

# Workers' Rights to Wages in the Process of Being Dismissed Unilaterally by the Company (A Case Study of the Jurisdiction of the Supreme Court Number 516 K/Pdt-Sus-PHI/2019)

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## ABSTRACT

Termination of Employment Relations or often referred to as layoffs is the termination or termination of the employment relationship of workers and employers as regulated in Law No. 13 of 2003 concerning Manpower. Currently, there are many cases regarding these layoffs, which are more specific, namely the case of unilateral layoffs carried out by employers to end the employment relationship process in one direction only. This action is not in accordance with what is in the labor regulations which are not recommended to carry out layoffs or unilaterally or not unilateral. It is certain that wages must be given to workers, one of which is wages during the termination process. I examined the Supreme Court Cassation Decision Number 516 K/Pdt-Sus-PHI/2019, the author examined this problem with normative research methods regarding wage increases during the process termination of employment whose stipulations are not yet clear in the law. The conclusion from the results of this study is that regulations regarding wages during the process of termination of employment should be given more clearly in the law because there is not much difference of opinion among law enforcement so that employers cannot arbitrarily carry out the layoff process and not pay the wages.

**Keywords:** *employment relation, layoffs, supreme court cassation*

## 1. INTRODUCTION

The Manpower sector is a crucial and also important field in every country, including Indonesia, employment itself as written in Article 1 Paragraph 1 of Law No. 13 of 2003 concerning Manpower is all matters relating to the workforce at the time before, during and after work. [1] Employment itself cannot be separated from the various problems that occur related to workers and employers and to minimize this, the Government hereby strives to always improve the Quality of Manpower for the development of a better Indonesia. The development of the quality of the workforce or the development of human resources can be done in various ways, such as:

- The government makes a quality education system to produce workers who can compete in work.
- Increasing religious behavior in social life to improve national identity or character building.
- Development of the quality of Human Resources by conducting coaching and training

However, there are still many cases of work strikes carried out by workers or laborers to pressure the company to grant requests from workers such as an increase in salaries and

facilities for workers, on the other hand the company also does the same thing to suppress the workers or workers. work by doing layoffs for reasons of loss in the company and also for reasons of reduction of workers which can usually occur when a company is experiencing a crisis.

In the world of employment, disputes will definitely occur in a relationship between workers and entrepreneurs, among others, regarding wages, and there are other problems that could occur. Termination of Employment (PHK) is an event that cannot be denied being in a relationship. work linking entrepreneurs and workers. The working relationship that connects entrepreneurs with workers/labourers will continue if the entrepreneur and workers/labourers carry out their work correctly without any mistakes and there is an equal profit between the two. Disputes in Termination of Employer Relations with Workers/Labourers regarding work or can be called layoffs can be eliminated if the worker or entrepreneur/entrepreneur continues to do what is in accordance with the Manpower Act No. 13 of 2003, Collective Labor Agreement (PKB), Employment Agreement (PK), and Company Regulations (PP) however. Violations often occur due to one or two things, so if there has been a violation between workers and entrepreneurs who deviate from the above provisions, those who commit

a violation must receive sanctions in accordance with the agreement at the beginning before the relationship process occurs. One of the sanctions that can be said to be the toughest for Workers/Labourers is Termination of Employment Relations so that by being laid off workers can no longer carry out their rights and obligations in the company, with this the final termination of layoffs can occur for many things, namely:

1. Based on the will of the entrepreneur,
2. Based on the will of the Worker/Labourer,
3. Based on the Court's Decision.

Termination of employment often occurs to employees, even though they did not do a mistake that created a violation when doing work, but layoffs could occur, namely because the company collapsed and went bankrupt and could be due to a reduction in the workforce and things that cannot be controlled as they are. natural disaster or it could be a pandemic which is often referred to as force majeure. With that, there are various things about workers who have been laid off, which cannot be properly regulated by workers/workers, entrepreneurs/companies, as well as workers in the regional sector and government, therefore when this happens, the company is ensured to be obliged to do so. distribute compensation in the form of various wages such as severance pay and processing wages to employees in accordance with applicable regulations.

