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The Rights of Workers Who Voluntarily Resign Whose Wages Have Not Been Paid (Case Study of Supreme Court Decision Number 318 K/Pdt.Sus PHI/2023

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Article

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Abstract

This research aims to analyze the rights of employees who voluntarily resign and whose wages have not been paid, through a case study of the Supreme Court decision number 318 K/Pdt.Sus-PHI/2023. This type of research is normative with a legislative, case, and conceptual approach. The technique for collecting legal materials is done through literature study and analyzed using a prescriptive technique. The research findings indicate that the judge's consideration of applying Article 50 of Government Regulation 35/2021, supported by the available evidence, states that employees who voluntarily resign are still entitled to unpaid wages and holiday allowances (THR), as well as severance pay. The research also concludes that employees who voluntarily resign should also be entitled to compensation for rights. The legal consequence of this decision is the annulment of the previous ruling, which rejected the lawsuit in its entirety. Consequently, the Defendant is obligated to pay the unpaid wages and THR, as well as the severance pay, to the Plaintiffs.

INTRODUCTION

Human beings must work to fulfill their various daily needs. Everyone's right to work is guaranteed by the Constitution, namely in Article 27 paragraph (2) of the

1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which states that "Every citizen has the right to work and a livelihood worthy of humanity." When a person works, a working relationship is created involving workers and employers. This relationship is a consequence of working activities where workers perform work that has been agreed with employers, and in this process, the obligations and rights of both are intertwined.

Article 1 point 15 of Law Number 13 Year 2003 on Manpower (hereinafter referred to as UUK) states that "Employment relationship is a relationship between an employer and a worker/laborer based on a work agreement, which has elements of

work, wages, and orders." In this provision, there are elements of the employment relationship, namely consisting of work, wages and orders. Some experts are of the opinion that in a work agreement, which is the basis of the employment relationship, there are four important elements, namely the existence of work, the existence of other people's orders, the existence of wages, and a certain time limit, because no employment relationship lasts continuously (Harahap 2020). Thus, it can be seen that in the employment relationship there are at least elements including the parties as subjects, a work agreement, a job, the number of wages and an order.

One of the distinctive features of labor law is the existence of legal sources that come from the parties, namely work agreements and company regulations, which are also said to be the legal basis for the occurrence of work relations between workers/laborers and employers (Asyhadie 2019). In other words, in labor relations there is a relationship consisting of workers as laborers and employers as employers, where the relationship occurs based on a work agreement between the parties.

In the dynamics of an employment relationship, differences of opinion, interests, or issues that arise can trigger disputes between the two. Such disputes relate to various aspects, such as wages, working conditions, or even legal issues that arise in the workplace. This is caused by several factors on the part of both workers and employers. Workers feel aggrieved by the policies of employers, as well as employers who feel aggrieved by the attitude or work of workers (Sibarani 2022). This dispute can be a trigger for termination of employment.

In general, termination of employment is not expected to occur, especially for workers. This is because termination of employment means losing a job to fulfill daily needs. In this regard, all parties involved in industrial relations must make every effort to prevent termination of employment (Pujiastuti 2008). If termination of employment cannot be avoided, there must be prior negotiation between the parties.

The employment relationship ends not only because the employer wishes to end it, but also because the worker wishes to. When the employment relationship has ended, the worker is no longer obliged to carry out work activities. Likewise, the company has been released from its

obligation to pay wages (Sumitro 2022). With the termination of the employment relationship, legal consequences arise regarding the rights obtained by workers from employers.

In Article 156 paragraph (1) of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as Law 6/2023) (labor cluster), it is stated that "In the event of termination of employment, the Employer is obliged to pay severance pay and/or long service pay (hereinafter referred to as UPMK) and compensation pay (hereinafter referred to as UPH) that should have been received." Meanwhile, workers who resign according to Article 50 of Government Regulation Number 35 of 2021

concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (hereinafter PP 35/2021) only get UPH and separation pay.

Workers who resign from their jobs, before their employment relationship is terminated, are still bound by the employment agreement so that they are obliged to carry out the work given and are entitled to receive wages from the employer. One of the reasons a person is willing to give up their time and energy to work is to get paid for the work (Pancarwengi 2023). Therefore, wages are the most important right for workers in labor relations. If the employer does not fulfill the worker's rights before the worker resigns, it will cause disputes such as what happened in the case between PT Shanty Wiraperkasa and its three former workers, namely Rizal Aryadi, Nurul Indah Saratri and Motie Martha Widiarti, whose case has been decided by Supreme Court Decision Number 318 K/Pdt.Sus-PHI/2023.

The industrial relations dispute case involving PT Shanty Wiraperkasa and its three former employees was a dispute over rights, namely the right to wages and holiday allowances (hereinafter THR) that had not been paid for some time before the three former employees resigned. This case has gone through bipartite negotiations, mediation, Industrial Relations Court (hereinafter referred to as PHI) at the first level, to Cassation in the Supreme Court. The parties who filed the lawsuit are Rizal Aryadi, Nurul Indah Saratri, and Motie Martha Widiarti (hereinafter referred to as the Plaintiffs) against the defendant, PT Shanty Wiraperkasa (hereinafter referred to as the Defendant).

