International Journal of Innovation, Creativity and Change. www.ijicc.net
Volume 15, Issue 8, 2021

Legal Protection of Workers in the Settlement of Disputes of Work Relationship (Pemutusan Hubungan Kerja) by Companies Based on Legal Labour Perspective

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Termination of employment by a company often results in disputes with the workers. The rule of law provides protection in carrying out industrial relations for workers, employers and the government. The perspective of labour law has the objective of social justice through settlement of dismissal disputes based on work agreements, company regulations and collective labour agreements. The government intervenes in regulating work termination disputes based on Law Number 13 of 2003 concerning manpower, abbreviated as UUK and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, abbreviated as UUPPHI. The research method used is the method of normative legal research, namely research on library materials that are basic data, in science classified as secondary data. Normative legal research serves to provide juridical arguments when there are vacancies, obscurity and conflict of norms. Company dismissal disputes are resolved by means of bipartite, conciliation, mediation and industrial relations courts. Legal protection for workers in settling disputes over termination of employment by companies harms the normative rights of workers; it takes a long time, starting from bipartite negotiations, through mediation to the Industrial Relations Court. Workers have lost their basic rights, namely the right to work and a decent life, based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Key words: *Legal protection of workers, Settlement of disputes over termination of employment by companies based on the perspective of labour law*

PRELIMINARY

Termination of employment (PEMUTUSAN HUBUNGAN KERJA) by companies causes many disputes when the work relationship is still ongoing within the company. The company acts arbitrarily against workers / labourers in carrying out unilateral layoffs. Employers should be obliged to make efforts to prevent layoffs and carry out bipartite negotiations with trade unions. Layoffs that arise in work relations are based on the regulations in the work agreement, Collective Labour Agreement (PKB) and Company Regulations, as a reference for the settlement of dismissals by the company.

Disputes over termination of employment by companies should be based on the values contained in Pancasila, namely the second principle: "just and civilized humanity". In this case, workers receive recognition in human rights as God's creatures that must be protected, and this applies universally. Then on the fifth principle of Pancasila, namely: "social justice for all Indonesian people", in this case the aspect of justice for workers to obtain happiness or welfare of the lives and families of workers in Indonesia.

The aspect of legal protection for workers is also regulated in the constitution of the Indonesian state, namely the 1945 Constitution, which states that "Indonesia is a constitutional state". That says the highest power in a country is based on law. A rule of law based on Pancasila as stated in "Article 27 of the 1945 Constitution paragraph (1) that all citizens have the same position in law and government. Likewise, Article 27 paragraph (2) states that every citizen has the right to work and a living that is decent for humanity."

The umbrella law of employment is contained in the Law of the Republic of Indonesia, No. 13 of 2003 Law of the Republic of Indonesia No. 13 of 2003 concerning manpower, hereinafter abbreviated as UUK, states in section (b): "That in the implementation of national development, the workforce has a very important role and position as actors in development goals." Furthermore, in section (c) : "According to the role and position of the workforce, it is necessary to develop manpower to improve the quality and participation in manpower development as well as the protection of workers and their families in accordance with human dignity and dignity." (Negara, 2003).

Settlement of employment termination disputes by companies based on Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement, hereinafter abbreviated as UUPPHI, regulates bipartite dispute resolution, mediation, arbitration and Industrial Courts (Negara, 2004). The government as the ruling party must intervene to help resolve disputes over termination of employment, where the government is obliged to provide protection for workers who have been terminated by companies.

THEORITACAL FRAMEWORK ATAU LITERATURE REVIEW

Law functions as a protection for human interests. In order for human interests to be protected, the law must be implemented. Law enforcement can take place normally, peacefully, but it can also occur because of lawlessness. In this case, the law that is violated must be upheld. It is through law enforcement that the law becomes a reality. In enforcing the law, there are three elements that must always be considered, namely legal certainty (*Rechtssicherheit*), benefits (*Zweckmassigkit*), then justice (*Gerechtigkiet*) (Mertokusumo, 2010).