In the process of termination of employment, workers will receive wages such as severance pay, reward wages during the period of service and there are wages during the layoff process which will be paid after the layoff occurs, the wages must be paid in accordance with the applicable regulations hereby, namely the regulation is in If the Manpower Act does not comply, it means violating the existing rules.

Process wages are wages given to workers who have been laid off in the process of completing the termination of employment as much as 6 months of salary as written in the Circular Letter of the Supreme Court No. 3 of 2015.

There is a period of 6 months when it is distinguished in the settlement of the dispute process as written in Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, which stipulates how long it takes for the bipartite process to apply for 30 days to work, the mediation process is 30 days. working days, and the settlement process through the Industrial Relations Court 50 days for work. It is hereby based on the law that regulates layoffs and the non-payment of processing wages after the layoff occurs.

### **1.1. Related Work**

Based on the introduction, the issues in this research are :

1. How is the payment of wages during the termination process based on the Supreme Court's Cassation Decision Number 516 K/Pdst.Sus-PHI/2019 in accordance with the Manpower Act?
2. Why was the Supreme Court's Cassation Decision Number 516 K/Pdt.Sus-PHI/2019 regarding wages during the termination process abolished?

### **1.2. Our Contribution**

The purpose of this research are:

- a. To find out whether the decision regarding wages during the process of termination of employment is in accordance with the Manpower Act.
- b. To find out about why wages during the termination process were abolished in the results of the Supreme Court's Cassation Decision Number 516 K/Pdt.Sus-PHI/2019.

### **1.3. Paper Structure**

The structure of this research uses various research methods by type of research, namely normative research with a statute approach and case approach, this research method is in the form of normative legal research, in this study I also use legal materials, namely:

- a. Civil Law Code
- b. Indonesia, Manpower Law No. 13 of 2003
- c. Indonesia, 1945 Constitution concerning Manpower Article 27 Paragraph 2
- d. Indonesia, Law on the Settlement of Industrial Relations Disputes No. 2 of 2004
- e. Indonesia. Supreme Court Circular Number 3 of 2015
- f. Indonesia, Supreme Court Circular Number 3 of 2018
- g. Decision Number 193/Pdt.Sus-PHI/2017/PN Mdn
- h. Supreme Court Cassation Decision Number 516 K/Pdt.Sus-PHI/2019

And many more in the form of books, articles, journals and so on.

## **2. BACKGROUND**

### **2.1. Position Cases**

In this case, it was explained that Robert Penggabean as the first plaintiff worked through PT. ARINA MULTI KARYA as a Employment Service Provider Company and employed at PT. BANK PANIN as Driver. The Plaintiff has worked for 12 years and 3 months since September 17, 2004. Whereas the legal issues that caused the dispute between Robert Penggabean and PT. Arina Multi Karya and PT. Bank Panin in this case, Robert Penggabean was ordered to sign a Contract Renewal from January 2016 to June 30, 2016, then in July 2016 was ordered to sign a Work Contract again from July 1, 2016 to December 31, 2016 by PT. Bank Panin, On January 2, 2017 PT. Bank Panin transferred the Contract to PT. Gemilang Indah Sentosa (GIS), without notification to the Plaintiff by distributing Notification Letter from KCU Pemuda Street, however, Robet Penggabean is not willing to transfer the work relationship to PT. GIS because there has been no settlement from PT. Bank Panin so that as a result of the incident Robert Penggabean asked for Bipartite Negotiations and in these negotiations Robert Penggabean was no longer employed and asked for his rights if he was no longer employed, but

PT. Arina Muli Karya and PT. Bank Panin did not distribute the rights of the Robert Penggabean.

Due to not finding any results in the Bipartite Negotiations, Robert Penggabean as the Plaintiff complained about the matter to the Medan City Manpower Office through his Attorney Indra Syafii, SE.MM Chairman of the Medan City PPMI DPC on 7 February 2017, However, in the Tripartite meeting there was no agreement or common ground between the Plaintiffs and PT. Arina Multi Karya and PT. Panin Bank. So the Mediator issued a letter of recommendation Number: 567/1174/DTKM/2017 dated April 10, 2017, In the first decision submitted by Robert Penggabean in the Principal Case punishing PT. Arina Multi Karya to pay the Plaintiff's rights in the form of severance pay, service award money and compensation for rights, as well as processing fees with a total of Rp.73,823,750.00 (Seventy Three Million Eight Hundred Twenty Three Thousand Seven Hundred Fifty Rupiah)

PT. Arina Multi Karya, who did not accept the Medan District Court's decision, appealed. However, in the cassation decision, it was reported that the money paid for the rights of the plaintiff from PT. Arina Multi Karya was reduced by Rp60,173,750.00 (sixty million one hundred seventy-three thousand seven hundred and fifty thousand rupiah) which was deducted from the non-payment of processing fees.