The Defendant is a company established on September 12, 1972, which is engaged in the implementation of building construction with specifications in the Architectural field consisting of housing and settlements, buildings and factories, then the civil field consists of drainage and irrigation networks. The company is located at 265 A Brigjend Katamso Street, Janti, Waru, Sidoarjo, East Java. The Plaintiffs are former employees of the Defendant, each of whom resides in Surabaya. Their identities are as follows:

Table 1 Identity of the Plaintiffs

No	Name	Position	Date of Entry	Date of Exit
1.	Rizal Aryadi	Constructor	Decembe r 1, 2015	September 15, 2020
2.	Nurul Indah Saratri	Drafter	February 18, 2013	March 17, 2021
3.	Motie Martha Widiarti	Personnel Supervisor	January 12, 2016	January 31, 2021

Source: Decision Number 25/Pdt.Sus-PHI/2022/PN Sby

The chronology of this case began in 2019 when the Defendant experienced financial problems. The Plaintiffs in their statement alleged that these financial problems were related to the transfer of significant funds to PT Central Light Concrete, a company led by the son of the Defendant's leader. This had an impact on the payment of wages, holiday allowances, and other entitlements to the Plaintiffs. At its peak from June 2020 until the first lawsuit was filed, part of the Defendant's wages were only paid in August 2021 and part of the 2020 THR was only paid in May 2021.

In addition to financial problems, during the momentum of the COVID-19 pandemic, the Defendant avoided its obligations related to its employment relationship by not providing new work orders even though the Plaintiffs continued to come to work, so that the Plaintiffs did not receive income. As a result, the Plaintiffs chose to resign from their jobs and work elsewhere. Although the Plaintiffs had resigned, the Defendant still did not pay the remaining wages and THR that should have been paid from June 2020 until the date of the Plaintiffs' resignation.

To resolve industrial relations disputes, workers and employers first conduct negotiations within the company without involving a third party (*external*) (Mashudi 2019). This negotiation is referred to as bipartite negotiation in the PPHI Law. This dispute has been subject to bipartite negotiations with the Defendant but failed.

After bipartite fails, there are tripartite negotiations. Tripartite negotiations can go through mediation, conciliation or arbitration (Mantili 2021). The parties have also attempted to resolve the dispute through mediation at the East Java Provincial Manpower and Transmigration Office with the issuance of a Mediator's Suggestion Letter number: 565/449/108.04/2021 dated September 09, 2021. The suggestion was accepted by the Plaintiffs but rejected by the Defendant, so the dispute proceeded to the Industrial Relations Court at the Surabaya District Court. The lawsuit filed by the Plaintiffs includes the fulfillment of rights to unpaid wages with adjustments to the Sidoarjo Regency Minimum Wage (hereinafter referred to as UMK) and unpaid THR.

The following details the rights for each Plaintiff are as follows:

Table 2
Plaintiffs' Unpaid Wages and THR

Name	*)	**)	Total
Rizal Aryadi	26.012.387	5.900.000	Rp. 31.912.387,-
Nurul Indah Saratri	42.687.174	3.193.581	Rp. 45,880,755,-
Motie Martha Widiarti	37.241.931	2.625.000	Rp. 39,866,931,-
Total			Rp. 117,660,073,-

Source: Decision Number 25/Pdt.Sus-PHI/2022/PN Sby

Notes:
*) Unpaid wages starting from June 2020 until the Plaintiff last worked (in rupiah)
**) THR in 2020 that was not paid (in rupiah)

In the Industrial Relations Court Decision Number 25/Pdt.Sus-PHI/2022/PN Sby, the Panel of Judges rejected the Plaintiffs' lawsuit in its entirety. The basis for the judge's consideration, among others, refers to the provisions of Article 88A of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as Law 11/2020) (labor cluster) in conjunction with Article 3 of Government Regulation Number 36 of 2021 concerning Wages (hereinafter referred to as PP 36/2021) which stipulates that "The right of workers/laborers to wages arises when a work relationship occurs between workers/laborers and employers and ends when the work relationship is terminated." The Panel of Judges concluded that since the Plaintiffs resigned from the Defendant company, the rights and obligations of the Plaintiffs and the Defendant also ended. The Plaintiffs' claims regarding the lack of wages and Religious Holiday Allowances that have not been paid in accordance with the Sidoarjo MSE from June 2020 until the Plaintiffs resigned are considered by the Panel of Judges to be no longer relevant and have no legal basis.

Upon the decision of the first instance judge, the Plaintiffs filed an appeal in cassation at the Supreme Court. In the cassation hearing, the result of the Supreme Court Decision Number 318K/Pdt.Sus-PHI/2023 was different from the previous Decision. The Panel of Judges granted the Plaintiffs' claims in part, which included granting the main claim by ordering the Defendant to pay separation pay as well as unpaid wages and THR to the Plaintiffs. This decision corrects the previous decision that rejected the lawsuit entirely, so it is interesting to know how the judges' legal considerations resulted in different decisions between the Industrial Relations Court Decision at the Surabaya District Court and the Supreme Court Decision.

