

LEGAL PROTECTION OF EMPLOYEES / WORKERS WHO EXPERIENCED EMPLOYMENT RELATIONSHIP IMPACT DIGITALIZATION

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Abstract

This journal describes labor problems that arise as a result of technological advances in the modern era, one of which is due to digitalization. This results in termination of employment by employers to workers even without severance pay. The purpose of this paper is to find out how the law regulates the rights and legal protection of workers who have been laid off. The research method used is the normative legal research method. This method examines law normatively by looking at the law from an internal perspective where the object of research is to use legal norms where there is still a vagueness of norms in legal protection for workers due to layoffs due to the impact of this digitization. The final result of this research is that the rights of workers who are laid off are contained in Article 150 to Article 172 of Act No. 13 of 2003 concerning Manpower. Legal protection for workers / laborers due to the impact of digitization is contained in Article 164 Paragraph (3) of the UUK with legal protection in the form of severance pay, awarding money or service fees during the work period of the worker.

Keywords: *Digitalization; Employees; Legal Protection*

A. INTRODUCTION

Work is the most important thing that is very inherent in human life because by working a person will get a wage in the form of a salary, a career path, this can be used to meet the need to achieve a better life. It is undeniable that in this modern era, work is not needed because someone merely wants to make ends meet, but to be able to increase the social status of that person which will also have a major impact on the life and lifestyle he leads.

In its development, in order to improve performance and also improve the quality of workers, it is necessary to ensure a definite life and deserve to be obtained by someone who can also result in an increase in the quality of the existing workforce by increasing the protection of workers who must be in accordance with dignity and human rights itself.¹ Given the rapid development of times and technology today, the protection of labor is

¹ Abdul khakim, *Pengantar Hukum Ketenagakerjaan Indonesia*, PT. Citra Aditya Bakti, Bandung, 2003, page. 9

crucial and must be paid attention to seeing the increased risks and responsibilities faced by workers. Indirectly, this protection is an appreciation to appreciate the work of the workers who have helped the company by contributing their ideas and ideas.² In addition, labor protection based on Pancasila and the 1945 Constitution can be said to be manpower development which is part of national integration and development. Therefore it is very important for the government to increase protection for workers.³ Manpower in Indonesia is regulated in Act No. 13 of 2003 concerning Manpower. The problems in manpower that arise are usually due to the absence of a harmonious relationship between the employer / entrepreneur and the worker / laborer. This has resulted in many interpretations stating that this labor issue contains elements of economic, social political elements and elements of social welfare.⁴ Manpower issues that must receive special attention, namely regarding termination of employment, hereinafter referred to as layoffs.

Layoffs of workers / laborers by companies often lead to social disparities due to the inability of a company to meet the criteria for layoffs imposed on its employees. Companies tend to terminate employment unilaterally which of course will harm the workers. Basically, a company must provide protection and ensure the welfare of every employee so that a harmonious working relationship between workers and the company can be created without any form of pressure from parties who tend to be stronger (employer / entrepreneur) to the parties. who tend to be weaker (workers / laborers).

The company may lay off workers on the grounds that the company concerned is taking efficiency measures. The efficiency referred to in this case is that the company limits the use of resources into the processes it uses in the company concerned. For workers, layoffs are the beginning of the loss of their source of income which will result in decreased quality of life and even the welfare of themselves and their families due to the fact that finding work is not an easy thing.

B. RESEARCH METHODS

In compiling this scientific journal, the author uses the Normative Law Writing method. This method examines law normatively by looking at the law from an internal perspective whose research object is to use legal norms.⁵ The writing method apart from examining existing statutory regulations is also carried out by examining library materials such as books and legal journals.

2 *Arbeidsrechtelijke Bescherming*, page.9

<https://openaccess.leidenuniv.nl/bitstream/handle/1887/602/thesis.pdf?sequence=1> accessed on date

3 I Made Udiana, *Industrialisasi dan Tanggungjawab Pengusaha Terhadap Tenaga Kerja Terlibat Hukum*, Udayana University Press, Denpasar, 2018, page. 26

4 Andrian Sutendi, *Hukum Perburuhan*, ed. II, Sinar Grafika, Bandung, 2001, page.83.

5 Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, CV. Rajawali, Jakarta, 1985, page. 15.

