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Retirement Age Disparity for Private Worker and State Civil Apparatus in Indonesia

10 Bachrul Amiq
Universitas Dr. Soetomo

Edy Widayat
Universitas DR. Soetomo

Liosten Rianna Roosida Uly Tampubolon*

Universitas DR. Soetomo
liostenully@yahoo.com

Totok Hendarto
Universitas DR. Soetomo

Abstract. Retirement is an essential change in the development of workers' lives. Retirement is marked by changes in circumstances, namely reduced income and social psychological problems. Indonesian Law No. 13 of 2003 concerning Employment does not specify a retirement age limit. The regulation instead states that age can be specified in work agreements, company regulations, collective work agreements, or statutory regulations. Meanwhile, the retirement age of the State Civil Apparatus is regulated in Indonesian Law Number 5 of 2014 concerning the management of the State Civil Apparatus. The problems examined in this study are the legal disparity in retirement age between private workers and the State Civil Apparatus and the resolution to minimize the disparity. This research is a qualitative descriptive using an empirical juridical approach.

Keywords: retirement, disparity, workers, state civil apparatus

INTRODUCTION

Retirement is a period experienced by those whose age is considered unproductive; had dedicated their lives to work in a company or government agency; have stopped working and are starting to enjoy old age. For most workers, entering retirement age is not a pleasant thing when the company does not provide severance pay, years of service appreciation pay, and compensation money as stipulated in Article 156 paragraph (2), Article 156 paragraph (3) and Article 156 paragraph (4). This means that workers entering retirement generally experience psychological and health deterioration. [1], [2] In Finland, the minimum retirement age is 63 years. Middle-income workers who are entering retirement experience the impact of retirement on their declining health and may even have heart disease [3], [4]. Retirement is one of the terminations of employment activities that often

occur in an employment relationship in industrial relations. According to Indonesian Law Number 13 of 2003 Chapter I Article 1 paragraph (25) concerning Employment states:

"Termination of employment is the termination of employment due to a certain matter that results in the termination of rights and obligations between workers/laborers and employers."

Matters concerning termination of employment are explained in Chapter XII of Article 150 - Article 172 which applies to business entities that have legal entities or not, businesses owned by individuals, partnerships or those of private and state legal entities and social businesses and other businesses that have management and employ people by paying wages and rewards in other forms. There are two types of Termination of Employment, which are classified in Indonesian Law Number 13 of 2003 concerning Employment. First, voluntary employment termination. Termination of employment is categorized as voluntary if there is a termination due to the wishes of the worker by resignation. Second, termination of employment due to "FORCED" conditions by the Termination of Employment Clause in Indonesian Law Number 13 of 2003 concerning employment, causing employment termination. This situation is due to disciplinary action, efficiency, and retirement. Therefore, this type of termination of employment is called involuntary termination of employment. In Indonesian Law Number 13 Of 2003 concerning employment, it can be found regarding retirement age in terms of termination of employment where the arrangements are in Articles 150 through 170, while the clarity of rules regarding retirement is contained in Article 154 which reads:

"The stipulation as referred to in Article 151 paragraph 3 is not necessary in the case of the worker/laborer reaches retirement age under the provisions in the work agreement,

company regulations, collective labor agreements, or statutory regulations; or (letter c), the worker/laborer dies (letter d)."

Meanwhile, Article 151 paragraph (3) explains the position of the occurrence of Termination of Employment, which cannot be avoided. This condition is regulated in paragraph 2 of Article 151 paragraph (1), Article 151 paragraph (2) and Article 151 paragraph (3):

"(1). employers, workers/laborers, trade unions/labor unions, and the government, with all efforts, must strive to avoid termination of employment.

(5). if all efforts have been made, but termination of employment is unavoidable, the purpose of termination of employment must be negotiated by employers and trade unions or with workers/laborers if the worker/laborer concerned is not a member of a trade union/labor union.

