



Imposition of Reprimands Before Termination of Employment Due to Violations

Muhammad Ibnu Rosyid

Faculty of Law, Universitas Islam Indonesia

Krawitan, Jl. Kaliurang No.Km. 14,5, Umbulmartani, Kec. Ngemplak, Kabupaten Sleman, Daerah Istimewa Yogyakarta 55584

m.ibnu01@gmail.com

Ayunita Nur Rohanawati

Doctoral Program of Law, Universitas Gajah Mada

Bulaksumur, Caturtunggal, Kec. Depok, Kabupaten Sleman, Daerah Istimewa Yogyakarta 55281

ayunita.nur@uii.ac.id

Abstract-The background of this research is that the presence of this government regulation has given rise to several interpretations of new violations in reprimands. Among them, there are certain and urgent violations. Until in fact, the industrial relations dispute judge refused to terminate the employment relationship on the grounds that the worker had committed an urgent violation. In other words, Government Regulation Number 35 of 2021 in regulating reprimands is still sporadic. The problems in this research are, first, What is the influence of the classification of violations in issuing reprimands in stages? Second, what is the ideal way to issue reprimands to workers before termination of employment? This research was conducted using the juridical-normative research method, with interviews as supporting data. The results of the research that the authors get are that the regulation still needs to be corrected in terms of added minor violations as well as details regarding certain violations that need to be explained in more detail.

Keyword – Reprimands, Violation, Layoff.

I. INTRODUCTION

Today's very rapid developments in time and technology have resulted in the protection of workers being a critical and crucial matter which must also be taken into account considering the increasing risk of layoffs that workers or laborers will face. Traditional assumptions about how organizations can thrive within global markets have been challenged by the advent of a new digital age. While many studies indicate that the future workforce should be equipped with digital skills and attitudes, less attention is paid to a second set of human skills and competencies which are essential in order for an organization to succeed in today's digital age.[1] Judging from the increasingly fierce competition, the workforce is never decreasing, and the unbalanced conditions in the business world increase concerns about layoffs.[2]

Reprimand is a form of administrative sanction. Warnings are given as an initial stage before proceeding to the next level of administrative sanctions, usually, these warnings are given several times. This is of course done as a preventive measure for entrepreneurs or companies who want to act arbitrarily towards workers by terminating employment without a reprimand.[6]

Reprimand can be interpreted as signs before the employer gives greater sanctions to workers for a decrease in performance or because of workers' actions that violate company regulations. In other words, giving this reprimand is a form of guidance from employers to workers.[7]

The article regulates: "Workers or Laborers violated the provisions stipulated in the Employment Agreement, Company Regulations or Collective Bargaining Agreement and have previously been given the first, second and third reprimands each of which valid for a maximum of 6 (six) months unless otherwise stipulated in the Employment Agreement, Company Regulations, or Collective Bargaining Agreement." By considering the Government Regulations, it can be seen that before the action of Termination of Employment is given, the company must have previously provided a reprimand. The thing that must be underlined in the Government Regulation is related to the provision of reprimand which are given consecutively.

The existence of Government Regulation Number 35 of 2021 shows this. The Government really wants to protect workers' rights through the promulgation of these regulations. However, the situation that occurred is based on data from the Directory of Decisions of the Supreme Court of the Republic of Indonesia, throughout 2021 after the enactment of Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time, and Rest Time, and Termination of Employment Relations, there were 282 people who sued regarding

termination. unilateral employment relationship (PHK). This data refers to all District Courts in Indonesia. However, data on workers affected by layoffs throughout 2021 based on the Ministry of Manpower's projections reaches 894,579 by the end of 2021. This data shows a high number, this large number is a problem and threat for workers, while for 2022 the number of workers based on data from the Ministry of Manpower reaches figure 25,114 people. *Punishment* It is indeed important to improve employee discipline, but companies must still go through the correct mechanisms and procedures in carrying out Termination of Employment.

