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RESEARCH ARTICLE

Shifting National Holiday Times In the Context of the Labor Law System

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Abstract: In the world of labor today, companies often shift national holiday time for power efficiency, but the rule that working on official holidays must be counted as overtime creates two different perceptions of the shift. The company applies national holidays to weekdays so that the company considers it normal work, but workers see it as a shift. Normative research analyzes laws and regulations. This research inventories and analyzes legislation on adjusting national holiday time in Indonesia's labor law system to determine workers' rights and obligations on government-set holidays and the legal basis for doing so. The study found that employers can order workers to work on government-set public holidays if they meet certain conditions and obligations based on statutory provisions, employment agreements, or collective labor agreements, which are supervised by the government, in this case the Ministry of Manpower, by imposing administrative and criminal penalties. provided that it meets the law and its implementing rules and work agreements or collective bargaining agreements pertaining to the nature and type of labor and the responsibility for Employers to pay overtime compensation for work on public holidays to Laborers.

Keywords: Time Off, Labor, Labor Arrangements

1. Introduction

Labor has a very important role and position as the cause and goal of development. In accordance with this role and position, labor development is required to improve the quality of labor and its participation in development, as well as to increase the protection of labor and their families in accordance with human dignity. Protection of labor is intended to guarantee the fundamental rights of workers/laborers and to ensure equal opportunity and treatment without any form of discrimination in order to realize the well-being of workers/laborers and their families while taking into account the progress of business.

One of the important factors in the implementation of economic development is the availability of workers who work in commercial companies. Labor in national development has a very important role and position as an actor and development goal. In accordance with the role and position of the workforce, manpower development is needed to improve the quality of the workforce and its participation in development as well as to increase the protection of the workforce and their families in accordance with human dignity.

The 1945 Constitution in Article 27 paragraph (2) states that every citizen has the right to work and a decent living for humanity and Article 28A Everyone has the right to live and has the right to defend his life and existence. Furthermore, Article 28D paragraph (2) explains that Everyone has the right to work and receive fair and proper compensation and treatment



in a work relationship. And finally in Article 28I, that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on the basis of a law that retroactive effect is a human right that cannot be reduced under any circumstances. Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment. Cultural identity and rights of traditional communities are respected in line with the times and civilizations. The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations. and the fulfillment of human rights is the responsibility of the state, especially the government. In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations. and the fulfillment of human rights is the responsibility of the state, especially the government. In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations.

By paying attention to our highest legal norm, namely the 1945 Constitution, including the articles that the researcher describes in the paragraph above, this is the legal basis as a reference for the government in regulating the field of the employment sector, both in terms of forming derivative laws and regulations to provide legal protection in employment relations. employment both to employers and to work recipients.

After the entry into force of the Job Creation Law which was later replaced by the Job Creation Perpu and in its current development the Perpu has been passed into law even though many layers of society, especially workers and students are against it, the Job Creation Perpu is known as the Omnibus Law on Job Creation is a regulation that the Government claims aims to change regulations in order to provide convenience, protection and empowerment of cooperatives and micro, small and medium enterprises, improve the investment ecosystem, and accelerate national strategic projects, including increasing the protection and welfare of workers carried out through changes to sector laws who do not yet support the realization of synchronization in guaranteeing the acceleration of work creation, so that a legal breakthrough is needed that can resolve various problems in several laws into one law in a comprehensive manner.

One of the sector laws that the government considers has not supported the realization of synchronization in guaranteeing the acceleration of work creation is Law Number 13 of 2003 concerning Manpower, it is necessary to know what is meant by work creation in accordance with the understanding in the Omnibus Law on Job Creation Article 1 point (1) states that in In this law, what is meant by Job Creation is an effort to create jobs through facilitating, protecting and empowering cooperatives and micro, small and medium enterprises, enhancing the investment ecosystem and facilitating doing business, and Central Government investment and accelerating national strategic projects. As revealed by Iman Soepomo in his book entitled Introduction to Labor Law, revealed that the main objective of labor law or what researchers now mention in this study of labor law is the implementation of social justice in labor and its implementation is carried out by protecting workers against unlimited power on the part of employers. Placing workers in a position that is protected against the power of the employer means establishing regulations that force employers to act differently than they have before.

