

Juridical Analysis Of Companies That Unilaterally Lay Off Employees And Severance Pay That Does Not Match The Length Of Service

Rhea Ditya Aulawi¹, Rahmayanti², Ismaidar³

Universitas Pembangunan Panca budi

*e-mail: rheaditya22@gmail.com

ABSTRACT

The problem of labor is a problem that we hear about in developing countries, including Indonesia. Related to this, termination of employment is one of them. As there is unilateral termination of employment carried out by companies in Indonesia. In this writing, the author uses normative legal research methods. Primary legal material is obtained from Law no. 13 of 2003 concerning labor and secondary legal material is obtained from a review of legal literature, especially labor, papers, internet and others. The implementation of termination of employment carried out by the company must be in accordance with Law No. 13 of 2003 concerning Manpower which states that termination of employment is carried out in several processes, namely holding deliberation between employees and the company, if it reaches a deadlock, the last resort is through the court to decide the case. For employees who have problems committing serious violations, they are immediately handed over to the police without asking permission from the authorities. And for employees who are about to retire can be submitted in accordance with the regulations. Similarly, employees who resign are regulated in accordance with company regulations and legislation. As a company's responsibility for laid-off workers where the law requires or requires the company to provide severance pay, award money, and rights replacement money. And regulations regarding severance pay, award money and reimbursement money are regulated in article 156, article 160 to article 169 of Law No. 13 of 2003 concerning Manpower.

Keywords:

Company, Layoffs, Severance pay

Introduction

Problem Background

Realizing a just and prosperous society is one of the goals of an independent Indonesia. Therefore, the state has an obligation to create welfare for its people fairly. One of the instruments of the realization of justice and prosperity is the law. Through law, the state seeks to regulate the relationship between individuals or between people and legal entities. This arrangement is intended

so that there is no tyranny from the stronger party to the weak, so as to create justice and peace in the midst of society¹.

The problem of labor is a problem that we hear about in developing countries, including Indonesia. One of these problems is the termination of employment carried out by the company, as there is unilateral termination of employment carried out by companies in Indonesia. One of the regulations made by the government is a regulation that Regulate a person's relationships in the world of work. The facts show that there are so many people who work in the company, therefore the working relationship between a worker and the company needs to be arranged in such a way that there is no arbitrariness that can harm one party. ²

In the history of the legal journey in Indonesia is closely related to labor problems, this can be seen from government policies regulated together with the legislature in the form of laws and government regulations (legislative and bureaucracy policy) such as Law Number 23 of 1948 concerning Labor Supervision, Law Number 13 of 2003 concerning Manpower, Law Number 3 of 1992 concerning Labor Social Security Work, Law Number 21 of 2003 concerning the Ratification of ILO Convention Number 81 Concerning Labor Inspection in Industry and Commerce (ILO Convention Number 81 Labor Supervision in Industry and Trade). Presidential Regulation Number 21 of 2010 concerning Labor Supervision, and others. These regulations are a real effort by the government as a policy-making institution to give legitimacy to the protection of workers' rights.³

Furthermore, companies often experience difficulties in carrying out layoff policies. This is because the layoff policy is interpreted as a policy that does not pay attention to employees. Basically, the layoff policy by the company is not necessarily a policy that harms employees. This layoff problem can actually be seen from 2 contexts, namely the context of a good understanding of regulations and the context of modern management in the layoff policy. The two things mentioned above are very important to avoid disputes that can be detrimental to both parties, both companies and workers.

Based on the things stated above, the author is interested in reviewing in the form of a Thesis entitled "*Juridical Analysis of Companies that Conduct Unilateral Layoffs and Severance Payments That Are Not in Accordance with Working Period*"

Problem Statement

Based on the background of the above problem, the formulation of the problem that is the basis of discussion in this study is as follows:

¹ Maringan, Nicodemus, (2015). Juridical Review of the Implementation of Unilateral Termination of Employment (PHK) by the Company according to Law No. 13 of 2003 concerning Manpower. *Journal of Legal Sciences, Legal Opinion*.3(3)

² Agusmidah, *Dilemma of Labor Law Political Review of Law*, (Medan: Sofmedia, 2011)

³ Manisha, T., Pakpahan, R., Ardhya, S. N., & Setianto, M. J. (2022). Juridical Review of Legal Protection of the Rights of Workers Who Experience Unilateral Termination of Employment is reviewed from Law Number 11 of 2020 concerning Job Creation. *e-Journal of Communication Yustisi Universitas Pendidikan Ganesha*. 5(11), 129-144

1. What is the legal policy against companies that provide inappropriate severance pay to laid-off employees?
2. What are the legal remedies that laid-off employees can take to get severance in accordance with the Manpower Law?

Research Objectives

Based on the problems described above, the objectives of this study can be concluded as follows:

1. To know and understand how legal policies against companies that are not appropriate provide severance pay to employees who have been laid off
2. To know and understand how legal remedies for laid-off employees to get severance in accordance with the Manpower Law

Research Methods

This research is a research that has a descriptive nature, which aims to obtain concrete information and data related to Juridical Analysis of Companies that make unilateral layoffs and severance that is not in accordance with the length of service, which is the discussion in this study.

