



Implications of Expanding the Reasons for Termination of Employment in Government Regulation Number 35 of 2021: An Analysis of Legal Uncertainty

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Abstract. The purpose of this study is to analyze the regulation of the impact of norm disharmony between article 35 letter b and article 43 paragraph 2 of Government Regulation Number 35 of 2021. The type of research used in writing this Law is a type of Normative Law research, with a *Statue Approach* approach. The results of the study show that there is legal uncertainty in Article 43 paragraph 2 of Government Regulation Number 35 of 2021 which expands the meaning of the provisions in Article 36 paragraph 2. Article 36 states that a company can carry out Termination of Employment if it suffers a loss, while Article 43 paragraph 2 states that layoffs can be carried out to prevent losses. The implication of expanding the reason for layoffs from 'Loss' to "Preventing loss" makes workers disadvantaged because employers have more legal reasons to terminate employment relations with workers, and this is certainly not in accordance with the principle of employment development. The solution to this problem is a revision related to the provisions of article 43 Paragraph 2 and aligning with the provisions of article 36 letter b of Government Regulation Number 35 of 2021, and contain strict procedures and evidence of losses suffered by the employer in terminating the employment of workers

Keywords: Termination of Employment; Oppose the norm; Suffer a Loss

1. Introduction

Government Regulation Number 35 of 2021 is presented as the implementing regulation of Law No. 13 of 2003 concerning Manpower. The presence of the government regulation has a significant impact on the legal aspect, by providing more defined and specific directions for aspects that were previously unclear, as well as posing new legal challenges [1], [2].

Termination of Employment is the settlement of an employment contract due to a certain situation that results in the termination of rights and responsibilities between the employee and the company [3], [4]. The term Termination of Employment is often considered to be an act of dismissal committed by a company against an employee without mutual consent, usually due to the employee's fault. Therefore, Termination of Employment is often viewed with an unfavorable view [5], [6].

Article 36 of Government Regulation Number 35 of 2021 stipulates that Termination of Employment can be carried out by the company if the company suffers losses. This arrangement provides protection for workers, by placing the company's 'loss' as a condition that must be proven before dismissal is carried out. On the other hand, Article 43 Paragraph (2) of the same regulation expands the scope of termination of employment by allowing companies to terminate employment to "Prevent potential losses" in the future. These two articles create legal uncertainty because they provide different grounds for termination, which can trigger conflicts between the employer's interests and workers' rights.

The urgency of this research arises from the potential for legal uncertainty that can have a significant impact on industrial relations in Indonesia. This misalignment between Article 36 (b) and Article 43 Paragraph (2) has the potential to cause labor disputes that can have a negative impact, both for workers who feel their rights are threatened, and for companies that may face legal risks in the event of a dispute.

This study aims to critically analyze the impact of the disharmonisation of these norms, as well as offer solutions that can harmonize the two articles in order to create better legal certainty. Thus, this research is expected to make a meaningful contribution to the development of labor law in Indonesia, especially in terms of protecting workers' rights and legal certainty for employers.

2. Method

The type of research applied in this writing is the normative juridical research method [7], [8]. This research used a Laws and Regulations approach. The legal materials used are primary materials in the form of PP 35 of 2022, and secondary legal materials in the form of journal articles and books related to termination of employment. The analysis method used is a grammatical analysis method that aims to analyze the meaning of words and phrases in legal texts based on grammatical rules and definitions of words in legal language.

3. Results and Discussion

3.1 Disharmonisasi Pasal 36 Huruf b dan Pasal 43 Ayat 2

Disharmonisation of laws and regulations occurs when two or more regulations have similar substance but are inconsistent in their technical specifications [9]. This essentially creates a conflict between the regulations, leading to both horizontal and vertical regression. An example of disharmony between articles is Article 36 letter (b) and Article 43 paragraph (2) of Government Regulation 35 of 2021. This dualism of legal regulations creates overlaps and contradictions in the arrangements between the two articles.