In today's world of work, companies often shift national holidays for reasons of power efficiency. If there is an official holiday that falls on a day between Tuesday and Friday, it will be shifted to Monday or Saturday. official holidays must be counted overtime, so there are two different perceptions related to the shift in national holiday time where the company applies a national holiday to a normal day so the company thinks it is normal work, because

it is only shifted, according to the perception of workers the opinion is that the company owes 1 working day because on holidays they work and should be considered overtime.

By taking into account the rights and obligations of workers on official holidays, Article 85 paragraphs (1) and (2) Law Number 13 of 2003 concerning Manpower, and it should be noted that this article is an article that has not undergone changes. The Omnibus Law on Work Copyright stipulates that workers are not required to work on official holidays and employers can hire workers/laborers to work on official holidays if the type and nature of the work must be carried out. or carried out continuously, or in other circumstances based on an agreement between the worker/laborer and the entrepreneur. As for what is meant by the types of labor carried out continuously based on Decree of the Minister of Manpower and Transmigration No. KEP-233/MEN/2003 of 2003 concerning Types and Nature of Labor Executed Continuously workers in the field of certain services (Indonesia, 2003).

Basically, on official holidays, workers are not required to work. However, for certain types and nature of labor that must be carried out continuously as mentioned above, employers can hire workers. In addition, in other circumstances, employers can also order workers to continue working on official holidays, but this must be based on an agreement with the workers. However, the shift in national holidays became a polemic when there was a misperception between employers and workers and there was no further regulation in the laws and regulations regarding the shift in national holiday time.

2. Literature Review

2.1. Indonesian Labor Law

Indonesian Labor Law recognizes a principle of no work, no pay, which means that if workers do not work, they will not receive wages. This is also stated in Government Regulation Number 36 of 2021 concerning Wages, in Article 40 paragraph (1). This article is intended to foster a sense of responsibility in employees for the work they have entrusted at work (Khakim, 2009, 2014).

2.2. Overtime Work Agreement

Overtime work during national holidays can be interpreted in which at a time or certain circumstances there is work that has piled up which must be completed immediately by workers deviating from working time, but the excess working time may not be more than 54 (fifty four) hours a week (FX Djumialdji, 2006).

3. Research Method and Materials

Researchers conducted various research methods adapted to the problems discussed. "Method is a way of doing things regularly (systematically)." While "legal research is a scientific activity based on certain methods, systematics, and thoughts that aim to study one or several certain laws, by analyzing" (Marzuki, 2017; Muhammad, 2004). This type of research in this method as a normative science of law has a distinctive way of being sui generis (Mahmud Marzuki, 2005). This research is a legal research (juridical research) which has a method that is different from that of other research. The legal research method is a systematic way of conducting research. The type of research used in this study is normative legal research, namely using normative legal case studies in the form of legal behavior products, for example reviewing draft laws (Abdulkadir Muhammad, 2004). The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that this type of research focuses on positive law inventory, legal principles and doctrine, legal findings in in concreto cases, legal systematics, level of legal synchronization, legal comparisons, and legal history. The nature of the research used by the author is descriptive analysis research. "Descriptive research, meaning research that describes certain objects and explains things related to systematically

describing facts or characteristics of certain populations in certain fields in a factual and accurate manner." This study uses a type of statutory approach (statute approach) (Ali, 2021).

4. Results and Discussion

As it is known that the definition of working holidays is based on the provisions of Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment (Number, 35 CE). In the Elucidation section of Article 26 paragraph (2) what is meant by holidays are weekly rest days and/or official holidays. Official holidays are national holidays, nationally closed days, or holidays determined by the Regional Government.

Regarding the obligation of workers to work on National holidays it is not mandatory, but there are exceptions to certain types and nature of labor where workers are still required to work, this is stated in the provisions of Law Number 13 of 2003 concerning Manpower to be precise in Article 85 paragraph (1) states that workers/laborers are not obliged to work on statutory holidays. Furthermore, in paragraph (2) it is stated that employers can hire workers/laborers to work on official holidays if the type and nature of the work must be carried out or carried out continuously or in other circumstances based on an agreement between the workers/laborers and the entrepreneur. In paragraph (3) Entrepreneurs who hire workers/laborers who perform labor on official holidays as referred to in paragraph (2) are required to pay overtime wages. Then there are several types and characteristics which are then regulated in a Ministerial Decree in charge of manpower affairs, as referred to in Article 85 paragraph (4) explaining that provisions regarding the type and nature of labor as referred to in paragraph (2) are regulated by a Ministerial Decree.