In this study the data collection method carried out is data collection carried out by document study which is a method of data collection through information obtained from related parties in accordance with the case study raised, documentation study is one way in which qualitative research visualizes the subject's perspective in this research.⁴

Result

If we look back, there are many cases of unilateral layoffs made by companies against their employees, this is motivated by various reasons thrown by companies, financial deficits, reducing labor for the sake of spending efficiency, are two of the many factors that are often used by companies as reasons for layoffs. Layoff or termination of employment itself is the company's decision to dismiss employees from the contract and work period that has previously been agreed upon, this of course must be followed by the rights that should be received by employees who are victims of layoffs, layoffs themselves have actually been regulated in such a way by the government in the law.

To minimize and overcome these things, an understanding of the procedures for termination of employment and settlement of industrial relations by a company is needed. Such as among them; preparation of documents related to layoffs, introduction to the character of disputes, strategies and stages in settlement, types of risks in layoffs, and so on. With this understanding, companies in

⁴ Soerjono Soekanto and Sri Mamuji. Normative Legal Research: *A Brief Review*. Jakarta: Raja Grafindo Persada, 2013, page 13.

carrying out the layoff process and PPHI in accordance with applicable regulations will get a fair solution or win-win solution.⁵

Company Responsibility to Workforce Due to Layoffs

The termination of employment began a difficult time for workers and their families. Therefore, to help or at least reduce the burden on laid-off workers, the law requires or requires employers to provide severance pay, award money, and reimbursement money. The reason for layoffs plays a major role in determining whether or not the worker is entitled to severance pay, award money and reimbursement money rights. Regulations regarding severance pay, award money and compensation money are regulated in article 156, article 160 to article 169 of Law No. 13 of 2003 concerning Manpower⁶. According to Law No. 13 of 2003 concerning Manpower, the company can be responsible under various conditions as below:

1. Resignation of good will of one's own accord.
2. Resignation in writing of one's own accord due to the termination of the employment relationship.
3. Resignation due to reaching retirement age.
4. Workers make grave mistakes.
5. Workers are detained by authorities.
6. The company went bankrupt/the company suffered losses.
7. Workers are failing constantly.
8. The worker passed away.
9. The employee committed a violation.
10. Change of status, merger, overtime or change of ownership.
11. Termination of Employment for Efficiency Reasons.⁷

Termination of employment between workers and employers should not be done arbitrarily, but there are certain things that must be fulfilled by both parties so that the layoff does not hurt the sense of justice between both parties

Calculation of Severance Money in the event of layoffs:

Severance pay is money given to workers or employees at the time of termination of employment by the employer / company based on the length of work that has been taken by the worker / company concerned and the amount of hourly compensation 8. The calculation of severance pay stipulated under article 156 paragraph 2 of Law no. 13 of 2003 is:

1. working time less than 1 year = 1 month salary
2. working time 1 year or more but less than 2 years = 2 months wages

⁵Lanny Ramly, *Employment Arrangements in Indonesia*, Print I (Surabaya: Airlangga University Press, 1998)

⁶ Indonesia, Law Number 13 of 2003 concerning Manpower

⁷ Naim, sokhib, (2022). Termination of Employment According to Law Number 13 of 2003 concerning Manpower. (PT. Cendrawasih Dwimega Kencana Sorong). *JUSTISI Faculty of Law, University of Muhammadiyah Sorong*. 8(3)

3. working time 2 years or more but less than 3 years = 3 months wages
4. working time 3 years or more but less than 4 years = 4 months wages
5. working time 4 years or more but less than 5 years = 5 months of wages
6. working time 5 years or more but less than 6 years = 6 months wages
7. working time 6 years or more but less than 7 years = 7 months wages
8. working time 7 years or more but less than 8 years = 8 months wages
1. working time 8 years or more = 9 months of wages.⁸

Money for reimbursement of rights that should be received by workers in the event of layoffs:

Reimbursement money that should be received based on article 156 of Law No.13/2003:

1. Annual leave that has not been taken and has not been forfeited;
2. Cost or cost of return for workers / laborers and their families to the place where workers / laborers are accepted to work
3. Reimbursement of housing and treatment and care is set at 15% of severance pay and/or service award money for those who qualify
4. Other matters stipulated in the employment agreement, company regulations or collective labor agreement.

Components used in the calculation of severance pay and award money:

The wage component used as the basis for calculating severance pay, service award money, and compensation money that should be received that is delayed, consists of:

- Basic Salary
- All kinds of fixed benefits given to workers and their families, including the purchase price of supplies given to workers free of charge, which if the supply must be paid by workers with subsidies, then as wages is considered the difference between the purchase price and the price to be paid by workers.⁹

Legal remedies that employees can take in overcoming layoffs

Based on Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement, termination disputes are disputes that occur due to differences of opinion from one of the parties. namely the company or workers related to termination of employment.¹⁰

Disputes arise when termination of employment is not in accordance with the rules or agreements. This case is very sensitive for workers as it relates to their survival. These labor relations disputes usually occur because companies feel their employees are no longer needed and then look for various reasons that even violate the law. Invite to terminate employment. Because workers do not have rights, termination of employment can also be done at the will of workers.

