One-Sided Termination of Employment (Case Study on Industrial Relationship Decisions Number 170/Pdt. Sus-Phi/2020/Pn.Jkt.Pst)

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ABSTRACT
A one-sided Termination of Employment Relationship is something that occurs due to something that results in the termination of the rights and obligations between the worker/labourer and the entrepreneur. In termination of employment sometimes disputes arise because there is no common understanding between workers/laborers and employers. The settlement of dismissal disputes can be carried out by Bipartite, Mediation, Conciliation, Arbitration, and the Industrial Relations Court. Cases of unilateral termination of employment often increase from year to year. However, not a few cases were enforced unfairly, and harmed the workers and workers. The research method used is to regulate justice through the use of legal methods and conceptual methods. From the results of this study, the authors raised the formulation of problems related to the role of the Panel of Judges in upholding the truth, and related to unilateral termination of employment related to the rejection of mutations, especially to parties affected by a breach of contract against the work contract that binds the party This study aims to find out how the implementation of unilateral termination of employment disputes at the Industrial Relations Court and to find out what obstacles occur and provide solutions to these obstacles.

***Keywords**: Unilateral Termination of Employment, Industrial Relations, Rejection of Mutation*

1. INTRODUCTION

As living beings, humans have needs that must be met in order to survive. To meet these needs, humans inevitably have to make a living, because work is one of the human rights to survive. A person who works with other people, can be referred to as a Worker. An employee is a person who works in a company and is bound by the company's superior, in a predetermined position, where this is often done by employers unilaterally because workers are considered to have committed a form of violation, or refuse work orders, for other reasons even for reasons of liking or not liking (Discussion on Termination of Employment is regulated in CHAPTER XII Article 150 to Article 172 of the Manpower Act). Employers sometimes transfer workers or so-called mutations to facilitate their business goals. Mutation can be interpreted as an activity from the company's leadership to move employees from one job to another that is considered equal or parallel.) The property rights of workers who are transferred to new, parallel positions cannot be reduced because workers have been directed to work placements in accordance with the skills, talents, and interests of the workers concerned. Industrial Relations is an agreement. An agreement is an event where one person promises to another person or where two people promise each other to do something. If the rights of one of the parties are violated or reduced, it will cause a difference of opinion which results in a conflict between the entrepreneur or a combination of employers and workers/laborers or a trade/labor union due to disputes over rights, disputes over interests, and disputes over termination of employment as well as disputes between unions. workers/unions in one company are referred to as Industrial Relations Disputes. In practice, employers sometimes transfer workers from one position to another. If the mutation is carried out in accordance with the worker's area of expertise and without reducing the rights of the worker in the slightest, the transfer will not be a problem. However, if the transfer is carried out by transferring the worker to a new position that is not in their area of expertise, it can even be accompanied by a reduction in fair rights if the worker rejects the mutation, and unilateral layoff is a decision made by the company/entrepreneur, without going through the appropriate legal process. with the Law, or the determination of the Industrial Relations Settlement Institution in advance. In response to this refusal, employers often lay off workers on the grounds that workers refuse to transfer, there is an opinion that employers can lay off workers who refuse to transfer because workers are considered to have refused work orders. There is also an

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opinion which states that employers who lay off workers who refuse to transfer are a layoff based only on likes and dislikes or in other words, an unfounded layoff so that it has legal consequences, namely the layoff is null and void and the working relationship between workers with the entrepreneur is considered to never break and continue.

1.1. Related Work

Based on the description above, the title of the research titled ONE-SIDED TERMINATION OF EMPLOYMENT (CASE STUDY ON INDUSTRIAL RELATIONSHIP DECISIONS NUMBER 170/PDT.SUS-PHI/2020/PN.JKT.PST)

1.1.1. The Factors that might cause the effect of One-Sided Termination of Employment in the Case Study on Industrial Relationship Decisions number 170/PDT.SUS-PHI/2020/PN.JKT.PST)

