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Liability of Companies That Do Not Pay Employees' Rights After Termination of Employment

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Abstract

Every individual who lives generally needs money to live his life and to get these costs; everyone needs a job; every citizen has the right to a job and a proper livelihood for humans. Termination of Employment (PHK) is something that is very feared by employees; termination of Employment (PHK) is the end of the working relationship between workers/employees and employers or the end of the period specified in the employment contract due to disputes between workers/employees and employers. This study aims to determine the legal rules for companies that do not provide employee rights in terms of termination of employment and what legal remedies can be taken by employees who do not get their rights in terms of termination of employment; the method used in this research is normative juridical. The approach used is through legislation, cases, and conceptual data collection methods through document studies and qualitative data analysis. The result of this study is that in the event of termination of employment, employers are obliged to pay severance pay, long service pay, and compensation pay that should be received. Administrative sanctions received for companies that do not provide employee rights are in the form of written warnings, restrictions on business activities, temporary suspension of part or all of the means of production, and suspension of business activities. Employees can take several legal remedies to fight for their rights, namely bipartite efforts, mediation efforts, conciliation efforts, efforts in industrial relations courts, and cassation legal remedies.

1. Introduction

Human life has diverse needs in order to meet their needs and their survival for the future, and they are required to work either on their own or under the pressure of others. In order to earn these costs, everyone needs to work and be able to complete their work; based on the 1945 Constitution of the Republic of Indonesia, Article 27 (2) states that "Every citizen has the right to a job and a livelihood worthy of a human being"[1]. Termination of Employment (Pemutusan Hubungan Kerja - PHK) is the end of the employment relationship between the worker/employee and the employer or the end of the period specified in the employment contract due to a dispute between the worker/employee and the employer. Layoffs have led to increased poverty, crime rates, and deteriorating family finances, which are very compassionate [2].

Especially during the COVID-19 pandemic situation yesterday and the increasing number of COVID-19 cases, the company is very detrimental to employees and affects the company's labor productivity. According to news sources, the number of layoffs continued to increase from March 2020 to September 2021. On March 17, 2020, the government issued the Minister of Manpower Circular Number M/3/HK.04/III/2020 2020 concerning Labor Protection and Business Continuity in the Context of COVID-19 Prevention and Control. SE Menaker 3/2020 was issued in connection with the spread of COVID-19 in Indonesian territory and based on the official statement of the World Health Organization (WHO) that the COVID-19 virus is a global pandemic.

The company can carry out layoffs following the COVID-19 pandemic, and this is due to the enactment of Article 164 Number 1 of Law Number 13 of 2003 on Manpower, which states that "the employer can terminate employment with workers or laborers if the company stops because business activities for 2

years experience losses or force majeure, provided that workers or employees have the right to "severance pay" in accordance with the provisions of Article 156 paragraph 2 once, the right to "FMD" is 1 time the amount stipulated in Article 156 paragraph 3 and compensation money in accordance with the provisions in Article 156 paragraph 4" [3].

In the case of termination of employment, what legal rules can be used for companies that do not provide rights for employees who are terminated in labor law, and what legal efforts can be made by employees who are terminated without obtaining their rights, this study aims to determine the legal rules for companies that do not provide employee rights. The benefits of this research are expected to provide insight and knowledge as well as understanding in the field of legal theory. They can contribute to the thoughts of readers, especially employees who feel disadvantaged by termination of employment. This research focuses on the system of giving rights to employees who are terminated by the company, which is included in the civil system.

2. Methodology

The research method used in this research is the normative juridical method. Several approaches are used in the research, namely the statutory approach (Statute approach). This approach examines all laws and regulations related to the legal issues being studied. Another approach is the case approach, which reviews cases related to the issue at hand. The existence of the approach aims to facilitate the author's obtaining information on the topic to be studied.

3. Results and Discussions

3.1. Legal Rules for Companies that Do Not Pay Employee Right after Termination of Employment

An agreement is a legal act based on an agreement to cause a legal effect [4]. The agreement, according to Article 1313 of the Civil Code, is "an act by which one or more people bind themselves to one or more people." The definition of a labor agreement can be seen in Article 1601 letter of the Civil Code, which reads: "labor agreement is an agreement by which one party, the worker, binds himself to be under the orders of the other party, the employer for a certain time, doing work by receiving wages." In this article, the relationship that occurs is the working relationship between the laborer and the employer; this occurs because of the employment agreement.

The article contains 3 main points, namely:

1. The existence of work performed by laborers.
2. wages are paid directly by the employer.
3. The laborer is in an unbalanced position (under the employer's command) [5].

