

Formulation of the Principle of Fairness in Settlement of Industrial Relations Disputes

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ABSTRACT

A crucial problem in the scope of employment is the issue of severance pay in terms of termination of employment (PHK). Particularly in the current situation of the Covid-19 pandemic, layoffs are very massive. Some employers ignore the normative provisions regarding severance pay as regulated in Law Number 11 of 2020 concerning Job Creation. In this condition, the settlement of disputes between workers and employers must be based on a professional and proportional, and dignified manner. The type of research in this study is normative law with a statute approach. The data used are secondary data, including primary legal materials, secondary legal materials, and tertiary materials collected through a literature study that is analyzed qualitatively. Industrial relations disputes must be pursued first through bipartite negotiations by deliberation to reach a consensus. If bipartite negotiations fail, one or both parties shall register their disagreement with the authorized local agency responsible for employment by attaching evidence showing that efforts to resolve through bipartite negotiations have been carried out. After receiving a record from one or both parties, the local agency responsible for employment is obliged to offer the parties to agree on the option of resolving the problem, either through conciliation or arbitration. If the two parties do not reach an agreement in the settlement process, either through conciliation or mediation, either party may file a lawsuit with the Industrial Relations Court. With the legal formulation on the settlement of labor disputes which follows the stage of deliberation by both parties, then the presence of the state, and comes to the stage of judicial review, the normative provisions have represented the principle of legal fairness based on Pancasila justice.

Keywords: *Fairness, Labor disputes, Unequal relations.*

1. INTRODUCTION

The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia states that one of the ideals of the Independence of the Republic of Indonesia is to protect the whole people of Indonesia and the entire homeland of Indonesia from advancing general prosperity. In order to protect the whole people of Indonesia and advance general prosperity, the Indonesian nation is based on law. As stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the 3rd Amendment states: "The State of Indonesia is a state of law".

Based on the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia above, according to Janpatar Simamora, one of the characteristics of a legal state is that the state provides maximum protection for human rights or basic human rights.¹

One of the essential elaborations related to fundamental human rights is the right to live in prosperity, namely getting a job and a decent living. Constitutionally, this right is stipulated in the Body of the 1945 Constitution of the Republic of Indonesia, Article 27 paragraph (2), namely, "Every citizen has the right to work and a decent living for humanity".

The provisions of Article 27 paragraph (2) of the 1945 Constitution above indicate that the state has the obligation and responsibility to provide jobs with decent incomes and decent living facilities for its people. In other words, every citizen must exist within the limits of a prosperous life. Consequently, the state (Government including the Local Government) has the obligation and responsibility to protect the interests of laborers/workers in obtaining their rights, especially rights related to the prosperity of workers.

This government protection is very crucial considering the unequal relationship between laborers/workers and employers. The laborers/workers are always the ones who get "beaten" by the employers. This unequal relationship results in several vile treatments experienced by workers in Indonesia, even in all countries. Marsinah's case is one of the proofs of this unequal relationship. Marsinah, along with hundreds of other workers, demanded an increase in wages, but they were met with intimidation and inhumane treatment. In this case, Marsinah died horribly. Allegedly, Marsinah's death was the aftermath of action against workers' demands.

Marsinah's case is only a tiny phenomenon from what befell. There are still many incidents of exploitation and discrimination experienced by laborers/workers. The most common occurrence is the discrepancy of employers with their commitments in fulfilling the rights of laborers/workers, particularly the right to receive salaries/wages by the provisions regulated by the Government. In addition, there are many cases of workers being dismissed (Termination of Employment/PHK) unilaterally. The termination of the workforce is only based on the "likes and dislikes" of the employers in a particular field of work.

This unilateral layoff case is a "prima donna" for employers. The employers use the layoff as an instrument to "scare" workers, so workers carry out their work according to the will of the employers. Layoff conflicts are quite dominant among industrial dispute cases.

Several facts show that many factories in Indonesia mistreat their workers. Jim Keady, Director of the NGO Educating for Justice, said that "Our research found workers from about 30 factories that produce various products for brands, including Converse, New Balance, Adidas, and Puma, also have the same problem." During the investigation, activists found that many factories still verbally and physically abused their workers. "Workers are called by harsh names, such as 'pig' and 'dog,'" he said. In addition, many factories do not treat their workers humanely. "In a meeting with workers from another factory on Wednesday night, the workers said that their rice rations contained worms. Besides that, there is documentation showing workers being stabbed with rattan when they are late for work in the morning,"²

Based on the above record, the role of the state (Government), both the Central Government and the Local Government, is crucial to protect the interests of the workers' rights. For laborers workers, the Government is their "last bastion," which can protect their rights.