In the Cassation Decision, the Supreme Court Judges annulled Decision Number 25/Pdt.Sus-PHI/2022/PN Sby and stated that the Industrial Relations Court at the Surabaya District Court had misapplied the law in deciding this case. By the Panel of Judges of the Supreme Court, based on the provisions of Article 50 of PP 35/2021, the Plaintiffs are not entitled to severance pay, UPMK and UPH but are entitled to separation pay based on the provisions of Article 32 paragraph (6) of the company regulation (Exhibit T-7) in accordance with their respective length of service. This cassation decision not only ordered the Defendant to pay separation pay, but also to pay the unpaid wages and THR, even though this claim had previously been rejected entirely in Decision Number 25/Pdt.Sus-PHI/2022/PN Sby.

Thus, there is a clear difference in how the judge ruled on this case. It is interesting to study the rights of workers who voluntarily resign through the consideration of the Judges in this case, because in the process there are different decisions between the decision of the Industrial Relations Court at the Surabaya District Court and the decision of the Supreme Court. In addition to the differences in decisions regarding whether or not the rights of workers who voluntarily resign, it is also interesting to know the considerations of the Supreme Court Judges who decided that workers are entitled to separation money but not UPH, and what the legal consequences of this decision are.

Based on the problems described above, the author wants to talk about the legal protection of well-known brands, so they want to conduct research with the title **Rights of Workers Who Resign Voluntarily Whose Wages Have Not Been Paid (Case Study of Supreme Court Decision Number 318K/Pdt.Sus-PHI/2023)**.

The problem that will be the subject matter of this research is formulated as follows

1. What is the basis for the judge's consideration (*ratio decidendi*) of Supreme Court Decision Number 318K/Pdt.Sus-PHI/2023 in declaring workers' rights for voluntary resignation at PT Shanty Wiraperkasa?
2. What are the legal consequences of Supreme Court Decision Number 318K/Pdt.Sus-PHI/2023 for the parties in the case of workers who voluntarily resigned at PT Shanty Wiraperkasa?

METHOD

This research conducts normative legal research as a type of research. This type of research will use library materials. *Normative law research*, is legal research that examines the law conceptualized as norms or rules that apply in society, and become a reference for everyone's behavior (Muhaimin 2020). There are three approaches used in this research, namely the *statute* approach, *case approach* and *conceptual* approach.

Based on the source, legal materials can be divided into two, namely primary legal materials and secondary legal materials. In this research, the primary legal materials

used come from legislation, doctrine, and other legal provisions that discuss the rights of voluntarily resigned workers whose wages have not been paid, including the Supreme Court judge's decision number 318 K/Pdt.Sus-PHI/2023. While the secondary legal materials used come from the results of studies which include scientific works and documents that have to do with the problems in this study, such as books, journals, previous research reports, scientific articles, and other literature.

The technique of collecting legal materials in this research is *library research* and document study. The technique of collecting legal materials or secondary data in normative legal research is carried out by literature study of legal materials, both primary legal materials, secondary legal materials, as well as tertiary legal materials and or non-legal materials (Muhaimin 2020). This technique is carried out by searching for the required materials in the form of library materials, such as books, journals, and other literature as well as documents that are directly related to the problem under study as primary data and secondary data. Data collection techniques with document studies can be done by collecting data or information based on sources obtained such as reading court decisions, letters, announcements, meeting minutes, written statements of certain policies, and other written materials.

The technique of analyzing legal materials in this normative research is a prescriptive technique. Prescriptive technique is a technique to provide an opinion on the results of research and find a solution to a legal and non-legal phenomenon. The nature of normative research analysis is prescriptive, namely to provide arguments for the results of the research conducted (Muhaimin 2020). Argumentation in this study is given to provide prescriptions or judgments regarding right or wrong or what should or should be according to the law, in the case in Supreme Court Decision Number 318 K/Pdt.Sus- PHI/2023.

RESULTS AND DISCUSSION

Case Position

The plaintiffs in this case are three former employees of PT Shanty Wiraperkasa. The three of them for several months since June 2020 continued to come to the workplace to work but were not given task orders by PT Shanty Wiraperkasa so they did not receive wages, then resigned respectively: Rizal Aryadi on September 15, 2020; Nurul Indah Saratri on March 17, 2021; MotieMartha Widiarti on January 31, 2021.

The problem began with the condition of PT Shanty Wiraperkasa, which since 2019 has experienced financial problems, causing delays in the payment of wages and other workers' rights, and has not even been paid since June 2020. The Plaintiffs, while still employees of PT Shanty Wiraperkasa, still came to work but were considered not working by the Defendant. The Defendant allowed the Plaintiffs to come to work and after the work was completed, the Defendant did not give new

task orders and left them alone on the grounds that there was no work. Therefore, the Plaintiffs did not receive any income and chose to voluntarily resign so that they could work elsewhere. The Plaintiffs who have resigned, apart from not receiving wages since June 2020, have also not been given rights related to their employment relationship such as religious holiday allowances and rights that should be obtained by resigned workers, namely separation pay and UPH.

