

Procedure for Termination of Employment Relations in The Pancasila Industrial Relations Concept

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Abstract

In the Pancasila Industrial Relations concept, the rights and responsibilities of employers and workers in a work relationship are balanced. This balance is achieved not based on considerations of strength (overall influence), but based on feelings of justice and honor. In addition, Pancasila Industrial Relations believes that company results achieved through cooperation between workers and entrepreneurs must be enjoyed equally by taking into account the sacrifices made by each individual. When a work stoppage occurs, this method is also assisted through a component that is a marker of Pancasila standards in legal guidelines through Law Number 2 of 2004 concerning Settlement of Industrial Relations Problems. This research employed normative juridical research methods Referring to Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time and Termination of Employment Relations, if there is termination of employment in accordance with the reasons for Termination of Employment, then the formulation of the amount of rights that the worker has at the time of termination of employment work adjusted to the reason for termination of employment. As the government's response to the difficulties and dynamics of competency and productivity-based employment relationships, this regulation was promulgated to provide guidelines for ending employment relationships because it is very necessary in efforts to protect rights and government assistance in fulfilling the welfare of workers/employees both during work, especially after the end of work friendships.

I. Introduction

Literally, for every termination of employment that occurs, workers/laborers have rights that are a consequence of the termination of employment. Usually, these rights are referred to as severance pay rights (hereinafter written as severance pay rights). In Government Regulation Number 35 of 2021, the formulation of the amount of severance pay rights is determined by the reason for the termination of employment. The issue of the amount of severance pay rights received by workers/laborers is the source of disputes between workers/laborers and employers. On the one hand, workers are in a position to demand the amount of severance pay rights in accordance with the provisions of the law. Meanwhile, employers strive for the amount of severance pay rights to be adjusted to the company's financial condition and adjusted to the reasons for the termination of employment. Finally, every termination of employment tends to be resolved at the court level by ignoring the concept of Pancasila industrial relations which prioritizes the principles of deliberation and consensus as well as family which is accommodated through mediation institutions both at the bipartite and tripartite levels in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes.

The world of employment is part of a shared life that must be maintained and organized considering that work is a community need and therefore its availability is guaranteed by the state through the government. So that employment matters are not only related to the interests of employers or workers but also the government in order to expand employment opportunities and protect workers. Therefore, employers/employers, workers and the government are required to ensure that the relationship between the three runs in a balanced and harmonious manner in order to realize harmonious industrial relations.

In relation to this, the occurrence of termination of employment in the world of work is a situation that is avoided by stakeholders, especially those that occur due to difficulties in the business world, either due to modernization factors or factors of decreasing sales turnover of a business. Although it is known on the other hand, termination of employment occurs naturally because the age of workers who have reached retirement age or because they have died. The decline in the company's sales turnover due to the weakening economy both domestically and globally is followed by the phenomenon of a wave of Termination of Employment. When this happens, according to regulations, employers have an obligation to provide severance rights to their workers, the amount of which has been formulated in the regulations. However, considering that layoffs occur due to a decrease in company turnover that threatens the sustainability of the business, of course for employers to provide or in other words pay severance pay to workers according to the amount regulated in the law is not an easy thing. The point of interest of employers is to save their business while for workers their interest is to obtain severance rights as capital to live life after work. The mutual attraction of these interests requires a meeting point that is facilitated by a deliberation. In the Industrial Relations Dispute Settlement Law, negotiations are accommodated at two levels, namely bipartite and tripartite negotiations, which are expected to be a means of resolving termination of employment, recognizing that in essence

the position of employers and workers is that of comrades in struggle who are bound by solidarity.

