Supplement to the State Gazette of Republic of Indonesia number 5747) Jo. Article 4 clause (1) of the Decree of the Minister of Manpower and Transmigration number Kep.102/Men/VI/2004 concerning Overtime Working Time and Overtime Wages, "Employers and businessmen that employ workers/ laborers who work more hours, are obliged to pay overtime wages."

¹⁸ see, Article 24 clause (2) and clause (3) of Government Regulation Number 78 year 2015 about Wages

¹⁹ see, Article 3 clause (5) jo. Article 8 letter b Regulation of the Chief of Police of Republic Indonesia number Pol: 17 year 2006 about Development of Security Services Business Entities (BUJP) jo. Article 61 verse (1) letter a, "BUJP in carrying out and implementing its activities mandatory must comply and obey with the provisions and conditions of the legislation / regulation". Police Regulation number 24 year 2007 about Security Management Systes for Organizations, Companies and / or Government Agencies / Institutions Jo, Article 14 letter d "implementation of Audits" Regulation of the Chief of Police number 24 year 2010 concerning Procedures for Conducting Audits for Issuing Letters of Recommendations and Operational Permits BUJP.

in accordance with the provisions, PTX can delay payments. However, PTX did not do so. That is, there is no reason for PTX to pay wages to the 12 Security Guards below the minimum wage. This case ended with the disappointing results for the 12 Security Guards.

9. Conclusion

Based on the description of the writing above, the author concludes the following:

1. The objective of enforcing the law through punishment is to protect and maintain the order of law in order to maintain the security and order of the community. As the theory of purpose, the theory of prevention or relative theory (doeltheorie) is to prevent (prevent) the recurrence of criminal acts of employers in the future.
2. Workers/Laborers problems are increasingly complex, so the functionalization of criminal law as a last resort (ultimum remedium) becomes again an effective action. The government cannot rely solely on preventive efforts to protect the rights of workers / laborers.;
3. The position of employers whom are stronger will be vulnerable to arbitrary actions against workers / laborers. Avoiding that arbitrariness, the state through law enforcement officials must seek the enforcement of employment crimes (*strafbaarfeit*);
4. In accordance with Article 182 paragraph (1) of Law No. 13 of 2003 concerning Employment, police investigators are key and the main door to the law enforcement on the protection of workers / laborers in employment crimes,
5. The police have absolutely no legal basis to reject reports and investigate any employment crimes. Another obstacle is, the problem of police resources whom are lacking / do not have enough adequate knowledge about labor laws, especially about employment crimes.

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