



# Probability of Employee Rights Submitting a Commercial Court Bankruptcy Application Without a Decision of the Industrial Relations Court

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**Abstract.** The position of Bankruptcy Preferred Creditor Labor in the provisions in Article 95 paragraph (4) of the Manpower Law, that workers' wages get fulfillment first in the event a company is declared Bankrupt. Conflict of norms in filing a bankruptcy application at the Commercial Court without a PHI decision resulting in a conflict of legal norms in terms of determining the expiration date for filing a lawsuit at the Industrial Relations Court, as can be seen from the meaning of the provisions of Article 96 Law no. 13 of 2003 concerning Manpower as amended by Law no. 11 of 2020 concerning Job Creation, which is different from the Constitutional Court Decision No. 100/PUU-X/2012 with SEMA No. 4 of 2014 concerning Enforcement of the Formulation of the Results of the 2013 Supreme Court Chamber Plenary Meeting as a Court Guideline. This writing uses normative juridical law research methods with the statute approach, conceptual approach, and case approach. The results of this research are workers who can apply for bankruptcy if they have fulfilled the simple bankruptcy requirements, to prove the validity of the amount of workers' wages which will be used as the object of the bankruptcy application.

**Keywords:** Employee Rights; Legal Probability; Bankruptcy Application; Commercial Court; Industrial Relations Court.

## 1. Introduction

Labor Law is known in Dutch as *arbeidsrecht*, developed and implemented by 3 (three) parties who have an interest, namely Workers/Labourers, Employers, and the Government. Each party has an interest so that labor relations can take place harmoniously.[1] Workers need jobs from employers, employers need workers to run their businesses, and the government needs workers and employers for the benefit of national development and equalizing the position of workers before employers. Work relations are inseparable when talking about Labor Law. The working relationship that occurs between employers and workers has the meaning as stipulated in Law no. 13 of 2003 concerning Manpower and as amended, most recently by Law no. 11 of 2020 concerning Job Creation, as well as labor law experts but not limited to Zainal Asikin and Lalu Husni.[2]

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According to Adrian Sutedi, the employment relationship is a (legal) relationship between employers and workers/workers based on a work agreement. Thus, the work relationship is something abstract, while the work agreement is something concrete or real. With a work agreement, there will be a bond between employers and workers. In other words, the bond because of this work agreement is a work relationship. In its implementation, the employment relationship always places the worker in a lower position than the employer, this can be proven at least from the element of command as one of the elements of the employment relationship which also shows a dienstverhouding nature. The element of this order is also the distinguishing feature between work relations and other civil law relations. In an employment relationship, workers are bound and dependent on the employer's orders and do not have the freedom not to do so.[3]

Building the economy in Indonesia requires synergy between employers and workers. To support the fulfillment of workers' welfare, the state is expected to be present in the legal relationship between employers and workers. Because it does not rule out that there are employers who for the sake of maximizing profits do not pay attention to the welfare of their workers who are entitled to this matter, and vice versa there are employers' rights that must be known by their workers so that a balance is created between the rights and obligations of employers and workers. Based on the government must play a role in overcoming problems like this by making related regulations. [4]

Industrial Relations is basically a process of developing communication, deliberative consultations and negotiations supported by the high ability and commitment of all elements within the company. The labor law has set the basic principles that we need to develop in the field of industrial relations. The aim is to create ideal systems and institutions, so as to create productive, harmonious, dynamic and just working conditions.

As time goes by in the business world, it is possible for a dispute to occur between workers and employers. So that the Government was present by issuing Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement and Law Number 13 of 2003 concerning Manpower in order to fulfill the people's need for rights and obligations in Manpower. Pursuant to the provisions of Article 1 of Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes. Disputes in employment relations such as differences of opinion that result in conflict between the entrepreneur or a combination of employers and workers/laborers or trade unions/labor unions due to disputes regarding rights, disputes over interests, disputes over termination of employment and disputes between trade unions/labor unions within a company. According to Article 82 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, lawsuits by workers/laborers regarding termination of employment as referred to in Articles 159 and Article 171 of Law Number 13 of 2003 concerning Manpower, can be filed only within 1 (one) time period. one) year from the receipt or notification of the decision from the entrepreneur.[5]

