

WORKERS RIGHTS' IMPLICATIONS WHO HAVE EXPERIENCED TERMINATION OF EMPLOYMENT ACCORDING TO THE LAW NUMBER 13 OF 2003 CONCERNING EMPLOYMENT

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ABSTRACT

This journal entitled Implications of the Rights of Workers Who Experiencing Termination of Employment (PHK) According to Law Number 13 of 2003 concerning Manpower discusses legal remedies that can be taken by workers who experience Termination of Employment (PHK) as a result of not fulfilling their rights by employers and legal sanctions against employers who violate workers' rights based on Law Number 13 of 2003 concerning Manpower. The results of this study indicate that workers can submit legal remedies to employers not giving rights due to layoffs mentioned in Article 171 of Law no. 13 of 2003 concerning Manpower, namely workers/laborers who experience termination of employment without the establishment of an industrial relations dispute resolution institution and administrative (bipartid)/civil measures and legal sanctions against employers who violate workers' rights as a result of layoffs, namely criminal and administrative sanctions. Article 189 Criminal sanctions of imprisonment, confinement and/or fines do not eliminate the obligation of employers to pay rights and/or compensation to workers or workers/laborers and Article 190 paragraph (2) namely administrative sanctions, namely warnings, written warnings, restrictions on activities business, freezing of business activities, cancellation of approval, cancellation of registration, temporary suspension of part or all of the means of production, up to revocation of permits.

Keywords

legal protection; termination of employment; workers' rights

INTRODUCTION

Employment agreement according to Law Number 13 of 2003 Article 1 Number 14 is an agreement between the worker and the employer or employer which contains the terms of employment. The rights and obligations of both parties, namely the rights and obligations of workers as well as the rights and obligations of entrepreneurs (Hamid, 2021).

Work agreement is an agreement between a worker and an employer, which agreement is marked by the characteristics of the existence of a certain wage or salary that was agreed upon and the existence of an elevated relationship (Dutch "dierstverhanding"), namely a relationship based on which one party (employer) has the right to give orders that must be obeyed by other parties (workers) (Subekti, 2014).

Work agreements, which in Dutch are often referred to as arbeidsovereenkoms, can be interpreted in several ways (Rivera, 2017). This definition is stated in Article 1601a of the Civil Code (KUH Perdata). That is "employment agreement is an agreement in which one party, the worker, binds himself to be under the orders of the other party, the employer for a certain time, to do work for a fee.

From this understanding it can indeed be said that between the owner of capital (employers) and the worker/ killer do have a relationship that is mutually dependent on one another, the worker/ laborer will get

a wage if he works according to the employer's orders and the employer will provide wages if the workers work according to his orders (Putra, 2017).

Employment agreements based on the understanding of Law Number 13 of 2003 concerning Manpower does not state the form of the agreement in writing or verbally, as well as regarding the time period to be determined or not as previously stipulated in Law Number 25 of 1997 concerning Manpower (Khoe, 2013). The work agreement does not require a specific form.

Law No. 13 of 2003 has been adapted to the development of reforms, especially those concerning the right to associate/organize, settlement of industrial disputes. In this manpower law the terms laborer and employer are no longer found, but have been replaced by the terms worker and entrepreneur. In Article 1 (paragraph 1) of Law No. 13 of 2003 concerning Manpower what is meant by employment is Employment is all matters relating to manpower before, during and after the working period (Article 1 Law No. 13 of 2003 concerning Manpower, page 294). Based on this definition of employment, it can be formulated that the meaning of Labor Law is all legal regulations relating to labor both before work, during or during work relations, and after work relations. only with regard to the legal relationship between workers and employers in work relations only.

It can be done verbally, with a letter of appointment by the entrepreneur or in writing, namely a letter of agreement signed by both parties. The law only stipulates that if the agreement is made in writing, the cost of letters and other additional costs must be borne by the entrepreneur. Moreover, agreements made orally, even written agreements are usually held very briefly, do not contain all the rights and obligations of both parties. Based on the research background above, the authors formulate several problems as follows; (1) what are the legal remedies that can be taken by workers who have experienced layoffs (termination of employment) due to non-fulfillment of their rights by employers based on Law Number 13 of 2003 concerning Manpower, and (2) what are the legal sanctions against employers who violate workers' rights based on Law Number 13 of 2003 concerning Manpower.

