

BUILDING AN IDEAL INDUSTRIAL RELATIONSHIP IN INDONESIA POST-DECISION OF THE CONSTITUTIONAL COURT

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Abstract

The terms of termination of employment due to gross misconduct by workers have been canceled. The ruler can no longer perform unilateral termination of employment. The determination of gross misconduct awaits the verdict of a court that has the force of law remains. The purpose of the study was to review the decision of the working relationship of gross misconduct after the decision of the Constitutional Court and to examine the working relationship between workers and the ideal ruler in the future. This study uses a philosophical approach, which is to examine the working relationships of workers and ideal rulers in the future. The results of this study showed that termination of employment among others because workers make severe mistakes that have the effect of not getting severance money and without any prior warning. The provision has been overturned by the Constitutional Court. Workers who commit gross misconduct must be proven first through criminal proceedings and there is a court ruling that has a fixed legal force. The pattern of worker and employer relationships is expected to create a mutually beneficial working relationship between the two parties in the future. The employment relationship of workers and employers is supposed to be a partnership relationship so that there is no discrimination, intimidation, and exploitation. Industrial relations ideally refers to Pancasila. With the source of Pancasila as a philosophical basis, and the 1945 Constitution all the rules of law governing Industrial Relations as its implementation. With this relationship, it is expected that the nuances of worker and employer relationships in the future can be harmonious, there is a positive syntactic relationship.

Keyword: Working Relationship, Ideal, Company, Worker.

A. INTRODUCTION

The provision of termination of employment due to gross misconduct by workers resulting in no severance has been annulled by the Constitutional Court. Previously, employers could terminate employment if workers made a gross mistake after obtaining a permit or staging from the Regional or Central Committee. Employers do not need to apply for a termination permit as long as the evidence is supported.

The reformation by the Constitutional Court shifts the guilty judgment of workers, especially those concerning criminal acts. The guilty verdict awaits the verdict of a court that has had a permanent legal force¹. Previously termination of employment can be done unilaterally by the Company if it meets one of the evidence tools. The businessman in this case has exercised the authority of the court.

Termination of employment is a crucial issue. It's even become a scourge for workers. Termination of employment has a direct impact on work that loses a source of income for workers. The company should not arbitrarily terminate the employment relationship unilaterally. Termination of employment also has wide implications for the company². Termination of Employment is certainly not desired by anyone, let alone by workers who are in a weak position compared to employers.

The broader impact of termination of employment is to increase unemployment, and can also open up potential criminality³. Termination of employment is often a big problem for the state because it has a considerable social subsidy. It will automatically erode the state budget that should be allocated to the development budget.

Along with the pace of modernization of national and state life, business industry and the increasing number of the labor force working in working relationships. The issue of termination of employment is always an issue because it concerns problems for citizens. Termination of employment for workers is the beginning of the problem. It means the beginning of the end of having a job, the beginning of the end of the ability to finance daily living needs for his family, the beginning of the end of the ability to send children to school, and so on⁴. Termination of employment means loss of employment and loss of income for the family.

Law of the Republic of Indonesia Number 13 of 2003 concerning Employment (hereinafter referred to as the Employment Law) regulates termination of employment. The Company cannot arbitrarily terminate the employment relationship unilaterally. Because the implications are very broad for the company itself and also for workers⁵.

1 Irawan, Kusbiant, Azmiati Zuliah, Labor Law Protection Due To Termination Of Employment Due To The Covid 19 Pandemic, *Legal Preneur Journal*, Vol. 1, No. 1, 2022, page. 27-33.

2 Isti Nurwanti, Murti Pramuwardahani Dewi, Perlindungan Hukum terhadap Hak Pekerja Akibat Tidak Sahnya Pemutusan Hubungan Kerja (PHK) dalam Putusan Pengadilan Hubungan Industrial, *Jurnal Hukum Perdata UGM*, Vol. 1, No. 2, 2012, page. 122-135.