## **2.2. The Decision of The Supreme Court Cassation Number 516 K/Pdt.Sus-PHI/2019**

Taking into account, based on the Manpower Act Number 13 of 2003, the Law on the Settlement of Industrial Relations Disputes Number 2 of 2004, the Law on the Judicial Power Number 48 of 2009, the Law on the Supreme Court Number 14 of 1985 as amended by Law Number 5 of 2004 and the second amendment to Law Number 3 of 2009 and other relevant laws and regulations;

Hereby the results of the Cassation Decision are as follows:

1. Reject the appeal from the Cassation Petitioner PT ARINA MULTI KARYA;
2. Correcting the decision of the Industrial Relations District Court at the Medan District Court Number 193/Pdt.Sus.PHI/2017/PHI Mdn, dated October 26, 2017, so that the fullas follows:
3. Granting the Plaintiff's claim in part;
4. To declare that the working relationship between the Plaintiff and Defendant II has been terminated since this decision was read out;
5. Sentencing Defendant II (ic. PT Arina Multikarya) to pay the Plaintiff's rights in the form of severance pay, service award and compensation for rights, with a total of Rp60,173,750.00 (sixty million one hundred seventy three million seven hundred fifty thousand rupiah), with details as follows:

Severance pay

$2 \times 9 \times \text{Rp}2.275.000,00 = \text{Rp}40.950.000,00$

Money gratuity

$5 \times \text{Rp}2.275.000,00 = \text{Rp}11.375.000,00$

Money substitute housing and medical

$15 \% \times \text{Rp}52,325,000.00 = \text{Rp}7,848,750.00$

6. Refused from the Plaintiff's claim for other than and the rest; In the Counterclaim and Reject the Plaintiff's claim in its entirety;

7. Fees to the State

Imposing court Hereby there is a change in the wage income that will be given to Robet Penggabean which was originally in the initial decision amounting to Rp.73,823,750.00 (seventy-three million eight hundred twenty-three thousand seven hundred and fifty rupiah); to Rp60,173,750.00 (sixty million one hundred seventy-three thousand seven hundred and fifty thousand rupiah), this happened because the Processing Fee for Robert Penggabean was abolished.

## **2.3. Regulations Regarding Termination of Employment and Unilateral Termination of Employment**

Termination of employment or has an abbreviation, namely PHK is the end of the employment relationship caused by various things that result in the termination of rights and obligations between workers and employers/entrepreneurs. Regulations regarding termination of employment are contained in Law No. 13 of 2003 concerning Manpower, prior to the occurrence of a termination of employment must begin with the existence of a working relationship between workers and entrepreneurs so that a written work agreement is made and is also carried out in accordance with applicable laws and regulations, the work agreement is also made on the basis of the agreement of both parties as well as the work carried out by both parties. promised not to conflict with public order, decency and applicable laws and regulations. [2]

Termination of employment begins with several things which usually begin with a mismatch so that a problem occurs within the company but it is written in Article 151 of Law No. 13 of 2003 concerning Manpower, namely employers/entrepreneurs and workers by all means to continue to seek termination of the relationship. work does not happen, but if all means have been done but the layoff cannot be avoided and the layoff process will still be carried out, then the layoff must be negotiated first by the entrepreneur with the members of the trade union if any, but if the negotiations are truly does not result in an agreement, the entrepreneur can only terminate the employment relationship with the workers after obtaining approval in the form of a determination from the industrial relations dispute settlement institution. Termination of employment does not all go according to the provisions, sometimes there are companies that unilaterally terminate employment, causing injustice between employers/entrepreneurs and workers, unilateral layoffs themselves have the meaning of decisions made by the company without going through a legal process or establishment of an institution. Industrial Relations Dispute Settlement. Unilateral layoffs are something that is very scary and most avoided by all workers, because only

with one or a sheet containing a certificate that the worker has been officially laid off issued by the company will make all rights in the form of salary and social security workers will be lost because the contract has been terminated. It should be noted that in Law No. 13 of 2003 concerning Manpower there is no written name for unilateral layoffs based on Article 151 of Law No. 13 of 2003 concerning Manpower, namely: [3]