METHODS

The research method in this thesis uses normative research methods or also called library research or document studies (laws and regulations), which are aimed at approaching the principles or principles of applicable law by proving the articles. According to the opinion of Soerjono Soekanto'. descriptive research intended to provide researched data, which means reinforcing hypotheses that can help old theories or in the framework of developing new theories (Soekanto, 2010). Data source is the subject from which the data can be obtained, in this case the data source is divided into three sources, namely:

1. Primary legal materials, namely binding legal materials in the form of statutory regulations in the field of agreements.
2. Secondary legal materials, namely legal materials that provide an explanation of primary legal materials, namely the work of legal experts in the form of books, opinions of scholars related to this research (Hanitjo, 1988).
3. tertiary legal materials, namely materials that provide instructions and explanations of primary and secondary legal materials in the form of legal dictionaries, legal journals, encyclopedias, legal magazines and so on (Soekanto, 2010).

Sewhereas data processing techniques are carried out by processing data obtained from the study of laws and regulations and then linked to the problems that have been formulated.

RESULTS

A. Legal Remedies for Workers Who Have Been Termination of Employment (PHK) Are Not Fulfilled by Employers According to Number 13 of 2003 concerning Manpower

Employment is very complex and varied, due to the fact that the working relationship between employers/employers and workers/ laborers does not always work in harmony. Labor issues contain economic, social welfare, and socio-political dimensions (Sutedi, 2009). One of the most common labor problems to date is termination of employment or layoffs. According to Law no. 13 of 2003 concerning Manpower Article 1 point 25 explains that "Termination of Employment is the termination of an

employment relationship because of a certain matter which results in the end of the rights and obligations between the worker/laborer and the entrepreneur" (Turangan, 2016).

According to Lalu Husni, layoffs are an event that is not expected to occur, especially among workers/workers because with layoffs the worker/worker concerned will lose his livelihood to support himself and his family, therefore all parties involved in industrial relations, both employers, workers/labourers, or the government, with all efforts must try to avoid termination of employment (Husni, 2010).

In Porigin 1 point 25 Law Number 13 of 2003 concerning Manpower, states that: "Termination of employment is termination of employment because of a certain matter which results in the end of the rights and obligations between the worker/worker and the entrepreneur". Termination of employment for the workers/ labourers will have a psychological, economic, financial impact (Zainal, 2010).

According to Law no. 13 of 2003 Manpower which regulate s Termination of Employment (PHK) in Article 164 paragraph one (3) states that Entrepreneurs can terminate employment relations with workers/laborers due to: the company closes not because it has suffered losses for 2 (two) consecutive years or not due to force majeure but the company has implemented efficiency, provided that workers/labor are entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2) , compensation for tenure of 1 (one) time under the provisions of Article 156 paragraph (3) and compensation for rights according to the provisions of Article 156 paragraph (4) arrangements for workers who experience termination unilaterally should not be carried out unilaterally and arbitrarily, but dismissals can only be carried out for certain reasons after efforts have been made that layoffs do not need to occur.

A form of legal protection for workers in Indonesia who have experienced termination of employment has been reflected in Law no. 13 of 2003 concerning Employment in Article 164 paragraph (1) which regulates legal protection for workers who are given the right to compensation, severance pay, and pensions (Article 164 Paragraph 1 Law no. 13 of 2003).

From the description above, if the employer does not fulfill the obligations towards the worker when he is terminated as stated in Chapter 12 of the Manpower Act concerning layoffs, which is specifically explained in Article 164 paragraphs 1, 2 and 3, the worker can file legal remedies as stated in Article 171 Workers/laborers who experience termination of employment without the establishment of an authorized industrial relations dispute resolution institution as referred to in Article 158 paragraph (1), Article 160 paragraph (3), and Article 162, and the worker/laborer concerned cannot accept the termination of employment mentioned above, the worker/laborer can file a lawsuit with the industrial relations dispute settlement institution within a maximum period of 1 (one) year from the date the employment relationship was terminated.

