

# Payment of Severance as Compensation for Termination of Employment According to Law No. 13 of 2003 on Employment (A Case Study Verdict No. 1238 K / PDT. SUS-PHI/2020)

Alfian Nurdiansyah<sup>1</sup> Gunardi Lie<sup>1\*</sup>

<sup>1</sup>Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia

\*Corresponding Author. E-mail: gunardilie.FH@gmail.com

## ABSTRACT

Employers, workers, trade unions, and the government with Every effort must be made to prevent termination of employment, in article 151 of Law no. 13 of 2003 concerning Employment explains that workers and employers must try as much as possible to avoid termination of employment. If the negotiations still haven't found a way out, then layoffs can only be done carried out after there is a determination from the relationship dispute settlement agency industrial. Termination of employment carried out without consent The institution for the settlement of industrial relations disputes is null and void. That is, layoffs are considered to have never existed. This is confirmed by Article 155 Paragraph (1) of Law No. 13 of 2003 concerning Manpower. If every effort has been made, but termination of employment cannot be avoided, the intention of terminating the employment relationship must be negotiated by the employer employment and trade unions, or with the workers concerned do not become union members, resulting in an agreement. Constitution The Republic of Indonesia Number 13 of 2003 concerning Manpower (Labor Law) has regulated the procedures for implementing layoffs so that there is a reference that can be used by workers to observe layoffs made by the employer. Other forms of industrial relations are: there is a clear arrangement between the rights and obligations that occur between workers, this matter is done clearly in an individual contract.

*Keywords: Termination of Employment, Industrial Relations, Severance*

## 1. INTRODUCTION

[1] The principle of manpower development is basically following the principles of Pancasila and the principles of fairness and equity. Manpower development has many dimensions and is related to various parties, namely the government, employers, and workers/laborers. [2] National development is carried out within the framework of the Indonesian people as a whole and the development of the Indonesian people as a whole to create a prosperous, just, prosperous, equitable society, both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In the implementation of national development, the workforce has a very important role and position as actors and development goals. In accordance with the role and position of the workforce, it is necessary to develop manpower to improve the quality of the workforce and their participation in development as well as to increase the protection of workers and their families under human dignity. In the provisions of Article 1 point 1 of Law no. 13 of 2003 concerning Manpower states that

Employment is all matters relating to labor before, during, and after the work period. [3] The work agreement must clearly stipulate the hours and hours of work, the number of wages, overtime pay, health protection, and so on. It also regulates the rights and obligations of workers as well as the rights and obligations of employers when the employment relationship ends or is terminated by one of the parties. The labor law is actually not new, because most of its contents are already known to workers and employers, but we must be grateful that the law clearly regulates the rights and obligations of each party in socializing in the work environment, the rewards (awards and punishment both civil and criminal and administrative) to the parties involved in the law. [4] It is undeniable that in the world of employment, termination of employment has always been a problem that always arises, therefore this is regulated in Law no. 13 of 2003 concerning Manpower so that employers or job providers do not arbitrarily terminate employment. Employers or employers, workers, trade unions, and the government must make every effort to prevent termination of employment, in article 151 of Law no. 13 of 2003 concerning Manpower explains that workers

and employers must try their best to avoid termination of employment. If the negotiations still have not found a solution, then the termination of employment can only be carried out after there is a decision from the Industrial Relations Dispute Settlement Institution. Termination of employment carried out without the approval of the Industrial Relations Dispute Settlement Institution shall be null and void by law. That is, layoffs are considered to have never existed. This is confirmed by Article 155 Paragraph (1) of Law no. 13 of 2003 concerning Manpower. If every effort has been made, but termination of employment is unavoidable, the intention to terminate the employment relationship must be negotiated by the employer and the trade union, or with the worker concerned who is not a member of the trade union, to result in an agreement. The Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Labor Law) has regulated the procedures for implementing layoffs, so that there is a reference that can be used by workers to observe layoffs carried out by the employer. According to Payaman J. Simanjuntak, industrial relations are relations of all parties who are related or have an interest in the process of producing goods or services in a company with an interest in each company, another form of industrial relations is the existence of clear arrangements between rights and obligations that occur between workers, this issue is made clear in individual agreements. In the process of industrial relations, both the company and the workers or laborers who work in a business entity have the same and legal rights as an effort to protect things that are considered as interests to secure the goals to be achieved. However, in practice it is possible for a company to always be faced with a problem, both internally and externally. So every company is expected to be able to face these problems with solutions that not only benefit the company but can benefit the workers/laborers. The cassation decision Number 1238 K/Pdt.Sus-PHI/2020 which cancels the Decision Number 9/Pdt.Sus-PHI/2020/PN Gsk at the Gresik District Court has a different opinion regarding the layoffs carried out by employers that the layoffs carried out by the company were carried out based on budget efficiency caused by losses so that the Defendant (PT. WIJAYA INDONESIA MAKMUR BICYCLE INDUSTRIES) filed an Application for Suspension of Debt Payment Obligations thus the judge considered that the company could terminate the employment relationship based on the provisions of Article 164 paragraph (1) of the Law Number 13 of 2003 concerning Manpower, the company laid off several employees and provided compensation for layoffs in the form of 1 (one) severance pay as stipulated in Article 156 paragraph (2), 1 (one) severance pay as stipulated in Article 156 paragraph (3), and compensation for rights in accordance with the provisions of Article 156 paragraph (4) of Law no. 13 of 2003 concerning Manpower. In this case, the judge granted the defendant's cassation on the basis that the defendant suffered losses continuously, seen through the financial statements for the last 2 (two) years where the company did not experience bankruptcy or force majeure but instead made efficiency towards the company, which made a discrepancy in the amount of severance pay

