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Settlement of Bipartite Termination of Employment Disputes based on Undang-Undang Nomor 2 Tahun 2004

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Abstract

The problems that occur in the world of work are not only workers and the availability of jobs. The problem of termination of employment or layoffs is one of the problems that often occurs. Differences in perceptions regarding layoff decisions made by employers or workers give rise to disputes. This dispute certainly disrupts the company's operations so it needs to be resolved quickly and fairly for all parties. The state as the protector of society regulates the bipartite settlement of layoff disputes. The purpose of this research is to find out the bipartite dismissal dispute settlement mechanism based on UU No 2 Tahun 2004. This juridical research obtained data from literature, regulations, and laws related to this study. The study show the bipartite negotiation mechanism, namely the stages before the negotiations, bipartite negotiations, minutes of negotiations, and reporting of the minutes of bipartite negotiations.

Keywords: termination of employment, bipartite negotiations, UU No 24 Tahun 2004

INTRODUCTION

Every human being needs work to be able to make ends meet. In Indonesia, the freedom to work in order to meet the needs of life is regulated in the 1945 Constitution Article 27 paragraph (2). The state gives people the freedom to prepare themselves for the desired job. When working, there is a relationship between the employer and the worker called an employment relationship or industrial relations.

Industrial relations are relationships that are established between employers and workers regarding employment rules (Bellemare, 2000). Industrial relations focused on the tripartite relationship⁴ between trade unions/syndicates, workers, and employers² Adams, 1887). Meanwhile, according to Law No. 13 of 2003 concerning Manpower, industrial relations are a system of relationships formed between actors in the production process of goods and/or services consisting of elements of entrepreneurs, workers/laborers, and the government based on the value of Pancasila and the 1945 Constitution of the Republic of Indonesia. Judiantoro (1992) describes an employment relationship as a relationship that is established in a person with who gives orders to an agreement that has been agreed before the employment relationship is carried out. An employment relationship is defined as a



relationship arising from the mutual agreement of an employer with its workers that is time-determined or timeless (Aloewic, 1996). Lyddon (2003) describes industrial relations as a condition of employers and workers together. In addition an employment relationship can also be explained as a relationship based on a mutually agreed legal agreement between the employer and his worker that lasts only for a certain period of time regardless of the agreement for an indefinite period (Barancová et. al, 2019). The implementation of industrial relations is regulated in accordance with the law so that it can run in harmony and harmony. The implementation of labor relations or industrial relations does not always go well. According to Law No. 2 of 2004 Article 1 No. 1, labor relations disputes are industrial relations disputes are differences of opinion that result in conflicts between employers or combinations of employers with workers/workers or trade unions/trade unions due to disputes regarding rights, disputes of interest, disputes over termination of employment and disputes between trade unions/trade unions in one company. Maswandi (2017) explained that problems that often occur in labor relations are rights issues, interest problems, termination problems, and problems between workers and trade unions. Disputes that often occur and attract the attention of the public are termination disputes.

Termination of Employment (LAYOFFS) is the settlement of the period of employment between the employer and the worker. Layoffs can also be explained as the termination of employment relations carried out by employers due to a violation of work rules. In addition, layoffs can also occur if workers have a desire to no longer continue the employment relationship with the company due to urgent reasons. Layoffs occur not only because of the wishes of employers but also because of the wishes of workers. Based on Law No. 13 of 2003, layoffs are divided into four groups, namely: 1) layoffs that occur for the sake of the law; 2) layoffs that occur from the request of employers; 3) layoffs that occur from the request of workers; and 4) layoffs decided through the courts. Layoffs agreed by both parties will not have disputes if the rights and obligations under the employment agreement have been implemented. In addition when the two sides have a mutual agreement.

At the time of layoffs, there are often disputes due to differences in perceptions about the reasons for the layoffs carried out by employers. This incident can occur protractedly. Both sides are reluctant to resolve the issue of layoffs in authorized institutions such as courts. In this case the state as a protector, it is necessary to mediate on the resolution of the problem (Friedmann, 1971). Therefore, it is necessary to resolve it with bipartite as stipulated in Law No. 2 of 2004. Almaududi (2017) explains that bipartite negotiations can be conducted without a written request. Raharjo (2009) describes bipartite negotiations as an attempt to discuss the issue of layoffs by employers and workers. Bipartite negotiations are the basis for resolving labor relations disputes because they are in accordance with Pancasila, which is carried out by deliberation (Sukadana, 2012).