The existence of Government Regulation Number 35 of 2021 still raises pros and cons in its implementation. These pros and cons occur because Government Regulation Number 35 of 2021 in regulating reprimand is still sporadic in the regulations themselves, giving rise to a lack of understanding regarding the unsystematic nature of the rules governing reprimand in the regulations themselves.

With the number of Termination of Employment still high, the Government issued Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations. The regulations provided by the Government are in Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations. The government is doing this in the hope of reducing layoffs given by employers to workers. If there are still loopholes in the regulations that have not been regulated, this will create an opportunity for individuals to commit violations which will ultimately result in cases for workers.

In Indonesia, labor law enforcement is carried out by industrial relations courts. The mechanism for resolving employment relations before reaching the level of the Industrial Relations Court can be taken to an alternative stage first through bipartite institutions, mediation, conciliation and arbitration.[8] The case regarding this reprimand was conveyed by the International Relations Dispute Judge that many companies did not provide reprimand to workers so evidence in the Industrial Relations Dispute courtroom experienced difficulties. So it can be said that a reprimand can be used as an effort to remove evidence that will have an impact on severance pay or other benefits for workers.[9] In this case, even though Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations has been introduced, there are still loopholes that cause workers to feel cheated by the company because they don't get severance pay or other problems. which does not provide justice to workers.

Government Regulation Number 35 of 2021 has ultimately caused confusion in every circle, including employers, workers, mediators, supervising agencies and academics when viewing these regulations. Therefore, this issue was raised and used as research by the author with reference to Government Regulation Number 35 of 2021.

II. LITERATURE REVIEW

A. Reprimands

Reprimand (SP) has principal differences with suspension. If this reprimand is given when the employer has not yet carried out the layoff process for workers, the suspension is given when the employer has processed the layoff action and has submitted and is waiting for a layoff determination from the industrial relations settlement institution.[4]

B. Violation by Employee

In Article 52 paragraph (2) Government Regulation Number 35 of 2021 new things are regulated regarding reprimands. It is explained that employers can terminate employment relations with workers/laborers for reasons that the worker/laborer has committed an urgent violation as regulated in the employment agreement, company regulations, or collective labor agreement. Regarding the explanation of what urgent violations are, they are explained in the explanation of the article which will be analyzed in the discussion section.

C. Layoff

The working relationship is said to be abstract because this working relationship will later influence job satisfaction, where a good relationship between the worker and the company will lead to employee satisfaction in the future.[3] Of course, termination of employment cannot be granted arbitrarily. This reprimand is an alternative or effort to anticipate the occurrence of termination of employment because with this action employers are not arbitrarily terminating employment with workers.[4] In fact layoffs can affect a wide range of survivor attitudes and behavior, such as organizational commitment and work performance. The fact, that employees perceived that the layoff process was unfair and made a bad impact also, they felt negative about the organization and they decreased the result of the work.[5]

III. METHOD

This research is juridical-normative legal research. This research uses literature as a tool to formulate problems. The research approach used is a statutory approach, namely by relying on Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations. Even though this research is juridical-normative, it still requires supporting data in the form of interviews with Siti Umi Akhiroh as Judge in the Industrial Relation Court at the Yogyakarta District Court, and Luthfi Asep Irvandana, Industrial Relations Section, Industrial Relations and Social Security for Workers in DIY Province. In this research, the author made two problem formulations. First, what is the influence of the classification of violations in issuing reprimands in stages based on Government Regulation Number 35 of 2021? Second, how should a reprimand (SP) be issued to workers before termination of employment?

IV. RESULT AND DISCUSSION

A. The influence of the classification of violations in issuing reprimands in stages based on Government Regulation Number 35 of 2021

Judging from the differences, there are new things regulated in Government Regulation Number 35 of 2021. There is a classification of violations committed by workers or laborers. The classification of violations includes Certain violations and Urgent violation.

