

Dispute on Termination of Employment as a Impact of Company Mergers and Closures

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Abstract

This research aims to examine industrial relations disputes, especially employment termination disputes that occur as a result of mergers, consolidations, takeovers or company closures. This research method is legal research with a conceptual approach and a case approach. Collecting materials through literature study methods, with primary and secondary legal materials. Next, the legal materials are studied and analyzed using the approaches used in this research to answer the legal issues in this research. The results of this research show: The Employment Law is a legal product that was formed to protect workers. Legal protection for workers who experience termination of employment due to mergers, consolidations and takeovers of companies is regulated in the provisions of Article 163 of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment, then regarding termination of employment due to company closure, legal protection for workers is regulated in the provisions of Article 164 of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment. Termination of employment relations that occurs to workers due to mergers, consolidations, takeovers or company closures can give rise to industrial relations disputes, namely employment termination disputes.

Keywords: Termination of Employment, Merger, Company Closure

A. Introduction

In carrying out business competition, companies must be supported by an adequate workforce that is skilled or appropriate in their field. Companies that are basically founded to seek profits and/or profit, the company deems it necessary to employ laborers or workers to achieve this goal. Labor is an important component in the running of a company because the workforce is the driving wheel of a company which plays an important role in its activities, both producing goods and providing services.

These workers play a very important role in improving and advancing the company in terms of company performance and productivity. Due to the increase or progress of the company in terms of company performance and productivity, it also indirectly contributes to national development. Regarding the contribution made by these workers, it is necessary to provide protection for workers, especially in the form of labor law regulations.

Whereas in the provisions of the 1945 Constitution of the Republic of Indonesia, Article 28

D paragraph (2) states that: "every person has the right to work and receive fair and decent compensation and treatment in employment relationships." Regarding the statement of Article 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it means that every person has the right to work and receive compensation in the form of wages for the work they do, and does not experience discrimination in any form in their work relationship. .

Basically, it is very important for laws in the field of employment to be formed to protect the rights of workers or laborers who work for a company because indirectly, these workers or laborers have contributed to national development through their performance in a company.

Workers as the driving wheels of the company play a very important role in achieving the goals of establishing a company, namely in seeking profits and/or profits. Companies are essentially formed to seek maximum profits and/or profits, but in these activities it is inevitable that losses will occur in the company so that in order to maintain the economic stability of their companies, entrepreneurs carry out mergers, consolidations, takeovers or company closures. In the company's actions in merging, consolidating, taking over or closing the company, entrepreneurs are obliged to pay attention to the interests of parties related to the company such as creditors and business partners, shareholders, the public, and what is more important to pay attention to is the workers in the company.

B. Research methods

The research method used is a legal research method which aims to find solutions to legal issues. According to Peter Mahmud Marzuki, "Legal Research is a know-how activity in legal science, not just know-about. As a know-how activity, legal research is carried out to solve the legal issues at hand

1. Collection Techniques

Procedures for Collecting Legal Materials Legal materials, both primary and secondary, will be inventoried and identified for further use in analyzing problems related to this research.

2. Data Processing Analysis

In the Processing and Analysis of Legal Materials, the series of processing stages begins with inventory and identification of relevant legal material sources (primary and secondary). The next step is to systematize all existing legal materials. This systematization process is also applied to legal principles, theories, concepts, doctrine, and other reference materials. This series of stages is intended to facilitate the assessment of research problems. Through this series of stages, it is hoped that we will be able to provide recommendations related to labor in Indonesia.

C. Results and Discussion

1. Settlement of Employment Termination Disputes outside the Industrial Relations Court

Settlement of disputes in industrial relations matters, especially regarding employment termination disputes, is sought through settlement outside the court (non-litigation). Industrial relations disputes in employment termination disputes, for efforts to resolve disputes outside the industrial relations court (non-litigation) can be resolved through bipartite, mediation and conciliation. Settlement through arbitration cannot be used as an effort to resolve employment termination because as stated in the provisions of Article 1 paragraph 15 of Law of the Republic of Indonesia Number 2 of 2004, industrial relations disputes that can be resolved through arbitration only include disputes of interest, and disputes between trade unions/ labor unions are only in one company, so employment termination disputes are not included in the scope of

arbitration cases.