The practice of Law No. 2 of 2004 has not been fully implemented by all employers and workers in Indonesia. This is due to the lack of legal knowledge about the settlement of terminations. Based on Law No. 2 of 2004, disputes can be resolved by bipartite negotiations, namely negotiations between employers and workers. This study aims to determine the mechanism for resolving labor relations disputes in a bipartite manner based on Law No. 2 of 2004.

METHOD

This research is a juridical research that is by paying attention to the phenomena that occur and compared with the existing rule of law as has also been done by previous researchers by Hayy Nasution (2022). The legal basis used in this study is: 1) Law No. 13 of 2003 concerning Manpower; 2) Law No. 2 of 2004 about the Settlement of Industrial Relations Disputes; and 3) Minister of Manpower and Transmigration Number 31 of 2008 concerning Guidelines for Resolving Industrial Relations Disputes through Bipartite Negotiations. .



RESULTS AND DISCUSSION

The implementation of bipartite negotiations is carried out by agreement of both parties. Negotiations are conducted directly or accompanied by the legal ruler of each party. In Indonesia, bipartite negotiations as a method of resolving labor relations disputes are regulated in the Minister of Manpower and Transmigration Number 31 of 2008 concerning Guidelines for Resolving Industrial Relations Disputes through Bipartite Negotiations. The regulation is based on Law No. 2 of 2004. The procedure for carrying out the completion of labor relations is shown in figure 1.



Keterangan : PB = Perjanjian Bersama

Figure 1. Layoff Dispute Resolution Procedure

Based on figure 1. Bipartite implementation is the first method when there is a labor relations dispute. In the bipartite negotiations, it will be discussed about the reasons for the dispute on termination of employment. The mechanism of dispute resolution is shown in figure 2.



Figure 2. Bipartite Layoff Dispute Resolution Procedure

Bipartite negotiations involve several parties, namely 1) entrepreneurs; 2) workers; and 3) trade unions. The entrepreneur is the party who provides the work. At bipartite negotiations, entrepreneurs are more often accompanied by corporate lawyers than corporate organizations. Furthermore, workers who are parties to the direct dispute, namely people who receive work as well as being given back services for their work. Third parties are trade unions, namely organizations whose task is to protect the rights and obligations of their members in accordance with Law No. 21 of 2000 concerning Trade Unions/ Trade Unions.

Bipartite negotiations begin at the stage of granting power. Bipartite negotiations are often not conducted by directly disputing parties. The company gives power of attorney to the management or lawyers of the company. Likewise on workers who give power to unions.

The next stage is by issuing a bipartite negotiating letter. Bipartite implementation basically does not require a letter published in writing (Almaududi, 2017).

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However, the issuance of a letter requesting bipartite negotiations as a preventive measure to prevent unfavorable attitudes from one of the parties.

The next stage is the bipartite negotiation stage. According to the Minister of Manpower and Transmigration Number 31 of 2008, Article 3 paragraph (1), when carrying out bipartite negotiations, all parties are expected to be able to carry out negotiations politely without any anarchist actions. The resolution of disputes with bipartite negotiations must be completed no later than 30 working days in accordance with Law No. 2 of 2004 and 3 paragraph (2).

In the early stages of bipartite negotiations, each party provided an identification report on the dispute over the layoffs that occurred. At this stage, each party provides a chronology of the occurrence of layoffs, including the reasons for the layoffs. Employers and workers provide explanations about rights that have not been received or that have been carried out. Furthermore, all parties provide information about the settlement scheme they want to obtain. All submissions of information must be in accordance with the previous employment agreement as well as applicable laws. Furthermore, by mutual agreement, a bipartite negotiation order was drawn up and scheduled a time for negotiations. The negotiation time is determined on the basis of Law No. 2 of 2004 Article 3 paragraph (2) concerning Settlement of Industrial Relations Disputes, which is not more than 30 days. In the implementation of the negotiations, it is carried out until a minutes occur where all parties are satisfied with the decision.