Workers and labor unions as well as with the Company and government assistance share all efforts to determine that there are no layoffs, every effort must be made to avoid the process of being laid off, but if after a long period of time and this method cannot be carried out or is nil so that layoffs cannot be avoided, the workers must negotiate with the utmost openness and the entrepreneur/entrepreneur can only terminate the employment relationship with the workers. after obtaining a legal determination from the industrial relations dispute settlement institution

#### ***2.4. Regulations Regarding Wages During the Termination Process***

Talking about Process Wages cannot be separated from the Manpower sector, namely regarding Termination of Employment, because without any Termination san The Employment Relationship providing Process Wages will not occur, it can be concluded that Process Wages are Wages received by Workers during the process of termination of employment, because during a dispute the workers and also the entrepreneur/entrepreneur must continue to carry out their obligations in accordance with what is written in Article 155 Paragraph (2) of Law Number 13 of 2003 concerning Manpower which reads: "As long as the decision of the industrial relations dispute settlement institution has not been determined, both the entrepreneur/entrepreneur and the worker/labourer must continue to carry out all their obligations." [4] However, in this article it is not well explained about the process wages so that judges often differ in their opinions on determining the limit of the amount of wages during the layoff process that companies must pay.

Process wages should be received by workers based on the Constitutional Court Decision Number 37/PUU-IX/2011 which explains that employers/entrepreneurs pay wages during the layoff process for 6 (six) months but if there is an excess of time in the court process as referred to in Law No. 2 of 2004 is no longer the responsibility of the parties. [5]

So that it was determined that in November 2018, the Supreme Court Circular Letter No. 3 of 2018 was issued which stipulates that workers who originally had a PKWT agreement, then changed to PKWTT, the worker is not entitled to process wages in the event of termination of employment.[6] With this there was a very detrimental and very significant change to the wage process, which started with getting a wage until it was legally binding, then changed to getting a maximum wage given as much as 6 (six) months and now there is no process fee at all which makes entrepreneurs will find it easier to carry out the

process of Termination of Employment which can be unilaterally or arbitrarily against workers, in this Supreme Court Circular No. 3 of 2018 explains the status of workers from a certain time work agreement (PKWT) to a time work agreement It is this indeterminate (PKWTT) that does not receive the process wage.

Based on the opinion of Juanda Pangaribuan, SH, MH and Nelson F. Saragih, SH, MH, wages during the termination process are required until the decision is proven and has legal force to make entrepreneurs are more able to appreciate the attitude workers when there is a dispute. In practice, entrepreneurs feel that the wages during the layoff process that must be given to workers are determined up to 6 (months) to be easy and not burdensome. Although the process in industrial courts is long because of the many cases that must be tried, if it becomes a definite law for both parties without any shortcomings or imbalances between the company and the workers. Therefore, the setting on wages during this inappropriate layoff process can lead to uncertain laws and also feelings of injustice on the part of workers. Circular Letter of the Supreme Court Number 3 of 2018 should not be so. Provisions regarding wages during the layoff process which are regulated outside of Law Number 13 of 2003 concerning Manpower should not be used as a reference if they are contradictory. [7]

Wages during the layoff process are said to be null and void if the worker or entrepreneur/entrepreneur is in good condition, there is no pressure. anything about this problem, wages during the layoff process cannot be determined. In the judiciary, the Industrial Relations Dispute judge did not have the same attitude in adjudicating the wage limit during the dismissal process. The first judge's attitude is to decide on wages during the maximum layoff process, which is six months. This stems from Article 191 of Law No. 13 of 2003.

