

BURDEN OF PROVING WORK ABSENCE IN OVERTIME WAGE CLAIMS

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Abstract

Overtime pay demands occur when a company employs its workers to work overtime, but the workers are not given overtime pay, so that the workers are forced to make a report or complaint to the labor inspector, to be examined as a basis for making calculations and determinations, because overtime pay is a right guaranteed by Article 78 paragraph (2) of Law No. 6 of 2023. In practice, overtime pay claims are very difficult to obtain, because labor inspectors who handle complaints always place the burden of proof on the workers who file complaints or demands. The main evidentiary document that must be proven in overtime pay claims is work attendance. Considering that work attendance only exists within the company, the burden of proof placed by labor inspectors on workers is the wrong burden of proof, because how can a party who does not have evidence be burdened to prove it.

Keywords: Burden, Evidence, Fair

INTRODUCTION

Industrial relations disputes regarding demands for overtime pay are one of the 4 (four) industrial relations disputes recognized in Law No. 2 of 2004, namely: a) Rights dispute; b) Conflict of Interest; c) Termination of Employment Disputes; d) Disputes between trade unions/labor unions in one company.

One of the four disputes is a dispute over overtime pay, which according to Law No. 2 of 2004, is referred to as a rights dispute. A rights dispute is a dispute that arises due to the non-fulfillment of rights, resulting from differences in the implementation or interpretation of provisions of laws and regulations, employment agreements, company regulations, or collective bargaining agreements.

According to Article 28 paragraph (1) of Minister of Manpower Regulation No. 33 of 2016 which has been amended to Minister of Manpower Regulation No. 1 of 2020, in the event of a demand for overtime pay, after an inspection by the Manpower Inspector, if there is a lack of fulfillment of workers' rights, the manpower inspector is obliged to make calculations and determinations.

The obligation of labor inspectors to make calculations and determinations actually contradicts Article 9 paragraph (1) and Article 33 paragraph (2) letter (a) of the Minister of Manpower Regulation No. 33 of 2016 which has been amended to become the Minister of Manpower Regulation No. 1 of 2020, because according to Article 9 paragraph (1) of the Minister of Manpower Regulation No. 33 of 2016 which has been amended to become the Minister of Manpower Regulation No. 1 of 2020, the stages of labor inspection are carried out through the stages of Preventive Education, Non-Judicial Repression and Judicial Repression, without recognizing the stages of calculation and determination, whereas according to the Minister of Manpower Regulation No. 33 of 2016 which has been amended to become the Minister of Manpower Regulation No.1 of 2020, Article 33 paragraph (2) letter (a), If the labor inspector conducting the inspection finds a violation, the inspector issues Note I, and if the employer does not implement Note I, the inspector issues Note II and if Note II is also not implemented, on the orders of the leader, the inspector conducts an investigation.

In practice, when there is a claim for overtime pay, the labor inspector conducting the inspection places the burden of proof on the worker who filed the report and immediately issues a Determination without conducting an investigation. According to the author, this attitude of the labor inspector deviates from the principles of the burden of proof and fairness. In this paper, the problem formulation is: (1) Who should be obliged to prove work absence in overtime pay claims? (2) What are the legal consequences if work absences are charged to employees?

RESEARCH METHODS

In preparing this paper, the author uses normative legal research methods and empirical methods, namely legal research by examining library materials and conducting research from real events, in the form of re-stipulation No. 5/20/AS.00.02/VIII/2023, dated August 10, 2023.

RESULT AND DISCUSSION

A. Who is obliged to prove work absence for overtime pay claims?

To discuss this problem, the author discusses it through an approach to several laws and regulations:

1. Law no. 30 of 2014
2. Law no. 3 of 1951
3. Law no. 8 of 1997
4. Law no. 7 of 1981

5. Minister of Manpower Regulation No. 33 of 2016 which has been amended to Minister of Manpower Regulation No. 1 of 2020
6. Compensation Principle.

Approach through Law no. 30 of 2014:

To find out who is obliged to prove work absence to the labor inspector in overtime pay claims, this can be seen in Law No. 30 of 2014, in Article 1 paragraph (2), Article 3 letters (a), (b), (c), (e), (f) and letter (g) and 7 paragraph (1), which reads as follows:

1. **Article 1 number 2 Law no. 30 of 2014**, The function of government is a function in carrying out government administration which includes the functions of regulation, service, development, empowerment and protection. Based on the sound of article 1 number 2, it can be interpreted that in the event of a demand for overtime pay, the labor inspector as a government apparatus must burden the Employer with proving work absences as an implementation of the function of regulating, serving, building, empowering especially the function of protection for workers, considering that work absences are on the employer.
2. **Article 3 letters (b), (c), (d), (e) and (f)**, The objectives of the Law on Government Administration are:
 - a. Create legal certainty.
 - b. Preventing abuse of authority.
 - c. Providing legal protection to citizens and government officials
 - d. Implementing the provisions of laws and regulations and implementing AUPB.
 - e. Give the best possible service to the community.

Thus, based on Article 3 of Law No. 30 of 2014, in order to implement the objectives of the Law on Government Administration, the labor inspector in handling overtime pay claims should burden the employer with proving work absences, in order to create legal certainty, guarantee legal protection for employees and realize justice.

The approach of Law no. 3 of 1951:

According to Article 6 paragraph (4) of Law No. 3 of 1951, anyone who obstructs or thwarts any action taken by employees in carrying out their obligations as stated in Article 2, as well as anyone who does not fulfill their obligations including Article 3 paragraph (1) shall be punished with imprisonment for a maximum of three months or a fine of up to five hundred rupiah. Therefore, based on Article 6 paragraph (4), the labor inspector in carrying out supervision activities regarding the occurrence of overtime pay claims, the labor inspector should burden the employer with proving work absences, even if the employer is not willing to provide work absences, the labor inspector can process the employer criminally, because it is considered to have committed an act of obstructing the supervisor from carrying out supervision.

