

LEGAL ANALYSIS OF FULFILLMENT OF EMPLOYEES' RIGHTS WHO WERE DISMISSED DUE TO GROSS VIOLATIONS

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Abstract: *Termination of Employment is very important to study and understand, especially regarding the rights of employees who are laid off. It is not always smooth sailing between workers and employers in a company, they develop smoothly for the work done is something that really needs to be appreciated for its performance, but there is an act that makes this a common occurrence in any relationship so that a different point of view arises. This study aims to understand the rights that should be obtained by employees (workers) who are laid off for committing acts that are contrary to the law. This topic will focus on fulfilling the rights of employees who are laid off for serious violations. So the author is interested in knowing and analyzing a legal rule that applies in the world of employment. In answering and exploring this problem, the author uses the Normative Legal Research Type. The main results obtained by the author show that the employer does not want to provide severance pay to the employee because the employee has committed a serious violation. It can be seen that the unlawful act committed by the employee is very detrimental to the employer. Although severance pay is not given, there are rights that employees should receive, namely in the form of replacement money or separation money, in this case regulated and explained in government regulations and laws and regulations.*

Keywords: Employee Rights, Termination of Employment, Legal Arrangements

I. INTRODUCTION

An employee is someone who has the ability to work in a company, by carrying out their responsibilities and expecting compensation in the form of a salary that employees will receive. Employees have the meaning of a worker's work according to their duties and functions. Every company has company regulations that have been made and regulated so that they can be obeyed by all workers without exception. Based on the Law Regarding the Basic Provisions Concerning Manpower, according to the Manpower Law Number 13 of 2003, an employee (worker) is defined as any person who works and receives compensation from the place where he carries out his work and has an employment relationship with the existence of an employment agreement between the employer and the worker.

The employment relationship between employees and employers occurs after an agreement is made by both parties, in which case the parties are bound by an agreement, so that the employee states his/her ability to work. In previous research conducted by Fahrani Nur with the title "Termination of Employment Due to Serious Violations After the Issuance of Law of the Republic of Indonesia Number 06 of 2023 Concerning Job Creation, the results of this study explain that workers who are dismissed or representatives of workers who are harmed and experience losses due to serious and urgent violations should review the regulations related to the Job Creation Law and Government Regulation 35 of 2021 Article 52 which regulates urgent errors so that workers cannot be dismissed arbitrarily by the company without waiting for a binding criminal court decision and employers must implement these provisions in accordance with applicable regulations regarding serious violations. Then the previous study conducted by Dian Purnamasari with the research title "Termination of Employment Due to Serious Violations Reviewed from Legal Certainty", the results of this study explain that the suitability between the resources needed by the business world and the available resources is a consideration of the conditions of the employment relationship, including the elements of rights and obligations between the parties, often becomes a major problem in the termination of employment contracts or contract labor.

Furthermore, research conducted by Faizatul Laily with the research title "Legal Protection for Employees Who Experience Termination of Employment Due to Serious Violations", in his research explains that the procedure for termination of employment due to serious negligence is the same as the procedure for other terminations through the termination of employment system based on Law Number 13 of 2003. The parties involved negotiate to prevent the completion of the work. If all parties agree, then a mutual agreement can be made. However, if the negotiations are unsuccessful, it can be resolved through the PPHI facility. While waiting for a legal decision, all parties must continue to carry out their obligations properly. Based on the three previous studies, the researcher understands that each study is very related and there is no similarity with the research conducted by the researcher. With the fundamental difference, namely that previous studies prioritized the sanctions that would be given to workers who committed serious violations according to applicable laws, while this researcher focuses on the Fulfillment of the Rights of Employees Who Are Laid Off for Committing Serious Violations.

It is not always smooth sailing between an employee and an employer in a company, they develop smoothly for the work done is something that really needs to be appreciated for its performance, but there is an act that makes this a common occurrence in any relationship so that a different point of view arises. The existence of different points of view causes a conflict in a job. Conflicts between these parties often occur and can actually be resolved peacefully through mutual understanding or compromise between employees and employers, in this case a dispute occurs due to the actions of the employee or employer that are not in accordance with what is thought or done, this becomes a problem so that it sometimes escalates into a protracted and complex matter. Labor problems are generally observed in developing countries, such as Indonesia, and are often highlighted as significant challenges. These problems include a variety