Disputes between workers and employers often occur in the implementation of work relations, the settlement of which uses the mechanism of filing a lawsuit from

one party to the other. Positive labor law has at least provided an expiration date for filing a lawsuit over a dispute over rights whose meaning differs from one another so that there is a conflict of legal norms in terms of determining the expiration date for filing a lawsuit for rights disputes as can be seen in the meaning of the provisions of Article 96 of the Labor Law which are different between Court Decisions Constitution (Decision of the Constitutional Court) No. 100/PUU-X/2012 with the Supreme Court Circular Letter (SEMA) No. 4 of 2014 concerning Enforcement of the Formulation of the Results of the 2013 Supreme Court (MA) Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court, where differences can be found in the form of the Constitutional Court (MK) having stated that there is no time limit for workers to claim rights, but the Supreme Court stated that it is limited time based on the sense of fairness of the Panel of Judges at the Industrial Relations Court. This paper will focus on studying the provisions regarding the expiration date for workers to file a lawsuit with the Industrial Relations Court after the promulgation of the Job Creation Law, with the main problem being how to consistently regulate the expiration date for filing lawsuits so that it is easier for parties to obtain legal certainty after the promulgation of the Job Creation Law. The legal issue of expiry of lawsuits in industrial relations disputes (PHI) occurs due to the spread of legal sources regarding expiry beyond what has been regulated in Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes as the main source of formal law in settlement of PHI.

## **2. Problems**

How can the legitimacy of a petition for bankruptcy by Labor not indicate an Industrial Relations Court Decision?

## **3. Method**

Type of normative juridical research, with a conceptual approach (conceptual approach), statutory approach (normative approach) and legal synchronization. Primary legal material consists of: The amended 1945 Constitution, Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes, Law no. 13 of 2003 concerning Manpower and as amended, most recently by Law no. 11 of 2020 concerning Job Creation, Supreme Court Regulation No. 01 of 2008 concerning Mediation in Courts, Regulations and Decrees of the Minister of Manpower and Transmigration (Kepmenakertrans) No. Kep: 92/Men/VI/2004 concerning Appointment and Dismissal of Mediators and Mediation Work Procedures. Secondary legal materials consist of books, journals and legal papers that are relevant to the title, tertiary legal materials, namely legal dictionaries. The data found is then interpreted, evaluated and conclusions drawn deductively. The results of this research are expected to be used as input material in the amendment or revision of Law no. 2 of 2004.

## **4. Discussion**

### **4.1. The Legitimacy of a Petition for Bankruptcy by Labor Not Indicate an Industrial Relations Court Decision**

In a working relationship, it is undeniable that workers and employers have different interests. The purpose of working workers is to get wages and welfare to improve the quality of life for themselves and their families, and therefore it has become an instinct for every worker to increase welfare and maintain his job because when the employment relationship is cut off, wages and welfare also stop which will result in self-sustainability. Workers and their families as well as the beginning of unemployment. On the other hand, the goal of entrepreneurs opening their businesses is to get the maximum profit with the minimum possible capital, where workers are qualified as a burden of production costs. With this difference, it is not uncommon for workers and employers to reach the point of PHI. PHI itself consists of 4 (four) types, namely disputes over rights, interests, termination of employment, and between trade unions/labor unions within one company. Of the four types of disputes, disputes over termination of employment are the most frequent types of PHI. [6]

Disputes over termination of employment are differences of opinion between workers and employers regarding termination of employment, while disputes over rights are disputes that arise as a result of non-fulfillment of rights, as a result of differences in the implementation or interpretation of statutory provisions, work agreements. This PHI will culminate in filing a lawsuit at the Industrial Relations Court at the District Court where the worker is located, when in the bipartite and mediation settlement stages no agreement is reached. The Industrial Relations Court is a judicial institution authorized to examine and decide on cases at the Industrial Relations Court which is the court of first and last instance for disputes over interests and between SP/SB within one company and is the first level for disputes over rights and layoffs. The statute of limitations for workers filing a lawsuit at the Industrial Relations Court must be differentiated based on the object being sued.[7]

According to the author, the provisions regarding the expiration date for filing a lawsuit can be distinguished based on the object of the dispute being claimed, whether the dispute over rights which is a claim against rights born as a result of a work relationship requires that the employment relationship between workers and employers is still ongoing or there is no will or termination process. Employment relations, or disputes over termination of employment where there is a demand for rights born as a result of termination of employment, it is required that the will or process of termination of employment occur first. This difference is important, because it is also related to different expiration provisions. The procedural law that applies at the Industrial Relations Court is the PHI Law which replaces Law No. 22 of 1957 concerning the Settlement of Labor Disputes and Law no. 12 of 1964 concerning Termination of Employment in Private Companies which is deemed not to reflect the principle of a quick, simple and low-cost trial. [8]

The procedural law that applies at the Industrial Relations Court, namely the PHI Law as a *lex specialis* and the civil procedural law that applies to the Court within the scope of the General Court as a *lex generalis*. This means that provisions regarding procedural law that are not specifically regulated in the PHI Law apply to civil procedural law in general. The Civil Procedure Code consists of formal rules regarding the stages for someone who is suspected of having their rights violated to get their rights back through the courts. The discussion will begin regarding the provisions on the expiration of workers filing a lawsuit at the Industrial Relations Court. As previously mentioned, the expiration date for workers filing a lawsuit at the Industrial Relations Court must be distinguished based on the object of the dispute. A lawsuit is a form of demand for rights in terms of law enforcement. While law enforcement in the context of employment can be interpreted as an effort to uphold the functions of labor law norms both based on laws and regulations, work agreements, company regulations, and collective labor agreements in order to realize justice in work relations.[9]