The institution for the settlement of industrial relations disputes has not yet been formed, if it turns out that workers do not get their rights, based on the provisions of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPI), the institution referred to is the Industrial Relations Court, then administrative or civil remedies can be carried out (Wijayanti, 2009).

Legal remedies through administration, resolution can be through bipartite efforts made between workers and employers as parties bound in an employment relationship. If the negotiation reaches an agreement, then the result of the agreement has an agreement, so you can ask for approval from the Local Manpower Office.

In addition, civil legal remedies can be taken by workers if the employer's decision to lay off employees due to efficiency cannot be justified. In the sense that no initial steps have been taken to avoid efficiency in the number of workers (Wahyuono & Wahjuningati, 2022). Civilly, workers can file a claim for compensation to the District Court based on article 1365 of the Civil Code, namely: "Any unlawful act that causes harm to another person, obliges the person who because of the mistake to issue the loss, compensate for the loss". Since the existence of Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (UUPPHI) (Wijayanti, 2009).

1. Bipartite

If a dispute has not been submitted to a dispute resolution institution, every dispute must be resolved in a bipartite manner, namely deliberation between workers and employers. Based on the provisions of Article 1 point 10 UUPPHI, bipartite negotiations are negotiations between workers/laborers or trade unions/ labor unions and employers to resolve industrial relations disputes. Bipartite efforts are regulated in Articles 3 to 7 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

2. Mediation

Based on the provisions of Article 1 number 11 UUPPHI, industrial relations mediation, hereinafter referred to as mediation, is the settlement of rights, disputes over interests, disputes over interests, disputes over termination of employment. and disputes between trade unions/labor unions within one company only through deliberations mediated by one or more neutral mediators. Mediation efforts are regulated in Article 8 to Article 16 of Law Number 2 of 2004. Concerning the Settlement of Industrial Relations Disputes

3. Conciliation

Based on the provisions of Article 1 point 13 of Law Number 2 of 2004, industrial relations conciliation, hereinafter referred to as conciliation, is the settlement of disputes over interests, disputes over termination of employment or disputes between trade unions/labor unions only within one company through deliberations mediated by one or more conciliators. Conciliation is regulated in articles 17 to 28 concerning the Settlement of Industrial Relations Disputes

4. Arbitration

Authorized institution to be an arbiter in disputes of interests, disputes between trade unions. The one who is in charge of being a referee is an arbiter. These arbitrators may be selected by the disputing parties from a list of arbitrators determined by the minister. Pursuant to the provisions of Article 1 point 15 of Law Number 2 of 2004, industrial relations arbitration, hereinafter referred to as arbitration, is the settlement of a dispute over interests, and disputes between trade unions/labor unions only within one company, outside the industrial relations court through a written agreement of the parties concerned. disputing to submit dispute resolution to an arbitrator whose decision is binding on the parties and is final. Arbitration is regulated in Part 4 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes in articles 29 to 88.

5. Industrial Relations Court (PHI)

The industrial relations court is a special court that is within the general court environment, which is formed at the District Court and the Supreme Court. The absolute authority or absolute competence of the Industrial Relations Court is stated in Article 56 of the PPHI Law, namely: The Industrial Relations Court has the duty and authority to examine and decide:

- a. At the first level regarding rights disputes
- b. At the first and last levels regarding disputes of interest
- c. At the first level regarding disputes over termination of employment
- d. At the first and last level regarding disputes between trade unions/labor unions within one company (Husni, 2012).

The Industrial Relations Court has the authority to examine and decide on rights disputes and layoff disputes at the first level and decide on disputes between trade unions in a company at the first and last levels (Sitompul, 2021).

B. Legal Actions Against Entrepreneurs Violating Workers' Rights

The provisions of Labor Law in Indonesia are contained in Law Number 13 of 2003 concerning Manpower. Matters regulated in labor law are all matters related to labor before, during and after work. The purpose of forming this labor law is:

1. Empowering and utilizing manpower optimally and humanely;
2. Merealize equal distribution of employment opportunities and supply of manpower in accordance with the needs of national and regional development;
3. Meprovide protection to workers in realizing prosperity;

4. Improving the welfare of workers and their families.

Labor law also regulates the relationship between workers and employers which occurs because of a work agreement between employers and workers/laborers. In carrying out company activities, employers have an obligation to fulfill the rights of every worker. These workers' rights include the right to receive equal treatment without discrimination on any basis, the right to develop work competence, the right to worship according to their religion and beliefs, the right to get anything or income that is in accordance with human dignity and worth, the right to get protection, welfare, health and safety at work.