#### ***2.5. Abolition of Wages during the Termination Process based on the Supreme Court Cassation Decision Number 516 K/Pdt.Sus-PHI/2019***

It is known that in the initial decision it was decided that the processing fee given to the Plaintiff was Rp. 13,650.000,00 with details in the form of 6-month-salary or wages with a monthly salary of Rp. 2,275.000.00 which is in accordance with what it should be but after PT. Arina Multi Karya continued to appeal to the Supreme Court, the amount of the process fee was waived and not given to the Plaintiff was written in the Supreme Court's Cassation Decision that based on the cassation memorandum received on November 20, 2017 which is an integral part of this Decision, the Cassation Petitioner requests that:

1. To declare that Judex Facti, namely the Panel of Judges of the Industrial Relations Court at the Medan District Court which examined and decided on case Number 193/Pdt.Sus-PHI/2017/PN Mdn had made a mistake in applying the law and wrongly appraising the evidence;
2. Canceling the Decision of the Industrial Relations Court at the Medan District Court Number 193/Pdt.Sus-PHI/2017/PN Mdn;

3. Granting the Cassation Petitioner's application in its entirety; Or if the Panel of Judges has a different opinion, please issue a fair decision.
  - a. Whereas with respect to the memorandum of cassation, the Defendant of Cassation has filed a counter memorandum of cassation dated January 16, 2018 which essentially rejects the petition for cassation from the Petitioner of Cassation;
4. Considering, whereas for these reasons, the Supreme Court is of the opinion:
5. That the reasons cannot be justified, because after examining the memorandum of cassation dated November 20, 2017 against the memorandum of cassation dated January 16, 2018 is related to Judex Facti's considerations in this case the Court of Industrial Relations the Medan District Court did not misapply the law with the following considerations:

That the working relationship between the Plaintiffs and the Defendants in accordance with the provisions of Article 59 paragraph (7) changed to an Indefinite Time Work Agreement (PKWTT) because according to the Fixed Time Work Agreement (PKWT) it did not meet the provisions of Article 59 paragraph (1), (2), (4) and (5) Law Number 13 of 2003, as considered by Judex Facti and the employment relationship ended without any fault from the Plaintiff; That, however, the Judex Facti decision as long as it is regarding the provision of process wages needs to be corrected to not be given, because it is fair in the event of a change from PKWT to PKWTT then in the event of termination of employment, Workers are not entitled to process wages. the process of terminating the employment relationship due to a change that occurred to the Plaintiff who was originally a PKWT (Specific Time Work Agreement) worker turned into a PKWTT (Indefinite Work Agreement) which occurred because it was written that it did not meet the provisions of Article 59 paragraph (1), (2), (4) and (5) Law Number 13 of 2003 which is written, namely:

- 1) Paragraph (1) PKWT can only be made for certain jobs based on the type and nature or activities of the work will be completed within a certain time, namely:
- 2) Paragraph (2) PKWT cannot be held for permanent work
- 3) Paragraph (4) PKWT based on n for a certain period of time it can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year.
- 4) Paragraph (6) Renewal of work agreement for a certain time can only be made after the 30 (thirty) day grace period ends. 2 (two) years old.

This regulation is also written in the Supreme Court Circular No. 3 of 2018 namely: [8] "In the event of a change of a Specific Time Work Agreement (PKWT) to an Indefinite Time Work Agreement (PKWTT), workers are not entitled to Process Wages in the event of Termination of Employment or Layoffs.

## ***2.6. Employment Agreement Amendment Specific Time into Agreements Work Time Indefinite***

We can see that the abolition of wages during the termination process in the case that authors carefully because there is a change of PKWT be PKWTT in accordance with what is during the Supreme Court's Cassation Decision No. 516K/Pdt.Sus-PHI/2019. Before that the author will explain from PKWT and PKWTT, PKWT is a work agreement carried out by workers and also entrepreneurs to carry out work relationships in certain jobs while PKWTT is a work agreement carried out by workers and also entrepreneurs to hold a permanent employment contract. The application of the PKWT system in the company is very large and even exceeds the PKWTT because it is considered very efficient for entrepreneurs to get more profits than before because the costs incurred by entrepreneurs are smaller because the permanent workforce does not have a large number.

