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by Juli Moertiono

Legal Arrangements Related to Termination of Employment Relations (PHK) in Indonesia

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Abstract

For workers, termination of employment (PHK) is a loss of livelihood, meaning the worker/employee loses their job and income. Therefore, the term termination of employment contract (PHK) can become a taboo subject for every worker/employee because they and their families are threatened with their survival and must bear the consequences of termination of employment contract (PHK). The problem formulated based on the description above can be considered as one of the limitations of the research discussion. The problem raised in this research is: What is the legal system related to termination of employment contracts (PHK) in Indonesia. The results of this research are the legal provisions regarding termination of an employment contract (PHK) according to Employment Law Number 13 of 2003, specifically: Termination of an employment contract is the termination of an employment relationship for a certain reason which results in termination of the employment relationship, termination of rights and obligations between workers/employees and entrepreneurs.

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A. Introduction

Every person has the ability to do work to produce goods and services to meet the needs of themselves and society. What is meant here is anyone who works while receiving a salary or other form of compensation, or anyone who works alone and does not receive a salary or compensation. Labor relations are legal relations carried out by two or more subjects of labor law. The legal entity that carries out labor relations is the heart of labor relations.

The elements of an employment agreement which form the basis of an employment relationship in accordance with the provisions of article 1 point 4 of Law No. 13 of 2003 are:

1. The existence of work (arbeid)
2. Under orders/gezag ver houding (meaning that the worker carries out work on the orders of the employer, so it is subordinate)
3. There is a certain salary/loan
4. Within a specified time (tijd) (can be without time limit/pension or based on a certain time).

The first factor is the existence of work (arbeid), namely free work according to an agreement between the employee and the employer, as long as it does not violate legal, ethical and peaceful provisions. In the daily lives of workers and entrepreneurs, employment contracts (PHK) or layoffs are bound to occur. Layoffs can occur because a certain period of time has expired and has been previously agreed upon, it can also occur because of a conflict between the worker/employee and the contractor, or because the worker/employee is still alive or for other reasons.

Layoff is the termination of an employment relationship for one particular thing resulting in the end of the rights and obligations between workers/laborers and employers. There are also those who say that layoffs are a step in ending the employment relationship between workers and employers for certain reasons.¹

For workers, termination of employment (PHK) is a loss of livelihood, meaning the worker/employee loses their job and income. Therefore, the term termination of employment contract (PHK) can become a taboo subject for every worker/employee because they and their families are

¹ Ida Hanifah Lubis. *Pengantar Hukum Ketenagakerjaan Di Indonesia*. Medan: CV. Ratu Jaya, (2009), p 133.

threatened with their survival and must bear the consequences of termination of employment contract (PHK). Termination of employment carried out by companies on workers is often unacceptable to workers/laborers because it is not in accordance with article 151 of Law no. 13 of 2013 concerning employment, namely:

1. Employers, workers/laborers, trade/labor unions and the government must make every effort to ensure that employment relations do not terminate.
2. Every effort has been made, but termination of employment cannot be avoided, so the purpose of termination of employment must be negotiated by the employer and the worker/labor union concerned, not being a member of the trade/labor union.
3. In the event that negotiations as intended in paragraph (2) do not actually result in an agreement, the entrepreneur can only terminate the employment relationship with the worker/laborer after obtaining a determination from the industrial relations dispute settlement institution.²

Layoffs must be used as a last resort if there is an industrial relations dispute. Employers in dealing with workers should:

- a. Consider workers as partners who will help them to succeed in business goals.
- b. Providing adequate compensation for the services rendered by the partner, in the form of a decent income and certain social guarantees, so that the worker can work more productively (effectively)
- c. Establish good relationships with employees.³

Therefore, employees who work for the company must balance their work relationships with work that is really good, disciplined and has a high level of responsibility so that the company's goals can be achieved in the interests of the workers themselves. Anything that is unreasonable in the company will be resolved through deliberation and consensus, just like conflicts that arise in an extended family.⁴

At the socio-economic level, the situation of workers is still far from free. As a person who has no other means of living, he has to work for other people. It is the employer who fundamentally determines the terms of employment. Considering the lower position of workers compared to employers, it is necessary to intervene with orders to ensure legal protection.⁵

The consequences of terminating an employment contract (PHK) are complex and tend to cause conflict, therefore mechanisms for dismissal procedures must be regulated so that workers receive adequate protection and obtain their rights based on the terms of dismissal. such as Law and Regulation Number 13 of 2003 concerning Employment. The government is very concerned about the issue of worker protection because in general the position of workers is weak, so labor protection and worker safety will ensure the maintenance of worker welfare, health and discipline.⁶ The problem formulated based on the description above can be considered as one of the limitations of the research discussion. The problem raised in this research is: What is the legal system related to termination of employment contracts (PHK) in Indonesia.