Human rights are basic rights as the image of God Almighty, received from birth. This right does not depend on the recognition of other human beings, nor is it by society or the state. Thus, all rights are rooted in human nature. Human rights are rights that are fundamental and inherent in human identity, universally. Therefore, studying human rights actually examines the totality of life, the extent to which our lives give a reasonable place to humanity (Lubis, 1986).

Legal protection is providing protection to human rights that have been harmed by other people, and this protection is given to the community so they can enjoy all the rights provided by law, or in other words, legal protection is a variety of legal measures that must be given by law enforcement officials to give a feeling of safety, both in mind and physically, from interference and various threats from any party (Rahardjo, 2000).

METHODOLOGY

To answer the problems that have been formulated, the type of research method used is normative legal research methods, namely research on library materials that are basic data, which in science is classified as secondary data. Normative legal research serves to provide juridical arguments when there are vacancies, obscurity and conflict of norms (Diantha, 2016).

RESULTS AND DISCUSSION

1. Legal protection for workers in termination of employment by the company.

The provisions of article 151 paragraph (2) and (3) of the UUK state that: paragraph (2) states that in the event that all efforts have been made, but termination of employment is unavoidable, the entrepreneur and the trade / labour union must negotiate the intention of terminating employment, or with workers / labourers if the workers / labourers concerned are not members of a trade / labour union. Paragraph (3) states that in the event that the negotiations as meant in paragraph (2) do not result in approval, the entrepreneur can only terminate the working relationship with the worker / labourer after obtaining a ruling from the industrial relations dispute settlement institution.

Termination of employment in labour law is a last resort after various steps have been taken but have not brought the expected results. Termination of Employment, according to Halim, states: "a step to terminate the working relationship between workers and employers for certain reasons."(Khakim, 2003).

Termination of employment (PEMUTUSAN HUBUNGAN KERJA) by companies often results in disputes between workers / labourers and employers. For the settlement of dismissal disputes by the entrepreneur, the position of the worker / labourer is the weak party from the socio-economic aspect. Meanwhile, in the juridical aspect, it should have the same rights and obligations in the settlement of dismissal disputes.

Legal protection for workers in settling dismissal disputes by companies is influenced by industrial relations, namely workers / labourers, employers and the government. Industrial relations must be based on labour law norms. From a labour law perspective in settling dismissal disputes by companies, it is very important to carry out legal protection for workers / labourers. Layoffs that often lead to disputes are dismissals carried out unilaterally by employers, where employers terminate arbitrarily and do not give normative rights to workers when they are laid off (Permatasari, 2018).

Employers are obliged to pay the workers / labourers' normative rights based on Article 156 paragraphs (2), (3) and (4) of the UUK in the form of severance pay, period of service pay and compensation for rights that should have been received when the company terminated employment.

2. Settlement of Disputes on Termination of Employment by the Company Based on Indonesian Manpower Law

Disputes over termination of employment occur due to employers not complying with the labour regulations contained in the company, namely work agreements, collective labour agreements and company regulations. The regulation stipulates the mechanism for termination of employment by both parties, including procedures for terminating employment, reasons for companies to terminate employment, and stipulating normative rights of workers / labourers. Including termination of employment by the company, these must be done through prior negotiation with the labour union in the company. If the result of termination of employment negotiations with the labour union is accepted, the employer will continue the termination of employment to obtain a negotiation minutes as a collective agreement with the workers union. Then, if no agreement is reached on the termination of employment by the company and the labour union, the employer must obtain a permit to terminate the employment relationship from the Industrial Relations Dispute Settlement institution at the Office in the field of manpower based on the domicile of the company.

