



Problematics of Termination of Employment Relations for Workers Undergoing Industrial Relations Trial Period

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Article		Abstract
Keywords: Validity; Termination Employment	Decree; of	<i>Termination of employment begins with a letter of termination of employment. With the letter of termination of employment, the relationship between the worker and the employer has ended. In relation to this, there is a worker named Bunari who has a problem regarding the validity of the letter of termination of employment. The letter of termination he received is considered to be in conflict with Article 155 number 2 of the Manpower Law. The legal issue in this study is the ambiguity of norms. The purpose of this study is to understand the validity of the employer's letter of termination of employment during the trial process in decision Number 1237 K / Pdt.Sus-PHI / 2017 and to understand the provisions regarding process wages for workers who are undergoing an industrial relations trial period. The research method used by the researcher is the normative legal research method, where this study attempts to analyze an event that is analyzed with applicable laws and regulations. The results and discussion of the study indicate that the termination of employment against Bunari does not have formal validity. This is because at the same time, Bunari was filing an industrial relations dispute lawsuit. This causes the termination of employment to have no legal validity. Bunari is also entitled to receive the process wages that are his rights. This is because Bunari fulfills the elements in the provisions for recipients of process wages. Then related to the payment period for the process wages received by Bunari is 6 months of salary. This is based on SEMA 3 of 2015 which is also an update of previous regulations that also discuss the payment period for process wages.</i>

INTRODUCTION

A company can run of course because of the role of workers in it. Workers are an important instrument in a company. Their existence greatly influences the progress of a company. According to the term in labor law, workers are every person who works for others with the provision of wages or compensation that can be in other forms. Rewards in other forms can be implemented on goods or objects whose value has been agreed upon by workers and employers in advance. Based on this understanding, it can

be concluded that anyone who works with others accompanied by wages, then he is categorized as a worker.

In principle, the position between workers and employers is equal. This is because both parties are burdened by their respective rights and obligations that must be carried out. However, in practice, the position between workers and employers is more seen as a subordinate relationship. Where the position of the employer is always above while the position of the worker is always below (Alam and Arif, 2020).

If digested more deeply, an employment relationship has three central elements in it, namely the existence of work, the existence of orders, and the existence of wages (Mangaraja Manurung, 2023). This element of the Order is what then makes the relationship between the two no longer equal, where the entrepreneur has a position above who is authorized to give an order, while the worker is in a position below the entrepreneur who is tasked with carrying out an order from the entrepreneur.

An industrial relationship certainly has several parties involved in it. These parties include employers, workers and the state or government. The employer or company is the first party to initiate an order in an employment agreement. It can be said that the employer is the driving force so that an employment relationship can run, then the worker is the implementing party of what the employer or company orders. In this case, the worker is the executor in the field of the order that has been made by the employer or company.

In its scope of movement, parties within the scope of industrial relations are not allowed to have an independent nature in carrying out all their activities, but must be interrelated and synergize with each other to realize harmony in industrial relations. This can indirectly increase national productivity in general and internal company productivity. Every party in an industrial relationship always wants harmony in it. However, sometimes polemics and problems often occur in it. The problem that often arises in industrial relations is the problem of termination of employment. Termination of employment is not only detrimental to workers, but also causes difficulties and unrest for the company.

Termination of employment is actually regulated in the employment law. According to the employment law, termination of employment is defined as the termination of employment due to a certain reason that results in the termination of rights and obligations between workers and employers.

In principle, termination of employment can occur if one or both parties feel that there are no more benefits to be gained if the employment relationship is continued. This can be interpreted that termination of employment can occur with the desire of the worker, the desire of the employer or it can also be because of the desire of both parties themselves (Shubhan, 2020).

Termination of employment actually causes several losses, both from the side of the worker and the side of the employer. However, because the losses by maintaining

the employment relationship are felt to be greater, termination of employment must be carried out, so that termination of employment is considered a way out in solving a problem (Cahyadi and Sitabuana, 2022). In the process, termination of employment, whether at the will of the company or at the will of the worker, must still be guided by the regulations governing this matter. This is to avoid the emergence of conflicts that could occur in the future which could harm both parties later.