B. Discussion

1. Legal arrangements related to termination of employment (PHK) in Indonesia

Regarding the determination of workers' wages, it must reflect justice and take into account various aspects of life, so that the Islamic vision of workers' rights to receive wages can be realized properly.⁷ The layoff provisions include layoffs that occur in business entities that are legal entities or non-legal entities, owned by individuals, owned by partnerships, or owned by legal entities, both private and state, as well as social business entities and other regulated business entities. Termination of employment is a problem that can impact unemployment, crime and employment opportunities. With the rapid development of industry and the increasing number of workers working in employment relationships,

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² Undang-undang No.13 Tahun 2003 Tentang Ketenagakerjaan.

³ Soerjono Soekanto. *Pengantar Penelitian Hukum*. Jakarta, (2012), p 12.

⁴ *Op.Cit* Asari Wijayanto. halaman 159.

⁵ Lulu Husni. *Pengantar Hukum Ketenagakerjaan*. Jakarta: PT. Raja Grafindo Persada, (2005), p 133.

⁶ Zaeni Asyedhin, *Hukum Ketenagakerjaan Bidang Hubungan kerja Cet III*, Depok: RajaGrafindo Persada, (2012), p 61.

⁷ Anna Annisa. "Ketentuan Upah Menurut Uu No. 13 Tahun 2003 Dalam Perspektif Hukum Islam". 1, No. 01, (2011): p 1.

the issue of terminating employment contracts has become a difficult topic because it involves issues of human life. In life, the termination of the employment relationship or in other words the termination of the employment relationship between the employee and the entrepreneur can occur due to the legal termination of the employment relationship due to the termination of the previous work contract agreement.

Termination of employment that occurs because the employee has retired (before the end of the employment contract for an indefinite period of time) does not cause difficulties for both parties (employee or employer), because all parties involved know or are aware of it. Many cases of layoffs occur due to conflict, this situation will have an impact on both parties, especially for workers who are considered economically weak in their relationship with their employers. Because firing workers will have psychological, economic and financial impacts.⁸ Article 1 number 25 of law no. 13 of 2003 concerning employment, "Termination of employment is the termination of an employment relationship due to certain reasons which result in the end of the rights and obligations between the worker/laborer and the entrepreneur."

Article 158 of the Manpower Law, paragraph 1 reads, "Employers can terminate employment relations with workers/laborers on the grounds that the worker/laborer has committed serious mistakes as follows:

- a. Commit fraud, theft or embezzlement of goods and/or money belonging to the Company
- b. Providing false or falsified information to the detriment of the Company
- c. Being drunk, drinking intoxicating liquor, using and/or distributing narcotics, psychotropic substances and other addictive substances in the work environment
- d. Committing immoral acts or gambling in the work environment
- e. Attacking, abusing, threatening, or intimidating fellow workers or employers in the work environment
- f. Persuading co-workers or entrepreneurs to commit acts that are contrary to statutory regulations by carelessly or deliberately damaging or leaving company property in danger which causes losses to the Company
- g. Carelessly or intentionally leaving co-workers or employers in danger at work
- h. Revealing or leaking company secrets that should be kept secret except in the interests of the state or
- i. Committing other acts within the company that are punishable by imprisonment for 5 (five) years or more.⁹

Employers who wish to terminate employment relations with company employees must have valid reasons ⁶ or taking such action and must not deviate from certain regulations and laws currently in force, namely Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes in conjunction with Law no. 13 of 2003 concerning Employment. The provisions regarding termination of employment relations in Article 1 number 4 of Law Number Article 2 of 2004 stipulate that "Disputes regarding termination of employment relations are disputes that arise because there is no agreement regarding views regarding termination of employment relations."