⁸ Number 13 of 2003 concerning Manpower. *Lex et Societatis*. 5(07)

⁹ Fadlan, M. R., & Rini Irianti Sundry. (2022). Settlement of Industrial Relations Disputes due to Termination of Employment (PHK) Connected with Law No.2 of 2004 concerning Settlement of Industrial Relations Disputes. *Bandung Conference Series: Law Studies*, 2(2), 1140–1148.

¹⁰ Indonesia, Law No. 2 of 2004

In the event that employees do not accept the layoff decision calculated by the company / employer, bipartite negotiations are carried out as the first step in efforts to resolve deliberately, these negotiations are carried out between the laid-off employees and the company, bipartite negotiations are given 30 working days to be able to reach an agreement, if bipartite negotiations are successful then a joint decision will be agreed upon which the decision This will later be carried out as the results of the bipartite negotiations themselves, and if the bipartite negotiations do not find a solution, then the next thing that can be done is to carry out the second stage of business, namely tripartite negotiations.¹¹

Tripartite negotiation itself is an advanced negotiation carried out if bipartite negotiations do not find a middle ground for both parties to the dispute in industrial relations cases, tripartite negotiations themselves are negotiations carried out between laid-off employees and companies and mediated by neutral and competent parties in terms of industrial relations matters, these negotiations are then carried out where the mediator provides Advice to both parties to resolve existing disputes, agreements on severance pay etc. will usually also be discussed, if at this stage the mediation process finds a good middle ground for both parties, a joint agreement signed by both parties will be made witnessed by the mediator and they must report the results of the agreement to the Industrial Relations Court according to its territory.¹²

If the parties do not reach an agreement in mediation, the mediator will make the recommendation submitted within 10 (ten) working days from the first mediation hearing must have been submitted to the parties and the parties must answer the recommendation within 10 (ten) working days from receipt. If the parties do not provide an answer, the parties will be deemed to have rejected the suggestion. Meanwhile, if the parties agree with the recommendation submitted by the mediator, the parties are required to make a Collective Agreement within 3 (three) days from the receipt of the recommendation. The Collective Agreement is registered in The Industrial Relations Court of the territory of the parties entering into the Collective Agreement in order to obtain a deed of proof of registration. For the settlement of layoff disputes through conciliation, basically it has the same stages as settlement through mediation, but the handling is carried out by conciliators who are private parties who have met the requirements set by the Minister of Manpower.¹³

Meanwhile, the settlement of layoff disputes through litigation mechanisms can be done by filing a lawsuit with the Industrial Relations Court. The Industrial Relations Court is the court of first instance in layoff disputes that is in the District Court to handle special cases, Please note that in layoff disputes there is no legal remedy for appeal in the High Court, but directly conducts cassation efforts in the Supreme Court. A lawsuit filed with the Industrial Relations Court can only be brought if settlement through mediation or conciliation is unsuccessful. Filing a lawsuit through the Industrial

¹¹ Michael, J. W. (2022). Legal review related to the settlement of termination of employment for workers appointed as directors of limited liability companies. *Legal journal visio justisia*.

¹² Benefactor, F. A., & Sarnawa, B. (2021). The Role of the Manpower Office in the Mediation Process for Solving Industrial Relations Problems. *Media of Law and Sharia*, 2(3), 272-287

¹³ Handayani, Sri. (2018). Legal Aspects of Termination of Employment by Employers. *Mercatoria Journal of UMA Master of Law*. 11 (02)

Relations Court is the same procedure as a civil lawsuit in general. A lawsuit filed with the Industrial Relations Court must be attached with minutes of settlement through mediation or conciliation. If the lawsuit is not attached with minutes of settlement through mediation or conciliation, then the judge will return the claim to the plaintiff or in other words the claim cannot be accepted.¹⁴

After the process in the Industrial Relations Court is complete and a court decision has been issued regarding what the company must do, or the approval or disapproval of the lawsuit by the plaintiff, then the court decision is declared as a valid legal dsar which must be obeyed by both parties, for example in a lawsuit employees win a lawsuit related to severance pay that must be given as a right from the layoffs they experienced, Then the company must provide rights for employees in accordance with the decision of the Industrial Relations Court, and if subsequently the company is still reluctant to give employees rights or one of the parties wants to appeal, it can appeal to the Constitutional Court.

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1. The implementation of termination of employment carried out by the company must be in accordance with Law No. 13 of 2003 concerning Manpower which states that termination of employment is carried out in several processes, namely holding deliberation between employees and the company, if it reaches a deadlock, the last resort is through the court to decide the case. For employees who have problems committing serious violations, they are immediately handed over to the police without asking permission from the authorities. And for employees who are about to retire can be submitted in accordance with the regulations. Similarly, employees who resign are regulated in accordance with company regulations and legislation.
2. There are several ways that can be taken to solve the problem of layoffs, especially those that can be done by employees as victims, therefore, to solve these problems can be done by bipartite, tripartite, or litigation in the industrial relations court, these three ways can be done in order to provide the best solution for both parties

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