The meaning of expiration is very closely related to the time period, which if it is associated with a lawsuit, it gets the meaning of the limit or time period for filing a lawsuit. Darwan Prinst provides a definition of expiration or *verjaring* by referring to the provisions of Article 1946 of the Civil Code, which is a tool to obtain or release something based on an agreement with the passage of time and on conditions determined by law, where a person may not obtain something and can relinquish the rights it has due to expiration. Likewise, Sudikno Mertokusumo stated that past time has an influence on claims for rights, where claims for rights or lawsuits can expire due to the influence of past time determined by law (*decheance*). Expiration of waiver, namely when a person is released from claims for rights when 30 (thirty) years have passed or the law stipulates a shorter time is not used by the owner of the right to sue. Pitlo provides 2 (two) cumulative conditions for the expiration of the release, namely the owner who does not fulfill his obligations and remains silent does not use his right to sue.[10]

Concerning workers' rights can be found in laws and regulations in the field of manpower as heteronomous rules and work agreements, company regulations and collective labor agreements as autonomous rules. The basic difference between the two rules is that heteronomous rules are a form of regulation made by the government to provide protection to workers as a party who has a weaker position compared to employers, while autonomous rules are laws made based on an agreement between workers or trade unions and employers. The protection provided by the Government includes protection of wages, welfare, social security, occupational health and safety, freedom of association, and the right to negotiate. However, at the same time, apart from aiming to provide protection to workers, the Government also has an interest in encouraging the opening of many job opportunities so that it will reduce the unemployment rate which has an adverse impact on the sustainability of the life of the nation and state. As of November 2, 2020, the Government has promulgated the Job Creation Law, in which the Manpower Law is part of the law which has been amended therein.

With the passing of this law, the government hopes that it will become part of legal reforms to increase investment in Indonesia and at the same time be able to eliminate the imbalance in the bargaining position between workers and employers in employment relations, but in fact it continues the trend of deregulation and flexibility, which weakens protection against workers as started when Law No. 21 of 2000 concerning Trade Unions/Labour Unions, the Manpower Law, and the PHI Law which prioritize the interests of investors without upholding developments in the protection of workers. This can at least be seen from the many waves of rejection of the discussion and ratification of the Job Creation Law because it regulates articles that are considered not to provide or at least reduce the protection and welfare of workers than what was previously better regulated in the Manpower Law, namely the elimination of the minimum wage. sectoral, extending the period for which a worker can be contracted, and expanding the designation and use of the outsourcing mechanism .[11]

Apart from that, this law re-arranges the rules for filing a lawsuit for termination of employment which has resulted in more dominance and ease for employers in terminating employment so that it becomes more difficult for workers and unions to defend and fight for workers' rights. The Constitutional Court has read out the Decision on the Request for a Formal Test on the Job Creation Law on 25 November 2021, which in essence is as follows:

- a. Declare that the Establishment of the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it does not mean "no amendments have been made within 2 (two) years since this decision was pronounced";
- b. Declare that the Job Creation Law will remain in force until the formation is corrected according to the time limit specified in this decision; and
- c. Order the legislators to make improvements within a maximum period of 2 (two) years from the pronouncement of this decision and if corrections are not made within that time limit, the Job Creation Law will become permanently unconstitutional;

The expiration date for filing a lawsuit regarding disputes over rights to the Industrial Relations Court is regulated in the provisions of Article 96 of the Manpower Law. Whereas the objects referred to in the provisions of this Article are wages, overtime pay, bonuses, in kind, and so on as long as they are rights that are born from the ongoing working relationship. Initially, the regulation regarding the expiration stated that wages and other rights arising from an employment relationship could only be claimed by workers for a maximum of 2 (two) years after these rights were supposed to be received by workers. However, on September 19 2013, the Constitutional Court issued the Constitutional Court Decision No. 100/PUU-X/2012 which tests the constitutionality of Article 96 of the Manpower Law. The Constitutional Court as a form of judicial power in Indonesia has different authorities from other judicial bodies, one of which is constitutional review, namely examining a law against the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia).[12]

The Constitutional Court was born with the aim of protecting the fundamental rights possessed by every citizen based on the constitution of the Republic of Indonesia from abuse of authority by state institutions, and ensuring the functioning of the democratic system in balancing the roles of the executive, legislature and judiciary. Ni'matul Huda stated 4 (four) reasons for establishing the Constitutional Court, namely:

- a. The embodiment of constitutionalism;
- b. Application of checks and balances;
- c. Clean state administration; and
- d. Protection of human rights of citizens.