PT Shanty Wiraperkasa and the Plaintiffs have conducted bipartite negotiations but failed. Previously, it should be noted that the parties had held a meeting at the East Java Regional Police by producing a statement letter dated May 24, 2021 regarding the ability to pay the shortage of PT Shanty Wiraperkasa workers' wages, THR 2021 and BPJS Employment. The statement letter was not implemented until the parties made mediation efforts at the East Java Provincial Manpower and Transmigration Office and failed. Furthermore, the three former workers of PT Shanty Wiraperkasa filed a lawsuit with the Industrial Relations Court at the Surabaya District Court and resulted in Decision Number 25/Pdt.Sus-PHI/2022/PN Sby which stated that, "rejecting the Plaintiffs' lawsuit in its entirety." Then, the Plaintiffs filed an appeal and the Supreme Court partially granted the lawsuit, including granting the main lawsuit regarding unpaid wages.

1. Analysis of Judges' Considerations in the District Court and Supreme Court

The consideration of the Panel of Judges of the Industrial Relations Court at the Surabaya District Court rejected the Plaintiffs' lawsuit entirely. The judge's consideration stated that since the Plaintiffs resigned from the Defendant company, the rights and obligations of the Plaintiffs and the Defendant also ended. For this reason,the Plaintiffs' claims regarding the lack of wages and Religious Holiday Allowances that have not been paid according to the Sidoarjo MSE from June 2020 until the Plaintiffs resigned are no longer relevant and have no legal basis. The judge gave consideration in deciding the case based on the provisions of Article 88A of Law 11/2020 (labor cluster) in conjunction with Article 3 of PP 36/2021, which states that:"The right of workers/laborers to wages arises when a work relationship occurs between workers/laborers and employers, and ends when the work relationship is terminated."

Meanwhile, the Supreme Court's consideration granted the Plaintiffs' petition and annulled the decision of the Industrial Relations Court at the Surabaya District Court. The Supreme Court's consideration to grant the claim is that there are several facts that prove that there are rights of the Plaintiffs who voluntarily resigned at PT Shanty Wiraperkasa from several considerations as follows:

The Plaintiffs who voluntarily resigned were entitled to separation pay and UPH.

Between the termination of the Plaintiffs' employment with the Defendant on the grounds that the Plaintiffs were proven to have voluntarily resigned from the Defendant company (Exhibits T-3, T4, and T-5), then upon the termination of the employment relationship based on the provisions of Article 50 of PP 35/2021, the Plaintiffs are not entitled to severance pay, long service pay and compensation pay as stipulated in the provisions of Article 40 paragraphs (2), (3) and (4) but are entitled to separation pay based on the provisions of Article 32 paragraph (6) of the company regulation (Exhibit T-7) in accordance with their respective length of service.

The researcher's opinion regarding the consideration of the Supreme Court Judges who used Article 50 and Article 40 paragraphs (2), (3) and (4) of PP 35/2021, as well as Article 32 paragraph (6) of the company regulation (Exhibit T-7) is partially correct. Workers who resign voluntarily are entitled to UPH and separation pay, this is regulated in Article 50 of PP 35/2021 which states that "Workers/Laborers who resign on their own accord and meet the requirements as referred to in Article 36 letter i, are entitled to:

a. compensation money in accordance with the provisions of Article 40 paragraph (4); and
b. separation pay whose amount is stipulated in the Work Agreement, Company Regulation, or Collective Labor Agreement."

The researcher's opinion regarding the consideration of the Panel of Judges of the Supreme Court who did not state that the Plaintiffs were also entitled to UPH is incorrect. The provision of UPH is an obligation of employers in the event of termination of employment, as stipulated in Article 40 paragraph (1) of PP 35/2021 which states that "In the event of termination of employment, the Employer is obliged to pay severance pay and/or long service pay, and compensation for rights that should have been received." Based on this provision, UPH must also be given in the event that termination of employment occurs due to employee resignation in accordance with Article 50 of PP 35/2021.

Article 40 paragraph (4) of PP 35/2021 states that "Reimbursement of rights that should have been received as referred to in paragraph (1) includes:

a. annual leave that has not been taken and has not been canceled;
b. return costs or fees for Workers/Laborers and their families to the place where the Worker/Laborer is accepted to work; and
c. other matters stipulated in the Work Agreement, Company Regulation, or Collective Labor Agreement."