This expectation is in line with the legal principles that have been stipulated in Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning Industrial Relations Disputes. From the

regulatory aspect, the substances specified in the two laws and regulations are adequate. However, it is necessary to admit that the enforcement of these laws and regulations still requires the commitment of the Government.

Yusmedi said that, in their implementation, the two laws and regulations had not discussed the disputing parties. Therefore, in solving problems, strikes and demonstrations by workers against employers and the Government are often carried out. Industrial relations disputes occur in the form of opinion differences, resulting in conflicts between employers or a combination of employers and workers or labor unions. These disputes are often regarding rights and interests, termination of employment, and disputes between trade unions in one company. This has been considered in part (b) of Law Number 2 of 2004 concerning the settlement of industrial relations disputes which states: "In the era of industrialization, the problems of industrial relations disputes are becoming increasingly complex and increasing; hence, institutions and mechanisms for the settlement of industrial relations disputes that are time-efficient, precise, fair, and cheap are necessary."³

As an extension of the laborers/workers, the Government is often unreliable in resolving the settlement of industrial disputes. Therefore, the laborers/workers go on strike or demonstration to resolve the problem of the industrial relation.

A time-efficient, precise, fair, and cheap mechanism for resolving industrial relations disputes is needed as part of the Government's commitment to place human resources as a crucial element. The workforce is the central supporting pillar and the driving force of the organization to realize the company's vision, mission, and goals. The lives of the workforce must be increasingly considered, given the significant contribution to the survival of a country⁴.

In carrying out their work, the workforce has a great responsibility, which is achieving the goals of the company that employs them. However, in reality, the great responsibility of these workers is not in line with the protection of their rights and treatment from the companies/employers.

Formulating a series of laws and regulations on industrial relations accompanied by provisions for the settlement of labor disputes is crucial. These laws and regulations can guide workers and trade unions, management, and arbitrators. In addition, various rules in industrial relations can facilitate the Government's task in supervising the course of industrial relations and its role as a trigger for the settlement of mutually beneficial labor disputes.

2. METHOD

This research is normative legal research with a statute approach. Researchers examined all regulations or policies related to employment issues, particularly Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The data used is secondary data covering primary legal materials, secondary legal materials, and tertiary materials collected through literature study. This data is then analyzed qualitatively where the data is analyzed using legal theories, legal principles, legal rules to find a prescription.

3. RESULT AND DISCUSSION

Fairness comes from the word fair. In the Dictionary of Indonesian Language, fair is not arbitrary and impartial. Fair mainly means that a decision and action are based on objective norms. Fairness is a relative concept where everyone has a different definition of fairness. What is fair to one is not necessarily fair to the other. When someone asserts that they are fair, their assertion should be based on a public order that recognizes a scale of fairness. The scale of fairness varies significantly from place to place. Each scale is defined and wholly determined by the community according to the public order where the community lives.⁵

Fairness is the crown of the law. Many experts associate fairness with legal goals, giving birth to various theories about fairness, including the figures.

According to Roscoe Pound, fairness is in the concrete results he could deliver to society. He saw that the results obtained should be in the form of the most considerable satisfying human needs with the most negligible sacrifices. Pound said that he was pleased to see. "The more widespread recognition and satisfaction of human needs, demands, or desires through social control; the more widespread and effective the guarantee of the social interests of an effort to eliminate continuous waste and avoid conflicts between humans in utilizing resources. In short, social engineering is getting more effective," said Pound.⁶

In Indonesia, fairness is described in Pancasila as the basis of the state, which is social justice for all Indonesian people. This fifth principle contains values functioning as objectives to be able to live side by side. Fairness is based on and imbued with the essence of human fairness, namely fairness in the relationship between humans and themselves, humans with other humans, humans with society, nation and state, and human relationships with God.⁷

The values of fairness must be a basis applied in the life of the state to realize the state's objective, which is the prosperity of all its citizens and the entire territory, as well as to educate all its citizens. The values of fairness are also the basis in the association between countries and fellow nations globally. In addition, these values also contain the principles to create order to live side by side

in an association between nations in the world based on a principle of independence for each nation, eternal peace, and fairness in living side by side (social justice).⁸

Legal protection is the protection of dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules that will be able to protect one thing from another.⁹

In Indonesia, the legal protection referred to is always based on Pancasila as the ideal foundation even though its formulation uses western world ideas whose emphasis on the concept rests on the protection of human rights. Thus, in simple terms, the concept of legal protection for workers in Indonesia still relies on protecting the dignity of workers, along with their human rights, both as an individual and as a "worker." Aspects of protection for workers include two basic protections, which are protected from the power of employers and protection from government actions. According to Philipus, legal protection is always related to two powers: economic power and government power. By not taking any action against rights violations, the Government is considered to have taken legal action. Other legal actions are in the form of preventive legal actions, which is the Government's prudence in formulating policies.¹⁰

Legal protection from the power of employers is implemented when the laws and regulations regarding labor that require or force the employer to behave as in the legislation are implemented by all parties. This is because the validity of the law cannot be measured in a juridical manner but is measured sociologically and philosophically.¹¹

Worker protection is strictly regulated under Article 5 of Law Number 13 of 2003 concerning Manpower. The article states that every worker has an equal right and opportunity to have a job and decent life without discrimination based on gender, ethnicity, race, religion, and political view, by his interests and abilities, including equal treatment to workers with disabilities.