The minutes of the bipartite negotiations are evidence of the implementation of the settlement of layoff disputes. In the minutes of bipartite negotiations each party will give a signature as an agreement to the joint minutes. If one of the parties is not willing to give consent then bipartite negotiations fail and can be submitted to the court. In the minutes of bipartite negotiations there should be some information such as: a) the names and addresses of both parties; b) information regarding the place and date of the negotiations; c) information regarding the object of dispute; d) the opinion of both parties regarding the object of the dispute; e) the outcome of mutually agreed negotiations; and f) proof of signature of the disputing party as proof of agreement.

The next stage is to register the minutes of collective bargaining at the court level, namely the district court which is in the working area of the negotiations. It is necessary to bind each party to the content of the negotiations that have been carried out. Next the court will provide a deed of proof of registration of the agreement. At this time, the agreement that has been mutually agreed upon has been legally bound and each party. If in the future one of the parties violates the content of the collective agreement, the other party can submit it to the court which will then be executed by the court.

Bipartite negotiations are an initial effort to resolve layoff disputes and other industrial relations issues. The stages of bipartite negotiations can be carried out in a fairly short time. The recommendation for the implementation of bipartite negotiations based on Law No. 2 of 2004 for 30 working days from the request for bipartite negotiations makes negotiations must be carried out quickly and effectively. Short negotiations made the workers and employers not suffer heavy losses. However, the Minister of Manpower and Transmigration Number 31 of 2008 expects that there will be no layoffs in industrial relations.

CONCLUSION

Research shows that bipartite negotiations are the first and foremost method for resolving layoff disputes that occur in industrial relations. Bipartite negotiations became the practice of the fourth precept of Pancasila, namely prioritizing deliberation to solve problems. Disagreements on layoff decisions can be resolved by expressing opinions regarding the object of the dispute and its resolution. In bipartite negotiations, there are several stages that need to be carried out. Agreements obtained at bipartite negotiations also need to be registered with the courts in order to ensure that the contents of the agreements are legally implemented. Each disputing party should consider resolving the issue through bipartite negotiations rather



than directly suing the courts. This is done in order to be able to complete it in a fast and effective way.

BIBLIOGRAPHY

- Adams, H. (1887). Relation of the State to Industrial Action. Baltimore, MD: *American Economic Association*, 1, 465–549.
- Almaududi. (2017). *Employment Law in Theory and Practice*, Bandung: Kaifa Publishing.
- Aloewic, T. F. (1996). *Academic Papers On Termination of Employment and Settlement of Industrial Disputes*. BPHN. Jakarta.
- Bellemare, G. (2000). End Users: Actors in The Industrial Relations System?. *British Journal of Industrial Relations*, 38(3), 383–405.
- Friedmann, W. (1971). *The State and The Role Of Law In A Mixed Economy*. Steven & Sons, London.
- Hayy Nasution, A. (2022). Proof of Child Crimes in the Judicial Process Seen from Article 1 Number 27 of the Criminal Procedure Code (Kuhap) Case Study on Decision 380/Pid.Sus/2022/Pnckr.". *LITERATUS*, 4(3), 1098–1109. <https://doi.org/10.37010/lit.v4i3.1051>
- Judiantoro, H. (1992). *Legal Aspects of Labor Dispute Resolution*. Eagle Press. Jakarta.
- Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes
Law Number 21 of 2000 concerning Trade Unions/ Trade Unions.
- Lyddon, D. (2003). *History and Industrial Relations*. In P. Ackers and A. Wilkinson (eds.), *Understanding Work and Employment: Industrial Relations in Transition*. Oxford: Oxford University Press.
- Maswandi, (2017). Settlement of Employment Relations Disputes in the Industrial Relations Court, *Journal of Public Administrative Sciences*, 5(1), 36-42.
- Rahardjo, S. (2009). *State Law What To Happiness Its Peoples*. Genta Publishing: Yogyakarta.
- Regulation of the Minister of Manpower and Transmigration Number 31 of 2008 concerning Guidelines for Resolving Industrial Relations Disputes through Bipartite Negotiations.
- Sukadana, I. M. 2012. *Mediation of Mediation Courts in the Indonesian Civil Justice System in order to realize a simple, fast, and low-cost judicial process*. Achievements of Pustakaraya. Jakarta.
- The 1945 Constitution Article 27 paragraph (2) *on the Right of Citizens to Get a Job*.

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