A Specified Time Work Agreement is a form of work agreement made jointly by the employer to the worker/laborer for a temporary job. Workers who work under this type of employment agreement are usually called contract workers [6]. Government Regulation No. 35 Article 1 (10) "A Fixed-Term Work Agreement, hereinafter abbreviated as PKWT, is a work agreement between workers/laborers and employers to establish a working relationship for a certain period or a certain job."

For employers who use this specific time work agreement (PKWT) arrangement, employers are given the opportunity to apply it for work that is limited in time so that employers can also avoid the obligation to appoint permanent workers/laborers for work that is limited in time. According to the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number 100/MEN/VI/2004, it states: Work agreements for a certain period (PKWT) as stipulated in Article 56 paragraph (2) of Law Number 13 Year 2003 concerning Manpower are only based on a period or the completion of a certain job and cannot be made for permanent work [7]. In addition, work agreements for a certain time can only be made for certain jobs which, according to the type and nature or activities of the work, will be completed within a certain time.

However, a specific time work agreement cannot be made for permanent work. According to Article 59 (3) of Law No. 6 of 2023, "A Specific Time Work Agreement that does not fulfill the provisions as

referred to in paragraph 1 and paragraph 2 by law becomes an indefinite time work agreement (PKWTT)."
Law No. 6 of 2023 Article 56 paragraph 2: Specific time work agreements, as referred to in paragraph (1), are based on:

1. Period.
2. Completion of a particular job.

Government Regulation No. 35 of 2021 Article 5 (1) (2): Non-permanent contracts based on a period, as referred to in Article 4 paragraph (1) letter a, are made for certain jobs, namely:

1. work that is expected to be completed within a short period.
2. seasonal work. Or
3. work related to new products, new activities, or additional products that are still being tested or explored.

Contract workers have rights due to termination of employment by the company during the contract period. If the company does not provide their rights as regulated by law. Termination of employment experienced by contract workers when the contract period is still ongoing by the Company unilaterally without clear reasons, workers must obtain legal protection. Also, the company is obliged to pay the rights of contract workers during the contract period until the contract period ends [8]. According to Law number 11 of 2020 Article 61A paragraph (1) concerning Job Creation, namely the Employer is obliged to provide compensation to workers/laborers if a certain time work agreement ends. Provisions regarding compensation money are regulated in Government Regulation No.35 of 2021 (Article 15). Employers are obliged to provide compensation money to workers/laborers whose work relations are based on PKWT; the provision of compensation money can also be carried out at the time of the expiration of PKWT. The compensation money, as referred to in paragraph (1), is given to Workers/Laborers who have a working period of at least 1 (one) month continuously. If the PKWT is extended, the compensation money is given at the completion of the PKWT period before the extension. For the PKWT extension period, the next compensation money is given after the extension of the PKWT period ends or is completed [9]. PP 35 of 2021, the amount of compensation is given in accordance with the following provisions:

1. PKWT for 12 (twelve) months continuously, given at 1 (one) month's wage.
2. PKWT for 1 (one) month or more but less than 12 (twelve) months, calculated proportionally with the calculation: length of service x 1 (one) month wage.
3. PKWT for more than 12 (twelve) months, calculated proportionally with the following calculation: length of service x 1 (one) month wage

An indefinite Time Work Agreement (PKWTT) is a work agreement between workers or laborers and employers to establish a permanent working relationship [10]. Indefinite Time Work Agreements (PKWTT) have no obligation to be made in writing and must be accompanied by a letter of appointment [11].

Based on the provisions of Article 1603 q paragraph (1) of the Civil Code, Article 1603 q paragraph (1) of the Civil Code "when the duration of the employment relationship is not determined, either in the agreement or the employer's regulations or in statutory regulations or also according to custom, the employment agreement is deemed to be held for an indefinite period" One of the characteristics of PKWTT is that it can require a probationary period of work which is a maximum of 3 (three) months. During the probationary period, employers are prohibited from paying wages below the applicable minimum wage under any pretext.

Based on the Job Creation Law, Article 56 in the Manpower Law is amended where the article adds 2 paragraphs, which in paragraph 4 will refer to PP No.35/2021. In essence, PKWTT is still based on the period or completion of a certain job. Still, in paragraph 3, it is stipulated that the period or completion of a certain job is determined based on the employment agreement, meaning that the parties must include this in the agreement so that there are no multiple interpretations in the employment agreement made between them [12].

Every worker has rights in the termination of his/her employment relationship, including workers with the status of an Indefinite Time Work Agreement. When a termination of employment (PHK) is carried out against an employee with an Indefinite Time Work Agreement (PKWTT) relationship, the employer is obliged to provide the employee's rights such as severance pay, long service pay (UPMK), compensation pay (UPH) that he/she should receive, Law Number 6 of 2023 and Government Regulation Number 35 of 2021 have regulated all three.