The Minister's decision in question is a decision in the field of manpower issues, namely the Minister of Manpower and Transmigration, which has been decided in Decree of the Minister of Manpower and Transmigration No. KEP-233/MEN/2003 of 2003 concerning Types and Nature of Labor Executed Continuously. In his Decree in Article 3 paragraph (1) there are types of work where employers can hire workers who work on holidays, including: health services; transportation services; transportation equipment repair services; tourism business; postal and telecommunications services; provision of electricity, clean water service network (PAM) and supply of fuel oil and natural gas; labor in supermarkets, shopping centers and the like; mass media; security; labor in conservation institutions; workers who, if stopped, will disrupt the production process, damage materials, and include maintenance/repair of production equipment;

There are things that need to be considered related to the provisions of Article 85 paragraph (2) which states that employers can hire workers/laborers to work on official holidays if the type and nature of the work must be carried out or carried out continuously or in other circumstances based on an agreement between workers/labourers with employers. By taking into account the provisions of Article 85 paragraph (2) it can be seen that other than the type and nature of the work that has been determined by the Ministerial Decree mentioned above, if there is work that is not included in the list of work that must be carried out or carried out continuously,

In every working relationship, there will be rights and obligations to employers and workers which are reciprocal for the work relationship that is being carried out, namely labor rights are an obligation for employers to fulfill and vice versa the rights of employers are an obligation for workers to fulfill them. In accordance with the purpose of providing protection, the nature of the rules in a law is coercive with criminal penalties, this law only applies to labor performed by workers/laborers, namely people who work for other people or entities by receiving wages, so it is a labor done in an employment relationship (Iman Soepomo, 1988; Kahfi, 2016).

By looking at the explanation above regarding labor rights in the context of the worker being instructed by the employer to continue working on official holidays, including national holidays where the right is an obligation for the employer, namely to pay overtime as stated in the provisions of Article 85 paragraph (3) explains that employers who hire workers/laborers who do labor on official holidays as referred to in paragraph (2) are required to pay overtime wages. Then there are several types and characteristics which are then regulated in a Ministerial Decree in charge of manpower affairs (Nurcahyo, 2021).

As for the meaning of overtime working as regulated in Government Regulation of the Republic of Indonesia Number 35 of 2021 Concerning Work Agreements for a Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Work Relations is working time that exceeds 7 (seven) hours a day and 40 (four) 1 (one) hour a week for 6 (six) working days in 1 (one) week or 8 (eight) hours a day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week or working hours on weekly rest days and/or official holidays determined by the government. It should be noted that Government Regulations are implementing regulations for the Omnibus Law on Job Creation, which in this provision amend several articles in Law Number 13 of 2003 concerning Manpower.

The definition of overtime pay contained in the Government Regulation mentioned above is the wage paid by employers to workers who carry out work during overtime work. By looking at some of the provisions above, the researcher can conclude that a job can be ordered by an employer to a worker even on a national holiday that has been determined by the government with conditions and obligations that must be fulfilled by the employer based on statutory provisions or work agreements. Workers who do labor on national holidays which are categorized as overtime work, the obligations for employers which are the rights of workers are regulated, which include the following:

In Article 21 it is stated that: Every Employer is obliged to carry out the provisions on working time and working time as referred to in paragraph (1) covering: 7 (seven) hours 1 (one) day and 40 (forty) hours 1 (one) week for 6 (six) working days in 1 (one) week; or 8 (eight) hours 1 (one) day and 40 (forty) hours 1 (one) week for 5 (five) working days in 1 (one) week.