Therefore, employers are reminded to be aware of the existence of rights and obligations arising from work agreements between employers and workers/labor which have been regulated in Law Number 13 of 2003 concerning Manpower regarding sanctions that can be imposed in the case of employers' non-compliance with rights and obligations. called a form of legal protection for workers who experience termination of employment has been reflected in Law no. 13 of 2003 concerning Employment in Article 164 paragraph (1) which regulates legal protection for workers by providing the right to compensation, severance pay, and pensions or what is called the workers' rights for the layoff. Basically, there are and types of sanctions contained in Law Number 13 of 2003 concerning Manpower, namely in the form of criminal and administrative sanctions as regulated in Chapter XVI Articles 183 to 190.

a. Criminal Sanctions

Criminal sanctions can be imposed on employers who commit violations against workers as stipulated in Law Number 13 of 2003 concerning Manpower which varies according to the article that was violated. These criminal sanctions are mentioned in articles 183 to 189, as follows.

Article 183

- (1) Anyone who violates the provisions referred to in Article 74 shall be subject to sanctions imprisonment for a minimum of 2 (two) years and a maximum of 5 (five) years and/or a fine of a minimum of IDR 200,000,000.00 (two hundred million rupiah) and a maximum of IDR 500,000,000.00 (five hundred million rupiah).
- (2) The crime referred to in paragraph (1) is a criminal act.

Article 184

- (1) Whoever violates the provisions referred to in Article 167 paragraph (5), is subject to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp. 100,000,000.00 (one hundred million rupiahs) and a maximum of IDR 500,000,000.00 (five hundred million rupiah).
- (2) The crime referred to in paragraph (1) is a criminal act.

Chapter 185

- (1) Whoever violates the provisions referred to in Article 42 paragraph (1) and paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 90 paragraph (1), Article 143, and Article 160 paragraph (4) and paragraph (7), shall be subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of a minimum of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000. 000.00 (four hundred million rupiah).
- (2) The crime referred to in paragraph (1) is a criminal act.

Article 186

- (1) Whoever violates the provisions referred to in Article 35 paragraph (2) and paragraph (3), Article 93 paragraph (2), Article 137 and Article 138 paragraph (1), is subject to imprisonment for a minimum of 1 (one) month and a maximum 4 (four) years and/or a fine of at least IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 400,000,000.00 (four hundred million rupiah).
- (2) The crime referred to in paragraph (1) is a criminal offense.

Article 187

- (1) Whoever violates the provisions referred to in Article 37 paragraph (2), Article 44 paragraph (1), Article 45 paragraph (1), Article 67 paragraph (1), Article 71 paragraph (2), Article 76, Article 78 paragraph (2), Article 79 paragraph (1), and paragraph (2), Article 85 paragraph (3), and Article 144, are subject to criminal sanctions with imprisonment for a minimum of 1 (one) month and a maximum of 12 (twelve) months and/or a fine a minimum of IDR 10,000,000.00 (ten million rupiah) and a maximum of IDR 100,000,000.00 (one hundred million rupiah).
- (2) The crime referred to in paragraph (1) is a criminal offense.

Article 188

- (1) Whoever violates the provisions referred to in Article 14 paragraph (2), Article 38 paragraph (2), Article 63 paragraph (1), Article 78 paragraph (1), Article 108 paragraph (1), Article 111 paragraph (3), Article 114, and Article 148, shall be subject to criminal sanctions of a minimum fine of Rp. 5,000,000.00 (five million rupiahs) and a maximum of Rp. 50,000,000.00 (fifty million rupiahs).
- (2) The crime referred to in paragraph (1) is a criminal offense.

Article 189

Criminal sanctions of imprisonment, confinement and/or fines do not eliminate the obligation of employers to pay rights and/or compensation to workers or workers/laborers.