Furthermore, Article 6 requires employers to provide workers' rights and obligations without discrimination based on gender, ethnicity, race, religion, skin color, and political view. Other rights regulated in detail under the Manpower Law are contained in the following articles:

1. Article 11 contains the right to acquire and develop competence;
2. Article 12 paragraph (3) contains the right to attend (get) training;
3. Article 31, in conjunction with Article 88, contains the right to choose work type and earn income, both at home and abroad;
4. Article 86 paragraph (1) contains the right to be healthy and safe.
5. Article 99 paragraph (1) contains the worker's and his family's right to have social security for workers (Jamsostek);

6. Article 104 paragraph (1) contains the right for a worker to be involved (form or become a member) in a trade/labor union.

A crucial issue in the scope of employment is severance pay in terms of employment termination (PHK). To facilitate the conflict resolution on the severance issue, Law Number 11 of 2020 on Job Creation states the following:

- (1) In the event of employment termination, the employer shall give severance pay and/or service pay and compensation for entitlements.
- (2) The severance pay as referred to in paragraph (1) is given under the following conditions:
 1. The working period of less than 1 (one) year, 1 (one) month's salary;
 2. The working period of 1 (one) year or more but less than 2 (two) years, 2 (two) months' salary;
 3. The working period of 2 (two) years or more but less than 3 (three) years, 3 (three) months' salary;
 4. The working period of 3 (three) years or more but less than 4 (four) years, 4 (four) months' salary;
 5. The working period of 4 (four) years or more but less than 5 (five) years, 5 (five) months' salary;
 6. The working period of 5 (five) years or more but less than 6 (six) years, 6 (six) months' salary;
 7. The working period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months' salary;
 8. The working period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months' salary;
 9. The working period of 8 (eight) years or more, 9 (nine) months' salary.
- (3) The service pay as referred to in paragraph (1) is given under the following conditions:
 1. The working period of 3 (three) years or more but less than 6 (six) years, 2 (two) months' salary;
 2. The working period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months' salary;
 3. The working period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months' salary;
 4. The working period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months' salary;
 5. The working period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months' salary;
 6. The working period of 18 (eighteen) years or more but less than 21 (twenty-one) years, 7 (seven) months' salary;

7. The working period of 21 (twenty-one) years or more but less than 24 (twenty-four) years, 8 (eight) months' salary;
 8. The working period of 24 (twenty-four) years or more, 10 (ten) months' salary;
- (4) The compensation of entitlement that shall be received as referred to in paragraph (1) includes:
1. Annual leave that has not been taken and has not been expired;
 2. Costs and fees for returning worker/laborer and his family to the place where the worker/laborer is accepted to work;
 3. Other matters stipulated in the employment agreement, company regulations, or collective labor agreement.
- (5) Further terms on giving severance pay, service pay, and compensation of entitlement as referred to in paragraph (2), paragraph (3), and paragraph (4) are stipulated in the Government Regulation.

In Article 157 of Law Number 11 of 2020, it is stated that:

- (1) The components of salary used as the basis for calculating severance pay and service pay are a. basic salary; and b. fixed allowances are given to workers/laborer and their families
- (2) If the worker's/laborer's income is paid daily, one month's salary is equal to 30 (thirty) times daily salary.
- (3) If the worker's/laborer's income is paid based on output unit calculation, one month's salary is equal to the average income in the last 12 (twelve) months.
- (4) If one month's salary is lower than the minimum wage, as referred to in paragraph (3), the basis for calculating severance pay is the minimum wage applicable in the company's domicile area.

Under the provisions of the articles of Manpower Law above, the scope of worker protection for workers includes:

1. The worker's/laborer's fundamental rights to negotiate with employers;
2. Occupational safety and health;
3. Special protection for female worker/laborer, children, and persons with disabilities;
4. Protection of worker's salary, welfare, and social security.¹²

Industrial relations are an exciting relationship between worker/laborer and employer, which potentially causes differences of opinion and even disputes between the two parties. Disputes in industrial relations that have been known so far are related to the rights that have been established in or labor conditions that have not been established in the work agreements, company regulations, collective labor agreements, or laws and

regulations. The termination of employment can also cause industrial relation disputes.