Of course, these two types of violations have different consequences and reprimands in their application. This type of violation only emerged at the same time as the enactment of Government Regulation Number 35 of 2021. The effect from the workers' side is that the position of workers is increasingly vulnerable to being laid off without being given a reprimand in stages. From the employer's point of view, employers increasingly have the opportunity to impose layoffs without a reprimand in stages, because there are certain and urgent violations. From the perspective of the Manpower Department itself, it was stated that there were many misunderstandings between employers and workers regarding existing reprimands, and the Industrial Relations Court Judge said that the existence of this urgent violation was an opportunity for the employer to immediately issue layoffs.

Entering the first violation section is a specific violation. Certain violations of the criteria are not contained in Government Regulation Number 35 of 2021. These particular violations adapt to each company's culture. However, the impact that workers or laborers receive if they commit this particular violation is high risk, because the company issuing a reprimand will be different from a minor violation. Based on Government Regulation Number 35 of 2021, a company can issue 1 (one) reprimand and if it commits certain violations again within the validity period of SP 1, a third reprimand can immediately be issued. It is very clear that this particular violation carries a reprimand from the first reprimand to the third reprimand.

The final classification of violations that are worthy of a reprimand in Government Regulation Number 35 of the Year is urgent violations. This urgent violation is different from minor and certain violations. Both in terms of criteria, sanctions stages and also the impact on workers or laborers. The criteria for this urgent violation include committing fraud, theft, or embezzlement of goods and/or money belonging to the company; Providing false or falsified information to the detriment of the company; Being drunk, drinking intoxicating liquor, using and/or distributing narcotics, psychotropic substances and other addictive substances in the work environment;

. There are often complaints from workers or laborers regarding this reprimand, also of course regarding termination of employment. Of the many cases submitted by the industrial relations section, within the scope of the DIY province, before layoffs are imposed, several workers or laborers will come to the relevant office and be directed to a special room for mediation between workers or laborers and employers regarding the problems that occur. Once the case is mediated and a meeting is held between the worker or laborer and the employer or representative, termination of employment will be avoided. Based on the results of interviews with related staff, usually this incident is just a misunderstanding and lack of communication between employers and workers.

Based on the PHI Judge's interpretation, even though there are sentences unless otherwise stipulated in the Work Agreement (PK), Company Regulations (PP), or Collective Work Agreement (PKB), these three types of regulations or agreements must still refer to Government Regulation Number 35 of 2021. In the words Other than that, PK, PP, PKB must not deviate from Government Regulation Number 35 of 2021, especially since the contents of the agreement contain clauses that burden workers.

Multinational companies and companies that have gone public at the time of making work agreements, especially in the realm of reprimands, do not make regulations that are regulated in the PP. In other words, this other decision should have been made based on what is not regulated in Government Regulation Number 35 of 2021. The real case is PT Budi Makmur Yogyakarta. The company's regulations are included in other provisions, namely not regarding reprimands or provisions that have been regulated in Government Regulation Number 35 of 2021, but regarding the company's annual recreation regulations and monthly rice distribution regulations. These other provisions generally apply to large companies in Yogyakarta. Thus, this classification affects employers, workers and related agencies, namely the DIY Provincial Manpower Office.

B. Imposing reprimands (SP) on ideal workers.

In implementation in the field, it is very important to ensure that training or guidance is provided to workers. Moreover, workers are facing the digitalization era as well as the industrial era 4.0. Several policies that need to be implemented to face these challenges by workers are as follows:[11] Improve work skills. Training provided to workers can be organized either by the government or private parties or companies. Providing training to workers must be adjusted to good qualification standards. Pay attention to worker placement. In order to improve performance optimization, workers must be able to work in the right field. Therefore, employee placement is important in order to get good work results. There are efforts to improve performance in order to avoid issuing reprimands (SP) to workers. Efforts to improve performance must be carried out as soon as possible by entrepreneurs. Job training is organized and aimed at equipping, developing, and improving workers' competence so that it will have an impact on the abilities, productivity, and welfare of the workers themselves.[12]