The approach of Law no. 8 of 1997:

According to Article 11 paragraph (1) of Law No. 8 of 1997, the 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. Therefore, it is the employer who is obliged to prove work absences to the Supervisor and the employer's unwillingness to provide work absences to the Supervisor, becomes the legal basis for the Supervisor to issue a determination/redetermination by requiring the Employer to pay employee overtime wages in accordance with the labor inspector's calculations.

Approach through Law no. 7 of 1981:

According to Article 7 paragraph (1) of Law no. 7 of 1981, After submitting the report as referred to in Article 6, employers or managers are required to submit a written annual report regarding employment to the Minister or a designated official. Thus, through the company's mandatory annual report, labor inspectors can find out how much employees' wages are, how many hours they work, what their employment status is, and how many employees they have, so they can see whether employers are employing their employees to work overtime or not.

Minister of Manpower Regulation No. 33 of 2016 which has been amended to Minister of Manpower Regulation No. 1 of 2020:

Based on Article 14 paragraph (1) of Minister of Manpower Regulation No. 33 of 2016, In carrying out supervisory duties, labor inspectors have the right to request information from:

1. Entrepreneurs and/or managers;
2. Workers/laborers;
3. Managers of business organizations;
4. Trade union/labor union administrators;
5. K3 expert and/or;
6. other related parties;

In the case where the labor inspector conducts supervision and is forced to ask for information from the employer, the labor inspector is not sufficient to simply accept the employer's statement but the labor inspector must burden the employer to prove the work absence to test the truth of the information provided by the employer. And if the employer cannot or does not want to prove the employee's work absence, then it can be known or reasonably suspected that the employer's statement is a lie so that the supervisor has reason to issue a determination/redetermination by calculating the overtime pay that must be paid by the employer. According to Article 1865 of the Civil Code and Article 163 of the HIR, every person who claims a right, or in order to confirm his rights or deny the rights of others, is obliged to prove the right or event (Harahap, 2011).

Compensation principle:

The principle of compensation is a legal principle, where the burden of proof is placed on the owner or the person who controls the data or evidence (Simanjuntak, 2018), thus, because work absences only exist in the company, the company is obliged to prove work absences to the labor inspector who carries out the supervision.

From the 5 (five) laws and regulations and principles of compensation above, it has been explained that in claims for overtime pay, the burden of proving work absence is borne by the Employer, not the employee.

B. What are the legal consequences if the labor inspector places the burden of proving work absences on employees?

To discuss the legal consequences if the labor inspector places the burden of proving work absences on employees, the author discusses this based on 2 (two) laws, namely:

1. Law no. 5 of 1986 which has been amended into Law no. 9 of 2004 was then changed again to Law no. 51 of 2009.
2. Article 1365 of the Civil Code.
3. Law no. 5 of 1986 which has been amended into Law no. 9 of 2004 was then changed again to Law no. 51 of 2009.

According to Article 53 paragraph (2) No. 9 of 2004, a State administrative body or official in issuing a decision or determination, which is contrary to laws and regulations and general principles of good governance, can be used as a basis for filing a lawsuit to the State Administrative Court to cancel the Determination. Therefore, if the labor inspector, either at the provincial level or the Ministry of Manpower level, issues a decision or re-determination on overtime pay claims, which states that there is no overtime pay because there are no documents caused by the worker being unable to prove work absence, then based on Article 53 paragraph (2) of Law No. 9 of 2004, it can be ascertained that the decision is contrary to laws and regulations and general principles of good governance, so that the party who feels disadvantaged by the decision can file a State administrative lawsuit to the State Administrative Court, with a demand that the decision be revoked or canceled and a new decision be issued.

Article 1365 of the Civil Code

Regarding the actions of the labor supervisor who burdens employees with proof of work absence in issuing their determination/redetermination, these actions can be classified as unlawful acts because they violate Article 1 paragraph (2), Article 3 letters, (b), (c), (e), (f) and letter (g) and are contrary to Article 7 paragraph (1) of Law No. 30 of 2014, Article 6 paragraph (4) of Law No. 3 of 1951, Article 11 paragraph (1) of Law No. 8 of 1997. Article 7 paragraph (1) of Law No. 7 of 1981, Article 14 paragraph (1) of Minister of Manpower Regulation No. 33 of 2016 which has been amended to Minister of Manpower Regulation No. 1 of 2020, and violates the principle of Compensation.

Because the actions of the labor inspector who issued the determination by placing the burden of proving work absence on the employee, violates statutory regulations and general principles of good governance, then based on Article 1365 of the Civil Code, workers who feel disadvantaged by the Determination/Redetermination can file a lawsuit for compensation to the District Court on the grounds that the labor inspector has committed an "unlawful act".

Thus, due to the actions of the Labor Inspectorate which places the burden of proving work absence on employees, in claims for overtime pay, employees can take the following legal action:

1. Submit a lawsuit to the State Administrative Court based on Article 53 paragraph (2) of Law No. 9 of 2004 to cancel the decision or determination.
2. File a lawsuit with the District Court on the grounds that the Labor Inspector has committed an unlawful act as regulated in Article 1365 of the Civil Code.

CONCLUSIONS

In the case of overtime pay claims, the obligation to prove work absence must be borne by the Employer. The action of labor inspectors in imposing the burden of proving work absences on employees is an act that violates laws and regulations and the general principles of good governance and is therefore classified as an unlawful act.

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