In Supreme Court Decision Number 318K/Pdt.Sus- PHI/2023, the Panel of Judges was correct in stating that the Plaintiffs were entitled to separation pay, but the Panel of Judges of the Supreme Court should have also stated that the Plaintiffs

were entitled to UPH. The Panel of Judges of the Supreme Court used the basis of Article 50 of PP 35/2021 and Article 32 paragraph (6) of the company regulation (Exhibit T-7) to state that the Plaintiffs are entitled to separation pay, but did not observe that Article 50 of PP 35/2021 also states that workers who voluntarily resign are entitled to UPH. The amount of UPH is in accordance with Article 40 paragraph (4) of PP 35/2021, which includes annual leave that has not been taken and has not been canceled; costs or return costs for workers and their families to the place where the worker was hired; and other matters stipulated in the work agreement, company regulations, or collective labor agreement.

Workers who resign voluntarily can be said to be voluntary if they submit their resignation in writing of their own accord without any indication of pressure or intimidation from the employer. If the resignation is not made of their own accord or there is pressure from the employer, then the termination of employment can be categorized as the fault of the employer and has implications for the amount of severance package received by workers/laborers (Andriani 2019). Article 154A letter i of Law 6/2023 (labor cluster), states that "Workers/Laborers resign on their own volition and must meet the following conditions:

a. submit a written resignation application no later than 30 (thirty) days before the resignation start date;
b. is not bound by any service bond; and
c. continue to carry out their obligations until the resignation start date."

The conceptual approach taken by the researcher includes building a concept of voluntariness in terms of termination of employment on the grounds of resignation by workers to answer the problems in this thesis. The concept of voluntariness in worker resignation is obtained from the analysis of the concept of resignation based on Article 154A letter i of Law 6/2023 (labor cluster). The concept of resignation in this provision has three conditions that must be met, namely submitting a written resignation application no later than 30 (thirty) days before the resignation start date, not being bound by service bonds, and continuing to carry out their obligations until the resignation start date. If these things are fulfilled, the worker is entitled to the rights of workers who resign voluntarily, namely UPH and separation pay.

The act of resignation of the Plaintiffs can be said to be voluntary if it is in accordance with the concept of resignation according to Article 154A letter i of Law 6/2023 (labor cluster). The consequence of the act of voluntary resignation is that new rights and obligations arise, namely the Plaintiffs are entitled to receive UPH and separation pay, while the Defendant is obliged to provide these rights. Thus, the concept of voluntariness means that the act of resigning is in accordance with normative provisions, which is done based on one's own will without any indication

of pressure or intimidation. If the voluntary element is fulfilled, workers who resign are entitled to UPH and separation pay in accordance with Article 50 of PP 35/2021.

The status of the employment relationship between the Plaintiffs and the Defendant has ended since the Defendant received the Plaintiffs' resignation request as evidenced by Exhibits T-3, T-4, and T-5. Once both parties have agreed to terminate the employment relationship, the employment relationship can be terminated from that moment on. Because the formal requirements have been met and there is no indication of pressure or intimidation, the resignation of the Plaintiffs has fulfilled the voluntary element, so that the end of the employment relationship between the Plaintiffs and the Defendant gave rise to new rights for the Plaintiffs, namely the right to UPH and separation pay.

The decision does not identify the amount of separation pay. Whether or not there are rules regarding the provision of separation pay in work agreements, collective labor agreements or company regulations, it is still obligatory for companies to pay separation pay to employees who resign from the company (Suryana 2023). If the amount of separation pay is not regulated, as in the case of Supreme Court Decision No. 104K/Pdt.Sus/2010, it is known that the separation pay by the Panel of Judges can be calculated based on the UPMK calculation. UPMK is service money as a reward from employers to workers/laborers that is linked to the length of service (Pramesti 2016). The calculation of UPMK is contained in Article 156 paragraph (3) of Law 6/2023 (labor cluster).

In filing a lawsuit to the Industrial Relations Court, as long as the formal requirements in Article 83 of the PPHI Law are met so that the filing of the lawsuit is accepted by the Panel of Judges of the Industrial Relations Court, then the case can be heard. In this case, the right to file a lawsuit is basically determined from the time the tripartite effort is made. This is based on the requirements of Article 83 of the PPHI Law which requires the lawsuit to be accompanied by minutes of settlement through mediation or conciliation. The Plaintiffs are known to have made mediation efforts at the East Java Provincial Manpower and Social Affairs Office and have issued a Mediator's Suggestion Letter as letter number: 565/449/108.04/2021 dated September 09, 2021 which was rejected by the Defendant, so the Plaintiffs are entitled to file a lawsuit with the Industrial Relations Court.

As for the Defendant's rebuttal in the exception regarding the status of the Plaintiffs who are no longer active workers but former workers, the statute of limitations is no longer regulated. The expiration rule as stipulated in Article 82 of the PPHI Law is now invalid as the issuance of Law 6/2023 which abolishes the expiration of Article 171 of the UUK through Article 81 number 63 of Law 6/2023 and confirmed in the Constitutional Court Decision Number 94/PUU-XXI/2023.

Therefore, the expiration of the lawsuit now no longer applies and the Plaintiffs can file a lawsuit without a time limit.