of issues related to employment, such as working conditions, salary payments, job opportunities, and labor rights. When the parties sign an agreement, they have an understanding of the rights, obligations, responsibilities, impacts, and potential risks associated with the termination of the agreement, which may result in losses from the agreement made. Regarding the problem of Termination of Employment, it becomes a burden for workers and becomes a fear, because when laid off, workers lose their source of income for their lives. The form of violation committed by the employee is in the form of forgery so that the employer does not provide the employee with severance pay. This unlawful act does have a major impact on the development of a company and results in great losses. So this possibility is a reason for the employer not to provide severance pay to the employee. As in cases that often occur in companies, this becomes a problem related to the rights and obligations of employees, because of the occurrence of this unlawful act, it has violated a provision of the law, it should be noted that the state must guarantee and protect part of the rights and obligations of these employees, therefore it is necessary to know about How is the Legal Accountability for the Rights of Employees Who Are Laid Off for Committing Serious Violations? and How are the Considerations of Legal Efforts Taken Against Employees If Their Rights Are Not Fulfilled? and the author wants to examine the novelty of the rules and regulations that apply to fulfill the rights of employees who have been laid off due to serious violations.

II. METHOD

The research method used in relation to the context of the problem taken is the type of Normative Juridical research, because to examine or trace the regulations that apply in an action on each attitude of action that gives rise to legal action that occurs, namely legal events regarding employees who are laid off, due to committing serious violations, and the employee does not receive severance pay from the company. This study uses the type of Normative Juridical research and applying two approaches, namely the Legislation Approach and the Case Approach. Through the Legislation Approach, this approach is carried out to observe the applicable laws and regulations related to the problem being studied. While through the Case Approach, this approach is carried out by analyzing and reviewing the events that occurred in this company based on the results of observations made on the media platform that often occur regarding Termination of Employment. The purpose of this approach is to find a legal solution in resolving actions that give rise to legal events and is based on the principles of applicable regulations.

III. RESULT & DISCUSSION

Legal Responsibility for the Rights of Employees Who Are Dismissed Due to Serious Violations

In carrying out a job, it can sometimes cause a dispute between the parties, namely the employer and the worker (employee). The problem that often arises in every company between the employer and its workers, namely the emergence of a problem that starts from an irresponsible party and in the end the attitude of the behavior, it is considered against the law. Every act that is against the law will have a major impact on losses. As we know and often happens in every company, employees commit acts of forgery, this can be categorized as a crime of fraud, in this case if the employee provides an illustration of a picture of an item or other thing as if it were true or original, while in fact this truth is not owned, and because of this description of the act, other people are deceived and believe that the conditions described for the goods, letters, or data are true or original. According to Adami Chazawiki, a crime that contains falsehoods about an object or other thing that is visible outwardly is known as forgery, as if it were true, when in fact, it is not the truth. So this has a very big impact in problems in employment relationships, of course there are those that can be resolved amicably or resolved through a legal step. Regarding this, termination of employment is one of them. This serious

violation is not a new case, in the sense that this case often occurs in every company. This is what makes the employee dismissed by the employer, because the employee commits a conflict or acts that are contrary to the Law, where this act of forgery is seen to have harmed the employers and the company.

Legal Protection for Employees Who Are Laid Off Due to Serious Violations

Termination of Employment Relations between the parties, namely the employer and the worker (employee), hereinafter referred to as PHK. Layoffs carried out by employers can also be caused by employee errors or there are several things due to other factors such as company closures due to losses, changes in positions, and because of the will or initiative of the employer. In fact, there are rules that have long regulated employment, but there are still those who want to violate them and completely ignore the legal consequences that occur. According to Leon Duguit, legal regulations function as a means or foundation to control individual behavior in a society, and their significance lies in their ability to maintain common interests in a community. If a violation occurs, this system will require collective action against the violators. The government always has the best efforts for its people, this matter is an ideal and desire that must be fought for so that it looks fair and prosperous based on Pancasila and the 1945 Constitution of the Republic of Indonesia. All actions that are not permitted and have been regulated in a law, if there is a party that violates it, the application of sanctions must be based on the existence or absence of provisions for sanctions for the actions taken. Sanctions are generally an action to deprive someone of their rights, therefore they must be carried out democratically.

That Article 156 paragraph 1 of Law Number 6 of 2023 concerning the Stipulation of PP in Lieu of Law Number 2 of 2022 concerning Job Creation becomes a Law which states that "regarding an action taken by an employer against an employee, namely dismissal from work due to being laid off, then the employer must provide severance pay and long service award money and replacement money for rights that should be received." It can be seen from the article that the employer should be able to provide severance pay or a long service award money or replacement money for rights that should be received by workers (employees), even though the workers, namely the employees, are laid off (even though the employees who are laid off do not get severance pay, but employees are still required to be given long service award money or replacement money for rights). That regarding replacement money has also been regulated in Article 156 paragraph 4 of Law Number 6 of 2023 that the replacement money for rights that should be received as referred to in paragraph (1). In Article 158 of Law Number 13 of 2003 because it has been deleted, where in the article it has been regulated regarding employees who are laid off with a statement that they have made a serious mistake, with various explanations contained in the article.