3 Erni Dwita Silambi, Pemutusan Hubungan Kerja Ditinjau dari Segi Hukum (Studi Kasus PT. Medco Lestari Papua). *Jurnal Ilmu Ekonomi dan Sosial*, Vol. 5, No. 2, 2014, page. 61-74.

4 *Ibid.*

5 Isti Nurwanti, Murti Pramuwardahani Dewi, *loc.cit.*

To create a healthy and conducive atmosphere for workers and companies, a harmonious relationship should be created. Reciprocity because it has a common interest. If there is a harmonious relationship, it gives a heavy psychological impact for workers in doing their work activities. The impact will decrease the productivity of work, so it will certainly also influence the company's performance. These two parties must be in line in communication, atmosphere, and work process, to be able to get a compensation profit⁶.

Often the problem of termination of employment is due to the understanding of perceptions of legislation between workers and companies⁷. A good worker is a worker who performs his duties well. It is also listed in Article 1603 of the Civil Code which states that to carry out the obligations of workers carrying out their work according to the best ability, not representing the work to third parties without the permission of the entrepreneur and obeying all the rules of the company without coercion. If any rules are violated, be it minor mistakes or gross errors, then it is attempted to be resolved by family relations and with a good rebuke⁸.

The material test of the Employment Law was partially granted by the Constitutional Court. Termination of employment due to gross misconduct including the canceled. Normatively, the decision of the Constitutional Court is the first and last level, which means that the ruling is final and binding. The Constitutional Court's ruling cannot be requested for retesting. That is polemics on the existence of the Labor Law formally and procedurally contrary to the 1945 Constitution ended. Employment Law remains in force, only a few materials have been canceled.

B. RESEARCH METHODS

This type of research is library research. Library research is a study that is rigidized by researching library materials or secondary data. This research includes literature research because the data used is secondary data in the form of legal documents. The approach used in this research is philosophical. The philosophical approach in legal research is to examine the law in terms of ideals. This research uses a philosophical approach because it formulates laws that are still in the level of aspired (*ius constituendum*), in the form of Building an Ideal Industrial Relationship in Indonesia. The data source used in this study is secondary data. Secondary data is data obtained indirectly or has been provided by another party. Secondary data used in the form of legal documents that serve as the main reference to review termination of employment after the decision of the Constitutional Court. Data collection techniques were used in this study through offline and online management. Offline library approval is the

6 Agus Mulya Karsona, et.al., Perspektif Penyelesaian Sengketa Ketenagakerjaan melalui Pengadilan Hubungan Industrial dalam Menghadapi Masyarakat Ekonomi Asean, *Jurnal Poros Hukum Padjajaran*, Vol. 1, No. 2, 2020, page. 158-171.

7 T. Waggar, Labour Management Forum and Workplace Performance. *Journal Management in Medicine*, Vol. 16, No. 6, 2020, page. 408-420.

8 Sonhaji, Analisis Yuridis PHK Akibat Kesalahan Berat Pekerja, *Administrative Law and Governance Journal*, Vol. 2, No. 1, 2019, page. 60-78.

activity of finding the source of the library to the data store. While online graduation is the activity of finding the source of libraries in cyberspace through the internet network. Conventional library approval is done by looking for library materials to libraries, collections of books and personal journals, purchasing books, and attending scientific activities (seminars). While online approval is done by searching on the internet. The method of data analysis used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories, and basic description units so that themes can be found presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive way, not in the form of numbers or numerics.

C. DISCUSSION

1. Constitutional Court Ruling on Termination of Employment due to Gross Misconduct

Termination of Employment is something feared by workers who are still actively working. Until now termination of employment became a negative thought because it is considered as dismissal. Whereas termination of employment is a process of continuity of the company.