Severance pay is a right that must be obtained by workers who experience termination of employment. The calculation of severance pay is seen from the employee's tenure or when the employee first entered to work at a company and signed a work agreement. Suppose the company, from the beginning of the employee's entry, immediately gives an Indefinite Time Work Agreement. In that case, the employee is a permanent employee who is entitled to severance pay if the employment is terminated [13]. In terms of severance pay, the Law and Government Regulations have regulated the following provisions:

1. service period of less than 1 (one) year, 1 (one) month wage.
2. service period of 1 (one) year or more but less than 2 (two) years, 2 (two) months wages.
3. service period of 2 (two) years or more but less than 3 (three) years, 3 (three) months wages.
4. service period of 3 (three) years or more but less than 4 (four) years, 4 (four) months wages.
5. service period of 4 (four) years or more but less than 5 (five) years, 5 (five) months wages.
6. service period of 5 (five) years or more, but less than 6 (six) years, 6 (six) months wage.
7. service period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months wage.
8. service period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months wage.
9. service period of 8 (eight) years or more, 9 (nine) months wages.

Service fees, as referred to in Law Number 12 of 1964, are benefits paid by employers to their employees related to the employee's length of service. Meanwhile, the provisions for the provision of Long Service Award Money are regulated as given with the following provisions:

1. service period of 3 (three) years or more but less than 6 (six) years, 2 (two) months wages.
2. service period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months wages.
3. service period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months wages.
4. service period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months wages.
5. service period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months wages.
6. service period of 18 (eighteen) years or more but less than 21 (twenty-one) years, 7 (seven) months wages.
7. service period of 21 (twenty-one) years or more but less than 24 (twenty-four) years, 8 (eight) months wages.
8. service period of 24 (twenty-four) years or more, 10 (ten) months wages.

In the form of money, employers provide compensation to employees in the form of annual leave, long breaks, travel expenses to take employees to work, health care facilities, housing, and others. The provisions of the calculation of compensation that should be received include the following:

1. annual leave that has not been taken and has not been forfeited.
2. the cost or return fare for the Worker/Laborer and their family to the place where the Worker/Laborer was hired.
3. other matters stipulated in the Employment Agreement, Company Regulation, or Collective Labor Agreement.

There are still many companies that violate the laws and regulations that have been made, especially regarding the provision of Employee / Worker rights in the event of termination of employment, which the government has recommended and requires companies that have or want to terminate employment to provide compensation.

For this reason, the government makes regulations as a means of threatening companies/employers if they do not carry out their obligations to provide rights for employees affected by termination of employment, in Government Regulation Number 35 of 2021 Article 61 paragraph 1, namely "Employers

who violate the provisions of Article 15 paragraph (1), Article 17, Article 21 paragraph (1), Article 22, Article 29 paragraph (1) letters b and c, Article 53, and/or Article 59 are subject to administrative sanctions in the form of:

a. written reprimand.
b. restriction of business activities.
c. temporary suspension of part or all of the means of production.
d. suspension of business activities.

3.2. Legal Efforts that Can be Performed by Employees in the Event of Termination of Employment by the Company

Civilly, workers can file a claim for compensation to the District Court based on Article 1365 of the Civil Code (KUHPer), namely: "Every unlawful act which causes loss to another person shall oblige the person through whose fault the loss is caused to compensate for the loss." Legal remedies for workers who experience industrial relations disputes are regulated in Articles 3 through 155 of Law Number 2 Year 2004 on Industrial Relations Dispute Resolution. The remedy provided by law in certain cases to individuals or legal entities to challenge a judge's decision is a place for parties who are dissatisfied with the judge's decision, which is considered contrary to their wishes. Does not provide the target of justice because the judge is someone who can make mistakes/mistakes so that he makes the wrong decision or takes sides with other parties [14]. Legal remedies can be taken if employers deny workers their rights through bipartite, mediation, industrial relations court, and cassation.

In the event of termination of employment, several legal remedies can be taken by the parties, especially employees/workers, if an employee does not get his rights after termination of employment or the fulfillment of rights that have been regulated by law related to the rules for providing compensation, severance pay, long service pay, reimbursement of rights, in the first stage if employees do not get their rights, they can take steps Bipartite where this effort is carried out by negotiating, compromising between the two parties, namely the Employer and the employee concerned to reach an agreement or solution for both parties. The second legal effort that Employers or Employees can make if the first stage does not get an agreement is through Mediation, by bringing together the two parties, employees and employers, with the aim and hope of reaching an agreement that can be reached between the two, which in the process is assisted by a Mediator to provide fair proposals, but is not authorized to decide the problem, if, in the case of mediation, no agreement is reached.

