



Employment Contracts and Terminations: A Study of Labor Law in Indonesia

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Abstract

This research aims to explore strategies that can be used by workers to help prevent wrongful termination due to wrong employment contracts. This research uses the normative legal research method. This method emphasizes research on existing laws. The results of the study show that the current legal regulations are not sufficient to protect workers from wrongful termination problems. However, there are several initiatives that can be taken to increase legal protection for contracts of employment.

Keywords: *Legal Protection; Contract of Employment Strategies; Wrongful Termination*

Introduction

Work is a way to meet the financial needs needed by every human being. Work can be done independently or by working for other parties, the same is the case with working for the state (employees) or for the private sector (laborers or workers). However, in reality, there are still workers who have not received the rights they should have.¹

To guarantee workers' rights, the government has established various rules and regulations that must be obeyed by workers, employers, and the government. For example, Law no. 13 of 2003 concerning Manpower, Law no. 40 of 2004 concerning the Implementation of Workers' Social Security, and Law no. 21 of 2007 concerning Corruption. Even so, there are still many workers who experience discrimination, injustice, and discomfort at work.²

¹ Sebedeus Hitokdana. 2018. Efektivitas Kebijakan Pemerintah Daerah Terhadap Pengembangan Industri Kecil Di Kota Jayapura. Law and Justice UMS. Vol 3. No. 1. Pp 49

² D. Anggraini, "Indonesian Supreme Court Judicial Decision on Sharia Economic Disputes," Indonesian Supreme Court, accessed October 30, 2020,

Therefore, the government and various institutions must remain committed to guaranteeing workers' rights. The government and various institutions should strive to raise awareness about workers' rights, provide education and training to workers, and monitor the implementation of workers' rights.³In addition, workers must also jointly play a role in upholding their rights. Workers must know their rights, understand applicable regulations, and voice their opinions and aspirations.

Settlement of industrial relations in the Unitary State of the Republic of Indonesia should be based on the values specified in Pancasila. These values include the values of divinity, humanity, unity, deliberation and representation, and what is no less important is the value of social justice. Therefore, employers are required to take action to sign a work contract with workers, either for a certain period of time or without a period of time.

The working relationship is an interrelationship between employers and workers based on an agreement which includes elements of work, wages and orders. In other words, the employment relationship occurs because of a work contract that has been approved by both the employer and the employee. Employment provides guarantees and safety to employers and workers and requires government intervention in the labor sector.⁴

The basic principle of the employment relationship is the existence of a work contract made between workers and employers.⁵This marks the private nature attached to the relationship. As a result of violations in the field of labor, the government can impose sanctions in the form of criminal or administrative. In addition, the government also intervenes in setting the standard wage (minimum wage) that applies in all regions.

Labor law has become an interesting topic in discussions on labor issues. It is undeniable that this law has a significant impact on the lives of workers. Almost all aspects of the employment relationship between employers and workers are regulated by law, so workers need to understand the legal aspects of the law regarding them.

Employment is one of the areas most affected by economic uncertainty.⁶Work contract strategies related to layoffs are one of the phenomena that workers often face. This employment contract strategy covers various areas such as short-term employment contracts, employment contracts that do not expire, employment contracts that can be changed or canceled, employment contracts that fall under legal standards, and so on.

Over the past few years, there have been many cases of layoffs that have occurred around the world. Despite the controversies related to layoffs, many companies still use the wrong employment contract strategy, which can lead to layoffs. Different labor regulations in various countries also cause injustice to workers. Therefore, it is important to know how labor law can help minimize the problem of layoffs caused by the wrong employment contract strategy.

The problem of layoffs is one of the important social issues to be discussed. By knowing more about labor law and employment contract strategies related to layoffs, we can improve social and

³ Mohammad Fandrian Hadistrianto, *Praktek Pengawasan Perburuhan Dalam Konteks Penegakan Hukum Perburuhan Heteronom*, Jurnal Surya Kencana Satu Vol 8 No 2 Oktober, Universitas Pamulang, Tangerang Selatan, 2017, hal. 23

⁴ Riska Purbasari, Mohammad Jamin. 2021. The Job Creation Act: Implication of National Strategic Project on Regional Spatial Planning (Study in Madiun City, East Java Province. Jurisprudence UMS. Vol 11. No 2.

⁵ Soedarjadi, *Hukum Ketenagakerjaan Di Indonesia* (Yogyakarta: Pustaka Yustisia, 2008).

⁶ Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia* (Jakarta: Citra Aditya Bakti, 2003).

economic justice for workers. In addition, by knowing more about this issue, we can also understand the implications of layoffs and how to overcome them.

Therefore, from the various problems and phenomena above, the author is interested in examining more deeply related to labor law and its strategy by examining this article with the formulation of the problem: "how can labor law help prevent layoffs caused by wrong employment contract strategies?".