C. RESULT AND DISCUSSION

1. Regulations Regarding Workers' Rights Due to Layoffs based on the Manpower Act.

The many definitions of layoffs, both given by law and given and explained by experts, are presented in general or in particular are able to provide a deeper understanding of the true meaning of dismissal. Basically, the regulation regarding dismissal is contained in Chapter XII Article 150 to Article 172 of Act No. 13 of 2003 concerning Manpower. UUK Article 1 point 25 provides an understanding of dismissal, namely the process of terminating a working relationship based on a certain matter which results in the termination of the relationship regarding rights and obligations between the worker / laborer and the entrepreneur. Specifically, the definition of dismissal is explained in the Decree of the Minister of Manpower Number Kep15A, Men, 1994 Article 1 Paragraph (4), that is, dismissal is a termination of employment by an employer to a worker due to a permit from the Regional Committee or the Central Committee.

An employment relationship is a relationship that arises as a result of a work agreement made or mutually agreed upon by the entrepreneur and the worker / laborer.⁶ A work agreement is an agreement that contains the rights and obligations of the parties, is also an agreement that will regulate the work system that will be carried out by the worker based on the terms and rights / obligations that the worker / laborer will receive.⁷ The relationship between layoffs and the rights contained in the worker / laborer is a very close relationship because in an employment relationship it will certainly create a binding of rights and obligations between the worker / laborer and the entrepreneur / employer. Because of the termination of the employment relationship, of course it will disrupt the chain of rights and obligations that are already contained therein. Fulfillment of workers' rights due to layoffs can be seen in Article 1 of the Decree of the Minister of Manpower Number Kep-150 / Men / 200, namely:

- a. Severance pay Severance pay can be defined as money that must be paid by employers to workers / workers as a result of layoffs.
- b. Employment Time Appreciation Money In this case, it is in the form of money that must be given by the entrepreneur to the workers / laborers as wages in terms of the length of time the worker / laborer works.
- c. Compensation for cash losses in this case is the wage given by the entrepreneur to the worker / laborer as compensation for losses suffered by the worker / laborer due to layoffs. Namely the replacement of public breaks, long breaks, travel costs to the place

6 Lalu Husni, *Hukum Ketenagakerjaan Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2006, page. 53.

7 Cristoforus Valentino Alexander Putra, *Urgensi Klausula Definisi Dalam Perjanjian Kerja*, Kertha Patrika, Vol. 39, 2017, page. 63.

where workers are accepted to work, medical facilities, housing facilities, and others.⁸

The 3 rights described above are rights that must be given to workers / laborers at the time of layoffs. Regarding the details of the size and formulation, it is further regulated in the UUK, namely regarding severance pay in Article 156 Paragraph (2), which gives the amount of severance pay based on the length of service of the worker / laborer concerned. The longer the work period, of course the greater the severance pay received and vice versa, the less time spent working, the less severance pay will be received.

Regulations regarding the work period award pay are also contained in the same Article, namely Article 156 Paragraph (3), the same as the severance pay, the amount or amount of the service period reward pay is calculated based on the length of service of the worker / laborer concerned. In this paragraph, from points A to point H, it is stipulated that the working period of the worker / laborer who receives the work period award money must be at least 3 years or more until the work period of 24 years or more. According to Wiwoho Soedjono, the award money is not only given because the worker / laborer has served a company, but if the worker / laborer has worked for 5 years or more and then the layoff occurs, the worker / laborer is obliged to get the award money.⁹ Meanwhile, the regulation regarding compensation money is contained in Article 156 Paragraph (4) of the Manpower Law which states that a worker / laborer is obliged to receive compensation money which includes:

- a. Annual leave that has not been taken and has not failed;
- b. Costs or fees used by the worker / laborer and their family to the place where the worker / laborer is accepted to work;
- c. Replacement in the form of a place to live along with medication and care for workers / laborers whose working period meets the requirements and is set at 15% of the severance pay; and
- d. Other compensation for damages can be seen from the work agreement made while still in a jointly determined work relationship.