2. Bipartite settlement

Bipartite settlement is the initial stage carried out by workers and employers in the event of industrial relations disputes, especially disputes regarding termination of employment as a result of mergers, consolidations, takeovers and company closures. Bipartite settlement in the literature regarding Alternative Dispute Resolution (ADR) is referred to as negotiated settlement. The word negotiation comes from the English language negotiation which means negotiation by deliberation, while what is meant by bipartite negotiation is negotiation between workers/laborers or trade unions and employers to resolve industrial relations disputes.

With regard to negotiation as an alternative dispute resolution, in the book business law, Principles, Cases and Policy by Mark E. Roszkowski it is said that: "Negotiation is a process by which two parties, with differing demands reach an agreement generally through compromise and concession. The two disputing parties in this negotiation effort each have different demands, so that through this negotiation process the parties can compromise with each other to reach an agreement on the problems that occur.

In industrial relations dispute resolution, the negotiation process is known as a bipartite settlement process. This bipartite settlement is a term specifically for resolving industrial relations problems where the components of the company are bound by the employment relationship, namely the employer, workers and labor unions. Settlement by bipartite negotiations as intended in the provisions of Article 3 paragraph (1) of Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

3. Settlement Through Mediation

Mediation is an alternative form of dispute resolution in the provisions of Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Etymologically, the term mediation comes from Latin, *mediare*, which means being in the middle. This meaning refers to the role played by a third party as a mediator in carrying out its duties to mediate and resolve disputes between the parties. Being in the middle also means that the mediator must be in a neutral and impartial position in resolving the dispute. 36 Explanation of Mediation in the Big Indonesian Dictionary, the word mediation is defined as the process of involving a third party in resolving a dispute as an advisor.

The explanation of mediation from a linguistic perspective (etymology) emphasizes the existence of a third party who bridges the disputing parties to resolve their dispute. 38 Based on the explanation of mediation, mediation is an alternative form of dispute resolution carried out by disputing parties by involving a neutral third party. or not taking sides with one of the parties to mediate disputes that occur between the parties.

The requirement for third parties to be included in the mediation process is to be neutral or impartial. This requirement is considered to include an independent attitude so that its meaning includes:

- a. Be free and independent from anyone's influence,
- b. Absolutely free from coercion and direction from any party.

Meanwhile, the condition of impartiality means:

- a. Must be truly impartial, must not be partial to one party,
- b. Must not be discriminatory, but must provide equal treatment to all parties

The statements and confessions of the parties in the mediation process cannot be used as evidence in the trial process of the case in question or other cases, because in the mediation process it is not to prove legal facts, to find out who is right and who is wrong, but what the parties want

to find is a way that would allow them to formulate an agreement.

4. Settlement through conciliation

The definition of conciliation as in the Big Indonesian Dictionary is an attempt to reconcile the desires of disputing parties to reach agreement and resolve the dispute. According to Oppenheim, conciliation is: "A process of resolving a dispute by handing it over to a commission of people whose job is to describe/explain facts and (usually after hearing the parties and trying to get them to reach an agreement), making proposals for a solution but the decision is not binding."

Efforts to resolve industrial relations problems through conciliation are efforts taken by the parties involved in industrial relations disputes, especially termination of employment relations due to mergers, consolidations, takeovers and company closures, after bipartite efforts are declared to have failed. Conciliation as regulated in the provisions of Article 1 paragraph (13) of Law of the Republic of Indonesia Number 2 of 2004, states that: Industrial Relations Conciliation, hereinafter referred to as conciliation, is the resolution of interest disputes, employment termination disputes or disputes between workers/labor unions only within one company through deliberations mediated by one or more neutral conciliators.

Conciliation based on the provisions of the Law is specifically an out-of-court (non-litigation) effort specifically for industrial relations disputes which include interest disputes, employment termination disputes or disputes between workers/labor unions in just one company. Based on the definition of conciliation, rights disputes cannot be submitted for conciliation based on the provisions of the Law. Conciliation efforts are intended so that the disputing parties can discuss to reach a consensus regarding the appropriate solution to the dispute between the parties so that the parties can make peace without any of the parties feeling disadvantaged.