(3) in the case of negotiations as referred to in paragraph (2) does not produce an agreement, the employer can only terminate the employment relationship with workers/laborers after obtaining a decision from the industrial relations dispute resolution agency.

Article 149 letter d junto 151 paragraph (3) of the Indonesian Employment Law has made it clear that in the event of termination of employment, the employer can only terminate employment with workers/laborers after obtaining a decision from the industrial relations dispute resolution agency. Lely Siregar, SH, MH. The Coordinator of the Civil Service Investigator in East Java Manpower and Transmigration Office stated:

"However, this stipulation is not required, one of which, in the case of workers/laborers reaching retirement age, is regulated in work agreements, company regulations, collective labor agreements, or statutory regulations. This shows that Indonesian Law number 13 of 2003 has provided legal protection for workers who have entered retirement. However, there are still significant problems because there is no firm regulation on the age limit. Thus, other legal facilities are needed that must regulate so as not to become a debate and even cases of termination of employment disputes that currently still occur due to the 'weakness' of the retirement age limit."

I can be a weapon for both parties, especially employers, to avoid the obligation to pay

compensation for retirement costs that must be paid to workers entering retirement. From this condition, it can be concluded that the form of legal protection for workers entering retirement age in private companies does not exist. However, the determination of the retirement age limit can be based on the prevailing customs in the company or based on the legislation regarding rights related to retirement. In contrast, in the United States, the retirement age of workers is determined by the type of work in 38 states or according to the position of work in that state. The composition of work concerning retirement age has two prerequisites, namely: (1) intrinsic characteristics of each occupation, physical or knowledge; and (2) varied job distribution in 38 states [5].

This condition is different from the application of workers/employees known as the State civil apparatus working for the state. The retirement period or better known as retirement is regulated very clearly in Indonesian Law Number 5 of 2014 concerning State Civil Apparatus, Article 87 paragraph (1) of the following State Civil Apparatus Acts:

"(1) Civil Servants are honorably dismissed because:

- a. Demise,
- b. A personal request,
- c. Retirement age limit,
- d. Streamlining organizations or government policies that result in early retirement, or
- e. Physically or spiritually incapable resulting inability to carry out their duties and obligations."

This phenomenon raises problems, namely: how is the legal disparity and efforts to minimize retirement age disparity between private workers and the State Civil Apparatus in Indonesia?

METHOD

This research was a qualitative descriptive study with an empirical juridical approach because it referred to legislation, specifically the Indonesian Employment Law. Data collection procedures were carried out by collecting primary and secondary legal materials. Processing and analysis of legal materials were carried out to analyze labor laws, Indonesian Government Regulations, and international journals related to employment, which were then analyzed by the primary matter.

RESULT & DISCUSSION

The rules for the retirement of Civil Servants in more detail are regulated in Article 239

Indonesian Government Regulation Number: 11 of 2017 concerning Management of Civil Servants, namely:

1. Civil servants who have reached the retirement age limit are honorably dismissed as civil servants.
2. The retirement age limit as referred to in paragraph (1), namely:
 - a. 58 (fifty-eight) years for administrative officials, junior functional expert officials, first functional expert officials, and skill functional
 - b. 60 (sixty) years for high-ranking officials and middle-ranking functional officials and
 - c. 65 (sixty-five) years for civil servants who hold key expert functional officials.

Retirement and Old-Age Benefits

State Civil Apparatuses who have stopped working are entitled to Pension and old-age benefits under Indonesian Law. This Pension and old-age benefits are provided as a protection for the continuity of old age income, a right, and appreciation for employee service. Retirement and old-age benefits are provided through national social security programs [6]. Funding for Pension and old-age benefits for the State Apparatus comes from the government as the employer and the contributions of the State Civil Apparatus concerned. Abdullah, SH., manager of Human Resources Development PT Jacobis stated:

“Pension guarantees are given to the State Civil Apparatus who are dismissed due to demise; resignation at own request for those who are over 45 (forty-five) years old and have worked for more than 20 (twenty) years; affected by streamlining organization or government policies; inability to work in any position because of physical and/or spiritual conditions.”