The third legal remedy can be done through litigation or the Industrial Relations Court (PHI), which is a court that aims to resolve industrial relations disputes; this court is made to decide a dispute/case between workers and employers or workers with workers in a fast, precise, fair and low-cost way, and if the decision of the Industrial Relations Court is deemed unacceptable by one of the parties. The fourth legal effort is through the cassation process; this process aims to cancel the previous court decision when one of the parties feels that the previous judge's decision is contrary to the law; if that happens, then this cassation process needs to be pursued by both parties to the dispute, especially the employee, if the previous judge's decision is deemed not to fulfill his rights, then it is necessary to take the cassation process.

4. Conclusion

Related legal arrangements for companies that do not pay employee rights after termination of employment are found in Manpower Law Number 6 of 2023 and Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, Termination of Employment Relations. Regarding the rights of employees whose employment is terminated, Law Number 6 of 2023 Article 156 Paragraph 1 states that in the event of termination of employment, employers are obliged to pay severance pay, long service pay, and compensation pay that should be received. Administrative sanctions received for companies that do not provide employee rights are in the form of written warnings, restrictions on business activities, temporary suspension of part or all of the means of production, and suspension of business activities. The author argues in

conclusion that the regulations made by the government have not been strongly implemented, so the desired objectives in making this regulation do not go well; this is a factor that there are still many companies that do not pay workers' rights, especially in providing compensation to workers whose employment is terminated. Legal remedies are a way for employees/workers who do not get their rights to get their rights after termination of employment; article 28D paragraph 1 of the 1945 Constitution of the Republic of Indonesia states that everyone is entitled to recognition, guarantees, protection, and legal certainty. There are several efforts that employees can make to fight for their rights; in the discussion, the author conveys that there are five ways of efforts, namely bipartite efforts, mediation efforts, conciliation efforts, efforts in industrial relations courts, and cassation legal remedies. From this explanation, the author explains that some of these efforts can provide a way to achieve a right for employees who are not given their rights in terms of termination of employment.

Some conclusions have been conveyed above, so suggestions can be given, among others, namely, the Government needs to carry out more supervision of companies in the event of termination of employment to their employees. The government needs to make stricter sanctions in order to provide a deterrent effect for companies that violate. Companies must follow the rules of law that have been enshrined in the law.

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References:

[1] R. Rhamadan, “Legal protection of labor laid off due to the impact of the Covid-19 pandemic on UD. Anak Negri Kota Duri”. Thesis. Pekanbaru: Riau Islamic University, 2022, pp. 1.
[2] R. Rhamadan, “Legal protection of labor laid off due to the impact of the Covid-19 pandemic on UD. Anak Negri Kota Duri”. Thesis. Pekanbaru: Riau Islamic University, 2022, pp. 15.
[3] R. Rhamadan, “Legal protection of labor laid off due to the impact of the Covid-19 pandemic on UD. Anak Negri Kota Duri”. Thesis. Pekanbaru: Riau Islamic University, 2022, pp. 6.
[4] S. Mertokusumo, Indonesian civil procedure law, Yogyakarta: Liberty, 1985, pp. 97.
[5] N. A. Sinaga, "The role of work agreements in realizing the implementation of the rights and obligations of parties in employment relations", Scientific Journal of Aerospace Law, vol. 7, no. 2, March 2017.
[6] B. C. Halim, et al, "Legal analysis of fixed-term employment agreements (PKWT) in law number 11 of 2020 concerning job creation", Prointegrita Journal, vol. 6, no. 10, April 2022.
[7] M. R. Pohan, "Legal protection of workers in a fixed-term employment agreement according to labor law", Merdeka Law Journal, vol. 1, no. 2, 2020.
[8] G. Darmawan and P. L. Tobing, “Legal protection of contract employees in a fixed-term employment agreement (PKWT) who are terminated while the contract is in progress (case study of decision number 24/PDT.SUS-PHI/2019/PNDPS)”, Journal of Citizenship, vol. 6, no. 2, September 2022.
[9] Government Regulation No. 35 of 2021 Concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.
[10] L. Husni, “Introduction to Indonesian labor law revised edition”, Jakarta: Raja Grafindo Persada, 2008, p. 60.
[11] I. Alfilaturahni, “Legal protection of the rights of non-permanent workers at Matahari Bazaar Ceria Mall Kapuk Jambi”, Thesis, Jambi: Jambi University, pp. 6.
[12] Agustianto, “Extension of specified time work agreement after the enactment of law number 11 of 2020 concerning job creation”, Journal of Law, vol. 6, no. 1, 2022.
[13] M. Fedryca, “Granting severance compensation to workers in a fixed-term employment agreement”, Adigama Law Journal, vol. 4, no. 2, 2021.
[14] https://www.djkn.kemenkeu.go.id.