From the description above regarding criminal sanctions against employers who violate work rights against termination of employment as stated in porigin 164 paragraph (1) Law No. 13 of 2003 concerning Manpower as follows which regulates legal protection for workers by providing the right to compensation, severance pay, and pensions or what is called the rights of workers for layoffs, namely criminal sanctions, namely: Article 189 Law No. 13 of 2003 concerning Manpower namely Penalties of imprisonment, confinement and/or fines do not eliminate the employer's obligation to pay rights and/or compensation to workers or workers/labor (Article 189 of Law No.13 of 2003 concerning Manpower).

b. Administrative Action

This administrative action can take the form of a warning, written warning, limitation of business activities, suspension of business activities, cancellation of approval, cancellation of registration, temporary suspension of part or all of the means of production up to revocation of jury. We can see further in Article 190 of Law Number 13 of 2003 concerning Manpower which states:

- (1) Minister or appointed official imposes administrative sanction for violation of provisions as stipulated in Article 5, Article 6. Article 15, Article 25, Article 38 paragraph (2), Article 45 paragraph (1), Article 47 paragraph (1) Article 48, Article 87, Article 106, Article 126 paragraph (3), and Article 160 paragraph (1) and paragraph (2) of this Law and its implementing regulations.
- (2) Administrative sanctions as referred to in paragraph (1) are in the form of:
 - a) reprimand;
 - b) written warning;
 - c) restrictions on business activities;
 - d) Suspension of business;
 - e) cancellation of approval;
 - f) cancellation of registration;
 - g) temporary suspension of part or all of the means of production;
 - h) license revocation.
- (3) Provisions regarding administrative sanctions as referred to in paragraph (1) and paragraph (2) shall be further regulated by the Minister.

Provisions regarding administrative sanctions as referred to in paragraph (1) and paragraph (2) are further regulated by the Minister. The explanation regarding the prohibition in Article 190 that will be subject to administrative sanctions above is:

- 1) Discrimination in obtaining employment (Article 5)
- 2) Discrimination at work (Article 6)
- 3) Not fulfilling the requirements for organizing job training (Article 15)
- 4) Apprenticeship outside the territory of Indonesia is not according to the rules (Article 25)
- 5) The collection of labor placement fees is not in accordance with the regulations (Article 38) Paragraph (2)
- 6) Employment of foreign workers is not in accordance with the regulations (Article 45 Paragraph (1))
- 7) Employer does not pay compensation to foreign workers (Article 47 Paragraph (1))
- 8) Employers do not repatriate foreign workers after the working period ends (Article 48)
- 9) The company does not implement an occupational safety and health management system that is integrated with the company's management system (Article 87)
- 10) The company does not form a bipartite cooperation institution according to the regulations (Article 106)
- 11) Entrepreneurs do not print and distribute the collective labor agreement text to each worker at the expense of the company (Article 126 Paragraph (3))
- 12) Employers do not aid dependents of workers who are arrested not on the basis of employer complaints (Article 160 Paragraphs (1) and (2)).

CONCLUSION

Workers can file legal remedies if the employer does not provide their rights as a result of layoffs mentioned in Article 171 of Law no. 13 of 2003 concerning Manpower namely workers/laborers who experience termination of employment without the establishment of an authorized industrial relations dispute resolution institution as referred to in Article 158 paragraph (1), Article 160 paragraph (3), and Article 162, and the worker/laborer concerned cannot accept the termination of employment mentioned above, the worker/laborer can file a lawsuit with the industrial relations dispute settlement institution (administrative/civil) within a period of 1 (one) year from the date the employment relationship was terminated.

Legal sanctions against employers who violate workers' rights as a result of layoffs based on Law Number 13 of 2003 concerning Manpower, namely criminal and administrative sanctions. Article 189 Criminal sanctions of imprisonment, confinement and/or fines do not eliminate the obligation of employers to pay rights and/or compensation to workers or workers/laborers and Article 190 paragraph (2) namely administrative sanctions namely reprimands, written warnings, restrictions on activities business, freezing of business activities, cancellation of approval, cancellation of registration, temporary suspension of part or all of the means of production, up to revocation of permits.

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