Plaintiff (Agus Siti) who works for (Defendant) PT Central Proteina Prima Tbk. Since February 2, 2012 in the Corporate Secretary and Investor Relations department. On October 25, 2019, the Director of Feed Production, Mr. Fredy Sumendap, called asking the Plaintiff to meet in his room. During the meeting, Mr. Fredy Sumendap conveyed verbally to the Plaintiff that as of December 1, 2019, the Plaintiff was transferred to the Procurement department. Then on October 28, 2019, the Plaintiff gave a verbal answer to Mr. Fredy Sumendap, that the Plaintiff was willing to move to the Procurement department, but the Plaintiff could not move on December 1, 2019, because the Plaintiff was preparing for the EGMS to be held on December 13, 2019, so that the Plaintiff request a postponement of the effective date for moving to the Procurement department. In response to the Plaintiff's response above, Mr. Fredy Sumendap said that because the Plaintiff could not move to the Procurement department, Mr. Fredy Sumendap would look for another candidate. Based on the foregoing, it is clear that the Plaintiff DOES NOT reject the mutation and there is no problem with the Plaintiff's transfer plan, because Mr. Fredy Sumendap has stated that he will look for another candidate to be transferred to the Procurement department, then the Plaintiff received a letter dated 21 November 2019, Subject: Bipartite Invitation from the Defendant, where the Defendant decided to terminate the Plaintiff's employment because the Plaintiff refused to be transferred. Before discussing the analysis of the problems that occurred in the Decision, the author would like to explain several important points as an early reminder and as a guide so that later readers can clearly understand the meanings of several legal meanings that will be used in discussing this research, such as:

1. Working Relationship

Article 1 number 15 of Law Number 13 of 2003 concerning Manpower (MANPOWER LAW) defines Employment Relations as "Employment relations are relations between employers and workers/laborers based on work agreements, which have elements of work, wages, and orders" an expert named Hartono Widodo and Judiantoro, the employment relationship occurs because of the regular mobilization of one's labor or services for the benefit of another person who orders him (the entrepreneur/employer) in accordance with the agreed work agreement. In addition, Tjepi Aloewic also argues that the definition of an employment relationship is a relationship that exists between employers and workers. This arises because the agreement is held for a certain or indefinite period of time.)

2. Mutation

Mutation is an activity of moving from one place to a certain place, therefore it can be concluded that mutation in the world of work is an activity carried out by employers to place workers in other places which is regulated and of course it has been regulated in the Manpower Act, especially in Article 32 which explains the following points:

“(1) The placement of workers is carried out based on the principles of being open, free, objective, fair, and equal without discrimination.

(2) The placement of workers is directed at placing workers in the right positions in accordance with their expertise, skills, talents, interests, and abilities with due observance of dignity, human rights, and legal protection.

(3) Manpower placement is carried out by taking into account the distribution of employment opportunities and the provision of manpower in accordance with the needs of national and regional programs.” Against this mutation, of course, can lead to various attitudes of workers. There are workers who refuse the transfer, while others accept it. For workers who refuse, employers are often threatened with Termination of Employment (PHK) or the employer may cancel the transfer.

3. Termination of Employment; Termination of Employment is defined in Article 1 Number 25 of the Manpower Act as“Termination of Employment Relationship is the termination of employment relationship due to a certain matter which results in the termination of the rights and obligations between the worker/labor and the entrepreneur.”According to Article 161 of the EMPLOYMENT LAW, in order to be able to impose a layoff, an entrepreneur must prove that there have been 3 (three) warning letters given to workers in succession so that the layoff can be imposed.

4. Employers may make layoffs for refusal of transfers; The Panel of Judges of Cassation in the case under study rendered a decision and argued that employers may lay off workers who refuse to transfer. Because the Panel of Judges is of the opinion that transfer is a work order which, if refused, may be subject to dismissal.

5. Employers are not allowed to lay off workers for refusal of transfers

The Panel of Judges of the Industrial Relations Court at the Central Jakarta District Court who examined, tried, and decided on the case under investigation was of the opinion that termination of employment due to refusing a transfer could not be carried out. Such layoffs are unfair dismissal or layoffs based on likes and dislikes which have the

consequence that the layoffs are null and void and the employment relationship is considered to have never ended.

1.2. Our Contribution

This paper presents some improvements based on the probabilistic assume-guarantee framework proposed in Feng et al. [23]. On one hand, our optimization is to verify each membership and equivalence query, to seek a counterexample, which can prove the property is not satisfied. If the counterexample is not spurious, the generation of the assumptions will stop, and the verification process will also terminate immediately. On the other hand, a potential shortage of the ASYM displays that the sole assumption A about M_1 is present, but the additional assumption about M_2 is nonexistent. We thus apply the SYM rule to the compositional verification of PAs and extend the rule to verify an n-component system ($n \geq 2$). Through several large cases, it is shown that our improvements are feasible and efficient.