2. Research Method

Soemitro said that normative legal research is also called library legal research, because it is mostly carried out on secondary data found in libraries.¹ An approach is a researcher's perspective in selecting a spectrum of discussion space which is expected to provide a clear description of the substance of a scientific work.² The data sources needed in this study were obtained from libraries and documents, through secondary data. According to Sugiyono, secondary data is a source of data that does not directly provide data to data collectors, for example through other people or through documents. In research, the sources of secondary data can be laws, books, journals, articles related to the research topic.³ The research methodology used in this study is normative legal research, which focuses on examining legal principles through the analysis of library resources and secondary data.⁴

3. Result and Discussion

Procedures for Settlement of Industrial Relations Disputes in Disputes over Termination of Employment According to Law No. 2 of 2004 Concerning PPHI

Termination of employment (PHK) is theoretically divided into four types, namely termination of employment (PHK) by law, termination of employment (PHK) by the court, processing of employment relations (PHK) by workers or laborers, termination of employment (PHK) by employers. The latter termination of employment (PHK) seems to be more dominantly regulated in employment provisions. This is because termination of employment (PHK) by employers is unacceptable to workers or laborers, thus causing problems. In addition to the need for protection for workers or laborers from the possibility of arbitrary actions by employers.

Explicitly regulated in Law no. 12 of 1967, but is only a procedure for termination of employment (PHK) by employers. This law was not repealed in Law no. 13 of 2003, but based on the adage *lex posterior derogate legi priori* (the new law overrides or cancels the old law), the procedure for termination of employment (PHK) in that law is automatically no longer valid or is still valid as long as it is not contrary to the new law (check Law No. 13 of 2003).

The procedure for termination of employment (PHK) according to Law No. 2 of 2004 is as follows:

¹ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri* (Jakarta: GhaliaIndonesia, 1990), hlm. 11

² I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan Kedua (Jakarta: Kencana, 2017), hlm. 11-12

³ Sugiyono, *Metode Penelitian Kuantitatif* (Bandung: Alfabeta, 2018), hlm. 456

⁴ Fathiyyah Jamil Fathin & Ismail Koto, "Legal Review of Transgender Heirs from the Perspectives of Islamic Law and Civil Law", *Jurnal Hukum Replik*, Vol. 12 No. 2 Tahun 2024.

- a. Currently, all associations (businesses, laborers or workers, as well as labor unions or labor organizations) must make efforts to avoid termination of employment (PHK).
- b. If it cannot be avoided, employers and labor unions or labor unions and workers or laborers hold negotiations. (bipartite)
- c. If the negotiations are successful, make a joint agreement.
- d. In the event that it does not produce results, the business actor submits a request for dispute resolution to the institution for dispute resolution for termination of employment. (Tripartite)
- e. If bipartite efforts and three-party exchanges do not produce results in resolving the termination of employment problem, then the resolution is carried out at the level of the modern relations court (first instance and cassation).

A number of implementing regulations have been issued since the Job Creation Law was enacted, including PP Number 35 of 2021 which regulates the amount of severance rights based on the reason for the severance. Provisions on Termination of Employment (PP 35 of 2021 Article 37) are as follows:

- a. Notification of Termination of Employment is made in the form of a notification letter and submitted legally and properly by the Employer to the Worker/Laborer and/or the Worker Union/Labor Union no later than 14 (fourteen) working days before the Termination of Employment.
- b. In the event that Termination of Employment is carried out during the probationary period, the notification letter is submitted no later than 7 (seven) working days before the Termination of Employment.
- c. Workers/Laborers who have received a notification letter of Termination of Employment and state that they reject it, must make a letter of rejection accompanied by the reasons no later than 7 (seven) working days after receiving the notification letter. (PP 35 of 2021 Article 39).

Manifestation of Pancasila Values and All Principles in Legal Regulations Related to Industrial Relations

Every citizen has the right to work based on the 1945 Constitution (Article 27 paragraph 2). This is reaffirmed in the 1945 Constitution of the Republic of Indonesia in 1945 (second amendment) Chapter XA on Human Rights (Article 28 A-28 J). Article 28 D states that "Everyone has the privilege to work and receive fair and appropriate compensation and treatment in employment relations". Furthermore, Article 28 I paragraph (4) emphasizes that protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government.⁵

The employment relationship that arises between workers and employers can

⁵ Lalu Husni, Pengantar Hukum Ketenagakerjaan Edisi Revisi (Jakarta: Rajawali Pers, 2015), hlm 13.