Then in Article 31 paragraphs (1) and (2) it is specified that companies that employ workers/labourers to exceed working hours as referred to in Article 21 paragraph (2) are required to pay overtime wages with the following provisions: for the first overtime hours of 1.5 (one point five) times hourly Wages; and for each subsequent overtime hour, 2 (two) times the hourly wage. Furthermore, companies that employ workers/labourers as referred to in paragraph (1) are required to pay overtime wages, if overtime work is carried out on weekly rest days and/or official holidays for a working time of 6 (six) working days and 40 (forty) hours. a week, with the provisions that the calculation of the Overtime Wage is carried out as follows: the first hour up to the seventh hour, paid 2 (two) times the hourly wage; and the eighth hour, paid 3 (three) times the hourly wage; as well as the ninth hour, tenth hour, and eleventh hour, paid 4 (four) times the hourly Wages; If the official holiday falls on the shortest working day, the calculation of the Overtime Wage is carried out as follows: the first hour to the fifth hour, paid 2 (two) times the hourly wage; and the sixth hour, paid 3 (three) times the hourly wage; as well as the seventh hour, eighth hour, and ninth hour, paid 4 (four) times the hourly Wages.

Companies that employ workers/labourers as referred to in paragraph (1) are required to pay overtime wages, if overtime work is carried out on weekly rest days and/or official holidays for a working time of 5 (five) working days and 40 (forty) hours a week. , provided that the calculation of the Overtime Wage is carried out as follows: the first hour up to the eighth hour, paid 2 (two) times the hourly wage; and the ninth hour, paid 3 (three) times the hourly wage; as well as the tenth hour, eleventh hour, and twelfth hour, paid 4 (four) times the hourly Wages.

With the above arrangements regarding the obligations that must be fulfilled by employers as fulfillment of labor rights if they want to give orders to workers to do labor during national holidays. The implementation of this obligation for Employers is supervised by the labor inspector at the ministry administering government affairs in the manpower sector and/or the agency administering government affairs in the provincial manpower sector. This is in line with the provisions of Article 60 explaining that labor inspection of the application of the provisions in this Government Regulation is carried out by the Labor Inspector at the ministry administering government affairs in the manpower sector and/or the agency administering government affairs in the provincial manpower sector. As protection provided by the government for workers' rights to carry out work during national holidays that have been determined by the government, there are administrative and criminal sanctions for employers who do not carry out their obligations to fulfill workers' rights to work during national holidays. As for administrative sanctions in accordance with the provisions of Article 61, namely: administrative sanctions in the form of: written warning; restrictions on business activities; temporary suspension of part or all of the means of production; and freezing of business activities. As for administrative sanctions in accordance with the provisions of Article 61, namely: administrative sanctions in the form of: written warning; restrictions on business activities; temporary suspension of part or all of the means of production; and freezing of business activities. As for administrative sanctions in accordance with the provisions of Article 61, namely: administrative sanctions in the form of: written warning; restrictions on business activities; temporary suspension of part or all of the means of production; and freezing of business activities.

The imposition of administrative sanctions as referred to in paragraph (1) is carried out in stages, namely the written warning as referred to in paragraph (1) letter a is a written warning of violations committed by Entrepreneurs. Restrictions on business activities as referred to in paragraph (1) letter b include: limitations on the production capacity of goods and/or services within a certain time; and/or postponement of granting business licenses in one or several locations for companies that have projects in several locations. Furthermore, the temporary suspension of part or all of the means of production as referred to in paragraph (1) letter c is in the form of an act of not operating part or all of the means of production of goods and/or services within a certain time.

Meanwhile, the criminal sanction in question is that employers who do not pay overtime wages will be subject to sanctions in accordance with Article 81 number (65) of the Omnibus Law on Job Creation which amends Article 187 paragraph (1) of Law Number 13 of 2003 concerning Manpower which reads: "Whoever violates the provisions referred to in Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1), paragraph (2), or paragraph (3), Article 85 paragraph (3), or Article 144 is 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 IDR 100,000,000.00 (one hundred million rupiah)."

According to the researcher, this arrangement for working overtime on national holidays which has been regulated by the Government, apart from being based on an order from the Job Creation Law, is a reaction or effort by the Government to the legal conditions and dynamics of globalization and the rapidly developing transformation of information technology which is changing the social order and the economy, including changes in the field of manpower to provide legal protection for the rights of the community, especially workers, in conducting work relations with companies in accordance with the mandate of the constitution, namely: Article 27 paragraph (2) of the 1945 Constitution states that every citizen has the right to work and a decent living for humanity and Article 28A Everyone has the right to live and has the right to defend his life and existence. Furthermore, Article 28D paragraph (2) explains that Everyone has the right to work and receive fair and proper compensation and treatment in a work relationship. Furthermore, in Article 28I of the 1945 Constitution, in paragraphs Right to life, the right not to be tortured, the right to freedom of thought and

conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be reduced under any circumstances; and Everyone has the right to be free from discriminatory treatment on any basis and is entitled to protection against such discriminatory treatment. Cultural identity and rights of traditional communities are respected in line with the times and civilizations. Protecting, promoting, upholding and fulfilling human rights is the responsibility of the state, especially the government. In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations. and the fulfillment of human rights is the responsibility of the state, especially the government. In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations. and the fulfillment of human rights is the responsibility of the state, especially the government. In order to uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations.

Changes in legal and technological conditions in the workforce are strategic challenges that demand productivity and competitiveness of human resources as the main prerequisite for Indonesian workers to be able to play their role in the global economic arena. The government has an obligation in order to improve the quality of Indonesian workers who are productive and competitive in the direction of development policies in the field of employment focusing on efforts to create the widest possible employment opportunities and increase the protection of rights and welfare for Workers/Labourers, both at work, and after the end of Work relationship. The government must establish a regulation that can adaptively respond to the challenges and dynamics of employment,

In 2023, in accordance with legal and public conditions, the Government has established National holiday days through a Joint Decree signed by the Minister of Religion, Minister of Manpower, and Minister of Administrative Reform and Bureaucratic Reform (PANRB).

In this Joint Decree there are 15 national holidays in 2023 that have been decided. This stipulation was stated in the Joint Decree (SKB) No. 327/2023, no. 1/2023, and No. 1/2023 which was signed by the Minister of Religion, Minister of Manpower, and Minister of Administrative Reform and Bureaucratic Reform (PANRB) on March 29, 2023. For joint leave, 5 points of agreement are set.

National Holidays and Joint Leave 2023 agreed:

- | | |
|-------------------|--|
| 1) January 1st | New Year's holiday 2023 AD |
| 2) January 22 | Chinese New Year 2574 Kongzili |
| 3) February 18th | Isra Mi'raj Prophet Muhammad SAW |
| 4) March 22 | The Holy Day of Nyepi for the Saka New Year 1945 |
| 5) April 7th | Good Friday |
| 6) April 22-23 | Eid Al-Fitr 1444 Hijriah |
| 7) May 1st | International Labor Day |
| 8) May 18th | Ascension Day of Jesus |
| 9) June 1st | Pancasila Birthday |
| 10) June 4th | Vesak Day 2567 BE |
| 11) June 29th | Eid al-Adha 1444 H |
| 12) July 19th | Islamic New Year 1444 H |
| 13) August 17th | RI Independence Day |
| 14) 28 September | Birthday of Prophet Muhammad |
| 15) December 25th | Christmas |

Meanwhile, Joint Leave is designated as Monday January 23 relates to Sunday, January 22 is the celebration of Chinese New Year 2574 Kongzili, then on Thursday March 23 related to Wednesday March 22 is the Holy Day of Silence for the Saka New Year 1945, then joint holidays on 19, 20, 21, 24 and April 25 related to Eid al-Fitr 1444 Hijri on April 22-23 which is a national holiday.

Based on the joint decree mentioned above, with the number of National holidays stipulated by the Central Government, not to mention that in each region the Regional Governments have designated them as official holidays in their regions, there is a potential for many Employers to order their Workers to work during official holidays. or national holidays so that intensive supervision is needed from both the Central Government and the Regional Government in charge of the manpower sector for the activities of Employers hiring their Workers during official holidays.

Indeed Holidays are meant to give workers the opportunity to participate in celebrating certain holidays, so that the material is more on aspects of workers' welfare. However, there are exceptions which also have implications for the obligations and rights that must be fulfilled by workers if workers continue to work on holidays such as national holidays that have been determined by the government.