2. BACKGROUND

A. Judge's Consideration on Unilateral Termination of Relations Case Study Against Industrial Relations DecisionNumber 170/PDT.SUS-PHI/2020/PN.JKT.PST). There are several positive laws that are not implemented as they should in this Decision, among others are;

1. Regarding the unilateral termination of employment by the company PT. Central Proteina Prima TBK.;

a) The dismissal of the Plaintiff is baseless and invalid, so that based on Article 61 (1) (c), 151 (3) and 155 (1) of Law Number 13 of 2003, therefore the working relationship between the Plaintiff and the Defendant should be continues;
b) The fact that since January 4, 2020, due to the prohibition for the Plaintiff who was asked by the Defendant to be present at the work location, the Defendant did not pay the Plaintiff's wages. Because basically the Plaintiff's absence at the work location was not because of the Plaintiff's own desire, but because it was prohibited by the Defendant, then in accordance with Article 93 paragraph (2) letter f of Law Number 13 of 2003 and Article 2 of PP. 78/2015, the Defendant is still obliged to pay the wages and rights of the Plaintiff as usual.

If it is linked to the theory of labor protection, a worker can take legal remedies that can be done by providing guidance or can also improve human rights, physical and technical protection as well as social and economic through the norms that apply in the work environment, then protection these workers will include: “Occupational safety norms”.

2. Regarding the severance pay that was not paid to the Plaintiff in accordance with the provisions of Article 163 paragraph (2) of Law Number 13 of 2003 states:

because the Defendant has not paid the Plaintiff's wages since January 2020, in accordance with Article 55 paragraph (1) letter a to letter c of PP No.78/2015, in addition to being obliged to pay the Plaintiff's wages every month starting from January 2020, the Defendant is also obliged to pay a fine for late payment of wages. back. In Article 163 paragraph (2) of Law Number 13 of 2003, in the event that the entrepreneur is no longer willing to accept workers/ laborers in his company due to a change in status, merger, or consolidation of the company, and the worker/ laborer is laid off (by the entrepreneur) , then he is entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2) of Law Number 13 of 2003. Regarding the provision of severance pay, this case also experienced irregularities because according to the determination of layoffs (by PHI). 169 paragraph (1) of Law Number 13 of 2003, then based on article 169 paragraph (2) of Law Number 13 of 2003, employers are obliged to pay severance pay of 2 (two) times the provisions of article 156 paragraph (2) of the Law. Number 13 of 2003 Then in the Minutes of Bipartite I dated November 26, 2019, the Defendant stated that:

a. The Defendant laid off the Plaintiff because the company's financial condition was experiencing a very difficult situation;
b. The Defendant offered compensation for severance pay in the amount of 1.5 x Article 156 paragraph (2), Service Period Award in the amount of 1 x Article 156 paragraph (3) and compensation for entitlements in accordance with Article 156 paragraph (4) of Law Number 13 of 2003;
c. Layoff payments will be made in stages as much as 13 x within a period of 13 months;
d. The termination date is December 31, 2019.

The Plaintiff rejected the offer of payment from the Defendant. The Plaintiff is dismissed, the Plaintiff demands payment of 2 x Severance Pay in accordance with Article 156 paragraph (2), 1 x Service Period Award according to Article 156 paragraph (3) and Compensation of Rights in accordance with Article 156 paragraph (4) of Law Number 13 of 2003. Because the Plaintiff refused the offer of payment Termination of the Defendant, no agreement was reached regarding the Plaintiff's dismissal. Related to the Dispute Resolution Process without Mediation carried out by PT. Central Proteina Prima Tbk. Against the Plaintiff As has been written in the decision, PT. Central Proteina Prima Tbk. terminated the employment relationship unilaterally without going through deliberation or mediation against the plaintiff, Mrs. Siti. The decision to lay off Mrs. Siti was taken unilaterally through a Bipartite Meeting held by the Board of Directors of the Company on November 21, 2019 where the letter was conveyed by a Bipartite Invitation from the Defendant. "Regarding the company's current financial condition, it is very difficult and the results of the implementation of the mass layoff program are also not as expected. Even though the company has made various efforts to save business continuity, there is no other choice and is forced to continue reducing employees. In relation to the above matters very seriously, we inform you that the

company will terminate the employment relationship effective December 31, 2019." Meanwhile, according to the Manpower Law No. 13 of 2003 article 151 paragraph (1) and paragraph (2), it means that layoffs cannot be carried out unilaterally but must go through negotiations first. Termination of Employment Relations without any stipulation from the industrial relations settlement institution will be null and void by law. When it comes to legal certainty theory, what the Plaintiffs need is clarity. Legal certainty theory is a behavioral scenario that is general in nature and binds all members of society including the legal consequences. Legal certainty is a guarantee that the law is carried out, every one stated by law has a right to obtain its rights and that a decision can be implemented.) Without legal certainty, the law loses its meaning because it cannot be used B. Arrangements for Unilateral Termination of Employment Due to Rejection of Transfer of Case Study on Decision Number 170/PDT.SUS-PHI/2020/PN.JKT.PST