Normatively, the Law of the Republic of Indonesia No. 13 of 2003 on Employment and the Law of the Republic of Indonesia No. 2 of 2004 on Settlement of Industrial Relations Disputes (hereinafter referred to as the Industrial Relations Dispute Resolution Law) are expected to protect against the threat of unilateral termination of employment⁹. Termination of employment is specifically also stipulated in the Industrial Relations Dispute Resolution Act. The law repeals Law of the Republic of Indonesia No. 12 of 1964 concerning Termination of Employment in Private Companies and Law of the Republic of Indonesia No. 22 of 1957 concerning Settlement of Employment Disputes.

Disputes resulting from termination of the relationship arise due to the absence of conformity of opinion on the termination of the employment relationship conducted by either party. Disputes are reasonable especially for workers because termination of employment means related to the fulfillment of workers' economic rights and the financial condition of the company¹⁰.

Termination of employment that occurs in a business entity that is incorporated or not, owned by an individual, federally owned or owned by a legal entity, either private or state-owned, as well as social enterprises and other businesses that have administrators and employ others by paying wages or rewards in other forms. Dismissal of workers

9 K. Prameswari, et.al., Termination of Employment Arrangements between Workers and Companies, *Jurnal Ilmu Hukum*, Vol. 1, No. 2, 2020, page. 99-112.

10 Kadek Agus Sudiarawan, Putu Edgar Tanaya, Kasandra Dyah Hapsari, Termination of Employment-Based on Efficiency in Indonesian Company, *Fiat Justisia: Jurnal Ilmu Hukum*, Vol. 15, No. 1, 2021, page. 39-50

should be based on legislation so as not to cause problems, and be done in the best way possible, as they were accepted as workers¹¹.

The relationship between the company and former workers should remain well established. Factually, there are many dismissals with dismissals due to insurmountable conflicts. Dismissal should be based on legislation¹².

There are 8 (eight) reasons for termination of employment, namely, because of the law, the wishes of the company, the wishes of workers, pensions, contracts of employment expired, health, death, and liquidated companies. A company's wishes can cause a person to be dismissed from the company, either honorably, or fired.

Application for termination of employment permit can be granted if the worker commits a violation / major mistake, among others:

- a. at the time the employment agreement is held to provide false or falsified information;
- b. committing an act of crime; and
- c. mistreatment, abusive or threatening employers, businessman's family, or workmates¹³.

Termination of employment based on the company's wishes can occur because the worker is elderly and has no profit for the company. Workers who are elderly, incompetent, or commit adverse actions such as corruption. While the company's desire to lay off these workers is due to:

- a. workers are unable to do their jobs;
- b. his behavior and discipline are not good;
- c. violate company rules and regulations;
- d. unable to cooperate and conflict with other workers; and
- e. immoral acts within the company¹⁴.

Factors causing termination of employment by employers are mentioned in the Employment Law, namely: *First*, the company suffers a setback so that it needs to rationalize or reduce the number of workers. If the termination of employment because of rationalization or minor mistakes of workers determined that employers, workers, unions, and the government try to prevent termination of employment. Such efforts have been made, but termination of employment is inevitable, so the

11 Sonhaji, *loc.cit.*

12 Rahmat GM. Manik, Pemutusan Hubungan Kerja Atas Kesalahan Berat Setelah Pasal 158 UndangUndang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan Dicabut Oleh Putusan Mahkamah Konstitusi Nomor 012/PUU-I/2003. *Melayunesia Law*, Vol. 1, No. 1, 2017, page. 65-80.

13 Tanti Kirana Utami, Ahmad Hunaeni Zulkarnaen, Perlindungan Hukum terhadap Pekerja dalam Pelaksanaan Hubungan Industrial, *Padjajaran Jurnal Ilmu Hukum*, Vol. 3, No. 2, 2016, page. 407-427

14 Yazid Bustomi, The Relevance of Behavior of Law Theory to Law Enforcement in Indonesia, *Jurnal Hukum Prasada*, Vol. 9, No. 1, 2022, page. 53-64

intention of termination of employment must be negotiated by the company and the Trade Union¹⁵.

