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Critical Analysis of Legal Protection for Workers Who have been Terminated Due to A Change in the Status of Their Employment Relationship

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Abstract

Work relations are expected to take place properly. Unfortunately, termination of employment happens sometimes. This study aims to determine the form of legal protection and legal remidies from workers who have been terminated due to change in their employment status. This research is a normative juridical with s statutory approach. The result of this study was the change in the employment status could only be done if there is agreement from both parties to re-contract. The absence of a re-contract agreement is a tort. The injured employee can make a tort against the contract which results in termination of the legal relationship. The conclusion stated that termination of employment without a contracting from a change in the employment status is tort and workers can claim the compensation for tort.

Keywords: legal protection, employment status, tort.

INTRODUCTION

Working relations are always expected to run well (Wan et al., 2015). Unfortunately, sometimes the working relationship does not always go well according to the expectations of the parties (Varela et al., 2019). Employment relationship is a legal relationship carried out by two parties or two legal subjects to do a job (Gordon & McCann, 2000). The two parties or the two legal subjects are the entrepreneur and the worker (Hahn-Hägerdal et al., 2007). Expectations of working relationships can go well, sometimes things don't go as expected (Mester et al., 2003).

Disputes between employers and workers during the employment relationship (Servais, 2014), which cannot find a solution (Bennett, 2013), can result in termination of employment (Tanguy, 2013). Intentions to terminate the employment relationship can come from employers, workers or third parties (court decisions) (MacDermott & Riley, 2011). Sometimes unilateral termination of employment by employers to workers is unavoidable (Mishra & Smyth, 2013).

Since the beginning of 2020, many employers have terminated their employment. During the COVID-19 pandemic (Rothan & Byrareddy, 2020), the main reason for layoffs (Sun et al., 2020). Social restrictions are carried out with the aim of suppressing (Shereen et al., 2020), minimizing or eliminating cases of COVID-19 sufferers (Li et al., 2020), resulting in everyone having to reduce their social activities (Wang et al., 2020).

The reduction in social activities (Autor, 2019), with many being at home (Mustapha, 2018), has changed people's habits. A lot of work is done from home (Shalihah et al., 2021). on the other hand, it also has a negative impact on the market economy (Wijayanti et al., 2021). This situation certainly has an impact on all sectors of human life, especially in the economic field.

Trade business decreased, people's purchasing power decreased. Likewise in the field of production. The decline in sales of manufactured goods resulted in huge losses for entrepreneurs. Production costs must be re-arranged. One component of production costs is the wages of workers. Of course, workers' wages can be reduced by changing the terms of work in the re-contract (Allen, 2016). The re-contract clause can provide for changes in the status of workers.

Our research is based on the need to provide legal protection guarantees for workers who are terminated due to changes in their employment status. Changes in the status of the legal relationship, namely from the original work relationship to a partnership relationship based on the clauses of the agreement held. Changes in the status of the Employment relationship also occur from the original Employment relationship as a permanent employee without a time limit to an Employment relationship based on outsourcing with a time limit. Changes in work relations are happening a lot at this time, namely during the covid-19 pandemic, in the form of changes that occur in terms of work, working hours, work methods. Changes in the legal relationship or employment relationship resulted in the termination of the employment relationship.

Methods

This is a normative legal research with a statute approach. The study includes reviewing and analyzing materials and legislation based on legal issues (Ariadi Subagyono & Wijayanti, 2020). This study was conducted to solve the arised legal problems to get a solution on what to do (Siti & Wijayanti, 2021). The approach used in this study uses a statutory approach, namely an approach using statutory regulations (Wijayanti et al., 2017). Legal research at the dogmatic level of law cannot be separated from the law because the topic approach in this research is sourced from statutory regulations (Wijayanti, 2017). The legal approach is carried out by reviewing all laws and regulations related to legal protection for workers who have been terminated due to a change in the status of their employment relationship (Suhartono & Wijayanti, 2017). In this case, to study whether there is consistency and conformity between a law and other laws, or between laws and the constitution or between regulations and laws.

Result and Discussion

Prior to the omnibus law on employment clusters in Law No. 11 of 2020, concerning Job Creation, the method of termination of employment was based on the provisions of Law No. 13/2003 on employment, there were three kinds of layoffs, namely layoffs for the sake of law, layoffs by workers and layoffs by employers. Termination by law due to the expiration of the employment contract, failure to pass the probationary period or the death of the worker. Layoffs by workers occur because workers resign, there are reasons to urge workers to apply for layoffs, or workers are entering retirement period. Layoffs by employers can occur due to mistakes made by workers, companies closing due to bankruptcy, force majeure, efficiency, changes in status, changes in property, changes in workplace location.

Specifically about termination of employment due to changes was interpreted as the occurrence of privatization, company mergers or changes in ownership. Privatization is really needed by the community on a national scale, even though it results in layoffs for employees or workers. The form of legal protection for workers whose employment is terminated due to changes in the company where they work is regulated in Article 163 of Law no. 13 of 2003, namely (1) Employers may terminate the employment relationship of workers/labourers in the event of a change in status, merger, change of company ownership and the worker/labourer is not willing to continue the working relationship, the worker/labourer is entitled to severance pay of 1 (one) time as stipulated in article 156 paragraph (2), the reward for the service period is 1 (one) time as stipulated in Article 156 paragraph (3) and compensation for rights in accordance with the provisions of Article 156 paragraph (4). (2) Employers may terminate the employment relationship of workers/labourers due to a change in status, merger, change of company ownership and the entrepreneur is not willing to accept workers/labourers in his company), payment for service period of 1 (one) time as stipulated in Article 156 (3) and compensation

for entitlements in accordance with the provisions of Article 156 paragraph (4).