In the law, there is an explanation regarding the serious errors referred to in paragraph (1) which must be supported by the following information: workers who were caught red-handed; and there is a confession from the worker concerned; or there is other evidence in the form of a report about a phenomenon made by a party who has a role in the responsibility in the company concerned and can be supported by at least 2 (two) witnesses. Workers whose employment is terminated based on a statement as referred to in paragraph (1), can receive compensation in the form of severance pay and severance pay, the amount and implementation of which are explained in an employment agreement, company regulations, or joint employment agreement as referred to in Article 156 paragraph (4). In this case, if Article 158 is not removed and is to be used in resolving the problem, then it can be seen that the employee has committed a serious error in the form of forgery, which of course the employee can be dismissed if it has been proven that the employee has committed a serious error. Regarding termination of employment, Workers are required to provide compensation in the form of severance pay and/or service award money and compensation for the rights that should have been received by the worker."

According to Circular of the Minister of Manpower and Transmigration Number SE-13/MEN/SJ-HK/I/2005 states that if an employer intends to terminate employment because the worker, namely the employee, has committed a serious error, it must be based on a criminal judge's decision that optimizes the law to be prioritized first, so that the error must first be proven beyond the criminal justice system. The issue regarding the Circular Letter is not included in the scope of a statutory regulation. Law Number 12 of 2011 concerning the Formation of Legislation, states that this Circular Letter is not included in the type of Legislation and is not included in a State Administrative Decision, but this Ministerial Circular Letter is one of the regulations whose contents are in the form of policy regulations or can usually be said to be Pseudo Legislation. BRegarding severance pay, the employee is not entitled to severance pay. So in the problem discussed, the employee has committed a serious violation in accordance with that stipulated in Article 158, then the worker is not entitled to severance pay because the employee has committed a serious violation, but the employee is entitled to receive replacement money as stipulated in Article 156 paragraph 4. And it can also be seen, regarding if Article 158 of Law No. 13 of 2003 is not abolished, then the employee is still not entitled to severance pay. Where this is the same as that stipulated in PP Number 35 of 2021 and Law No. 6 of 2023, which states that employees who are laid off are not entitled to severance pay. Termination of employment carried out by the employer without severance pay and service bonus money, but the employer provides the worker with compensation money and service fees for the worker.

Settlement of Industrial Relations

Employers are permitted to terminate a person's employment, however in aThe Manpower Law provides protection, namely preventing dismissal without the approval of the Industrial Relations Dispute Settlement Agency (BPPHI). Based on the facts that occur in the world of work, regarding the legal responsibility between employers in the implementation of layoffs due to serious errors, criminal steps against workers who make serious errors are interpreted as an employer's right, so that a mediator and judges no longer require that serious errors must be processed criminally first. There are legal rules in criminal law, which means that behavior is considered unlawful if it is carried out without the permission of the person concerned.

In the Industrial Relations Settlement process there are several settlements which include:

- Bipartite Negotiation, this process is a major thing in handling every Conflict in an Industrial Relations so that it is considered that the settlement of Industrial Relations Disputes must be carried out or implemented for employers and workers, and is carried out through deliberation to reach consensus. Through this settlement, it can be said that the settlement is an option to find a way out of the problems that occur, where employers and employees who make this mistake can be negotiated for their rights that should be obtained when laid off.
- Tripartite Negotiations, in the settlement process carried out by means of mediation, which in this case is through the processdiscussions conducted by a mediator who is fair, free and objective in resolving Industrial Relations Disputes, namely regarding Rights Disputes, Disputes over Termination of Employment, Disputes over Interests and Disputes between Workers' Associations. Sometimes in this mediation process fails to reach an agreement and ends in a deadlock or the absence of a good solution. This situation often arises because the company stubbornly refuses to comply with the proposals of employees and unions regarding changes to work arrangements.
- InThe PPHI process is based on the problem of layoffs which were previously based on the reason of carrying out an action that did not comply with regulations or an action that was contrary to the law,It would be better to prioritize peace, rather than taking the case directly to the Industrial Relations Dispute Court, because this peace process will lighten the burden

on the court, which in this case has the aim of...The responsibility for work and legal costs that must be borne by the state is reduced. And this is a strategy for the parties, so that the settlement can be fast and not protracted and save time, funds, and resources.. Industrial Relations Dispute Resolution is one component of the employment law system.