Second, the worker has made a mistake, whether the mistake violates the provisions listed in the company's regulations, employment agreements or minor violations, or criminal offenses (gross misconduct). For workers who are disconnected from employment for reasons of gross misconduct, the government emphasizes the factors that cause termination of employment in the hope that employers do not terminate employment with workers arbitrarily and violate workers' rights. One of the important issues in the Labor Law as stated in Article 153 paragraph (1) point to (3) is the prohibition of termination of employment, namely the worker concerned to perform worship ordered by his religion. This is a form of government concern in fighting for the right of workers to perform worship that is ruled by their religion.

The issue stipulated in the Labor Law regulates 2 (two) wishes that are always not aligned, namely the wishes of workers on one side and the wishes of employers on the other. The difference in desire is inseparable from the development of industrialization that resulted in the onset of the socio-economic revolution. Industrialization on the one hand has led to tremendous economic progress, but on the other hand, it also poses a variety of problems in the social field as well as in the economic field itself¹⁶.

It is characterized by the emergence of the working class as a salesperson and or mind that differs socioeconomically from the entrepreneur class as the owner of capital and production tools. Competition between employers for a large profit has given rise to a tendency for employers to suppress workers' wages. Instead, workers, who depend on their lives on wages, will struggle to earn high wages. Although juridically the position of workers is the same as the employer, sociologically the position of the entrepreneur is stronger when compared to the position of the worker, as a factor of production¹⁷.

Constitutional Court is a state institution that serves to handle cases under its authority to maintain the constitution. The Constitutional Court has judicial power in addition to the Supreme Court, among others authorized to test the Law against the Constitution of the Republic of Indonesia year 1945, with authority, decided on the first and last level.

With the Decision of Case No. 012/PUU-1/2003 on October 28, 2004, the polemic on the existence of Law of the Republic of Indonesia No. 13 of 2003 on Employment formally and procedurally, is not contrary to the 1945 Constitution. The enactment of Law of the Republic of Indonesia Number 13 of 2003 concerning Employment has legal force

15 Tanti Kirana Utami, Ahmad Hunaeni Zulkarnaen, *loc.cit*.

16 Mustufa Haider Abidi, Hisham Alkhalefah, Usama Umer, Fuzzy Harmony Search Based Optimal Control Strategy for Wireless Cyber Physical System with Industry 4.0, *Journal of Intelligent Manufacturing*, Vol. 33, 2021, page. 1795-1812

17 Jill Rubery, Gail Hebson, Applying a Gender Lens to Employment Relations: Revitalisation, Resistance and Risks, *Journal of Industrial Relations*, Vol. 60, No. 3, 2018, page. 287-297

and is binding. However, there are canceled materials, among them about termination of employment due to gross misconduct.

One of the reasons on which employers terminate their employment is if the Worker commits a gross error as stipulated in Article 158 paragraph (1). It is said to be a gross mistake because the sanction that will be imposed on Workers is the termination of employment without getting severance money and no longer give a warning letter as the provisions of article 161.

Based on the Decision of the Constitutional Court of workers who commit gross misconduct as stipulated in article 158 paragraph (1), it cannot be severed unilaterally by employers. The article stated by the Constitutional Court does not have binding legal force, so if the worker commits a serious violation must be proven first through criminal proceedings and there is a court ruling that has a permanent legal force. If the Worker is detained by law enforcement so that the Worker cannot perform the work, as usual, termination of employment based on the provisions of article 160 if such gross error is stated in the employment agreement, company regulations, and collective labor agreement then the provisions of article 161 apply.

The Constitutional Court held that in the market economy government intervention through market economic policies and arrangements should be done as proportionately as possible. The ideals contained in Article 33 of the 1945 Constitution remain the philosophy and norm system as the supreme law of the land so that from there will flow a series of rules and policies that are compatible for the greatest prosperity of the people. It means that market law will be influenced propositionally to eliminate distortions and market weaknesses and can be eliminated while considering the risks that investors will experience through balanced and reasonable incentives.