Manpower law essentially regulates to assure that workers / labourers have the same position as employers in a juridical manner. Workers / labourers are obliged to obtain legal protection against the power of entrepreneurs in socio-economic terms, because labour law has the following principles and objectives:

a. Labour law principles

Manpower development is carried out on the principle of integration and functional coordination across central and regional sectors. The principle of manpower development is basically in accordance with the principles of national development, in particular the principles of democracy, the principles of fairness and equality. This is done because manpower development is multidimensional and related to various parties, namely the government, employers and workers. (Khakim, 2003).

b. Purpose of employment law

According to Manulang in Khakim (2003), the purpose of labour law is:

1) To achieve the implementation of social justice in the manpower sector.

2) To protect the workforce against the unlimited power of employers.

Point 1 shows that labour law must maintain order, security and justice for the parties involved in the production process, in order to achieve peace of work and business continuity. Point 2 however, is motivated by the existence of experiences so far that employers often abuse workers / labourers. For that we need a comprehensive and concrete legal protection from the government.

The principle of settlement of disputes over termination of employment is carried out by employers and workers by deliberation and consensus, as stated in the section considering number (b) of the UUPPHI states: “In the era of industrialization, industrial relations dispute problems have become increasingly complex, so institutions and mechanisms for resolving relationship disputes are needed industrial fast, precise, fair and cheap.” The settlement of disputes over termination of employment according to the UUPPHI above is as follows:

a. Disputes Settlement Termination of Employment Through Bipartite Negotiations.

Any dispute over termination of employment must first be resolved through bipartite negotiations between the employer and the worker within thirty (30) working days from the date of commencement of the negotiations. Within a period of thirty working days, if one of the parties refuses to negotiate or has conducted negotiations, but does not reach an agreement, then the bipartite negotiation regarding termination of employment is considered a failure.

Thereby, one party or both parties are obliged to register the dispute with the agency responsible for the local manpower sector by attaching evidence that efforts to resolve through bipartite have been carried out. After receiving the registration of one or both parties, the agency responsible for local manpower affairs is obliged to offer the parties an agreement to choose a settlement by conciliation or by arbitration. If the parties do not decide on the option to settle the termination of employment through conciliation or arbitration within a period of seven (7) days, the agency responsible for local manpower will delegate dispute resolution through a mediator. For each bilateral negotiation a treatise must be drawn up, which consists of: full name and full address of the parties, date and place of negotiation, subject matter and reason for the dispute over termination of employment, opinions of the parties, conclusions or results of negotiations, and the date and signature of the parties conducting negotiation (Damanik, 2007).

b. Settlement of Disputes Termination of Employment Through Conciliation.

Settlement of disputes over termination of employment through conciliation is carried out by the conciliator, after the parties submit a request in writing to the conciliator appointed and agreed by the parties. At the latest seven working days after receiving the request for settlement of the dispute in writing, the conciliator must conduct research on the sit-down of the case, and at the latest on the eighth day hold the first conciliation hearing. If an agreement is reached through conciliation, a collective agreement is signed by the parties and witnessed by the conciliator and registered in the industrial relations court to obtain a proof of registration deed. If no agreement is reached, the conciliator will issue a written recommendation which must have been submitted to the parties no later than ten (10) working days from the first conciliation session. The parties are obliged to provide a written answer to the conciliator that agrees or rejects the written recommendation. Parties who do not provide their opinion / answer are deemed to reject the written recommendation. If the parties agree to the written recommendation, the conciliator must have finished helping the parties make a Collective Agreement no later than three (3) working days after the written recommendation is approved, which is then registered in the industrial relations court to obtain a proof of registration deed.

c. Settlement of Disputes Termination of Employment by Arbitration.