Research Methods

In the process of collecting the necessary data, we use normative juridical research methods.⁷This method emphasizes research on existing laws and helps analyze existing problems. This research is supported by secondary legal materials such as books, journals and other sources that provide conceptual and theoretical explanations relevant to the object of study. The aim of this research is to explore law-based strategies that can be used by workers to prevent layoffs caused by unfair employment contracts.

Literature Review

Workforce are individuals who are capable of performing a job in order to produce products or services for their own benefit or for the benefit of the community, as stipulated by Law Number 13 of 2003 Article 1 paragraph 2. The classification of workers is a grouping based on certain criteria, namely population, work and conditions. The population is divided into workforce and non-labor force, employment limits are divided between the workforce and non-labor force, and conditions are divided into educated workforce, skilled workforce, and uneducated and untrained workforce.⁸

Educated workers are workers who have formal or non-formal education that has been approved by the government. Educated workers are usually more experienced and have higher expertise than uneducated or unskilled workers. Trained workers are workers who have certain skills obtained through training, experience or guidance. Even though they have no formal education, they can still do specific jobs with a high level of skill.

Uneducated and unskilled workers are workers who do not have formal or non-formal education and do not have certain skills obtained through training, experience or guidance. These workers usually work as laborers who do simple and incompetent jobs.⁹

Every worker or laborer has the right to protection. Law Number 13 of 2003 Article 86 paragraph 1 states that workers have the right to safety, welfare, occupational health, moral protection, decency, and treatment in accordance with human dignity and values and religious values.¹⁰The workforce has an obligation to carry out work in accordance with predetermined obligations, maintain sustainable and sustainable production, channel aspirations democratically, develop skills and expertise to improve company performance, follow the provisions stipulated in the cooperation agreement or its amendments,

⁷ Khudzaifah Dimiyati dan Kelik Wardiono. 2004. *Metode Penelitian Hukum*. UMS Press. Surakarta. Hal 14

⁸ Dwiyanto Agus, *Reformasi Birokrasi Publik di Indonesia*, Gadjah Mada University Press. Yogyakarta, 2006, hal. 45

⁹ Khalimi & Susanto, "Kedudukan Akuntan Publik Untuk Melakukan Audit Investigatif Terhadap Kekayaan Badan Usaha Milik Negara (BUMN) Persero Dalam Rangka Menghitung Kerugian Negara," *Jurnal Hukum Staatsrechts* 1, no. 1 (2017).

¹⁰ Lalu Husni, *Pengantar Hukum Ketenagakerjaan*, PT. Raja Grafindo Persada, Jakarta, 2005, hal. 133

resolve disputes by way of deliberation and consensus, and notification in writing to employers and local agencies responsible for manpower affairs at least 7 days before striking.

In addition, workers are also entitled to wages and other rights determined by law. Law Number 13 of 2003 Article 89 states that workers are entitled to adequate wages, rewards for good work, and overtime pay. Workers are also entitled to entitlements to annual leave, sick leave and maternity leave. Workers are also entitled to pension rights and social insurance.¹¹

Results and Discussion

Labor law can help prevent layoffs caused by faulty employment contract strategies through proper enforcement. First, labor law stipulates rights and obligations for workers and employers in the work environment. This limits the employer's ability to change or terminate the employment contract unilaterally. Second, labor law also provides protection for workers from inappropriate layoffs. Appropriate law enforcement provides a mechanism for workers to bring lawsuits regarding improper layoffs they experience.

In addition, labor law also includes the right to take part in collective action, including trade unions. This allows workers to form a collective force to fight improper layoffs, even before they happen. By using their collective power, workers are able to demand justice and their rights. They can also use collective action to force employers to pay fair compensation to laid-off workers.

Labor law also regulates the relationship between workers and employers. This legal protection can help prevent layoffs caused by employers seeking to abuse their power to force workers to accept unfair working conditions. It also ensures that workers are provided with laws that cover their rights and obligations. Labor law also provides a mechanism for workers to bring lawsuits against improper termination.

In particular, labor law provides for laws that provide protection for workers who are terminated without proper reason. This allows workers to obtain appropriate compensation for the improper layoffs they experience. Thus, labor law provides strong protection for workers against improper layoffs.¹² The type of employment contract is important and greatly affects the rights obtained when the company terminates employment. Work contracts are divided into two, namely fixed time work contracts (PKWT) and unspecified time work contracts (PKWTT). Both types of employment contracts can affect employee rights related to termination of employment.¹³

However, there are cases where an employee has worked for many years in a company but is still considered a contract employee. In this case, the employment status of an employee may be questioned, because if the status remains as a contract employee even though they have worked for many years, the rights they obtain will also be limited. Therefore, it is important for an employee to ensure the status of the employment relationship in order to know the rights obtained when the employment relationship is terminated.