Based on the results of interviews with Judge PHI DIY, he said that the existence of this reprimand was very important for workers. The role of this reprimand based on research with the Judge is divided into two parts, namely: Reprimands are given as an opportunity and a forum for workers to improve their performance, although in reality, not all reprimands result in termination of employment. Employee reprimands have an important role in resolving industrial relations. Later this reprimand will be used as evidence in the industrial relations settlement trial. Therefore, based on Judge Siti Umi Akhirokh's experience, the company did not give reprimands to workers in an effort to remove evidence.

Judge PHI also said that the next mechanism after giving a reprimand to the worker is to continue to pay attention and provide the worker's actions during the period when the reprimand has been given. Based on the results of the interview, after being given a worker reprimand, the company provides coaching or training to workers, in the context of evaluating workers so that at least they do not repeat the same mistakes and even strive to improve their abilities in this field. During the grace period of 6 (six) months after the reprimand is issued, the company or entrepreneur should take action so that workers are not left behind after the reprimand is issued. Some of the actions include transferring or shifting workers' fields. You can also carry out transfers or even demotions in an effort to improve worker performance.

The presence of Government Regulation Number 35 of 2021, based on the results of the author's research, basically, there is one more type of violation, namely minor violations. Even though Government Regulation Number 35 of 2021 does not contain the word minor offense, the gradual issuance of reprimands starting from reprimands one, two, and three means it is classified as a minor offense. One example of a minor violation is a worker who is absent in the morning or a lecturer who is always late for class. The application of certain violation classifications can be taken as an example in the campus area. Certain reprimands can be classified as when a lecturer commits an act of plagiarism, where this action can be classified as a certain violation. If in the service sector, there are workers who defame the company's name to clients, this causes the company's customers to decrease. By relying on this Article, it shows that the justified reason for Termination of Employment (PHK) is when the company has first issued a reprimand to the worker for a period of 6 (six) months. Therefore, both the interpretation of the reprimand and the interpretation of the violation must be understood properly.

It should be regulated in one article that reads "Employers can issue first, second and third reprimands respectively to workers/laborers because the worker/laborer has committed a minor violation." Furthermore, an explanation of Article: Minor violations can be regulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement:

- a. Carelessly or deliberately entering the office late
- b. Deliberately or without permission not coming to work for less than 5 days
- c. Deliberately or carelessly violates or does not comply with the employer's check-in and check-out hours.
- d. Carrying out other actions in the company environment that pose a low risk and are outside the company's technical perspective.

After providing legal norms in the form of articles and explanations of articles, the author includes illustrations of the use of articles related to minor violations committed by workers. When a worker who works at a certain company does not come to work without a permit for 4 (four) consecutive days, the company can give warnings in stages from the first, second to third warnings.

Government Regulation Number 35 of 2021 regulates certain violations but does not explain what the particular violations themselves are. Therefore, the author provides input to comply with existing legal norms. In the explanation of Article 52 paragraph (2) it should be added that "After giving the first and third warning, the entrepreneur can immediately terminate the employment relationship with the Worker/Labourer, certain violations can be regulated in Company Regulations, Employment Agreements, or Collective Labor Agreements, for example in matter:

- a. do things that could endanger and/or disrupt the company's productivity;
- b. carry out actions that harm the company's reputation.
- c. carry out other actions in the Company environment that are medium risk and from a technical perspective.

The illustration that the author uses is that when workers in a manufacturing company make mistakes in quality control, which will cause the company's output to decrease, the company has the right to categorize the worker as having committed certain violations. So, a first and final warning can be given and termination of employment if after these two warnings are issued the worker still commits a violation.