If one of the parties no longer wants to be bound in the working relationship, it is difficult for the parties to maintain a harmonious relationship. Therefore, it is crucial to find the best solution for both parties to resolve the dispute in a fair and dignified manner.

For solving labor disputes in a fair and dignified manner, the Government stipulates Law Number 2 of 2004 on Settlement of Industrial Relation Dispute with the following points:

1. Disputing parties are an individual worker/laborer, a trade/labor union organization, and an employer or employers' organization. The disputing parties may also be a trade/labor union organization and another trade/labor union organization within the same company;
2. Any industrial relation dispute is initially resolved by deliberation to reach a consensus by the disputing parties (bipartite);
3. If the negotiation between the disputing parties (bipartite) fails, one of the parties or both parties shall register their dispute to the relevant agency responsible for the local human resources affairs;
4. Disputes of interest, disputes over employment termination, or disputes between trade unions/labor unions that have been registered in the relevant agency responsible for the local human resources affairs can be resolved through conciliation upon the mutual agreement. In contrast, the settlement of disputes through arbitration upon the mutual agreement can be done only for disputes of interest and disputes between trade unions/labor unions. Suppose there is no agreement between the two parties to resolve the dispute through conciliation or arbitration. In that case, the settlement shall be done by mediation before submitting it to the Industrial Relation Court. This is intended to avoid the accumulation of industrial relation dispute cases in court;
5. The Dispute of Rights that has been registered in the relevant agency responsible for the local human resources affairs cannot be resolved through conciliation or arbitration, and it shall be first solved by mediation before submitted to the Industrial Relation Court;
6. If Mediation or Conciliation does not reach an agreement as stated in the mutual agreement, one of the parties can file a lawsuit to the Industrial Relation Court;
7. Settlement of Industrial Relation Dispute through arbitration is carried out upon the agreement of the parties, and a lawsuit cannot be filed to the Industrial Relation Court because the arbitration award is final and binding, except in

some instances, an annulment may be filed to the Supreme Court;

8. The Industrial Relation Court is within the general judiciary and is gradually established at the District Court and the Supreme Court;
9. In order to ensure a fast, precise, fair, and cheap settlement, the settlement of industrial relation disputes through the Industrial Relation Court, which is within the general judiciary, is limited in its process and stages by not opening an opportunity to file an appeal to the High Court. The Decision of Industrial Relation Court within the District Court related to the dispute of rights and employment termination dispute can be appealed by directly requesting a cassation to the Supreme Court. Meanwhile, the decision of Industrial Relation Court within the District Court related to the dispute of interest and dispute between trade unions/labor unions in one company is the first and final decision that cannot be appealed to the Supreme Court;
10. The Industrial Relation Court, which examines and adjudicates industrial relation disputes, shall be held by a Panel of Judges consisting of 3 (three) persons, which are 1 (one) District Court Judge and 2 (two) Ad-Hoc Judges, whose appointments are proposed by the employers' organization and the workers'/labors' organization;
11. The decision of the Industrial Relation Court within the District Court regarding the dispute of interest and dispute between the trade unions/labor unions in one company cannot be appealed to the Supreme Court;
12. To enforce the law, sanctions are determined to be more substantial coercion means to obey the laws and regulations.

4. CONCLUSION

Industrial Relation Disputes shall be first resolved through bipartite negotiation by deliberation to reach a consensus. Dispute settlement through bipartite shall be resolved no later than 30 (thirty) working days from the negotiation date. Within 30 (thirty) days, one of the parties refuses to negotiate, or the negotiation has been carried out, but it does not reach a consensus. The bipartite negotiation is deemed to have failed. If the bipartite negotiation fails, one or both parties shall register their dispute to the relevant agency responsible for the local human resources affairs by attaching evidence that a settlement through bipartite negotiation has been carried out.

If the evidence is not attached, the relevant agency responsible for the local human resources affairs will return the document to be completed no later than 7 (seven) working days from the date the document is returned. After receiving a record from one of the parties, the agency responsible for the local human resources

affairs shall offer to resolve the dispute through conciliation or arbitration. Suppose the parties do not resolve the dispute through conciliation or arbitration within 7 (seven) working days. In that case, the agency responsible for the local human resources affairs will delegate the dispute to the mediator. If the settlement through conciliation or mediation does not reach a consensus, one of the parties may file a lawsuit to Industrial Relation Court.

The legal formulation on the settlement of labor dispute is deliberation between the parties, and the state is present when it reaches the judicial stage. The normative terms have represented the principle of legal justice based on Pancasila

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