Observing changes in termination of employment arrangements in the Employment Law, particularly concerning termination of employment with gross misconduct, there has been a change in the principle of termination of employment. Arrangement of termination of employment because of gross error, previous employers can perform termination of employment after obtaining permission or determination from the Regional/Central Committee.

After the verdict, employers do not have to apply for a termination permit after a court ruling that has had a permanent legal force. Thus, to determine guilt or not, purely becomes the authority of law enforcement.

2. The Working Relationship between Workers and Employers is Ideal going Forward

There are several legal sources to discuss termination of employment due to gross misconduct, namely:

- a. Law of the Republic of Indonesia Number 13 of 2003 concerning Employment, especially Article 158;

- b. Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes;
- c. Decision of the Constitutional Court of the Republic of Indonesia Number 12 /PUU/1/2003; and
- d. Circular letter of the Minister of Manpower and Transmigration of the Republic of Indonesia Number SE.13/MEN/SJ-HKI/I/2005.

The Constitutional Court considers that although Article 159 of the Employment Law determines if a Worker has been terminated due to gross misconduct under Article 158, if not accepted, the worker may file a lawsuit with the industrial relations dispute resolution agency. The provision bore a heavy evidentiary burden for Labor to prove its innocence. As an economically weaker party that should get more legal protection, compared to Employers.

Article 159 also raises confusion of thought by mixing criminal proceedings with out-of-place civil proceedings. The decision of the Constitutional Court states that the content of paragraphs, articles, and/or parts of the Law is contrary to the Constitution of the Republic of Indonesia of 1945 so that it does not have binding legal force.

Employers can no longer perform unilateral termination of employment because workers commit acts as stipulated in Article 158 before being found guilty of committing such crimes in criminal justice with permanent legal force. If a criminal court has declared a worker guilty of a crime and the verdict has a fixed legal force, then a new article 158 can be applied. Workers can be disconnected without severance and only get reimbursement of rights and or separation money as stipulated in article 158 paragraph (3) and paragraph (4) of the Employment Law¹⁸.

The Constitutional Court ruled that Article 158 has no binding legal force, so if any Worker commits gross misconduct as stipulated in Article 158 paragraph (1) then termination of employment can only be done if:

- a. there has been a verdict of a criminal judge who has had a permanent legal force that Labor is guilty of committing a criminal offense; and
- b. workers are detained by the police so that workers can not do the work as they should, then termination of employment based on the provisions of Article 160 paragraph (3) can be done without the establishment of an industrial relations dispute resolution agency.

Employers are not obliged to pay wages but are obliged to assist working families who are dependents. If the act that is categorized as a serious mistake is stated in the Employment Agreement, Company Regulations, or Collective Labor Agreement, then the sanctions that can be given the most severe is the third (last) warning letter. If the worker

18 Agus Suprayogi, Penyelesaian Pemutusan Hubungan Kerja karena Kesalahan Berat Pasca Putusan Mahkamah Konstitusi Nomor 012/PUU-I/2004, *Lex Journalica*, Vol. 13, No. 2, 2016, page. 114-125

commits another mistake that can be sentenced to a warning letter within the validity period of the third (last) warning letter, the termination of employment can be imposed, as stipulated in Article 161 which states:

- a. if the worker violates the provisions stipulated in the employment agreement, company regulations, or collective labor agreement, the employer may terminate the employment agreement, after the concerned worker is given the first, second, and third warning letter in a row;
- b. each warning letter is valid for a maximum of 6 (six) months unless otherwise stipulated in employment agreements, company regulations, or collective labor agreements; and
- c. workers who experience termination of employment for that reason, obtain severance money in the amount of 1 (one) time the provision of Article 156 paragraph (2), the award money of the working period of 1 (one) time the provision of Article 156 paragraph (3) and reimbursement of rights following the provisions of Article 156 paragraph (4) of the Employment Law.

