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Legal Reconstruction in Indonesia Based on Human Rights

Imam As Syafei Building

Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM.4 Semarang, Indonesia

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The 5th PROCEEDING

“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Reconstruction Of Article 156 Paragraph (1) Of Law Number 13 Year 2003 Regarding Manpower As A Guideline For The Provision Of Workers' Rights Based On Justice

Rahmatsyah
Abstract

In the global era, the course of the economy is certainly conducted by employers and workers. But the work relationship with the work agreement is not always smooth. There are several disputes over industrial relations that are resolved through legal channels. In general, industrial relations disputes are resolved using Law No. 13 of 2003, but there are still many weaknesses inside, the regulation can be distorted and overlapping, and causing legal uncertainty, especially in Article 156 Paragraph (1). The purpose of this study is to carry out reconstruction in Article 156 Paragraph (1) to fulfill the element of justice for workers. This research was conducted using the constructivist research paradigm. The results of the study, to minimize legal uncertainty and ambiguity in making legal decisions, Article 156 Paragraph (1) needs to be emphasized by adding the length of time given the rights of fired workers and reasons for layoffs who are entitled to workers' rights.

Keywords: justice, legal certainty, work termination

A. Introduction

In this globalization era, the field of economy has very tight competition. Philosophically, employers and workers have interests in accordance with their respective roles. Employers have an interest in improving the productivity of their business performance both in the field of goods or services, whereas workers have an interest in obtaining wages, rewards or incentives from carrying out work. The two sides, namely employers and workers have a working relationship after the employment agreement.³⁵ The relationship between employers and workers does not always run smoothly, but there are also disputes that can lead to Termination of Employment.

Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower as a product of labor law explains that labor laws are formed as an effort to provide protection to workers. This protection is carried out

by providing guarantees for workers' basic rights and guarantees equal opportunities and treatment without discrimination in any form for the welfare of workers / laborers and their families while still taking into account developments in the progress of the business world.

In the case of work termination in industrial relations, regulated in Article 150 to Article 172 of Law No. 13 of 2003 concerning Manpower, including the reasons for layoffs.³⁶ Termination of Employment does not mean resolving problems in the case of an employment agreement. Termination of employment often has a series of other problems if one party feels aggrieved by the decision. The main factor that often becomes polemic and raises new problems is the problem of workers' severance pay. The issue of severance pay is often a problem because it relates to the sense of justice assessed by each party. The sample of work termination decision that contains many problems of justice and

³⁵ According to Article 1 Paragraph (14) of Law Number 13 Year 2003, an employment agreement is an agreement between the worker / laborer and the employer that contains the conditions of work, rights and obligations of the parties.

³⁶ Abdul R. Bodiono, 2009, *Hukum Perburuhan*, Jakarta: PT Indeks, hal 79

legal certainty from supreme court are as follows. Decision of supreme court No. 755 K/Pdt.Sus-PHI/2017, No. 1/Pdt.Sus-PHI/2015/PN Plk, No. 1386 K/Pdt.Sus-PHI/2017, No. 534 K/Pdt.Sus-PHI/2015, and No. 836 K/Pdt.Sus/2011 had an inappropriate severance determination between the workers' views and the employers' views. The sense of justice proposed by the employer is inversely proportional to the sense of justice determined by the worker. Employers generally want to provide severance pay with a smaller amount compared to what workers want.

Another decision of District Court that contain problem about severance was Decision No 110/Pdt.sus-PHI.G/2017/PN. Jkt. Pst, There was controversy regarding severance pay, years of service awards and compensation money which were not paid by employers because of Law No. 13 of 2003 does not regulate the provisions of compensation that must be paid by employers against workers who were laid off for urgent reasons. In Law No. 13 of 2003 only regulates 1 (one) time compensation for layoffs in Article 156 Paragraph (2), reward for years of service in Article 156 Paragraph (3) and compensation for rights in Article 156 Paragraph (4). By not regulating compensation for layoffs for urgent reasons, the rights of workers will be very weak and can be used as a reason for layoffs by employers.

District Court Decision No. 05/Pdt.Sus-PHI/2016/PN. Jkt. Pst and No 08/Pdt.Sus-PHI/2016/PN. Jkt. Pst,

there is controversy regarding the provisions of Article 155 Paragraph (2) of Law no. 13 of 2003 that before the dismissal of a dispute is declared terminated by an industrial relations court, both parties are obliged to perform their rights and obligations, then Article 155 Paragraph (3) the employer must pay wages during the termination process. But on the other hand, Article 93 Paragraph (1) states that wages are not paid if workers do not do work. The two rules clash with each other, because if the parties dis-

pute with each other over the issue of layoffs, then workers can certainly be forced not to perform their obligations to work, and by not working, the provisions of Article 93 Paragraph (1) that will be used by judges in deciding cases. The provisions of the two articles should not be in conflict with each other.

Based on the phenomenon of the gap between *das solen* and *das sein*, further research needs to be conducted on the relationship between the rights that must be received by each party in industrial relations disputes with the obligations that must be carried out by each party. The rights and obligations of each of these parties need to be formulated in a rule so that legal certainty can be created in termination of employment disputes. In this study, researchers will review in more detail about Article 156 Paragraph (1) of Law no. 13 of 2003. In connection with this phenomenon, the problem was formulated. How is the legal reconstruction of employers' obligations due to termination of employment based on fair value?