Article 36 of Government Regulation No. 35 of 2021 contains the reasons for termination of employment. The content of Article 36 letter (b) is 'Termination of employment may occur for reasons of the Company's efficiency followed by the closure of the Company or not followed by the closure of the Company caused by the Company'. Meanwhile, Article 43 is part of the discussion related to rights resulting from employment relations. Concretely, the contents of Article 43 Paragraph (2) are Employers may terminate the employment of Workers/Labourers due to the reason that the Company is making efficiency to prevent losses, then Workers/Labourers are entitled to

- a. severance pay amounting to 1 (one) time the provisions of Article 40 paragraph (2);
- b. long service pay amounting to 1 (one) time the provisions of Article 40 paragraph (3); and
- c. compensation pay in accordance with the provisions of Article 40 paragraph (4).

3.2 Interpretasi Pasal 36 Huruf b dan Pasal 43 ayat 2

Interpretation is a way of revealing the meaning of law both in texts and in case law [10], [11][12]. The interpretation of Article 36 letter b of Government Regulation No. 35/2021 explains that termination of employment can occur at certain times such as, when the company will carry out financial stabilisation, whether the company can be closed or not. The interpretations of the article include:

- 1) Company Efficiency: Efficiency includes procedures that a company can take to reduce costs, increase operational productivity, reduce the number of employees, merge departments, or change work processes.
- 2) Company Closure: Company closure can occur as a result of such efficiencies. However, it is also possible to terminate employment even if the company is not closed, provided that the reasons for efficiency and company losses can be proven.
- 3) Company Losses: A loss is an unfavourable financial condition of the company, which can be caused by various factors such as a decrease in sales, an increase in production costs, or poor economic conditions. These losses must be proven by valid financial statements.
- 4) Workers' Rights: Although termination of employment is carried out for reasons of efficiency and company losses, workers are still entitled to compensation in accordance with existing regulations, such as severance pay for workers, long service pay and compensation.

Furthermore, the Interpretation of Article 43 paragraph (2) regulates the rights of workers affected by termination of employment for reasons of company efficiency to prevent losses. The following is an explanation of the rights for workers affected by termination of employment.

- 1) Severance pay, workers affected by termination of employment have the right to receive 1-time severance pay as described in Article 40 Paragraph (2). Severance pay is compensation given by the company to workers as a form of appreciation for their loyalty while working at the company.

- 2) Money for the elimination of length of service, workers are also entitled to get this money at least once as regulated in Article 40 paragraph (3). This award money is given based on the length of service of the worker in the company.
- 3) Reimbursement of rights, workers are also entitled to this money as explained in Article 40 paragraph (4). This money covers the remaining annual leave that has not been taken, housing replacement costs, medical and nursing costs, and other rights that have not been fulfilled.

This provision aims to ensure that workers affected by termination of employment due to company efficiency still receive proper and fair compensation.

3.3 Analysis of the Effects of Disharmonisation of Article 36 Letter b and Article 43 Paragraph 2

According to the author, the contents of Article 43 paragraph (2) have expanded meaning and become legal uncertainty in the provisions in Article 36 (b) because the provisions in the regulations governing the provisions on the causes of termination of employment have explained that companies can terminate employment if they suffer losses.

The rules set out in Articles 40 to 59 are about rights as a result of termination of employment which this article outlines the rights. in articles 40 to 59 this is a more concrete provision that outlines the provisions of article 36. Then article 43 paragraph 2 explains about more concrete provisions that should not be expanded in meaning. If you expand a provision then article 36 will raise a question which one is correct.

Article 43 paragraph 2 explains the reasons why employers terminate the employment of their employees, namely to make the company efficient and prevent losses to the company. According to the author, this is contradictory because the words 'preventing losses' are different from 'Suffering losses'. Indeed, Article 36 is a reason or cause, while Article 43 is an article that discusses more technically because Article 43 is an article that describes the right, because Article 43 describes the right, it should not be allowed to expand and it becomes asynchronous because one states suffering losses and the other states preventing losses.

The greatest danger of the phrase 'preventing loss' is that it can be used by employers to terminate the employment of people who are disliked by the employer. The word disliked is a subjectivity which is not necessarily about performance or about preventing losses itself. In addition, the word 'entrepreneur' in the provisions of Article 1 Point 5 of the Labour Law explains the definition of an entrepreneur, namely an individual or partnership or legal entity that is self-owned.