V. CONCLUSION

After carrying out several discussions in this research, the following conclusions can be drawn: The effect of classifying violations in this reprimand (SP) is that there is a lack of uniformity in implementation in the field. Both from the perspective of employers, workers, as well as agencies that oversee industrial relations. The effect from the employee side is that the position of workers is increasingly vulnerable to being laid off without being given a reprimand in stages. From the employer's point of view, employers increasingly have the opportunity to impose layoffs without a reprimand in stages, because there are certain and urgent violations. From the perspective of the Manpower Department itself, there were many misunderstandings between employers and workers regarding existing reprimands, and the Industrial Relations Court Judge said that this urgent violation was an opportunity for employers to immediately issue layoffs. Ideally, the reprimand will be issued in stages before the layoff is imposed, namely by carrying out several stages. Based on reference data from the DIY Provincial Manpower Office, as well as the PHI Yogyakarta Judge, there are several actions that need to be taken in issuing a reprimand. Personal approach, given job training, and rotation in certain fields. Companies or employers cannot carry out arbitrary actions against their workers.

VI. REFERENCES

- [1] C. W. K. S. B. B. L. E. Y. J, "Optimizing Employ Creativity in The Digital Era: Uncovering the Interactional Effects of Abilities Motivation and Opportunities," *Int. J. Environ. Res. Public Health*, vol. 17, no. 3, p. 1038, 2020.
- [2] I. G. A. D. Suwanti, "Perlindungan Hukum terhadap Para Pekerja yang Mengalami Pemutusan Hubungan Kerja karena Dampak Digitalisasi," *J. Kertha Semaya*, vol. 7, no. 6, p. 3, 2018.
- [3] Y. A. H. Rahman, "Peranan Hubungan Kerja Pengembangan Karir dan Motivasi Kerja terhadap Kepuasan Kerja Karyawan," *Manag. Account. Res. J.*, vol. 3, no. 2, 2019.
- [4] D. Agus, "Kedudukan Hukum Surat Peringatan (SP) dan Skorsing dalam Proses PHK Buruh/Pekerja," *J. Ilm.*, vol. 20, no. 2, p. 482, 2020.
- [5] G. B. L. W. D. R. G. B. A. L. P. E. . J.A, "Observers Fairness Perception Change with Contrasting Information for Employ Reprimands," *World J. Adv. Res. Rev.*, vol. 17, no. 2, pp. 430–443, 2023.
- [6] R. Febrianto, "Perlindungan Bagi Pekerja Atas Tindakan Putusan Hubungan Kerja Secara Sepihak," *J. Pembang. Huk. Indones.*, vol. 3, no. 1, p. 115, 2021.
- [7] Ridwan, *Hukum Administrasi Negara*, 12th ed. Jakarta: Raja Grafindo Persada, 2016.
- [8] Maswandi, "Penyelesaian Perselisihan Hubungan Kerja di Pengadilan Hubungan Industrial," *J. Adm. Publik*, vol. 5, no. 1, pp. 36–40, 2017.
- [9] S. U. Akhroh, "Permasalahan Klasifikasi Pelanggaran dalam Surat Peringatan," Yogyakarta, 2023.
- [10] H. DM, "Asas Ultimatum Remidium dalam penegakan Hukum Administrasi Perlindungan dan Pengelolaan Lingkungan Hidup," *J. Ilm. Galuh Justisi*, vol. 4, no. 2, pp. 257–271, 2017.
- [11] M. S. Is, *Hukum Ketenagakerjaan di Indonesia*, 1st ed. Jakarta: Kencana, 2020.
- [12] A. Sutedi, *Hukum Perburuhan*. Jakarta: Sinar Grafika, 2009.
- [13] K. S. F.L., "Pengaruh Pembinaan Pelatihan dan Pengembangan Pemberdayaan dan Partisipasi terhadap Kinerja Karyawan (Studi pada PT. Njonja Meneer Semarang)," *Diponegoro J. Manag.*, pp. 70–79, 2013.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