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The problem of termination of employment sometimes raises a new polemic. In this study, there is a problem regarding termination of employment that attracts attention. The problem occurred within the scope of the Yogyakarta District Court. Bunari as the plaintiff who works as a worker from PT. Jogja Tugu Trans filed a lawsuit to the Industrial Relations Court at the Yogyakarta District Court. The lawsuit was filed by Bunari (worker) on March 29, 2017 with case register Number: 9/Pdt.Sus-PHI/2017/PN.Yyk. This lawsuit is a lawsuit for termination of employment because the plaintiff (Bunari) demanded a change in contract status (PKWT) to permanent (PKWTT).

Before filing a lawsuit to the industrial relations court at the Yogyakarta District Court, Bunari had attempted bipartite negotiations and mediation with the company. However, these efforts did not reach an agreement. So then Bunari filed a lawsuit in the industrial relations court. The problem that occurred between Bunari and PT. Jogja Tugu Trans was when the trial period was underway (not yet reaching a final decision), PT. Jogja Tugu Trans terminated the employment of several of its workers. Several workers who were laid off included Bunari who was filing a lawsuit to the industrial relations court. The termination of employment occurred when Bunari filed a lawsuit with another lawsuit object, namely a rights dispute (Number: 08/G/2013/PHI.Yk), where the termination of employment was carried out on September 13, 2013 and the trial with the object of the lawsuit being a rights dispute was still ongoing.

In addition, since Bunari was unilaterally laid off by PT. Jogja Tugu Trans, Bunari no longer received wages and other rights that were usually received. In this study, the researcher used decision Number 1237 K/Pdt.Sus-PHI/2017 because the decision has permanent legal force. In addition, this decision is a cassation decision from a problem that previously occurred at the first level so that it has permanent legal force.

"Return of case files as referred to in paragraph (5) after more than 3 (three) times, the Public Prosecutor must provide instructions to the investigator so that the investigator determines his/her attitude in accordance with the legal facts found in handling the case as per previous instructions."

Based on this, the researcher aims to discuss and analyze the validity of the Employer's Decree regarding Termination of Employment Relations during the trial process in decision Number 1237 K/Pdt.Sus-PHI/2017 and the process wages during the industrial relations trial period in decision Number 1237 K/Pdt.Sus-PHI/2017.

METHOD

In this study, the type of research used by the researcher is normative legal research. Normative legal research emphasizes the source of document studies, namely using legal material sources in the form of laws and regulations, contracts or agreements, legal theories, court decisions or rulings and opinions of scholars. Normative legal research can also be called doctrinal legal research. It is called so because normative research is carried out or aimed only at written regulations or other legal materials (Maiyestati, 2022). The type of normative legal research is a legal research that discusses and analyzes at the level of norms, principles and legal doctrines (David Tan, 2021).

RESULTS AND DISCUSSION

A. VALIDITY OF EMPLOYER'S TERMINATION DECISION LETTER IN DECISION NUMBER 1237 K/PDT.SUS-PHI/2017

The termination of employment received by Bunari began with a demand or request to the company. The request was in the form of a request for the elevation of status from a contract worker to a permanent worker. Bunari then conducted bipartite negotiations and mediation but did not find any points of agreement between the two parties. This made Bunari then file a lawsuit with the Yogyakarta Industrial Relations Court.

In the rules, during the trial process both parties are required to continue to fulfill all their obligations. In other words, workers are still required to work and employers are still required to pay wages. However, during the trial process and had not yet produced a legally binding decision, on September 30, 2013 Bunari was laid off by PT. Jogja tugu trans. This layoff then became a problem because it was carried out at a time when the trial process had not yet produced a legally binding decision. The termination of employment received by Bunari was marked by a decision letter from the company regarding the termination of employment. The termination decision letter issued by PT. Jogja Trans was then questioned regarding its formal validity because it was considered to violate the provisions of Article 155 number 2 of the Manpower Law which explains that;

"Before the decision of the Industrial Relations Dispute Settlement Institution is determined, both employers and workers or laborers must continue to carry out all their obligations."