The definition of entrepreneur in this case is the Board of Directors of the entrepreneur, the owner of the Company, the manager of the Company, and the Representative of the Company. So there will be a lot of people who will potentially be able to dismiss their workers under this pretext.

3.4 Recommendations for Resolving Disharmonisation of Article 36 Letter b and Article 43 Paragraph 2

The disharmonisation issue between Article 36 letter b and Article 43 paragraph 2 reflects horizontal inconsistencies in the substance of the same regulation. For example, the provisions in Article 1 contradict the provisions in Article 15 of the existing regulation.

The main impact of this disharmony is legal uncertainty for workers. The phrase 'preventing losses' allows employers to conduct layoffs on broader grounds than those stipulated in Article 36 Letter b. For example, employers can use the reason of loss prevention to terminate the employment of workers who may not show the expected performance or who are considered to have the potential to cause problems in the future, even though no actual losses have occurred. This poses a risk of abuse, whereby termination is carried out not because of the need to address losses that have occurred, but for the company's subjective interests or internal administration.

Furthermore, this mismatch can cause injustice to workers. Where employers terminate employment on loss prevention grounds without having to show evidence of actual loss, workers may lose their rights without fair compensation. This potentially lowers workers' level of protection and creates uncertainty regarding their rights in a layoff situation. Affected workers may not be able to ascertain their rights regarding severance pay or other compensations that are usually more strictly regulated under actual loss conditions.

To address this disharmony, it is necessary to revise the provisions of Article 43 Paragraph 2 to be more in line with the provisions of Article 36 Letter b. The main recommendation is to clarify the phrase 'prevent losses' to ensure that the reason for termination remains consistent with the actual loss requirement stipulated in Article 36 Letter b. This revision should stipulate that termination can only be carried out based on actual losses that have occurred, not just to prevent speculative losses.

In the revision, it is necessary to add provisions that clearly explain how employers must document and prove the existence of actual losses before conducting layoffs. This includes the development of strict procedures on how and when layoffs can be carried out, as well as the evidence that must be submitted to justify layoff decisions based on loss prevention. Thus, workers' rights can be better protected and the layoff process can be conducted fairly and transparently.

In addition, the addition of transitional provisions that clarify how workers' rights are treated in situations of layoffs involving loss prevention will provide further legal certainty. This includes rights related to severance pay and compensation that should be provided even if the layoff is for loss prevention reasons.

Overall, resolving the disharmonisation between Article 36 Letter b and Article 43 Paragraph 2 requires clear and consistent regulatory adjustments to protect workers' rights and ensure legal certainty in layoff practices. Proper clarifications and revisions will reduce the potential for abuse and ensure that the regulations are applied fairly, both for workers and employers.

So the existence of disharmony is a dangerous thing for workers if there is an article that has the phrase preventing losses that can be used by employers to terminate employment with people who are not favoured by employers. According to the author, there is a way to resolve the disharmony between Article 36 letter b and Article 43 Paragraph 2, namely to revise the provisions of Article 43 Paragraph 2 and harmonise it with the provisions of Article 36 letter b of PP 35 THN 2021.

4. Conclusion

The disharmonisation issue between Article 36 letter b and Article 43 paragraph 2 in Government Regulation Number 35 Year 2021 shows horizontal inconsistency in the substance of the same regulation. The author highlights the legal uncertainty in Article 43 paragraph 2 of Government Regulation No. 35 of 2021, which expands the meaning of the provisions in Article 36 paragraph 2. The author is also concerned that the phrase 'Prevent losses' can be misused by employers to terminate employment with disliked workers, which may not be related to performance. In addition, the definition of 'Employer' in the Labour Law covers a wide range of parties, so many people can potentially terminate employment. This adds to the complexity and potential asynchrony in the application of this regulation. The author proposes to resolve this disharmonisation by revising the provisions of Article 43 paragraph 2 and aligning it with the provisions of Article 36 letter b in Government Regulation Number 35 of 2021. In addition, Article 36 letter (b) must also contain strict procedures and evidence of losses suffered by the employer in terminating the employment of workers.

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