provided. to those who were laid off because the company made efficiency.

### ***1.1. Related Work***

Based on the description above, the title of this research is Payment of Severance as Compensation for Termination of Employment According to Law No. 13 of 2003 on employment (CASE STUDY VERDICT NUMBER 1238 - K/PDT.SUS-PHI/2020).

#### ***1.1.1. How the Judge Compares to the Industrial Relations Court's Ruling and on the Cassation Level***

In the decision of the Industrial Court at the District Court, the Judge takes into account more in terms of the written and applicable provisions. The Industrial Relations Court's Panel of Judges can hand down an interim verdict that is not the final verdict, pronounced in the trial. In handing down this interim ruling the Judge must be able to know in real-time at the first or second hearing that the employer does not carry out his obligations. The obligation in question is evident to be handed down the interim verdict that employers must still pay the rights of workers who are being suspended due to the termination of the employment process. The interim ruling is intended to provide legalization for an urgent action that if not taken will have a major impact. The Panel of Judges shall consider the law, existing agreements, customs, and justice. Ad-hoc judges assigned to examine and adjudicate industrial relations disputes in the Supreme Court. So if seen from the above provisions, it can be known that the Panel of Judges in the cassation break considers the reasons and facts that may intersect with the previous ruling. In the event of the decisions of the Panel of Judges at any level, is a form of legal protection given to the parties and a form of legal certainty. Legal protection is protection by using legal means of protection provided by the law that aims to protect certain interests by making those interests a legal right. The considerations of the Panel of Judges in deciding the decision must certainly uphold legal certainty in terms of industrial relations issues, namely with the provision that employers, workers/workers, unions, and the government with all efforts must try to avoid termination of employment. All efforts mean that positive activities that can ultimately avoid termination of employment, among others, work timing, savings, improvement of work methods, and guide workers/workers. So termination of employment is the last act. If all prevention efforts have failed, the only termination of employment can be done.

#### ***1.1.2. How is the severance money given in accordance with the Supreme Court Decision No. 1238 K/Pdt.Sus-PHI/2020?***

[5] The principle of employment development is basically following the principle of Pancasila and the principle of

fairness and equity. Employment development has many dimensions and is related to the parties, namely the government, employers, and workers/workers. Therefore, employment development is implemented in an integrated manner in the form of mutually supportive cooperation. In the 1945 Constitution article 27 paragraph (2) it is explained that: [6] Termination of Employment as stipulated in article 164 Paragraph 1 (one) to 3 (three). In the provision of Article 164 Paragraph (1) which reads: employers can terminate employment relations against workers/workers because the company closes caused by experiencing doubts for two (2) consecutive years or because of force majeure, with the provision of workers/workers are entitled to severance of 1 (one) time the provision of Article 156 paragraph (2) of the award money of the working period of 1 (one) provision of article 156 paragraph (3) and reimbursement of rights by the provisions of Article 156 paragraph (4). In the provision of Article 164 Paragraph (3) which reads: employers can terminate employment relations against workers / workers because the company is closed not because of experiencing doubts for two (2) years in a row or not because of force majeure but the company makes efficiency, provided that workers are entitled to severance of 2 (two) times the provisions of Article 156 paragraph (2) of the award money for the working period of 1 (one) provision of article 156 paragraph (3) and reimbursement of rights by the provisions of Article 156 paragraph (4).