If during the conciliation process an agreement cannot be reached between the parties, then the matter is as follows:

- a. the conciliator issues written recommendations
- b. The written recommendation as referred to in letter a must be submitted to the parties no later than 10 (ten) working days after the first conciliation hearing.
- c. The parties must have provided a written response to the conciliator agreeing or rejecting the written recommendation no later than 10 (ten) working days after receiving the written recommendation.
- d. parties who do not provide their opinions as intended in letter c are deemed to have rejected the written recommendation;
- e. In the event that the parties agree to the written recommendation as referred to in letter a, then within 3 (three) working days after the written recommendation is approved, the conciliator must have completed assisting the parties in making a Collective Agreement to then be registered at the Industrial Relations Court at the District Court. in the region the parties enter into a Collective Agreement to obtain a deed of proof of registration.

5. Settlement of Employment Termination Disputes through the Industrial Relations Court

The Industrial Relations Court in the provisions of Article 1 paragraph (17) of Law of the Republic of Indonesia Number 2 of 2004 states that: "The Industrial Relations Court is a special court established within the district court which has the authority to examine, adjudicate and make decisions on industrial relations disputes." Based on this, the Industrial Relations Court is an environment within the District Court which is specifically for resolving disputes between parties in industrial relations disputes, so that disputes that do not fall within the scope of industrial relations disputes cannot be submitted through the Industrial Relations Court.

Industrial relations disputes are civil disputes of a special nature between the parties, so that the procedural law that applies in the Industrial Relations Court is the Civil Procedure Law that applies in the General Courts, except as specifically regulated in Law of the Republic of Indonesia

Number 2 of 2004 concerning Dispute Settlement Industrial relations. Based on the provisions of Article 56 of Law of the Republic of Indonesia Number 2 of 2004, the Industrial Relations Court has the duty and authority to examine and decide, namely:

- a. at the first level regarding rights disputes
- b. at the first and final levels regarding disputes of interest
- c. at the first level regarding employment termination disputes
- d. at the first and last levels regarding disputes between worker/labor unions within one company

Settlement of industrial relations disputes, especially employment termination disputes, through the Industrial Relations Court at the District Court and at the cassation level through the Supreme Court of the Republic of Indonesia, this is different from resolving disputes using non-litigation measures. While non-litigation efforts emphasize the principle of peace, namely that the disputing parties can find a mutually beneficial solution to the dispute that occurs, however, in the litigation process it is carried out to prove which party is right and which party is wrong, so that the decision that has been issued is final and has permanent legal force, the defeated party is obliged to comply with the contents of the Decision voluntarily.

D. Conclusion Suggestion

1. Conclusion

Termination of employment as a result of a merger, consolidation or takeover of a company in the event that the worker is unwilling to continue the employment relationship or the employer is unwilling to continue the employment relationship with the employee, this can be resolved using the provisions of Article 163 of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment . In the provisions of Article 163, there are differences in the amount of compensation received by workers as a result of termination of employment as in paragraph (1) and paragraph (2). This provision is intended to ensure that employers ensure that employment relations are not terminated due to mergers, consolidations and takeovers of companies because the compensation rights received by workers is greater than paragraph (1), namely 2 (two) times the severance pay. Termination of employment can also occur due to company closure, so to resolve the issue of termination of employment due to company closure, you can use the provisions of Article 164 of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment.

Termination of employment relations that occurs between employers and workers can give rise to industrial relations disputes, especially employment termination disputes. For employment termination disputes that occur, workers can take legal action in the form of non-litigation and litigation legal action. Non-litigation legal remedies that workers can take in the event of termination of employment include efforts to resolve through bipartite, mediation and conciliation.

Arbitration legal remedies cannot be used in resolving these disputes because employment termination disputes are not included in the scope of disputes that can be resolved through arbitration settlement as intended in the provisions of Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. If non-litigation legal efforts have been taken and these efforts fail to resolve the dispute, the worker can take litigation by filing a lawsuit through the Industrial Relations Court at the local District Court. Disputes regarding the termination of employment relations that have been resolved through the Industrial Relations Court, the decision issued can still be made by cassation through the Supreme Court of the Republic of Indonesia.

2. Suggestion

Law of the Republic of Indonesia Number 13 of 2003 concerning employment is a legal product that was created to protect workers. This law has had many regulations revised through

material review carried out through the Constitutional Court of the Republic of Indonesia. As a product of this law, there are still unclear regulations, especially regarding the regulation of Article 163 and Article 164 of Law Number 13 of 2003, so there are legal loopholes that do not protect the interests of workers.