In protecting the rights of workers / laborers based on the Manpower Act, it can be seen that the protection of these rights is in the form of protection of wages that must be received by workers / laborers when the termination of employment occurs. This can be seen from the provisions contained in Article 154 Paragraph (1), which states that employers are obliged to provide severance pay and / or an amount of reward money (service money) and are also obliged to provide compensation money for rights that should be received by workers / laborers. in the event of termination of the employment relationship.

⁸ Ibid, page. 189.

⁹ Zainal asikin, *Dasar-dasar Perburuhan*, PT. Raja Grafindo Persada, Jakarta, 2006, page. 196.

2. Legal protection for workers who do not get severance pay

Legal protection is a protective act carried out by law for every citizen. Juridically, in article 5 of Act No. 13 of 2003, it provides protection for workers which includes people who have not worked, namely people who are not bound in a work relationship, and people who are currently engaged in an employment relationship (workers / laborers), because a person who is bound in a working relationship also has the right to get a better job or one that the worker / laborer prefers. Meanwhile, Article 6 is a protection for workers / laborers (people who are in an employment relationship) only.¹⁰

Protection of workers can be carried out, either by providing guidance, or by increasing recognition of human rights, physical and technical as well as social and economic protection through the prevailing norms in the work environment.¹¹

Besides that, the difference between Article 5 and Article 6 is the subject of the perpetrator. Article 5 applies to anyone, in the sense that it is not limited to certain entrepreneurs. Rather, it includes the definition of an entrepreneur in general, meaning it can be any or anyone, for example company A, B, or C, and so on, including labor placement companies, but in article 6 the subject of the perpetrator is limited to the entrepreneur who employs the worker / laborer.¹²

This weak labor position requires a container time to become strong. That container is the exercise of the right to organize in a trade / labor union. One form of legal protection provided by the government for workers is the guarantee of freedom of association and assembly in a trade / labor union. Freedom to associate and assemble and express opinions are basic rights possessed by citizens of a democratic law country with people's sovereignty.¹³ Rights owned by humans based on their dignity as human beings and not because they are given by society or the state are called human rights.¹⁴

Protection of workers is intended to guarantee basic rights of workers and ensure equality and treatment without discrimination on any basis to create the welfare of workers and their families while still paying attention to the progress of the business world and the interests of entrepreneurs.¹⁵ Legislation related to the protection of workers Act No. 13 of 2003 concerning Manpower and the Implementing Regulations of

10 Hardijan Rusli, *Hukum Ketenagakerjaan Berdasarkan Undang-Undang No. 13 Tahun 2003 tentang Ketenagakerjaan dan Peraturan Terkait Lainnya*, Ghalia Indonesia, Bogor, 2011, page 7.

11 Kartasapoetra, G and Rience Indraningsih, *Pokok-Pokok Hukum Perburuhan*, Ed. I, Armico, Bandung, 1982, page.43.

12 Hardijan Rusli, *Op-Cit*, page. 8

13 Miranda Maria Koevoets, *Wangedrag van werknemers De bevoegdheid van werkgevers tot opsporing en sanctionering*, Proefschrift, Erasmus Universiteit Rotterdam, Rotterdam, 2006, page. 5-6

14 Frans Magnis Suseno, *Etika Politik Prinsip-prinsip Moral Dasar Modern*, Gramedia Pustaka Utama, Jakarta, 1999, page. 37.

15 Erkens, van der Heijden, *De Internationale Arbeidsorganisatie: Honderd Jaar*, Boom juridisch, Den Haag, 2019, page.28

legislation in the manpower sector. Imam Soepomo divides worker protection into 3 (three) types, namely:¹⁶

- a. Economic protection, which is a type of protection related to efforts to provide workers with an income sufficient to meet daily needs for him and his family, including in the case that the worker is unable to work due to something outside his will. Included in economic protection, including wage protection, Jamsostek, and THR.
- b. Social protection, which is a protection related to community efforts, the purpose of which is to enable workers to gain and develop their lives as human beings in general and as members of the community and family members. This social protection includes protection for child laborers, women laborers, and employers are obliged to provide time off and leave.
- c. Technical protection, namely protection relating to efforts to protect workers from the danger of accidents that can be caused by aircraft or by other work tools or materials processed or worked on by the company. This technical protection is related to K3 (Occupational Safety and Health), which is labor protection which aims to prevent workers from all possible hazards that may arise in the workplace, whether caused by tools or materials worked on in a work relationship.¹⁷