The provision explains that every worker and employer is required to continue to fulfill their obligations and rights until there is a decision from the industrial relations dispute resolution institution. This is intended so that both parties can provide benefits and advantages to each other before the termination of employment is decided by the industrial relations dispute resolution institution. In addition, the termination of employment of Bunari was not carried out with one month's notice to both Bunari and the union that oversees him. This incident is considered to violate Article 37 number 2 of the Manpower Law which states that;

"In the event that termination of employment cannot be avoided, the intent and reasons for the Termination of Employment shall be notified by the Employer to the Worker/Laborer and/or the Worker's Union/Laborer's Union within the Company if the Worker/Laborer concerned is a member of a Worker's Union/Laborer's Union."

Regarding the termination period, the company is required to notify the employee at least one month before the termination of employment. Likewise, when an employee wants to terminate employment with the company, the employee is also required to notify the company one month in advance. This is intended to provide sufficient preparation for both parties to prepare for the following matters. The employee can look for a new job during this period, while the employer can look for a replacement for the employee whose employment will be terminated.

The provisions regarding the grace period for dismissing workers are also explained in Article 1603i of the Criminal Code, which explains as follows:

"In the case of terminating an employment relationship, at least a grace period of one month must be respected."

Based on several provisions above, in its provisions, termination of employment must be through one month's prior notification to workers or through their union. Meanwhile, Bunari did not receive prior notification regarding the termination of employment. In addition, according to its provisions, termination of employment must be carried out before the last day of each calendar month (R. Aruan, 2020). This is as explained in article 1603h which explains that;

"Notification of termination of employment may only be made on a day other than the last day of a calendar month, and is void."

Termination of employment in its provisions must be carried out towards the last day of each calendar month (R. Aruan, 2020). This is intended so that in the last month of the worker's work, he gets full benefits from the results of his work. These benefits can be in the form of a salary paid for a full month if the termination of employment is carried out in the last days of the month. In addition, the company can also prepare time to find new workers to replace their positions.

The termination of employment received by Bunari was carried out on September 13, 2013, which was still the middle of the month. Based on several considerations above, the decision letter raises questions regarding its formal validity. This is because there are many indications in the process of making the termination decision letter that violate laws and regulations so that it is possible that the decision letter is considered null and void. Void by law itself can be interpreted as something that is void because there is a law that conflicts with the event which can then result in the legal act in question never happening (Astuti, 2016). If later the termination decision letter contains formal defects, then indirectly the termination that is carried out does not have legal force.

Another consequence of a formal defective PHK Decree is that the PHK that was carried out is considered to have never happened. This is because the procedure for making it has violated the relevant laws and regulations. Therefore, it is important to analyze a decree both in terms of substance and form. The substantive and formal aspects of a decree also determine the validity of the PHK.

B. WAGE PROCESS FOR WORKERS WHO ARE UNDERSTANDING A PERIOD OF INDUSTRIAL RELATIONS TRIAL

Every worker and employer is required to carry out all obligations and obtain all their rights. This includes when workers are undergoing an industrial relations trial. Workers who are undergoing an industrial relations trial are required to obtain all their rights as workers, including process wages. According to Judge Surtiyono, process wages are a punishment from the court because employers since carrying out layoffs (when workers are in court) no longer employ workers and do not pay their wages. He believes that workers who are fighting for their rights in court must be given process wages. He also believes that even though workers who file lawsuits in the industrial relations court are no longer employed, The employer is still required to provide process wages to workers. Based on the legal arguments that explain this, it is clear that process wages are a right of workers who are filing a lawsuit with the industrial relations court.

The provision of process wages to Bunari workers then raises a question mark, considering that in labor law itself there is a principle of no work no pay. This principle can be interpreted as a principle that states that workers are only entitled to receive wages if they have carried out the work that was agreed upon. In other words, if the worker does not carry out his work, then the worker is not entitled to receive wages (Muhidin and Sijabat, 2023). At the same time, Bunari did not fulfill his obligations to work at his company when filing the lawsuit.