essentially be seen from 2 (two) aspects, namely: a. legal aspect and b. sociological aspect¹⁴. According to Article 38 paragraph 2 of the 1999 Human Rights Law, "everyone has the right to freely choose the work they like and also has the right to fair employment conditions". Meanwhile, Article 71 regulates the government's responsibility to respect, protect, and advance human rights both as regulated in law and international law. From the legal basis above, it is clear that one of the constitutional obligations of the state/government is to provide employment for its citizens, because working is part of the basic freedom of citizens to follow their life existence.⁶

The 1945 Constitution before the amendment did not explicitly state that working is part of human rights, because during the discussion of the 1945 Constitution there was a difference of opinion between the nationalist school of thought that rejected the inclusion of the concept of Human Rights in the body of the Constitution that would be formed on the grounds that the state that would be formed would not adhere to individualism, but rather to the philosophy of family. The figures of this group were Soekarno, Supomo, Radjiman Widyodiningrat. But M. Hatta who had a modern view gave the response that the problem was not because they did not adhere to the philosophy of individualism, but that human rights needed to be included in the Constitution in order to prevent state power from becoming absolute (Minutes of Discussion of the 1945 Constitution, State Secretariat, 1945).

After deliberation, it was finally agreed to include the concept of human rights in several articles. Although the 1945 Constitution itself does not recognize the term Human Rights. Pancasila labor relations are relations between elements in production, namely workers, employers, and the government, which are based on the values contained in Pancasila. Thus, the core of the Pancasila labor relations pattern is that every labor dispute that occurs must be resolved through deliberation and consensus. The MPR RI has ratified the amendment to the 1945 Constitution through several amendments, namely the first amendment was ratified at the 1999 MPR RI Annual Session. The next correction was approved at the 2000 MPR RI Annual Meeting. The third amendment was ratified at the 2001 MPR RI Annual Meeting. The 2002 MPR RI Annual Session witnessed the ratification of the fourth amendment.

As stated in CHAPTER XA, the second amendment to the 1945 Constitution complements Indonesia's commitment to efforts to advance and protect human rights by including important provisions from international human rights instruments on Human Rights. This development continued until the fourth amendment to the 1945 Constitution, which was later called the 1945 Constitution of the Republic of Indonesia. The stipulation of human rights in a separate chapter in the Constitution of the Republic of Indonesia is to show the commitment of the Indonesian people to respect, recognize,

⁶ Ibid.,

and protect these human rights, although in the Constitution before the amendment, the provisions of Articles 27 to 34 were regulated regarding human rights. In addition, according to constitutional theory, it is about human rights, in addition to the composition of the workforce and the division and limitation of state duties.

4. Conclusion

The conclusion obtained is that the procedure for resolving termination of employment regulated in Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes is divided into 3 (three) stages, namely Bipartite, Tripartite and Court (first level and cassation). Although the government regulation has regulated the formulation of the amount of workers' rights who experience Termination of Employment adjusted to the reasons for the Termination of Employment, the concept of Pancasila industrial relations provides a basis for the implementation of dispute resolution with a family approach through deliberation and consensus. In its implementation, HIP is based on two very important work principles, namely the Principle of Family and Mutual Cooperation and the Principle of Deliberation for Consensus. HIP is based on three (three) Principles of Cooperation, namely Workers and Employers or Company Leaders as co-workers in the production process. This is a manifestation of the two previous principles. meaning that both workers and employers or company leaders are required to cooperate and assist in the smooth running of the business in improving welfare and increasing production; Workers and Entrepreneurs or Company Leaders are fellow fighters who participate in the results of the organization, which means that the results of the efforts obtained by the organization are followed by appropriate offers and in accordance with the implementation of the work; Workers and Entrepreneurs or Organization Pioneers are trusted people in their obligations which include responsibility to God Almighty, obligations to the state and country, obligations to the local area, obligations to workers and their families and Responsibility to the company where they work..

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