Referring to the provisions of Article 56 of Law no. 24 of 2003 concerning the Constitutional Court it can be concluded that the Constitutional Court's decision consists of being unacceptable, or rejected.

In the event that the Constitutional Court grants the request for review of a law with a ruling declaring an article, paragraph or phrase in a law unconstitutional and does not have binding legal force, then in fact the Constitutional Court is carrying out one of its functions, namely as a negative legislator. As Hans Kelsen said that "The annulment of a law is a legislative function, an act so to speak of negative legislation. A court which is competent to abolish laws individually or generally functions as a negative legislator". The decisions of the constitutional judges are erga omnes in nature which causes the nature of their attachment in general to both citizens and state institutions as administrators of governmental power.

This of course also binds law enforcement officials, including the court, not to apply the law that has been annulled. In the Constitutional Court Decision No. 100/PUU-X/2012 dated 19 September 2013, the Constitutional Court gave consideration which principally stated that wages and all payments arising from work relations are personal property rights and may not be taken over arbitrarily by anyone, either by individuals or through provisions of laws and regulations, and based on these legal considerations, the Constitutional Court issued a decision on the judicial review case. Constitutional Court Decision No. 100/PUU-X/2012 states that Article 96 of the Manpower Law is declared unconstitutional and has no binding legal force. MK Decision No. 100/PUU-X/2012 is also colored by a dissenting opinion from Constitutional Justice Hamdan Zoelva.[13]

Therefore, with the existence of this Constitutional Court Decision, it has a legal effect since September 19, 2013, workers can claim payment of wages that have not been paid by employers. This decision does not provide a good limit for workers/labourers to charge employers for failing to fulfill their normative rights. But presumably the meaning of this matter must be correlated as stipulated in Article 142 of Law no. 40 of 2007 concerning Limited Liability Companies where a limited liability company will lose its legal entity status when the conditions for the dissolution of the limited liability company itself have been fulfilled.[14] Since the

enactment of the Job Creation Law, specifically referring to Article 81 point 34 the validity of Article 96 of Law No. 13 of 2003 concerning Manpower has been removed, this is presumably in line with the mandate of the Constitutional Court Decision No. 100/PUU-X/2012. However, even though Article 96 of the Manpower Law has been stated by the MK and does not have binding legal force, the Supreme Court as one of the State Institutions denies or does not comply. This can be seen in SEMA No. 4 of 2014 concerning the Enforcement of the Formulation of the Results of the 2013 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Tasks for the Court, which states "The formulation of Article 96 of the Manpower Law which has been judicially reviewed based on the Constitutional Court Decision No. 100/PUU-X/2012 dated 19 September 2013 did not issue a new norm.

Therefore, in deciding the expiration date does not reduce the freedom of the judge to consider the sense of justice based on Article 100 of the PHI Law in conjunction with Article 5 of Law no. 48 of 2009 concerning Judicial Power."

## 5. Conclusion

From the results of the discussion above, the author concludes that regarding the expiration of claims since the enactment of the Job Creation Law, it must be interpreted as expiration for workers demanding wages, overtime pay, bonuses, in-kind, and so on as long as they are rights that are born from the ongoing work relationship, it must be interpreted without limiting it. , as long as there has not been dissolution of the company as stipulated in Article 142 of the Company Law. The expiration date for filing a lawsuit at the Industrial Relations Court is no later than 1 (one) year after receiving or notifying the decision on termination of employment from the employer, which can only be applied to the extent of termination of employment because the worker is detained by the authorities for allegedly committing a crime as stipulated in Article 160 paragraph (3) The Manpower Law, and the expiration date for workers filing a lawsuit to the Industrial Relations Court over disputes over termination of employment outside of the provisions of Article 160 paragraph (3) of the Manpower Law is 30 (thirty) years. In the event that the company where the worker/labourer works turns out to be in a state of bankruptcy, then the Employer does not have the authority to carry out the management and/or settlement of the company's bankrupt assets, and therefore the payment of wages owed, severance pay, long service pay, and compensation for workers' rights /Labor based on the Recognized Receivable List carried out by the curator. Workers/laborers who are positioned as creditors can submit bills in the form of unpaid wages or severance pay to the Curator, but what needs to be observed is based on the Constitutional Court Decision No. 67/PUU-XI/2013 dated 11 September 2014 against debts in the form of payable wages that take precedence over all types of creditors including separatist claims.

So that the Government together with the Legislature needs to include substance regarding the expiry of a lawsuit against the Court of Justice consistently in terms of disputes over rights or disputes over termination of employment. The



inclusion of the substance of the expiry of the lawsuit in a consistent and clear manner is intended to make it easier for both workers and employers to understand and find the backing and basis for rights in filing a claim for rights to the Industrial Relations Court.

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