¹¹ Zaeni Asyhadie, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja*, Cet. III, Raja Grafindo Persada, Depok, 2012, hal. 61

¹² Nuroini Indi, "Penerapan Perjanjian Bersama dalam Pemutusan Hubungan Kerja," Universitas Bhayangkara Surabaya, 2015.

¹³ Mohammad Fandrian Hadistrianto, "Praktek Pengawasan Perburuhan Dalam Konteks Penegakan Hukum Perburuhan Heteronom", *Jurnal Surya Kencana Satu* Vol 8 No 2 Oktober, Universitas Pamulang, Tangerang Selatan, 2017.

In addition, an employee must also understand the details of the work contract that has been agreed with the company. This employment contract regulates the rights and obligations of the employee. By reading and fully understanding the contents of the employment contract, employees will get a clear picture of their rights when terminating employment. If this is done, the employee will have the opportunity to resolve the issue safely and fairly in the event of termination of employment.

Then, employees must also understand the influence of labor regulations in influencing the rights obtained when the employment relationship is terminated. Labor regulations regulate employee rights in various fields, including those relating to termination of employment.¹⁴ For example, labor law in Indonesia regulates the rights of employees related to termination of employment, including old age benefits, working day replacement wages, and others. These things are closely related to the issue of wages and are the main problems in the field of employment.¹⁵

The wage-giving paradigm in Indonesia is consciously or not more oriented towards Western habits, namely wages are paid once a month for employees, then paid once a week or even per day for workers, where the difference in salary or wages obtained lies in the type of employee, namely including permanent employees or No.¹⁶

By understanding labor regulations, employees will have a clear picture of the rights they get when they terminate their employment relationship. Thus, an employee must ensure the status of the employment relationship, understand the contents of the work agreement, and understand the applicable labor regulations. This will help employees to understand the rights that come with termination of employment and provide an opportunity to resolve issues in a safe and fair manner.

In an employment relationship, there are 3 main elements that need to be considered, namely the existence of a job, the existence of orders or instructions from the employer, and the existence of wages given within a certain period of time. This work is an activity carried out by workers to meet the needs and desires of the employer. The orders given to workers are in the form of instructions from the employer which must be obeyed by workers. The wages given are compensation received by workers with a certain amount, within a mutually agreed period. With these three elements, a working relationship can take place well.¹⁷

To be able to act as a legal subject, both Workers and Employers must show and meet predetermined criteria, namely being mature and capable in terms of acting. Adult here means that it has reached the age that is allowed to take legal action in accordance with applicable law.¹⁸ Meanwhile, competent in terms of acting means being able to understand and respond to the actions they have taken and have the awareness to take action in accordance with the law. These two elements are important to implement so that the actions taken by Workers and Employers can be recognized as legal actions in accordance with applicable law.

A valid work contract must fulfill several conditions specified in Article 52 of Law Number 13 of 2003 concerning Manpower. These conditions include the agreement of both parties, the ability or ability

¹⁴ Monang Siahaan, S. H. *Falsafah dan Filosofi Hukum Acara Pidana*. Gramedia Widiasarana Indonesia, 2017.

¹⁵ Maimin Sholeh, *Permintaan dan Penawaran Tenaga Kerja Serta Upah: Teori Serta Beberapa Potretnya di Indonesia*, Jurnal Ekonomi dan Pendidikan, Vol.4, No.1, (April 2017), p.72-74

¹⁶ Rustam Effendi, *Peran Dewan Pengupahan Dalam Prespektif Problematika Ketenagakerjaan*, Tesis, Universitas Sultan Ageng Tirtayasa, Banten, 2019, p.15.

¹⁷ Y. M. Darusman, "Sistem Parlemen Threshold (Ambang Batas) Tantangan Atau Ancaman Dalam Perkembangan Demokrasi Indonesia," Jurnal Surya Kencana Satu (Dinamika Masalah Hukum & Keadilan) 2, no. 2 (2012): 1-23

¹⁸ F. A. Hayati dan O. Yanto, "Legal Protection Urgency of Children's Rights From Violence Action in Tangerang Selatan Area," dalam *The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)*, Atlantis Press, 2020, hlm. 583-587.

to carry out legal actions, the existence of work that has been agreed upon, and the work is not contrary to public order, decency, and applicable laws and regulations. This means that both parties must have agreed to the contents of the work agreement, and each has the ability to take legal action. The type of work that has been agreed upon must be clear and not contrary to public order, decency, and applicable laws and regulations.

Conclusion

It can be concluded that labor law can help prevent layoffs caused by wrong employment contract strategies through proper law enforcement. This law covers the enforcement of rights and obligations for workers and employers in the working environment, for workers from improper termination, the right to take part in collective action, relations between workers and employers and enforcement of labor regulations. With this law in place, workers will have the opportunity to obtain appropriate compensation for the inappropriate layoffs they experience, as well as understand the rights that are obtained when the employment relationship is terminated.

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