Honorable Dismissal at Own Request

The State Civil Apparatus resigning will be honorably dismissed as State Civil Apparatus. Requests for resignation can be delayed for a maximum of 1 (one) or if the relevant State Civil Apparatus is still needed for official purposes. Deny, chairman of the work unit representative of the All Indonesia Workers Union Federation CV. Profile states:

"Requests to stop working from employees can be rejected due to several reasons, namely being in the process of trial for allegedly committing criminal offenses; violating the discipline of the State Civil Apparatus, or are filing administrative appeals because they were disciplined."

They can resign honorably at their request and are entitled to retirement benefits. Indonesian Government Regulation Number 11 Of 2017 shall come into force on the date of promulgation, which is 7 April 2017. That is, this Indonesian Government Regulation has been in effect without waiting for the technical rules to be published. Until now, there are no technical provisions regarding the honorable dismissal of the State Civil Apparatus at its request.

It can be concluded that there is a very significant disparity regarding the implementation of employee pensions based on Indonesian Law Number. 13 of 2003 concerning “employment,” in which the worker has legal protection, albeit less explicitly, to undergo retirement according to the age stipulated in other provisions either in employment agreements, company regulations, collective labor agreements and or other legal provisions, including customs existing in legal entities/institutions/companies as employers.

Meanwhile, the state civil servants or Civil Servants (PNS) have a clearer and more firm legal umbrella related to the regulation of retirement, even early retirement. A 45-of-old civil servant who has a 20-of service term can apply for a pension. Significant differences also occur in pension compensation. From the results of the above analysis, it can be concluded that there is a very striking DISPARITY in both. Of course, it will not be excessive if these conditions have occurred for a long time and can result in an imbalance in social status and bring about disparities in both the Law, pension compensation, and social relations between private workers and the State Civil Apparatus.

The state must play a significant role in minimizing DISPARITY by maximizing the authority of the Indonesian Department of Manpower to order each company to register work agreements, company regulations, or collective labor agreements. This process will be more productive with a mechanism whereby the “Office of Manpower” prepares and standardizes work agreements and verifies the registration of company regulations or collective labor agreements that will be used by employer workers. Supposedly, in one of the clauses in a work agreement, company regulations, or standardized work agreement, there must be rules governing pensions and retirement age limits and serve as Technical and Implementation Guidelines. Thus, the supremacy of the rules regarding pensions and the retirement age limit can be enforced and will automatically minimize violations and disputes over employment relations so that the state’s goal of creating harmonious industrial relations can be realized.

This research is in line with research conducted by Mounir Rached Prashed (2012) in Lebanon on social security and pensions. In Lebanon, retirement age is extended to 65 years, and retirement age depends on the type of work. This regulation was made to create an element of justice because not all types of work require high expertise or knowledge. Thus, for the type of work that does not require high expertise and requires strength of workers have a shorter retirement age compared to jobs that require high expertise.

In Lebanon, benefits for workers entering retirement age are provided in the form of "Pension" and health. In this case, the ministry of finance is responsible for the pension scheme, and the minister of health is responsible for the health insurance component [7] This research is also in line with D.U's and Wang Meiyan, in 2010 in China. China made a policy to extend the retirement age, especially for workers in urban areas. The policy considerations for extending the retirement age are based on a large number of elderly workers and the high unemployment rate. Thus, the extension of the retirement age is done by hiring elderly workers to work in the informal economy sector [8]

CONCLUSION

Article 149 letter d junto 151 paragraph (3) of Indonesian Law Number 13 of 2003 concerning Employment does not specify a retirement age limit. Instead, the retirement age limit is stipulated in work agreements, company regulations, collective work agreements, or other laws and regulations. "The Indonesian Department of Manpower" has the right to refuse registration of company regulations and collective labor agreements if they do not include pension and retirement age requirements.

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