Likewise in Law no. 13 of 2003, includes termination of employment that occurs in business entities that are legal entities or not, owned by individuals, privately owned or partnerships or owned by legal entities, whether privately owned or state ⁵ yned, as well as social enterprises and other businesses t ⁵ t have management. and employing other people by paying wages or other forms of remuneration by paying wages or other forms of remuneration (Article 150 of Law No. 13/2003).¹⁰

This can also be seen in Article 1 ⁴ 8 BW which states: ¹¹

- 1) All agreements made legally apply as law to those who make them.
- 2) All agreements cannot be withdrawn other than by agreement of both parties, or for reasons stated by law to be sufficient.

⁸ Zainal Aisikin. *Dasar-Dasar Hukum Perburuhan, Cetakan IV*. Jakarta: Raja Grafindo Persada, (2002), p 26.

⁹ Ryan Turangan. *Pemutusan Hubungan Kerja Berdasarkan Undnag-Undnag Nomor 13 Tahun 2023*. IV, No. 1, (2016), p 68.

¹⁰ Sugeng Hadi Purnomo, *Pekerja Tetap Menghadapi Pemutusan Hubungan Kerja*. 2 No. 2, (2019): p 145.

¹¹ Pasal 1338 Kitab Undang-Undang Hukum Perdata (KUHP)

- 3) An agreement must be implemented in good faith. If the entrepreneur terminates the employment relationship before the end of the stipulated agreement period not because:
- 4) The worker dies
- 5) Expiration of the agreement
- 6) There is a court decision and/or court decision or determination of an Industrial Relations Dispute resolution institution which has permanent legal force.
- 7) There are certain circumstances or events that have been included in the work agreement, company regulations, or collective work agreement which can cause the end of the work relationship.

The matter above, where the entrepreneur considers the work to be careless or not careful in carrying out the work so that it can hamper work productivity which then has an impact on the continuity of the company, cannot be categorized as intended in Article 158 of Law no. 13 of 2003.

Explicitly, the layoff procedures regulated in Law Number 12 of 1969 are only layoff procedures carried out by entrepreneurs. This law was not revoked with the issuance of the UUKK, but based on the adage *lex posteriori derogat lex priori* (the new law overrides/eliminates the old law) the layoff procedure in this law is automatically no longer valid or based on Article 191 UUKK is still valid as long as it does not conflict with the new law.

The layoff procedures according to the UUKK are:

1. Previously, all parties (employers, workers, labor unions) had to make efforts to avoid layoffs.
2. If it cannot be avoided, employers and trade unions or workers hold negotiations.
3. If the negotiations are successful, a joint agreement is made
4. If unsuccessful, the entrepreneur submits a request for determination accompanied by the basis and reasons to the PPHI Institution. As long as there is no determination/decision from the PPHI Institution, both parties will continue to carry out all their respective obligations. Where workers continue to carry out their work and employers pay wages.

The definition of terms related to layoffs that are still relevant is stated in Article 1 of the Decree of the Minister of Manpower Number KEP-150/-MEN/200, namely:

- 1) Severance pay is a payment in the form of money from employers to workers as a result of layoffs.
- 2) Long service award money is service money as intended in Law Number 12 of 1964 as an employer's reward for workers which is linked to the length of service.
- 3) Compensation is a payment in the form of money from the employer to the worker in lieu of annual rest, long rest, travel costs to the place where the worker is accepted to work, medical facilities, housing facilities and others determined by P4D (author-PPHI) as a result of termination work relationship.

Termination of employment cannot be avoided, so employers are forced to terminate employment by:

- a. Negotiations and explanations regarding the real situation of the Company must be held to the trade unions/labour unions.
- b. Together with the trade/labor union, formulate the number and criteria for workers whose employment relationship will be terminated.
- c. Negotiate the terms and conditions for terminating employment relations openly and based on good faith.

C. Conclusion

Legal provisions regarding termination of employment contracts (PHK) according to Employment Law Number 13 of 2003, in particular: Termination of an employment contract is the termination of the employment relationship due to certain reasons which result in the end of the rights and obligations between workers/employees and employers. The procedures for dismissal based on the UUKK are as follows: Previously, all parties (employers, workers, labor unions) had to make efforts to avoid dismissal. If this cannot be avoided, employers and trade unions or workers will negotiate. If the negotiations are successful, a mutual agreement is reached. If the entrepreneur is unsuccessful, he sends a request for determination including the basis and reasons to the PPHI institution, as long as there is no decision/decision from the PPHI institution, both parties continue to carry out all their respective obligations. Where the worker continues to do his job and the employer pays his salary.

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