In relation to this, it is important to note that the implementation of the no work no pay principle is not without any flexibility. (Gunadi, 2021). In Article 93 paragraph (2) of Law No. 13, there are several concessions aimed at workers/laborers who do not do work due to no fault of their own to still receive their wages. Based on the provisions in Article 93 paragraph (2) of Law No. 13 of 2003, employers are still required to provide wages to workers/laborers who do not carry out their work, if the workers/laborers are in the following circumstances:

1. Sick;
2. Sickness on the first and second day of menstruation for female workers/laborers;
3. Getting married, marrying off, circumcising, baptizing one's child, wife giving birth or having a miscarriage, husband or wife or child or son-in-law or parent or parent-in-law or family member in one household dies;
4. Currently carrying out obligations to the state;
5. Carry out the worship commanded by his religion;
6. Willing to do the work that has been promised, but the employer does not employ him, either due to his own fault or obstacles that the employer should have been able to avoid;

7. Exercise the right to rest;
8. Carry out the duties of the workers' union/labor union with the approval of the employer; and
9. Carry out educational tasks from the company.

From the several exceptions above, Bunari is included in the criteria of a worker who is willing to carry out the work that has been promised but the employer does not employ him, either due to his own fault or obstacles that the employer should have been able to avoid. The legal basis for the implementation of process wages is based on Article 155 paragraph (2) of Law No. 13 of 2003. This provision explains that before there is a permanent legal decision, both workers and employers are required to continue to carry out their obligations. This obligation is that workers are required to continue to carry out their work, while employers are required to continue to pay wages to the workers. With the provisions governing process wages, it is clear that process wages are a right of workers who are undergoing an industrial relations trial.

Regarding the provisions on the payment period for process wages, there are several provisions that regulate it. These provisions also regulate the amount of time for which the process wages are applied. Several provisions that regulate process wages include:

1. Manpower Law Number 13 of 2003 Article 155:

"As long as the decision of the industrial relations dispute resolution institution has not been determined, both employers and workers/laborers must continue to carry out all their obligations."

The above provisions state that the process fee is paid by the employer since the trial process is ongoing until a judge's decision is legally binding. This is because the provision of wages is an obligation of the employer. However, over time this article is considered to have no clear legal interpretation. This is because the phrase "not yet stipulated" in Article 155 paragraph (2) of Law No. 13 of 2003 is contrary to the provisions of Article 28D paragraph (1) and (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) insofar as it is not interpreted as not yet having permanent legal force. In response to this, the Constitutional Court then conducted a material test of the article.

CONCLUSION

The conclusions of this research as described above are as follows:

1. The termination of employment of Bunari carried out on September 30, 2013 did not have formal validity. The termination of employment of Bunari was considered to have contained elements of violation of the Law. The termination of employment was considered to be in conflict with Article 155 paragraph (2) of the Manpower Law because the termination of employment was carried out at a

time when Bunari was filing a lawsuit for an industrial relations dispute. Then the termination of employment received by Bunari was also without a month's prior notification to Bunari or the Workers' Union that oversees him. This certainly contradicts the provisions regarding the deadline for lawsuits in Article 37 number 2 of the Manpower Law and Article 1603i of the Civil Code.

2. Bunari is entitled to receive the process wages that are his rights. This is because Bunari fulfills the elements in the provisions of recipients of process wages. Then related to the payment period for the process wages received by Bunari is 6 months of salary. This is based on SEMA 3 of 2015 which is also an update of previous regulations that also discuss the payment period for process wages.

Suggestion

Here are some suggestions from researchers related to the problems in this study:

1. Entrepreneurs should pay more attention and understand the consequences of layoffs. A layoff that occurs gives rise to several rights owned by workers that must be obeyed by employers. When workers are filing a lawsuit in the industrial relations court, employers are required to respect the steps taken by their workers and not lay off the workers.
2. Workers should pay more attention and understand the substance of the Manpower Law. Where the maximum period of PKWT is 2 years with a maximum extension of one time (assuming a maximum of 4 years). This can be interpreted that when a worker has worked for more than 4 years, even though in the company's records he still has the status of a contract worker, but legally he already has the status of a permanent worker.

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