In setting Labor rights for holidays that have been determined by the Government, it can be seen from the principle of "No Work No Pay", namely a principle which states that if you do not do labor, you are not entitled to wages. (Single, 2013). Law Number 13 of 2003 concerning Manpower also adheres to the principle of "No Work, No Pay". But also with exceptions as stated in the provisions of Article 93 paragraph (1) for the application of the principle "No Work No Pay" and in paragraph (2) is an exception rule from the implementation of the principle "No Work No Pay", taking into account the contents of the provisions of Article 93, what needs to be known is that the provisions of Article 93 do not include those that have been amended or deleted or added after the entry into force of the Job Creation Law, namely Article 93 paragraph (1) states that Wages are not paid if the worker/labourer does not do the work. While in paragraph (2) mention that The provisions referred to in paragraph (1) do not apply, and employers are obliged to pay wages if: the worker is sick so he cannot do the work; female workers who are sick on the first and second day of their menstrual period so they cannot do labor; the worker is absent from work because the worker/labourer is married, married, circumcised, has his child baptized, the wife gives birth or has a miscarriage, the husband or wife or child or son-in-law or parents or parents-in-law or a family member in the same house dies; workers cannot do their jobs because they are carrying out their obligations to the state; workers cannot do their work because they carry out worship ordered by their religion; the worker is willing to do the work that has been promised but the entrepreneur does not require it, either due to his own mistakes or obstacles that the entrepreneur should have avoided; workers exercise the right to rest; workers carry out the duties of a trade union/labor union with the approval of the entrepreneur; and workers carry out educational tasks from the company. Based on the provisions above, it can be concluded that vacation time outlines the implementation of labor rights during official holidays, workers continue to work based on the provisions in Article 93 paragraph 2 letters (e) and (g) then workers must still be paid their wages and if workers are required or ordered to work during official holidays that have been determined by the Government, then the calculation of overtime pay applies for work. In analyzing the Company Arrangement to Shift the National Holiday Time that has been determined by the Government, it can be analyzed through Law Number 13 of 2003 concerning Manpower to be precise in Article 85, namely: it states that workers are not obliged to work on official holidays. Then in this rule it is stated that employers can hire workers to work on statutory holidays if the type and nature of the work must be carried out or carried out continuously or in other circumstances based on an agreement between the worker and the employer. Entrepreneurs who employ workers who work on statutory holidays are required to pay overtime wages. Provisions regarding the type and nature of the work are regulated by a Ministerial Decree.

The Minister's decision in question is: Decree of the Minister of Manpower and Transmigration Number KEP-233/MEN/2003 of 2003 concerning the Type and Nature of Work that is Performed Continuously. Furthermore, in the special regulations on labor in the mining business sector through the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Per-15/Men/VII/2005 Concerning Working Time and Rest in the General Mining Business Sector in Certain Operational Areas and Decree of the Minister of Manpower and Transmigration Number KEP-234/MEN/2003 of 2003 concerning Working Time and Rest in the Energy and Mineral Resources Business Sector in Certain Areas. Regarding working time and payment of wages in the general mining sector and the energy sector as well as mineral resources in certain areas, it is specifically regulated to deviate from the provisions of Article 85 of the Manpower Act. In these two sectors, workers work certain work periods according to a set work schedule, ignoring calendar days. This is because the general mining business has its own characteristics which are partly due to the fact that the location of the business is generally in a remote place so that normal working hours and rest periods cannot be imposed.

This means that in analyzing the shift in national holiday time that has been determined by the government that it cannot be based on the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Per-15/Men/VII/2005 Concerning Working Time and Rest in the General Mining Business Sector in Certain Operational Areas and Decree of the Minister of Manpower and Transmigration Number KEP-234/MEN/2003 of 2003 concerning Working Time and Rest in the Energy and Mineral Resources Business Sector in Certain Areas, because these two regulations only specifically regulate employment issues in the general mining business sector and the energy sector and mineral resources in certain areas of operation,

Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Per-15/Men/VII/2005 Concerning Working Time and Rest in the General Mining Business Sector in Certain Operational Areas, in its regulation Article 7, states that in the event of an official holiday it falls on a certain period. has been selected and determined by the company based on working time as referred to in Article 2, then the official holiday is considered a normal working day. Whereas in the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: Kep.234/Men/2003 Concerning Working Time and Rest in the Energy and Mineral Resources Business Sector in Certain Areas, Article 4 (1) Companies can make changes and or changes working time by selecting and redefining the working time as referred to in Article 2 paragraph (1).