In the author's opinion, the Plaintiffs should have made efforts to resolve the industrial relations dispute as soon as possible since the beginning of the dispute. Chronologically, since June 2020 or since wages have not been paid, the Plaintiffs who are still workers can initiate bipartite efforts. The Plaintiffs while still workers can also file for termination of employment if the Defendant does not pay wages at the specified time for 3 (three) consecutive months or more as stipulated in Article 154A paragraph (1) letter g number 3 of Law 6/2023 (labor cluster). That way, the Plaintiffs' rights can be immediately fulfilled and the case does not drag on.

Rights of the Plaintiffs after Termination of Employment

The Defendant's fault was in not performing the obligations promised to the Plaintiffs, namely by not providing work and not paying wages to the Plaintiffs. The Plaintiffs state that they came to work to do their jobs, after the jobs were completed the Defendant did not give them new work orders. The Plaintiffs were left alone with the excuse that there was no work. From this statement it can be seen that the Plaintiffs were willing to do the work in accordance with the employment agreement, but the Defendant did not employ them.

The arguments of the Defendant in their exceptions included stating that the Plaintiffs were not entitled to

wages because they did not work as stipulated in Article 93 paragraph (1) of the UUK which reads "Wages are not paid if the laborer/worker does not perform work." This provision is the basis of the principle of wages, namely *no work no pay,* which states that wages are not paid if not working. This principle is not absolute. Exceptions to this principle are found in Article 93 paragraph (2).

Employers are still obliged to pay wages even though workers do not perform work if in accordance with the provisions of Article 93 paragraph (2) of the UUK. This provision provides legal protection for workers in the event that employers do not pay wages because they do not work. Thus, the actions of the Defendant in not employing the Plaintiffs on the grounds that the Plaintiffs were not working cannot be justified. This is based on Article 93 paragraph (2) letter f of the UUK which is in accordance with this case where the Plaintiffs were willing to do the work that had been promised but the employer did not employ them, either due to their own fault or obstacles that should have been avoided by the Defendant.

Given that the Plaintiffs are PKWTT workers, then based on Article 50 of PP 35/2021 the Plaintiffs should be entitled to UPH and separation pay. UPH that can be requested by the Plaintiffs according to Article 40 paragraph (4) of PP 35/2021 includes: annual leave that has not been taken and has not been forfeited; costs or return costs for Workers/Laborers and their families to the place where the

Worker/Laborer was hired; and other matters stipulated in the Work Agreement, Company Regulation, or Collective Labor Agreement. In addition, the Plaintiffs are also entitled to separation pay as stipulated in Article 32 paragraph (6) of the Company Regulation. If the amount of separation pay is not regulated, such as the case in Supreme Court Decision No. 104K/Pdt.Sus/2010 where the separation pay by the Panel of Judges was calculated based on the UPMK calculation. The calculation of UPMK is contained in Article 156 paragraph (3) of Law 6/2023 (labor cluster).

According to the researchers, the consideration of the Panel of Judges of the Industrial Relations Court at the Surabaya District Court is not correct. Even though workers resign voluntarily, it does not mean that their rights end just like the end of the employment relationship. The Plaintiffs are still entitled to obtain normative rights from the Defendant in accordance with the provisions of the laws and regulations governing employment.

The researcher partially agrees with the consideration of the Supreme Court Judges in deciding the case in the case of worker resignation at PT Shanty Wiraperkasa. The consideration of the Judges in deciding the case is that the Plaintiffs are entitled to separation pay. This is based on the provisions of Article 50 of PP 35/2021 and Article 32 paragraph (6) of the company regulation (Exhibit T-7) inaccordance with their respective length of service. In addition, the Plaintiffs are also entitled to unpaid wages as recognized and confirmed by the Defendant. This is also in accordance with the statement letter (Exhibit P-4) signed by the Defendant on May 24, 2021 which basically states that the Defendant is willing and able to pay all wage shortages and religious holiday allowances that have not been paid to all workers. Thus, PT Shanty Wiraperkasa is obliged to pay the shortage of wages and religious holiday allowances as well as separation pay to the Plaintiffs.

1. **Legal Consequences of Supreme Court Decision Number 318 K/Pdt.Sus-PHI/2023**

Cassation Legal Remedies through the Supreme Court is the last legal remedy that can be taken to resolve industrial relations disputes with types of rights disputes and termination of employment. Supreme Court Decision Number 318 K/Pdt.Sus-PHI/2023 has permanent legal force. Against this decision, there are no more legal remedies that can be taken. In its consideration, the Panel of Judges of the Supreme Court considered that the Judex Facti, in this case the Industrial Relations Court at the Surabaya District Court, had misapplied the law in deciding the case a quo, so the Panel of Judges annulled the previous decision, namely Decision Number 25/Pdt.Sus-PHI/2022/PN Sby and tried the case itself.