The decision from the results of the first Bipartite meeting was to terminate the employment relationship with the defendant Mrs. Siti, because the company was experiencing difficult financial conditions, but in the Bipartite Minutes II, the plaintiff was declared laid off because the Plaintiff refused to be transferred to the procurement department. Where a decision to transfer an employee is the full right of the Company, but this Work Order is only carried out orally by Mr. Fredy Sumendap as the head of the Procurement Department, to give a mutation order to move Mrs. Siti from her position as Corporate Secretary, to the Procurement Division without a decree. or a clear Work Order, with the reason "Requires a person who is fluent in English in the procurement division". The Plaintiff never refused the transfer but only asked for a postponement of the effective date of the transfer to the Procurement department on December 1, 2019, because the Plaintiff still had to prepare for the EGMS on December 13, 2019 where it was the duty of a Corporate Secretary, and Mr. Freddy never stated that the Plaintiff refused the transfer, and the plaintiff also did not make a resignation letter because there was never an order for a transfer either. After that the plaintiff was ordered not to come to work anymore, but the plaintiff was not paid a salary and the severance pay for the layoff was not paid for 6 months. Then the plaintiff decided to file a lawsuit against the company PT. Central Proteina Tbk..

Based on the foregoing matters, the Plaintiff requests that the Industrial Relations Court at the Special Class IA Central Jakarta District Court decide as follows:

1. Granted the Plaintiff's Claim in its entirety;
2. To declare that the Defendant's dismissal decision is baseless and invalid and thus null and void;
3. To declare that the working relationship between the Plaintiff and the Defendant is still ongoing;
4. Ordered the Defendant to re-employ the Plaintiff in his original position;
5. Sentencing the Defendant to pay the Plaintiff's wages as of January 2020 until the Plaintiff returns to work;
6. Sentencing the Defendant to be able to pay a fine due to a delay in payment of wages of 50% of the wages of Rp. 5,542,021, - for each month whose value is late starting from January 2020 until the Plaintiff returns to work.

Then in an electronic letter dated January 31, 2020, the Defendant's HRD Director:

1. The reason for the Plaintiff's efficiency layoff is the Defendant's decision;
2. The Defendant has made efforts to prevent the Plaintiff from being laid off by transferring to the Plaintiff;
3. The Defendant acknowledged that the reason for the Plaintiff's dismissal was changed from rejecting the transfer to efficiency.

Whereas because in this second bipartite negotiation no agreement was reached, the Defendant is of the opinion that the Plaintiff is no longer willing to work for the Company or does not want to continue the working relationship as stipulated in the Collective Labor Agreement with PT. Central Proteina Prima, Tbk.. period 2018-2020;

Article 8 paragraph (4) "Rejection of the assignment and or transfer ordered by the Employer as referred to in paragraph (3) above is declared no longer willing to work in the Company or no longer wishes to continue the employment relationship with the Company, he is qualified to resign of his own volition as stated in Article 162 of Law number 13 2003 concerning employment"

Article 60 number 14; "Work relations between workers and employers can be severed in terms of; Workers refuse to carry out work orders (assignments) and/or transfers ordered by the employer without a solid reason and can be accepted by the employer."

Article 61 paragraph (20); "In the event that a worker is terminated because of his refusal to carry out a work order (assignment) and/or a transfer given by the entrepreneur without a solid reason and acceptable to the employer, as regulated in Article 8 paragraph (4) above, the worker is entitled to compensation for entitlements according to the regulations and applicable laws."

In the case studied, the entrepreneur could not prove that he had given 3 (three) warning letters as a basis for doing layoffs. But layoffs are still allowed by the Court of Cassation. This, of course, is contrary to the provisions of Article 161 of the MANPOWER LAW. However, during this case the Defendant was unable to explain and prove the truth of the transfer decision to the Plaintiff. Therefore, the Plaintiff's argument point 8 states; "The defendant was inconsistent with changing the reasons for the layoffs in the first negotiation on November 26, 2019 due to the difficult financial condition of termination of employment, while in the second bipartite negotiation. This case was resolved using Law no. 13 of 2003 concerning Manpower, Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes and other relevant laws and regulations. And Judge

1. Reject the Plaintiff's claim in the Primary section;
2. Directory of Decisions of the Supreme Court of the Republic of Indonesia verdict.mahkamahagung.go.id;
3. Granted the Plaintiff's claim on the Subsidiary's part;

4. To declare that the decision on termination of employment from the Defendant to the Plaintiff is null and void;
5. Declaring the Termination of Employment Relationship between the Plaintiff and the Defendant as of December 31, 2019;
6. Sentencing the Defendant to pay the compensation for the layoff in cash and at once, as a result of the termination of employment to the Plaintiff in a total of Rp. 133,323,000, (one hundred and thirty three million three hundred and twenty three thousand rupiah);
7. Charge the state with the costs of the case in the amount of Rp. 306,000 (three hundred and six thousand rupiah).