Based on the decision of the Constitutional Court, the pattern of employment and employer relations in the future that is expected to create a mutually beneficial working relationship between the two parties is expected in the employment system in Indonesia. The working relationship of workers and employers should be a model of partnership relationship, so that the relationship is a relationship that is without discrimination, without exploitation, and without violence¹⁹.

The organization of workers who usually exist in each company is also expected not to be intervened by the management of the company to stand in line in conveying the aspirations of its workers²⁰. The impression so far that many worker organizations are subordinated by the management of the company so that its strength is weak in mediating the problems faced by oppressed workers. The organization of workers is expected to position its duties as an Institution that can bridge the interests of workers to employers so that all problems can be resolved properly and profitably²¹.

Industrial relations are formed by referring to the philosophical foundation of the nation and the country. Each nation and country has a different philosophy so the industrial relations system also tends to differ

19 Triana Sofiani, Rita Rahmawati, Shinta Dewi Rismawati, *Membangun Konsep Ideal Hubungan Kerja Antara Pekerja Rumah Tangga dan Majikan Berbasis Hak-Hak Buruh dalam Islam*, Conference Proceedings: Annual International Conference on Islamic Studies (AICIS) XI, UIN Sunan Ampel Press, Surabaya, 2013.

20 Amir Razi, Syed Atif Ali, Labour Management Relation. *Global Management and Business Research*, Vol. 12, No. 1, 2022, page. 29-36

21 Luis Marnisah., *Hubungan Industrial dan Kompensasi : Teori dan Praktik*, Deepublish, Yogyakarta, 2019.

from country to country. Indonesia with Pancasila as the philosophy of the nation and the state, industrial relations ideally refers to Pancasila²².

With the source of Pancasila as a philosophical foundation. Normatively all the rule of law governing Industrial Relations is based on Pancasila and the 1945 Constitution. Other laws and regulations as their implementation²³. With this approach, it is expected that the nuances of worker and employer relationships in the future can be harmonious, there is a positive syntactic relationship in building employment for employers, workers, and the state.

D. CONCLUSION

Based on the discussion can be concluded that termination of employment is often done unilaterally by the company. The reason for termination of employment is because the worker made a grave mistake. The category of gross misconduct due to the sanctions that will be imposed on Workers is the termination of employment without getting severance money, nor does it give a warning letter. Based on the decision of the Constitutional Court workers who make severe mistakes can not be severed working relationships unilaterally by employers. Workers who commit gross misconduct must be proven first through criminal proceedings and there is a court ruling that has a fixed legal force. If the worker is detained by law enforcement so that the worker cannot perform the work as usual, then the termination of employment is based on the provisions of article 160 of the Employment Law. Any serious errors are stated in the employment agreements, company regulations, and collective labor agreements, then the provisions of article 161 apply. Based on the decision of the Constitutional Court the pattern of employment and employer relations is expected to create a working relationship that is mutually beneficial to both parties. The employment relationship of workers and employers is supposed to be a partnership relationship so that there is no discrimination, intimidation, and exploitation. It is expected that industrial relations are formed by referring to the philosophy of the nation and the state. Industrial relations ideally refers to Pancasila. With the source of Pancasila as a philosophical basis, and the 1945 Constitution all the rules of law governing Industrial Relations as its implementation. With this relationship, it is expected that the nuances of worker and employer relationships in the future can be harmonious, there is a positive syntactic relationship in building employment for employers, workers, and the state.

22 F. Rumimpunu, Pancasila Industrial Relations System in Indonesia with Labor, Company Seen from Aspects (Labor Law No.13 Year 2003), *Jurnal Hukum Unsrat*, Vol. 2, No. 1, 2014, page. 117-126.

23 Ayu Putri Rainah Petung Banjaransari, Investment Effect on Wage System in Pancasila Industrial Relations based on Job Creation Law, *Jurnal Hukum Prasada*, Vol. 9, No. 1, 2022, page. 45-52.

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