Supreme Court Decision Number 318 K/Pdt.Sus- PHI/2023 reads that it grants the cassation application from the Cassation Petitioners, namely the Plaintiffs and annuls the Decision of the Industrial Relations Court at the Surabaya District

Court Number 25/Pdt.Sus-PHI/2022/PN Sby. The Panel of Judges of the Supreme Court granted the Plaintiffs' claims in part and ordered the Defendant to pay separation pay and unpaid wages and THR. The essence of the Plaintiffs' claim, namely suing the Defendant to pay unpaid wages and THR, has been granted.

Supreme Court Decision Number 318 K/Pdt.Sus- PHI/2023 has legal consequences, namely the termination of the employment relationship between the Plaintiffs and the Defendant because the Plaintiffs resigned in accordance with their respective resignation letters, so the Defendant is obliged to pay separation pay, wages, and THR that have not been paid to the Plaintiffs. The amount of wages and THR to Plaintiff I amounted to Rp40,662,387.00 (forty million six hundred sixty two thousand three hundred eighty seven rupiah), to Plaintiff II amounted to Rp51,630,755.00 (fifty one million six hundred thirty thousand seven hundred fifty five rupiah) and to Plaintiff III amounted to Rp45,616,931.00 (forty five million six hundred sixteen thousand nine hundred thirty one rupiah).

In Supreme Court Decision Number 318 K/Pdt.Sus- PHI/2023, the Defendant is obliged to pay the unpaid wages and THR to the Plaintiffs as well as separation pay. The Judge only mentioned the amount of wages and THR, not the separation pay. Nevertheless, the Defendant is still obliged to pay separation pay in accordance with the provisions in the Company Regulation, as mentioned in the previous discussion. This decision is a final decision with permanent legal force, so the parties must be able to accept and implement the Supreme Court's decision.

With the Panel of Judges of the Supreme Court annulling Decision Number 25/Pdt.Sus-PHI/2022/PN Sby, it shows that the interpretation of Article 88A paragraph (1) of Law 6/2023 (labor cluster) in conjunction with Article 3 of PP 36/2021 is not as interpreted by the Industrial Relations Court Judge at the Surabaya District Court. Workers whose employment relationship has ended do not end their rights if they have not been fulfilled. These rights include the basic rights of workers such as wages and THR, as well as the special rights of workers who resign voluntarily, namely the right to UPH and separation money. However, this decision does not state that the Plaintiffs are entitled to UPH, so the addition of UPH is an input that Researcher added in this research.

For the executed verdict, the Researcher can write a scientific article that analyzes the verdict, evaluates, and provides input for better legal improvement. Such publications can help create discussions among academics and legal practitioners. Researchers can also submit reports or inputs to the Judicial Commission, as the body authorized to oversee the behavior of judges and maintain the integrity and credibility of the courts. Such reports or inputs include potential ethical violations or suggestions for improving the transparency and accountability of the judicial system, so that the legal consequences of this decision can be an

evaluation of the application of law in similar cases in the future. Thus, research on this decision will be beneficial for future legal developments.

The Plaintiffs are entitled to the unpaid wages of the Defendant.

The Plaintiffs' unpaid wages and holiday allowances while still working are the Defendant's obligations that must be paid as previously agreed. The Panel of Judges of the Supreme Court considered that in its answer the Defendant did not dispute the Plaintiffs' unpaid wage claims, the Defendant's attitude can be interpreted that the Defendant tacitly acknowledged and justified the Plaintiffs' wage claims, on the other hand in Exhibit P-4 in the form of a statement signed by the Defendant on May 24, 2021 in essence the Defendant is willing and able to pay all shortages of wages and THR that have not been paid to all workers.

The researcher agrees with the consideration of the Panel of Judges of the Supreme Court which states that the Defendant is also obliged to pay the Plaintiffs' unpaid wages to each Plaintiff in accordance with their demands. This is based on the principle of *pacta sunt servanda* in the law of agreements, which means that agreements made shall apply as laws to those who make them, in accordance with Article 1338 paragraph (1) of the Civil Code. Based on these provisions, the agreement entered into by the Plaintiffs and Defendants previously either through the employment agreement or in the statement letter dated May 24, 2021 (Exhibit P-4) must be adhered to as a legally binding agreement.

Previously, the Panel of Judges of the Industrial Relations Court at the Surabaya District Court in their consideration concluded that since the Plaintiffs resigned from the Defendant company, the rights and obligations of the Plaintiffs and Defendant also ended as stipulated in Article 88A of Law 11/2020 (labor cluster) in conjunction with Article 3 of Government Regulation 36/2021. The researcher's opinion regarding the consideration of the Panel of Judges of the Industrial Relations Court at the Surabaya District Court in interpreting the expiration of the rights and obligations of the Plaintiffs and Defendants as stipulated in Article 88A of Law 11/2020 (labor cluster) in conjunction with Article 3 of PP 36/2021 is erroneous.

The judge assumed that since the Plaintiffs resigned from the Defendant company, the rights and obligations of the Plaintiffs and Defendant also ended. This is based on Article 88A of Law 11/2020 (labor cluster) in conjunction with Article 3 of PP 36/2021 which states that "The right of workers/laborers to wages arises at the time of employment between workers/laborers and employers, and ends at the time of termination of employment."