Dispute settlement Termination of employment through arbitration is carried out by the arbitrator based on a written agreement of the disputing parties. The arbitrator is obliged to complete the arbitration assignment no later than thirty (30) working days from the signing of the agreement letter for the appointment of the arbitrator. The examination of the dispute shall be carried out no later than three (3) working days after the signing of the agreement letter for the appointment of the arbitrator. Upon the agreement of the parties, the arbitrator has the authority to extend the period for settling industrial relations disputes by one extension, no later than fourteen (14) working days. Examination by the arbiter or arbiter council is conducted behind closed doors, unless the disputing parties wish otherwise. In an arbitration hearing, the

disputing parties can be represented by their proxies with a special power of attorney. The arbitrator's industrial relations dispute settlement begins with an attempt to reconcile the two disputing parties. If peace is reached, then the arbiter or arbiter council is obliged to produce a Peace Deed signed by the disputing parties and the arbitrator or arbiter council, then registered in the industrial relations court at the district court in the arbiter's territory to make peace. If the reconciliation fails, the arbitrator or panel of arbitrators continues the arbitration hearing. An arbitration award has legal force that binds the disputing parties and is a final and permanent award. An arbitration award is registered in the industrial relations court at the district court in the area of the arbitrator to determine the award. Regarding the arbitration award, one of the parties may submit a request for annulment to the Supreme Court within 30 (thirty) working days from the date of stipulation of the arbitrator's decision.

d. Settlement of Disputes Termination of Employment Through Mediation.

Settlement of disputes over termination of employment through mediation is carried out by the mediator of the Civil Servant (PNS) of the Manpower Office, the company, and the workers in the mediation session. If an agreement is reached through a mediation session, a recommendation will be issued signed by the parties and witnessed by the mediator and registered at the industrial relations court to obtain a proof of registration deed. If no agreement is reached through mediation, the mediator will issue a written recommendation. If the parties agree to the written recommendation, the mediator must have finished assisting the parties to make a collective agreement no later than three (3) working days after the written recommendation is approved – which is then registered in the industrial relations court to obtain a proof of registration deed. The mediator completes the mediation duties no later than thirty (30) working days after the transfer of the case.

e. Settlement of Disputes Termination of Employment Through the Industrial Relations Court.

Settlement of disputes over termination of employment through a lawsuit by the party who refuses the recommendation from the mediator of the Manpower Service to the Industrial Relations Court. It begins with filing a lawsuit at the industrial relations court at the district court, whose jurisdiction includes the place where the worker / labourer works. Submission of the lawsuit must be accompanied by minutes of settlement through mediation or conciliation, which, if not attached, the judge is obliged to return the claim to the plaintiff (Maimun, 2004).

A. CONCLUSIONS AND RECOMMENDATIONS

a. Conclusions

Termination of employment by companies often results in disputes with workers / labourers and with trade unions, because companies terminate employment unilaterally and arbitrarily.

1. Disputes termination of employment occurs because there is no equality of will, in which the entrepreneur is socially and economically stronger than the worker / labourer.

2. Legal protection for workers in termination of employment by companies should be completed based on work agreements, Collective Labour Agreements (PKB) and Company Regulations.

3. The government intervenes to resolve disputes over termination of employment under the UUK and UUPPHI through bipartite settlement, mediation, arbitration, conciliation and industrial courts.

4. Legal protection for workers in the termination of employment by the company lasts a long time. Workers have lost their normative rights to receive severance pay, long service pay and compensation since the bipartite settlement in the company.

b. Advice

1. Disputes over termination of employment by the company unilaterally begin from when there is a dispute within the company, namely during bipartite negotiations between the company and workers or labourers and the workers' union..

2. The essence of labour law regulates the same rights and obligations in disputes over termination of employment by companies.

3. Legal protection for workers due to termination of employment by the company must be completed based on work agreements, collective labour agreements, and company regulations.

4. The government or the Manpower Office must intervene in the bipartite settlement, mediation and conciliation in the settlement of termination of employment by companies under the UUK and UUPPHI. Thereby, the settlement of disputes over termination of employment can be resolved quickly and the workers' normative rights are not violated by the company.

5. Mediation by the government should start from within the bipartite settlement so that the government acts proactively and does not just wait for complaints from workers to the mediator.

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