If you know that when the entrepreneur has many workers, the entrepreneur is required to distribute a lot of money in the form of allowances for workers such as health care benefits, layoff benefits, work awards and others in the sense of the word if the entrepreneur/entrepreneur is more likely to distribute work in the form of labor with PKWT, then these costs can be reduced. [9]

It is certain for workers that the contract is considered very unfavorable to the policies of the workers because they do not have the certainty and duration of their work to be appointed as permanent workers or provide severance pay when the workers' contracts have expired. [10]

The regulations regarding the terms of PKWT are clearly written in Law No. 13 of 2003 concerning Manpower Article 59, namely: [11]

- 1) Paragraph (1) PKWT can only be made for certain jobs which based on the type and nature or activities of the work will be completed within a certain time, namely:
  - a. temporary workers
  - b. work for a maximum of 3 (three) years;
  - c. seasonal work;
  - d. new product work, or with probationary work.
- 2) Paragraph (2) PKWT cannot be held for permanent work.
- 3) Paragraph (3) PKWT can certainly be extended or renewed.
- 4) Paragraph (4) PKWT based on a certain period of time may be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year.
- 5) Paragraph (5) Entrepreneur/entrepreneur who wants to extend the working relationship must be at least 7 days before the agreement expires
- 6) Paragraph (6) Renewal of PKWT can only be held after the 30 (thirty) day grace period has expired. For a certain period of time, the renewal of this work agreement for a certain time may only be carried out 1 (one) time and for a maximum of 2 (two) years.
- 7) Paragraph (7) PKWT that does not meet the provisions as referred to in paragraph (1), paragraph (2), paragraph

(4), paragraph (5), and paragraph (6) shall by law become an indefinite work agreement.

Changes in status from PKWT to PKWTT can occur due to several things, namely:

1. Changes due to an agreement between Workers and Employers / entrepreneurs so that an agreement is reached that can change the status of a PKWT worker to PKWTT
2. Changes can be due to the law
3. Changes can happen because any irregularities committed are stated in Law No. 13 of 2003 concerning Manpower Article 57 which is written: [12] Article 57
  - 1) PKWT is made in writing and must use Indonesian and Latin letters.
  - 2) PKWT made unwritten contrary to the provisions as referred to in paragraph (1) shall be declared as a work agreement for an indefinite period of time.
  - 3) In the event that the work agreement is made in Indonesian and a foreign language, if then there is a difference in interpretation between the two, then the work agreement made in the Indonesian language shall prevail.

### 3. CONCLUSION

1. Based on the analysis of the problems and research described above, related to the research on the Cassation Decision of the Supreme Court of the Republic of Indonesia Number 516K/Pid.Sus-PHI/2019 that has been carried out, the authors conclude that the Supreme Court's Decision abolishes wages during the termination process of the Respondent. The cassation is in accordance with Law No. 13 of 2003 concerning Manpower, but on the other hand the clarity in the law regarding the acquisition of wages during the process of termination of employment is still very confusing so that there are differences in meaning in the community, so that wage arrangements during the termination process Work is often detrimental to the workers because it is not clearly written in Law No. 13 of 2003 concerning Manpower so that workers are harmed by not getting wages during the termination process
2. Based on the analysis of the problem regarding wages that must be paid correctly by the company based on the labor law, namely severance pay, service pay, compensation for rights and also process wages. and regarding the change from PKWT to PKWTT which makes workers not get wages during the termination process as stated in the 2018 Supreme Court circular letter.

### ACKNOWLEDGMENT

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- [2] Indonesia, Law Number 13 of 2003 on Manpower, Article 51-52
- [3] Indonesia, Law Number 13 of 2003 on Manpower, Article 151
- [4] Indonesia, Law Number 13 of 2003 on Manpower, Article 155 Number 2
- [5] Indonesia, Supreme Court Circular Number 3 of 2015, pp. 4, point f
- [6] Indonesia, Supreme Court Circular Number 3 of 2018, p. 10, part B.
- [7] Gressella, Jesslyn, Andari Yurikosari, 2019 "Analysis of Process Wages According to Constitutional Court Decision Number 37/PUU-XI/2011, Supreme Court Circular Letter Number 3 of 2015 and Circular Letter Number 3 of 2018 (Case Study of Industrial Relations Court Decisions)
- [8] Indonesia, Supreme Court Circular Number 3 of 2018, pp. 10.
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- [11] Indonesia, Law Number 13 of 2003 on Manpower, Article 59
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