Entrepreneurs in other sectors cannot make it the basis for arranging shifts in working time on national holidays based on the two ministerial decrees. So the researcher will analyze it with Law Number 13 of 2003 concerning Employment and Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Break Time, and Termination of Employment and Decree of the Minister of Manpower and Transmigration Number KEP-233/MEN/2003 of 2003 concerning the Type and Nature of Work that is Performed Continuously.

In the case of an Entrepreneur whose business is engaged not in the general mining business sector in certain areas of operation and the energy and mineral resources business sector in certain areas in shifting the national holiday time for the benefit of work effectiveness or operational needs, then the Entrepreneur must comply with and adjust to the rules contained in Law Number 13 of 2003 concerning Manpower and Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment and Decree of the Minister of Manpower and Transmigration Number KEP-233/MEN/2003 of 2003 concerning the Type and Nature of Work that is Performed Continuously which of course has consequences for the Employer's obligation to pay overtime in accordance with the provisions of the applicable laws and regulations as discussed

by the Researcher in the previous section. By looking at the provisions above, shifting the time for national holidays on the grounds of work effectiveness can be carried out provided that the shift does not eliminate overtime calculations on national holidays.

As is known in the labor law system in Indonesia, the basic provisions contained in Article 27 paragraph (2) paragraph (2) of the 1945 Constitution state that every citizen has the right to work and a decent living for humanity. Furthermore, Article 28D paragraph (2) explains that: Everyone has the right to work and receive fair and proper compensation and treatment in a work relationship. By paying attention to the two provisions mentioned above, if it is related to the labor legal system in Indonesia, the legal system established by the Government must have the concept of justice, welfare and legal protection for its citizens in carrying out every work relationship, whether citizens as entrepreneurs or workers. but if you look at these basic provisions,

In line with the above explanation, related to the issue of shifting notional holiday time to another day with reasons for company efficiency and effectiveness as well as on the basis of company operational considerations, the potential for violations is more for Employers than Labor due to the factor of unbalanced position or too dominant position of Employers compared to Labor .

As for what can be done by workers if they do not get justice in carrying out their working relationship with employers which in the context here is shifting the national holiday time, which makes workers have to work on national holidays while employers do not pay overtime wages, then there are legal remedies that can be taken between Another way is through the rights dispute settlement mechanism as stipulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (Indonesia, 2004). As the provisions of Article 1 of the Law on Industrial Relations Dispute Settlement it is explained that:

If analyzed based on Article 1, the non-payment of overtime when shifting working time to national holidays by employers to workers is included in industrial relations disputes, where there are disputes over rights that arise due to non-fulfillment of rights, namely the right to overtime wages when shifting working time on national holidays. , which results from differences in the implementation or interpretation of statutory provisions, work agreements, company regulations, or collective bargaining agreements.

The following are the steps that can be taken by workers if employers are shifting national holiday time by not being paid overtime wages for work on national holidays that have been determined by the Government, namely in the manner set out in the provisions Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement, what the researcher summarizes is that bipartite negotiations by deliberation to reach a consensus are negotiations between workers/labourers or trade unions/labor unions and employers to resolve industrial relations disputes and if this fails then settlement can be done through conciliation or industrial relations mediation. Industrial Relations Conciliation, hereinafter referred to as conciliation, is the settlement of disputes over interests, disputes over the termination of employment relations or disputes between trade unions/labor unions in only one company through deliberations mediated by one or more neutral conciliators while Industrial Relations Mediation, hereinafter referred to as mediation, is dispute resolution rights, disputes over interests, disputes over termination of employment,

5. Conclusion

The implementation of labor regulations which are carried out during official holidays or national holidays or holidays determined by the Regional Government within the scope of their blood, is the responsibility of the Employer who is on a strong side. The role and role of the Government through supervision carried out in a preventive, intensive and repressive manner is urgently needed and carried out with full sense of responsibility, including being able to provide/treat administrative and criminal sanctions in accordance with statutory

provisions, if a violation occurs. Labor as a party in a weak position will really feel helped and protected by the Government through the Ministry of Manpower.

It is better if the shift from national holidays to working days is carried out by employers for workers in a work agreement or collective work agreement so that both parties get legal certainty, namely for employers in order to achieve effectiveness and efficiency as well as the operational needs of the company they own, while for workers it is with the fulfillment of the right to get overtime pay on national holidays in accordance with the amount determined by the laws and regulations.

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