It can be concluded from these three settlement processes, in order for employers and workers to resolve Termination of Employment disputes, they must be comparable to the regulations and procedures explained and outlined in the legislation. Termination disputes that are not resolved through negotiations will be followed up by the Industrial Relations Court. If the company also does not pay severance pay to employees or compensation for the rights of dismissed employees, and the company still insists on not paying severance pay, then the company is considered to have violated Article 156 Paragraph 1 of Law Number 11 of 2020. And workers who are affected by Termination of Employment, whose rights are not fulfilled can sue the company through their lawsuit.

Consideration of Legal Actions Taken Against Employees If Their Rights Are Not Fulfilled

When talking about a legal problem, it is not something ordinary. Legal efforts are an action or effort in creating an idea of thought that is awaited by the people to be proof of truth by the process of linking many things, its use is to resolve legal problems that occur. Law enforcement efforts for workers affected by Termination of Employment must be carried out, especially for workers who make serious mistakes and are laid off and want their rights to be obtained. The law has high authority in this case, the law is the foundation for ensuring human needs that need to be protected and regulated. The law has the right to protect an interest for someone, which in this case the meaning of the interest is referred to as a worker's right. The need for law is to take care of the rights and interests of workers. This legal protection is intended to create a balance in the legal relationship between employers and workers. Employment law enforcement is a form of effort to be able to implement employment law properly, and supervise its implementation so that no arbitrary actions occur, and if a violation occurs there is a policy in the form of other efforts to restore the violated law so that it is re-enforced. Thus there are various efforts made so that employees can have their rights fulfilled again, namely:

- a. Preventive Law Enforcement Efforts, in this case have the aim of preventing a problem from occurring, so that it is carried out by every workforce that is useful for obtaining a fair consideration step for employers to the workers (employees), who are laid off, so that there is no continuous conflict, and this effort is more effective and influential because the resolution is carried out through mediation and socialization, so that the conflict does not drag on and is able to quickly get a bright spot for workers who are laid off so that they can get a good final decision in restoring their rights. Related to the Manpower Law, the implementation of the Law is also one of the efforts to find a real way out and is expected by the government, as a preventive protection effort, and this Joint Working Agreement is also an effort for preventive protection. This preventive legal protection is recognized by the existence of a form of legislation that is used as a benchmark in order to limit a person's actions that can violate the rights of others.
- b. Repressive Law Enforcement Efforts, this has the aim that the law enforcement carried out obtains maximum and firm results on legal problems that arise between employers and workers (employees). As basically that an action of will carried out by a party who considers it very detrimental, if a desired claim does not get a good and proper consideration and is not followed up in accordance with applicable legal regulations, and then the workers also have the right to make a complaint to the Manpower Office, then mediation will be carried out between the laid-off employee and the employer, if in this case it also does not produce the fairest results, then it is continued with a complaint of

the mediation results to the Industrial Relations Office and will then be processed through the Industrial Relations Court.

Workers who have a conflict in their employment relationship with their employer can take legal action to obtain their rights that have not been paid by their employer, namely by means of dispute resolution. So that Protection of workers is intended to be very important to ensure and guarantee the basic rights of workers and guarantee equal opportunities and non-discriminatory treatment of anything to be able to realize the welfare of workers and their families while still being able to pay attention to the development of progress in the business world and the interests of employers. It can be interpreted that this Law Enforcement is an effort to carry out legal protection, which in this case has the intention and purpose that this Legal Protection can provide a sense of security and certainty, or a sense of being protected by laws and regulations for workers who work (Protection of Human Rights).

IV. CONCLUSION

To provide progress in the field of employment in the present and in the future. Regarding the description related to the Fulfillment of Employee Rights which is important to know as a reference for the framework of thinking that the impact arising from the problem of employee rights that are not fulfilled, because the employee commits a serious violation. Regarding the problem of Termination of Employment, namely employees who are laid off because they have acted contrary to the law, this is a factor that causes a loss for the employer, so that with this problem, the employer does not fulfill employee rights. First, in overcoming this problem, legal regulations are the main foundation in fulfilling the rights of employees who are laid off, along with several indicators that are sufficiently strengthened in law enforcement efforts that are the basis for fulfilling employee rights. So that in this study, legal regulations in the form of laws and legal efforts are described regarding the fulfillment of the rights of employees who are laid off due to serious violations committed. Second, this writing also provides advice to employers to pay attention to the applicable legal regulations, before laying off workers, namely employees, by looking at the stages of the process in the applicable laws and regulations and it is also hoped that the regulations or new regulations that are to be achieved for the fulfillment of employee rights in the future will be increasingly fulfilled, so that protection, welfare for employee rights can be achieved, and it would be good, before laying off workers must also pay attention to every applicable provision. All that is stated in the results and discussions is certainly an obligation as an academic to be able to help implement a good order in the world of employment so that the mandate or direction that is then poured into the form of a legal product can be implemented properly.

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