Based on the provisions of Article 163 of Law no. 13 of 2003, if there is a change in the company, it is possible to terminate the employment relationship. The changes referred to in the provisions of Article 163 of Law no. 13 of 2003 there are three kinds, namely a change in status, a merger of companies or a change in ownership. In practice, it turns out that there are still other forms of change, such as a change in the location of the workplace; or a change in the work system. For this reason, there is still a need for legal interpretation, both in the form of legal formation and discovery. Any changes that occur in the company may result in layoffs. Termination of employment is an initiative that can come from the employer or from the workers. Sometimes the ongoing working relationship between employers and workers produces positive things, although not infrequently negative or less favorable impacts can occur.

The first criterion of the changes referred to in article 163 of Law no. 13 of 2003 is a change in status. A change in the status of a company can occur due to company development or vice versa can occur because the company is facing a critical period to the possibility of closing the company. Changes in status with authentic interpretation are not found in Law no. 13 of 2003 and its explanation. This can be interpreted that the intended status change is a change in business status, for example from a State-Owned Enterprise to a private company. This is better known as the privatization of a State-Owned Enterprise. Here is an assumption that a State-Owned Enterprise have been running their business inefficiently with an unprofessional work system. With the privatization of a State-Owned Enterprise, it is hoped that good performance and optimal results will occur. The negative impact of this status change is a reduction in the number of workers which leads to layoffs.

The other side of the change in status is to restore the government's function as a supervisor. The market economy mechanism which basically leads to the liberalization of privatization is the basis that gives birth to business competition by placing the private sector as business actors in the market. In this mechanism, the government functions as a supervisor and facilitator. With the dominant role of the government which is more directed as an actor through a State-Owned Enterprise and determining through legal arrangements regarding protection and appointments, the government has deviated from its function as a supervisor and facilitator in the economy (Wijayanti, 2020). So a change in the status of the company which is interpreted as the occurrence of privatization is really needed by the community on a national scale, even though it results in the impact of layoffs for employees or workers.

Changes that occur in the company in the second criterion is the merger of companies. Merger of companies occured when more than one company merged with each other to form a new company. Of course, the merger process must be preceded by an agreement between the entrepreneurs of both parties. Mergers can have both positive and negative impacts. The positive impact if the purpose of the merger is to develop the further business. Meanwhile, the negative impact can mainly be felt by workers who work in each company that merges with each other. There may be a reduction in the number of workers. For example, there are two similar companies that have made an agreement by merging themselves to form a new company with a new work system, so for one position only one worker is needed which previously may have been filled by more than one worker. Of course there must be a quality selection among workers to be able to occupy the needs of that one position. This causes workers who fail to be selected to be transferred or even terminated.

The existence of a merger of companies gives psychological consequences to workers on the change of the work system. Workers who are not ready for a change in the work system have a tendency to not continue working relationships with the new work system. In other words, some of the workers are more likely to choose termination of employment.

The third criterion for changes that occur in the company is a change in ownership. It is possible that an employer sells his company to someone else for several reasons. Changes in business owners will affect workers in carrying out work relationships. It is possible to change the work system. Not everyone can easily accept changes to a new work system quickly. Sometimes the owner of a substitute business will make improvements to the workers by conducting

quality evaluations. Only qualified workers can still be employed, while workers with low performance qualities will immediately be laid off.

After the existence of the Job Creation Law which coincided with the pandemic period, the provisions of Article 163 of Law 13/2003 were removed by Law 11/2020. The regulation was downgraded in Government Regulation Number 35/2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. Article 36 of PP 35/2021 regulates that Termination of Employment may occur due to the reason that the Company merges, consolidates, takes over, or separates the Company and the Worker/Labourer is not willing to continue the Employment Relationship or the Employer is not willing to accept the Worker/Labourer. The term change in status is removed, so that in practice the term change in status can be interpreted as a change in the work system.

Changes in the work system, for example, initially working for 40 hours a week was reduced. The reduced working time in a week results in a proportional reduction in the wages received by workers. Changes in the workplace can also occur from work from office to work from home. It can even change from being a permanent worker to a daily worker, working if there is work. Work according to the summons from the employer to come to work or do work.

Changes in employment relationship status can only be made if there is an agreement from both parties to re-contract. The absence of a re-contract agreement is against the law. Aggrieved workers can file a lawsuit against the law on re-contracts resulting in termination of employment. Unfortunately, many workers choose not to file a lawsuit against the law because they do not have sufficient funds. This is quite a cost, considering that many workers, especially unskilled labor, cannot afford to pay for the services of an advocate. The stages are complicated and quite long, of course, it will cost a lot of money. Lack of sufficient formal evidence from workers will be a weak point for workers' claims to fail to fight for the reduction or loss of lost rights due to termination of employment due to a change in status.

If the worker chooses the stage of the Employment relationship dispute settlement process, then in order to be able to file a lawsuit to the industrial relations court, efforts must be made: First, bipartite between the worker and the employer as evidenced by the existence of an official report on the implementation of the bipartite itself. Second, mediation between employers and workers in the manpower office as evidenced by the issuance of a recommendation from the manpower office employee. After that, the third step can be carried out, namely filing a lawsuit to the industrial relations court. Actually, workers can also file a lawsuit against the law to the district court, if the termination of the employment relationship is due to a change in the status of the employment relationship as an unlawful act / tort to the district court. Cost constraints are the main reason for not carrying out civil lawsuits regarding unlawful acts to the district court.

Conclusion

Legal protection for workers who are terminated due to the changes in status must be done through re-contracts. If a re-contract is not carried out, workers may have a compensation for violating the law.

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