B. Theoretical Framework

In every legal action, there must always be legal certainty, so that the legal action ensures that the rights and obligations of the parties involved in legal actions can be fulfilled. Legal certainty is used to ensure justice for the community. Legal certainty will guarantee the clarity of rights and obligations according to law. Without legal certainty, people will not know what to do, do not know what is right or wrong, are prohibited or not prohibited by law. This legal certainty can be realized through a good and clear normalization in a law and it will also be clear application (grand theory).

Based on the above theory, the purpose of legal certainty is to guarantee the implementation of certain and fair laws as expressed by Aristotle. Therefore, justice is used as a middle theory in this research. This formulation of justice has two very basic opinions that need to be considered: First,

the views or opinions of the laity which basically formulate that what is meant by justice is the harmony between the use of rights and the implementation of obligations in line with the postulate of the legal balance namely the dose of rights and obligations. Second, the views of legal experts such as Purnadi Purbacaraka who basically formulate that justice is the harmony between legal certainty and legal comparability.³⁷

Aristotle distinguishes justice into distributive justice and commutative justice. Distributive justice is justice that demands that everyone gets what is rightfully theirs, so it is proportional.³⁸ Commutative justice concerns the problem of determining the right to fairness among several equal personal human beings, both among physical and non-physical personal persons.³⁹ The existence of legal certainty is a hope for justice seekers of arbitrary actions from law enforcement officials who sometimes always arrogance in carrying out their duties as law enforcers (applied theory).

In a country's legal system, Subekti mentions the system is an orderly arrangement, a whole consisting of parts related to one another, arranged according to a plan or pattern, the result of a writing to achieve a goal.⁴⁰ In a good system there should not be a conflict between parts. In addition, duplications or overlaps between these parts may not occur. A system contains several principles that guide the formation.⁴¹

Indonesia is a country that adheres to the continental European legal system. The continental European legal system developed in mainland European countries and is often referred to as "Civil Law".⁴²

The Civil Law system has three characteristics, namely the codification, the judge is not bound to the president so that the law becomes the main source of law, and the justice system is inquisitorial. The main characteristic that forms the basis of the Civil Law system is that the law obtains binding power, because it is manifested in regulations in the form of laws and systematically arranged in the codification. This basic characteristic is held in view that the main value which is the goal of law is legal certainty. Legal certainty can only be realized if human legal actions in the association of life are regulated by written legal regulations. With the purpose of the law and based on the legal system adopted, judges cannot freely create laws that have general binding force. The judge only functions to set and interpret the rules within the limits of his authority. Decisions of a judge in a case only bind the parties to the case alone (Doktrins Res Ajudicata).⁴³

C. Research Methods

In this study using the constructivist research paradigm. Who views that the reality of social life is not a natural reality but is formed from the results of construction. This research requires an empirical juridical approach method related to the granting of workers' rights due to work termination. The type of data used in this study includes primary data and secondary data. Primary data is data obtained directly from the object, while secondary data is data obtained from library materials.⁴⁴ This study using qualitative data analysis methods. This method is based on the depth of data collected. The collected data will be sorted and described

³⁷ Purnadi Purbacaraka in A. Ridwan Halim, 2015, *Pengantar Ilmu Hukum Dalam Tanya Jawab*, Jakarta: Ghalia Indonesia, hlm.176.

³⁸ J.H. Rapar, 2019, *Filsafat Politik Plato*, Jakarta: Rajawali Press, hlm. 82.

³⁹ *ibid*

⁴⁰ Inu Kencana Syafie, 2003, *Sistem Adminitrasi Negara Republik Indonesia (SANRI)*, Jakarta, Bumi Aksara, hlm. 2

⁴¹ *Ibid*

⁴² Dedi Soemardi, 1997, *Pengantar Hukum Indonesia*, Jakarta, Indhillco.hlm.73

⁴³ *ibid*

⁴⁴ Soerjono Soekanto,1982, *Pengantar Penelitian Hukum*, Penerbit Universitas Indonesia (UI-Press), Jakarta, hal 52

thoroughly, systematically, critically and constructively in the labor law system.

D. Analysis and discussions

The ongoing economy has resulted in the emergence of interests, namely between entrepreneurs who have capital and workers who need work and wages by offering their performance. Therefore, the equality of interests, then the work agreement between the worker and the employer appears.

Work agreements arising from the two parties resulted an employment relationship. However, work relations between the two parties are not always smooth, there are still disputes due to differences in interpretation of rights, disputes of interest, disputes about termination of employment and disputes between workers or disputes between trade unions themselves. With the problems that can disrupt the wheels of the economy, then comes the effort to protect the rights of each party by using the rule of law.

There are various cases of work termination that cannot be resolved through bipartite and tripartite channels, namely by involving third parties as mediators, so many dismissal cases are brought into the realm of civil law. In the civil realm, work termination are generally resolved using Law No. 13 of 2003 concerning manpower. In Law No. 13 of 2003 there are several articles governing work termination, namely Article 150 to Article 172. In some of these articles there is one article that is often used as a reference for judges when deciding cases, namely Article 156 Paragraph (1).