Legal protection for workers after layoffs, if you trace various literatures and similarly in practice, it will be known that workers' legal protection is contained in a collective labor agreement consisting of the obligations and rights of both parties (workers / laborers and employers).¹⁸

Then to be able to clarify the legal protection that should be received by workers can be separated, among others:¹⁹

- a. Workers' Legal Protection in the Process of Termination of Employment The process of termination of employment, which means that the termination of the relationship has not occurred, means that workers are still on their duty and workers are still entitled to their rights in accordance with the provisions of laws and regulations, namely workers in article 155 Act No. 13 of 2003 concerning Manpower.
- b. Workers 'Legal Protection after Termination of Employment. After the termination of employment, apart from wages or severance pay, there are other workers' rights that must be received by workers.

16 Imam Soepomo, 1985, *Pengantar Hukum Perburuhan*, Djambatan, Jakarta, page. 97.

17 L. Husni, *Perlindungan Buruh (arbiedshreming)*, dalam Zainal Asikin, dkk, *Dasar-Dasar Hukum Perburuhan*, PT. Raja Grafindo Persada, Jakarta, 1997, page. 77.

18 Koko Kosidin, *Perjanjian Kerja Perburuhan dan Peraturan Perusahaan*, CV. Mandar Maju, Bandung, 1999, page.25.

19 Ridwan Halim, *Hukum Perburuhan Dalam Tanya Jawab*, Gahlia Indonesia, Jakarta, 1985, page.45.

3. Legal Protection for Workers / Laborers for Termination of Employment Due to the Impact of Digitalization

Basically, based on the results of the literature review that has been carried out, there is no specific understanding of the definition of digitization itself. Based on the KBBI, digitization can be interpreted as a replacement for use, the provision of a digital system in daily activities. In its implementation, digitization is used to facilitate all human activities, both in terms of disseminating information and in terms of jobs that require more assistance. In other words, digitization itself provides a positive impact to assist technological developments and the times in terms of production,²⁰ Based on the opinion of Marilyn Deegan, digitalization can be interpreted as an act of presenting all data that is converted from a printed document into digital form, which can facilitate access in all respects. Apart from having a positive impact, of course digitalization has a negative impact, one of which is in the manpower sector which causes layoffs by employers to workers / laborers on the grounds of efficiency and because of technological developments and knowledge employers want to switch to the digitization system. When examined further, the UUK does not explicitly regulate the principles of digitization and the regulations governing the consequences of this digitization.

In general, it can be found that there are 4 categories of layoffs that are usually carried out by a company, namely:

- a. Termination, in this case layoffs can be carried out by a company due to the expiration of a work contract between the entrepreneur and the worker / laborer;
- b. Dismissal, the occurrence of a termination of employment caused by a fatal action by the worker / laborer which may be in the form of a worker / laborer not being disciplined or the worker / laborer violating the existing work contract;
- c. Redundancy, a company makes layoffs due to a result of existing technological developments such as starting to implement sophisticated technology machines in its company or starting to change all forms of manual activities into digital form (digitization) which of course results in a reduction in employees and leads to increased unemployment ; and
- d. Retrenchment, layoffs caused by an unstable economic effect on a company, such as for example the company suffered losses in succession or even a decrease in the level of sales or profits obtained by the company.²¹

Layoffs as a result of the digitization of relevant legal arrangements regarding this can be seen from the provisions of Article 164 Paragraph (3) of the UUK which states that employers can terminate

20 Effendi, Onong Ochjana, *Teori dan Praktek Ilmu Komunikasi*, PT. Remaja Rosdakarya, Bandung, 2003, page. 98.

21 Sendjun Manulang, *Pokok-pokok Hukum Ketenagakerjaan Indonesia*, PT. Rineka Cipta, Jakarta, 2001, page. 107.

employment relations with workers / laborers which are not caused by the company experiencing losses in succession for 2 years. or experience losses. and not because of force majeure, but because the company is doing efficiency, but with provisions. The company is obliged to provide severance pay to workers / laborers on the condition that it is equal to two terms of office, award money for the term of office which must be given on the basis of one term of service, and compensation for rights as large as that must be received by the worker / laborer in accordance with Article 156 paragraph (4).