This Employment Law should be revised to better legally protect the interests of workers. In connection with the application of the provisions in Law Number 13 of 2003, it is necessary to have a specific legal theory regarding employment, so that this legal theory can be expected to provide answers to the lack of clarity in several provisions contained in Law Number 13 of 2003 concerning Employment.

Reference

- Abdul Khakim. *Legal Aspects of Industrial Relations Dispute Resolution*. Second. Bandung: Citra Aditya Bakti, 2015.
- Abdul Khakim, *Basics of Indonesian Employment Law 4th Printing Revised Edition*, (Bandung: PT Citra Aditya Bakti, 2014
- Agus Suprayogi. "Completion of Termination of Employment Relations of Company Directors Who Previously Had Worker Status at the Same Company," 2020.
- Almaududi. *Employment Law Employment Relations*. Jakarta: Kaifa Publishing, 2017.
- Aloysius Uwiyono. *Principles of Labor Law*. Jakarta: PT. Raja Grafindo Persada, 2015.
- Almaududi, *Employment Law, Employment Relations in Theory and Practice*, Kaifa, Jakarta. 2022,
- Aly, Bustoro, *Republic of Indonesia Employment Law Book*, Ilmu Publishers, Jakarta. 2018,
- Aries, Harianto, 2016, *Employment Law The Meaning of Morality in Employment Agreements*, Lakbang Pressindo, Jakarta.
- Ari Hermawan, *Settlement of Industrial Relations Disputes*, (Yogyakarta: UII Press Yogyakarta, 2019.
- Anonymous. *Collection of Employment Laws and Regulations*. Jakarta, 2014.
- Asri Wijayanti. *Reconstruction of Employment Law*. Surabaya: PT. Revka Petra Media, 2016.
- Fahmi Idris. *Dynamics of Industrial Relations*. Yogyakarta: Deepublish, 2018.
- Luxena Gabriella, S. Atalim, *Analysis of Employment Termination for Reasons of Disharmony (Case Study of Industrial Relations Court Decision Number 121/Pdt.SusPhi/2018/Pn.Bdg Juncto Supreme Court Decision Number 1942 K/Pdt.SusPhi/2018)*, Adigama Law Journal Vol. 2 No. 2, 2019.
- Muhammad Hanif Dakhiri. *Dynamics of Industrial Relations in the Era of Industrial Revolution 4.0*. Yogyakarta: Q Media, 2019.
- Munir, Fuady, "Legal Research Methods, Theoretical and Conceptual Approaches", Depok, PT. Raja Grafindo Persada, 2018.
- Noval, Dr. Sayid Mohammad Riffqi. *Employment Law*. Bandung: PT. Refika Aditama, 2017.
- Sayid Mohammad Rifqi Noval, *Employment Law: The Essence of the Ideal of Justice in the Employment System*, (Bandung: Refika Aditama, 2017.
- Sherlina. "Legal Study of Termination of Employment Relations by Employers Due to Worker Absenteeism (Decision Study No. 128 K/PDT.SUSPHI/2014)," 2018.
- Sunggono, Bambang, *Legal Research Methods*, PT. Rajagrafindo Persada, Jakarta, 2013.
- Suratman, *Introduction to Indonesian Employment Law*, Rajawali Press, Jakarta. 2019,
- Taufan, Sonny, *Indonesian Employment, Rasi Terbit*, Jakarta. 2016,
- Tersiana, Andra, *Research Methods*, Andrat, Yogyakarta, 2018.
- Trijono, Rahmat, *Introduction to Employment Law*, Djamtan, Jakarta. 2017,
- Vienna Isvarin Fauziah. "The Position of Contracts for Outsourced Workers Regarding Outsourced Workers Without a Contract According to Law No. 13 of 2003 concerning Employment (Case Study of Decision No. 1438 K/PDT.SUS-PHI/2017)," 2018.
- Yuliana Yuli W, Sulastri, Dwi Aryanti R, *Implementation of Employment Laws in Employment*

Agreements Between Companies and Workers in Limited Liability Companies (PT),
Juridical Journal Vol. 5 No. 2, 2018.