Article 156 Paragraph (1) is written

“In the event of a termination of employment, employers are required to pay severance pay and / or years of service awards and compensation money that should be received.”

The sentence raises legal uncertainty because the entrepreneur is only required to pay severance pay, appreciation money, and compensation money, the amount of which is determined in the next paragraph. But it does not regulate the reasons for work termination and the length of time given.

If the provisions are only written as in Article 156 Paragraph (1), then it can lead to several interpretations, which are as follows.

- a. Every time a person is dismissed, the employer is obliged to pay severance pay, years of service awards and compensation fees determined by the amount in the next paragraph. Thus, there are no exceptions to the reason for work termination, all work termination will get the rights as referred to in Article 156 Paragraphs (2), (3) and (4).
- b. There is no time limit for when the money will be paid, even though the work termination dispute settlement can take a long time to months. Thus it can cause ambiguity because the length of time is not determined and can be interpreted by the judge so that there is no legal certainty between case one and another case.

Therefore, to fulfill the elements of legal certainty, justice and reflected in legal actions, Article 156 Paragraph (1) must be amended with the provisions of the following rules.

- a. In the event of termination of employment, the employer is obliged to pay severance pay, and / or pay for work tenure and compensation money that should have been received, except for termination of employment due to a serious error, and his own request.

Writing like in the description above, it has more value of fairness and legal certainty because employers will not use other termination of employment terms, except for termination of employment due to serious reasons and their own requests.

By using this word there will be no layoffs for urgent reasons as stated in the results of the decision No 110/Pdt.sus-PHI.G/2017/PN. Jkt. Pst, there was controversy regarding severance pay, years of service awards and compensation money which are not paid by employers because of Law No. 13 of 2003 does not regulate the provisions of compensation that must be paid by employers against workers who were laid off for urgent reasons. In Law No. 13 of 2003 only regulates 1 (one) time compensation for layoffs in Article 156 Paragraph (2), reward for years of service in Article 156 Paragraph (3) and compensation for rights in Article 156 Paragraph (4). By not regulating compensation for layoffs for urgent reasons, the rights of workers will be very weak and can be used as a reason for layoffs by employers.

- b. In the case of industrial relations disputes and do not have permanent legal force, workers must carry out their obligations to work without obstruction from employers until a dispute with permanent legal force is decided.
- c. In the event of an industrial relations dispute and does not yet have permanent legal force, the employer is obliged to give workers the right to work as usual and the rights of other workers until the dispute is decided by permanent legal force.
- d. In the case of industrial relations disputes and do not yet have permanent legal force, if workers commit fraudulent acts or commit criminal acts to the detriment of other parties, then compensation rights will not be given to workers who experience termination of employment.
- e. In the case of industrial relations disputes and do not yet have permanent legal force, if the employer commits fraud or commits a criminal act to the detriment of another party, then the em-

ployer is obliged to provide workers with rights of termination of employment twice as much as the provisions in Article 156 Paragraphs (2), (3) and (4).

The description as above has more principles of justice and legal certainty because there will not be overlapping provisions as happened in the Decision No. 05/Pdt.Sus-PHI/2016/PN. Jkt. Pst and Decision No 08/Pdt.Sus-PHI/2016/PN. Jkt. Pst, there is controversy regarding the provisions of Article 155 Paragraph (2) of Law no. 13 of 2003 that before the dismissal of a dispute is declared terminated by an industrial relations court, both parties are obliged to exercise their rights and obligations, then Article 155 Paragraph (3) the employer must pay wages during the termination process. But on the other hand, Article 93 Paragraph (1) states that wages are not paid if workers do not do work. The two rules clash with each other, because if the parties dispute with each other over the issue of layoffs, then workers can certainly be forced not to perform their obligations to work, and by not working, the provisions of Article 93 Paragraph (1) that will be used by judges in deciding cases. The provisions of the two articles should not be in conflict with each other.

The above description is more fulfilling the distributive justice side namely everyone gets what they are entitled to.⁴⁵ Employees and employers are treated with proportional justice, without taking sides. By fulfilling the element of justice, legal certainty will be easier to obtain by minimizing the arbitrary actions of law enforcement officials and cunning entrepreneurs. Legal certainty can only be realized if human legal actions in the association of life are regulated by written legal rules clearly, in detail and without ambiguity. With the purpose of the law and based on the legal system adopted, judges cannot freely create laws that have general binding force. The judge only functions to set and interpret the rules within the limits of his authority. Decisions

⁴⁵ Loc Cit, J.H. Rapar, 2019

of a judge in a case only bind the parties to the case alone (Doktrins Res Ajudicata).⁴⁶

E. Conclusions

Based on the description above, it can be concluded that Article 156 Paragraph (1) needs to be reconstructed by adding the length of time given for the rights and the reasons for work termination who are entitled to workers' rights.

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Regulation

Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan

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⁴⁶ Loc Cit, Dedi Soemardi, 1997