### **1.2. Our Contribution**

Based on the background and problem formulation described above, the objectives to be achieved in this research are to find out the factors that causing termination of employment and rights owned by the labor in the occurrence of the termination of employment. According to Law No. 13 of 2003 on employment

### **1.3. Paper Structure**

The type of research method used in this thesis is the normative or doctrinal legal research method. Normative or doctrinal legal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzing the relationship between regulations that explain areas of difficulty and possibly predict future development. And also Legal Resources and Materials In this paper, the author uses legal materials obtained from the results of a review of decisions or a review of literature or library materials related to a problem or a material from research which is often called legal material.

## **2. BACKGROUND**

### **2.1. Agreement in Establishing Employment Relationships**

[7] A work agreement is an agreement in which one party (the laborer), binds himself to under the orders of the other party (the employer) for a certain period of time, to do work by receiving wages [8] The principle of balance is very important to be applied in the content of a work agreement between the company and the workforce, because the principle of balance is a principle that requires both parties to fulfill and implement the agreement. The principle of balance is based on efforts to achieve a state of balance between rights and obligations. Thus, the ideal form of a work agreement is appropriateness and position, each party to put in a position, each party to place himself in an agreement. So that it can be clearly accepted that an agreement based on the principle of balance can prevent the provision of expectations that are beyond the limits and prevent an imbalance in the content and rights and obligations that are bound to the parties. The principle of balance is based on efforts to achieve a state of balance between rights and obligations. Thus, the ideal form of an employment agreement is the appropriateness in placing the position of each party to place themselves in an agreement. [9] The legal subject of the employment agreement is the worker and the employer. [10] The legal object of the employment agreement is the work that the worker does. In other words, the energy attached to the worker is a legal object in the employment relationship. [11] The provisions in the work agreement or the contents of the work agreement must reflect the contents of the labor agreement/collective labor agreement. In other words, the rights and obligations of workers and employers are described in the employment relationship section.

### **2.2. Legal Purposes as a Form of Labor Protection**

Protection of workers/workers can be done by various laws and regulations, including Law No.13 of 2003 on Employment. This Law pays great attention to the protection of workers, in terms of substance and scope of regulation, which covers all matters related to labor at the time before, during, and after the employment period. Pre-employment arrangements: [12] Labor is any person who works by receiving wages or rewards in other forms. Protection of workers is intended to realize the direction of labor law/employment, which according to Imam Soepomo has the main purpose of the implementation of social justice in the field of labor, and its implementation is organized by protecting workers against unlimited power from the employer. [13]

### **2.3. Laws and Regulations Related to Legal Protection Against Termination of Employment**

Employers, workers/ workers, unions, and the government with all efforts must try to avoid termination of employment. All efforts means that positive activities that can ultimately avoid termination of employment, including working time arrangements, savings, improvement of working methods, and guide workers/workers. So if all efforts have been made but do not find the best way then termination of employment is the last action and at that time only termination of employment can be done. Termination of Employment as described in Law No.13 of 2003 concerning Employment is a termination of employment due to a certain thing that results in the termination of rights and obligations between workers/workers and employers. In Article 161 to be able to drop layoffs, employers must prove the existence of 3 (three) times warning letters given to workers in a row. Legal protection for every Indonesian citizen without exception can be determined in the Constitution of the Republic of Indonesia Year 1945, therefore every product produced by the legislature must always be able to provide guarantees of legal protection for everyone, even must be able to capture the aspirations of law and justice that develop in society this can be seen from the provisions governing the existence of equality of legal standing for each citizen. Legal protection is protection by using legal means of protection provided by the law that aims to protect certain interests by making those interests a legal right. Legal protection can also be interpreted as an act or effort to protect the public from arbitrary actions by rulers who are not following the rule of law, to realize order and tranquility to enable man to enjoy his dignity as a human being. [16] The form of legal protection realizes the rights of employees who are not granted by limited liability companies by fighting for their rights through industrial relations courts or by bankruptcy applications. In industrial relations courts, efforts are made first through bipartite and tripartite mechanisms that generate recommendations from the labor, while the application for bankruptcy in the commercial court must first be done by the mechanism of settlement of debt repayment obligations.

### **3. CONCLUSION**

Based on the background and research problem the objectives to be achieved in this research is to find out the factors that causing termination of employment and rights owned by the labor in the occurrence of the termination of employment. According to Law No. 13 of 2003 on employment. As the result, Constitution of Republic Indonesia Number 13 of 2003 concerning Manpower (Labor Law) has regulated the procedures for implementing layoffs so that there is a reference that can be used by workers to observe layoffs made by the employer. Other forms of industrial relations are: there is a

clear arrangement between the rights and obligations that occur between workers, this matter is done clearly in an individual contract.

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