Legal regulations regarding layoffs as a result of this digitization are guided by the sound of the paragraph above because the main purpose of digitizing them by a company is none other than due to company efficiency measures, both efficiency in the field of labor and efficiency to get more benefits. Efficiency by switching to a digitalization system carried out by a company is a way for a company to survive and compete to compete in an increasingly dynamic business world.²² This makes the company have to be able to concentrate on the series of processes for creating a product or service, but can minimize losses. However, even though the law provides for and allows layoffs in this regard, on the other hand, unilateral layoffs are also not allowed and layoffs must be carried out in accordance with the existing flow or provisions and a company must also consider all the consequences of such layoffs and strive to ensure that the absence of layoffs through the various existing efforts.

Employers may do layoffs must be based on the reasons contained in the law and not done unilaterally, but the termination of the employment relationship must be negotiated in advance by the two parties concerned, namely between the entrepreneur and the worker / laborer. The reasons for layoffs permitted by law are:

- a. If the worker / laborer submits a resignation based on his own will in a written form and of course without any influence or pressure from other parties, either the entrepreneur or his co-worker;
- b. If the worker / laborer has reached the age of retirement, which should be in accordance with what was previously determined in the work agreement or in accordance with what is stipulated in law;
- c. If the worker / laborer dies or dies;
- d. If the worker / laborer commits a serious mistake, for example, committing fraud, giving false information, committing immoral acts, leaking company secrets, etc .;
- e. If the company experiences economic downturns or losses in succession;
- f. If the worker / laborer does not carry out their obligations, such as not working for a long time without prior notification or confirmation on the company's employees; and

22 Kadek Agus Sadiwara, Pengaturan Prinsip Transfer Of Undertaking Protection Of Employment (TUPE) Dalam Dunia Ketenagakerjaan di Indonesia, *Jurnal Magister Hukum Udayana*, Vol. 4, 2015, Page. 797

- g. If the worker / laborer is caught in the act of doing things that are permitted by law or by customs in society.

Reasons for dismissal other than those stipulated in the law as mentioned above, then the termination of employment by the company can be null and void. For example, an entrepreneur cannot lay off workers / laborers for the following reasons:

- a. If the worker / laborer cannot work because he is sick and must rest according to the doctor's statement;
- b. If the worker / laborer is unable to work because he is carrying out obligations towards the state in accordance with the provisions of statutory regulations;
- c. If the worker / laborer is performing worship according to the instructions given by his belief;
- d. If the worker / laborer is pregnant or breastfeeding;
- e. If the worker / laborer has a relationship in the form of a marriage bond with his partner at his place of work, unless the donation is regulated in a work agreement that has been mutually agreed upon beforehand;
- f. If the worker / laborer becomes or establishes a trade / labor union;
- g. If the worker / laborer reports the company to the competent authority regarding the company's actions that are not true and violate the law; and
- h. If the worker / laborer is permanently disabled as a result of a work accident or because of a work relationship that has more work risks.

With the exclusion reasons as explained above, employers cannot arbitrarily lay off workers / laborers and can immediately be canceled by law. Termination of employment by an entrepreneur must have a sufficiently strong reason and be in accordance with the existing statutory provisions. Based on the description of layoffs as a result of the impact of digitization based on the Manpower Law above, it can be seen that the legal protection obtained by workers / laborers who experience layoffs due to the impact of digitization is contained in Article 164 Paragraph (3) of Act No. 13 of 2003 concerning Manpower with legal protection in the form of severance pay, award or service fees during the work period of the worker / laborer,

D. CONCLUSION

Legal protection for workers / laborers due to the impact of digitalization, awarding money or service fees during the work period of the worker / laborer, and provision of legal protection. Compensation rights for the impact of the layoffs. So this provision can guarantee legal protection for workers / laborers as a result of the impact of digitalization. However, companies are still not allowed to carry out layoffs arbitrarily and must make efforts to prevent layoffs from occurring.

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