However, this contradicts with the next paragraph, namely Article 88A paragraph (3) of Law 6/2023 (labor cluster) which states that "Employers are obliged to pay wages to workers/laborers in accordance with the agreement." Based on the

provisions of Article 88A paragraph (3) of Law 6/2023 (labor cluster), the agreement regarding wages between the Plaintiffs and the Defendant must be implemented.

The researcher's opinion in interpreting Article 88A paragraph (1) of Law 11/2020 as replaced by Law 6/2023 (labor cluster) does not apply to all existing rights and obligations. For example, when the employment relationship ends, workers are not entitled to receive next month's wages, but are still entitled to receive wages before the employment relationship ends. In addition, other rights related to the end of the employment relationship such as separation pay and UPH cannot use these provisions, but refer to the provisions of Article 40 of PP 35/2021. Based on this, the Researcher agrees with the use of PP 35/2021 by the Panel of Judges of the Supreme Court and its consideration of Exhibit T-7 as an agreement that must be implemented by the Defendant.

Resigned Workers Have the Right to File a Lawsuit

In the first instance trial, it was noted that the Defendant in its exception considered that the Plaintiffs as resigned workers were not entitled to file an industrial relations dispute lawsuit. The Panel of Judges of the Industrial Relations Court at the Surabaya District Court in their consideration rejected the Defendant's exception because the exception was related to the subject matter which still required further proof, so it would be more appropriate if it was considered together with the material in the subject matter.

Disputes that can be filed in the Industrial Relations Court according to Article 2 of the PPHI Law are cases of industrial relations disputes which include rights disputes, interest disputes, employment termination disputes, and disputes between trade unions/labor unions in only one company. In their lawsuit, the Plaintiffs essentially requested that their rights to wage shortages and THR be fulfilled by the Defendant. Because this case is a dispute over rights, it can be litigated in the Industrial Relations Court.

Article 5 of the PPHI Law states that "In the event that settlement through conciliation or mediation does not reach an agreement, then either party may file a lawsuit with the Industrial Relations Court." In accordance with this regulation, the Plaintiffs filed a lawsuit with the Industrial Relations Court at the Surabaya District Court because the mediation between the Plaintiffs and the Defendant did not reach a mutual agreement.

CONCLUSION

Conclusion contains a description that should answer the problem(s) raised and answer the objectives of research. Provide a clear and concise conclusion. Do not repeat the Abstract or simply describe the results of the research. Give a clear explanation regarding the possible application and/or suggestions related to the research findings.

The judge's reasoning in imposing a cassation decision on the Defendant in Supreme Court Decision Number 318 K/Pdt.Sus-PHI/2023 is partly in accordance with juridical and non-juridical aspects. The panel of judges considered the obligation to pay unpaid wages and THR along with separation pay only applying Article 50 of PP 35/2021 and Article 32 paragraph (6) of the company regulation (Exhibit T-7) and considering the Defendant's attitude which confirmed that wages had not been paid and the existence of a wage payment statement/agreement (Exhibit P-4). The Defendant should not only be obliged to pay separation pay, but also be subject to Article 50 of PP 35/2021 in conjunction with Article 40 paragraph (4) of PP 35/2021, because based on the concept of voluntariness and the principle of pacta sun servanda, the Plaintiffs are also entitled to UPH. So that the cassation verdict is partly in accordance with existing laws and regulations, but there are still some rights of the Plaintiffs that should be entitled to receive.

The legal consequences of the Supreme Court Decision Number 318K/Pdt.Sus-PHI/2023, it can be said that this decision canceled the previous decision, namely the decision of the Industrial Relations Court at the Surabaya District Court Number 25/Pdt.Sus-PHI/2022/PN Sby. The legal consequences of the partial granting of the Plaintiffs' claims for the Defendant are the obligation to pay the shortage of wages and THR as well as separation money to the Plaintiffs. Through this decision, the Plaintiffs as former employees of the Defendant are still entitled to unpaid wages and THR as well as their rights as workers who resigned voluntarily, so that the interpretation of Article 88A of Law 6/2023 (labor cluster) in conjunction with Article 3 of PP 36/2021 does not mean that it completely eliminates workers' rights. With this post- decision research and publication, it can be an input for legal implementation in similar cases in the future that workers who resign are entitled to unpaid wages and THR along with UPH and separation money.

Suggestions

As a suggestion for the Panel of Judges of the Industrial Relations Court at the Surabaya District Court and the Panel of Judges of the Supreme Court in adjudicating cases of industrial relations disputes, they should be more thorough in applying labor regulations, especially related to Law 6/2023 and its new derivatives . The Panel of Judges should also be more assertive in stating the existence or absence of workers' rights in accordance with applicable regulations, in this case separation pay and UPH in accordance with Article 50 of PP 35/2021, so that there is no misunderstanding about the amount of rights obtained by workers. For workers who find problems related to industrial relations disputes, they should immediately make efforts to resolve them as soon as possible so that the problem does not drag on.

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