From the decision of the Panel of Judges above, it is very clear that the panel of judges did not grant the plaintiff's request and decided that the decision to lay off the Defendant to the Plaintiff was null and void, but the plaintiff was still dismissed and declared as Termination of Employment because the relationship between the plaintiff and the defendant was not harmonious and will not be conducive if continued. The Panel of Judges also decided that the defendant should pay compensation severance pay in the amount of 1.5 x Article 156 paragraph (2), Service Period Award in the amount of 1 x Article 156 paragraph (3) and compensation for entitlements in accordance with Article 156 paragraph (4) of Law no. 13/2003, which should be 2 x Article 156 paragraph (2). If it is related to the theory of legal protection as a protection by using legal means or protection provided by law which aims to protect certain interests by making these interests a legal right. Legal protection is protection provided based on laws and regulations.) According to the author, severance pay should be paid in accordance with Article 163 paragraph (2) of Law Number 13 of 2003, in the event that the entrepreneur is no longer willing to accept workers/laborers in his company due to a change in status, merger or consolidation of companies, and workers If the worker is laid off (by the entrepreneur), then he is entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2) of Law Number 13 of 2003. Regarding the provision of severance pay, this case also experienced irregularities because according to the determination of the layoff (by PHI) For the reasons as stated in Article 169 paragraph (1) of Law no. 13/2003, then based on article 169 paragraph (2) of Law no. 13/2003, employers are obliged to pay severance pay.

3. CONCLUSION AND SUGGESTIONS

3.1. Conclusion

After conducting research in the form of data analysis that has been described in the previous section, the author arrives at this closing section, the author will conclude by outlining short answers to answers to the results of the formulation of the problem in the form of:

1. According to the results of the author's analysis, Decision Number 170/PDT.SUS-PHI/2020/PN.JKT.PST) does not have a regulatory basis and ignores legal facts. Because with all the things that have been done by the defendant to justify the process of layoffs against the plaintiff who from a legal point of view, does not meet the qualifications. And because the Plaintiff was postponed for 6 months and was not given a salary and compensation was not paid by the company.
2. The Defendant's decision to try to terminate the Plaintiff's employment on the grounds of inconsistent transfers is very unfair due to the lack of legal certainty for the Plaintiff.

3.2. Suggestion

The suggestions that can be submitted by the author in order to achieve the objectives of this research are:

1. Termination of Employment (PHK) for workers is the beginning of all terminations, for that all parties are expected to avoid termination of employment (PHK).
2. Termination of Employment (PHK) at PT. Central Proteina Prima Tbk. What has happened should not be used as an example to other companies because the practice of Termination of Employment (PHK) in addition to not being based on laws and regulations, there are also some policies from employers that do not prioritize aspects of deliberation and to achieve consensus.
3. Termination of Employment (PHK) can certainly have consequences for employers and workers, but the ones who feel the most from these consequences are workers, because workers who get Termination of Employment (PHK) will experience difficult times, namely meeting all the needs of life and their families , get a job right away where this costs money.
4. The author hopes that with the implementation of termination of employment that will be carried out by the company, it must be carried out in accordance with the applicable legal procedures, namely Law Number 13 of 2003 concerning employment as a form of company responsibility that must comply with the applicable law. applies where if a company is going to terminate the employment relationship (PHK) due to a certain reason such as a forced situation that cannot be avoided other than by doing this, then the company is required to provide severance pay, award money, and compensation for entitlements as a form of wages. of the hard work the worker has put in. And the regulations regarding severance pay, award money and compensation payments are regulated in article 156, article 160 to article 169 of Law no. 13 of 2003 concerning Manpower.
5. For the Panel of Judges, hopefully in the future they will pay more attention to the impact that the Plaintiff will have in the case of Unilateral Termination of Employment and hopefully it will be tried as fairly as possible.
6. As for the community, it is hoped that later they will be able to better appreciate all forms of legal rules, because

basically the rule of law is one way to realize legal protection which of course has the aim of being able to protect all the rights and interests of each individual who becomes legal subject properly.

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