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Legal Protection for Workers Who Have Termination of Employment Due to Force Majeure

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ABSTRACT

The purpose of this research is to find out the level of regulation conformity regarding the termination of employment due to Force Majeure in Indonesia in the form of legal protection and juridical consequences based on governing termination regulations of employment due to force mejaeure in order to fulfill the workers' rights caused by layoffs. This research discusses the suitability of arrangements regarding workers who experience termination of employment due to Force Majeure in Indonesia with ideal legal protection and legal consequences of arrangements for employment termination implemented because of Force Majeure. The type of research used is normative legal research, is legal research that examines document studies using statutory regulations, court decisions, legal theory, and scholars' opinions. The research result indicate that legal protection for workers who have been terminated due to Force Majeure has been reflected in Law 13 of 2003 concerning Manpower, but in order to create a positive law regarding forms of legal protection for workers who have been laid off, there must be clearer arrangements regarding the rights to workers in the future.

Keywords: Force Majeure, Legal Protection, Termination of Employment, Workers

INTRODUCTION

The employee has an important role as one of supporting elements in company development. It is impossible to improve the quality of human beings without obtaining a life guarantee, and the improvement of staff quality and their protection must be adapted to human dignity. The employee roles and their performance are influencing the company's development in present and future (Rozikin et al., 2019). In national development, the role of labourers is increasing along with the various challenges and risks faced by them, and it makes them need to be guaranteed with protection, maintenance, and welfare improvement as basic protection to meet the minimum living needs. This is an award to every labourer who has contributed their energy and thoughts to the company, a place where they work to increase the level of national productivity. Employee rewards and recognition have a significant and positive effect on employee performance, whereas job stress has a significant and negative effect on employee performance (Hussain et al., 2019).

Nowadays, the problem of employment is very complex and diverse due to the fact that working relationship between employer and worker does not always harmonious. The problems regarding employment including economic, social welfare, and socio-political dimensions (Adrian, 2011). One of the labor problems that often occurs is the termination of employment (hereinafter referred as layoffs). According to Law No. 13/2003 concerning Manpower Article 1 number 25 explains that termination of Employment (PHK) is the employment termination due to a certain matter which results in termination of rights and obligations between workers and employers.

The termination often cause several problems that are not easily resolved, both regarding the relationship termination itself and legal consequences of employment terminating. The relationship between workers and employers will be broke apart when one party imposes its interest on other party relationship that harmed the fulfillment of one party needs or interests (IMade, 2016).

In provisions of Article 164 paragraph (1) of Law no. 13, 2003 concerning Manpower explains in itsprinciple, when there is a compelling situation that the company experiencing Force Majeure, they has the authority to give workers their rights for compensation in the form of one-time severance salary. It is different with Articles 1244 and 1245 of the Civil Code which clearly states that the concept of Force Majeure is when Force Majeure occurs, the responsibility for all compensation and claims will be lost and there will be no compensation for losses in force majeure or unintentional incident. Force Majeure (French) or known as vis major (in Latin), is defined as superior strength, otherwise known as cas fortuit (French) or casus fortuitas (in Latin), bad events, or situations outside the plan that cannot avoid. Force Majeure is an excuse to be exempted from all obligations to pay compensation (Israhadi, 2020).

The purpose of this research is to find out the level of regulation conformity regarding the termination of employment due to Force Majeure in Indonesia in the form of legal protection and juridical consequences based on governing termination regulations of employment due to force mejaeure in order to fulfill the workers' rights caused by layoffs.

RESEARCH METHODOLOGY

This research is using normative law method. Normative law method is a legal research method that describes the condition of norms with conflicting norms (*geschijldvan normen*), vague or unclear norms (*vague van normen*) or empty norms (*leertmen van normen*). Normative legal research is a process to find a legal rules, legal principles and doctrines of the law to address the legal issued at hand. Result law study are the argument, theory, or the new concept as a prescription in solving the problem (Christiani, 2016). Normative research is library law research or legal research based on secondary data. This research is analyze how the suitability of the regulations for employment termination caused by Force Majeure in Indonesia with existing legal protection and legal consequences, and what the outcomes caused based on these regulations on workers by business actors who give employment termonation to their workers.

RESULTS AND DISCUSSION

The Arrangements for Unilateral Termination of Employment

In principle, the provisions for force majeure are regulated in Article 1244 of the Civil Code and Article 1245 of the Civil Code which explain that the debtor must be sentenced for compensating costs, losses and interest when he cannot prove the non-performance of engagement or time inaccuracy in performing the engagement that was caused by an unforeseen event, which cannot be accounted for by him, even though there is no bad faith in him, and Article 1245 of the Civil Code that stated there is no reimbursement of costs, losses, and interest when due to compelling circumstances or due to coincidences, the debtor is prevented from giving or doing something required, or something forbidden by him.

The state of coercion according to classical legal scholars is interpreted as a condition that cannot be avoided by debtor to conduct his performance againts an obligation (Isradjuningtias, 2015). Their thought are on natural disasters or accidents that beyond human ability, making it impossible for debtors to fulfill their achievements. The absolute and relative nature of coercive circumstances shows the difference between absolute which associated with cancellation or dissolution of a debtor's obligation, and relative defined as void. The termination is associated with the destruction of agreement object, while relative shows an achievement made by debtor, but has no value in creditor's view.

Force majeure or in Indonesia known as overmacht is an event that is

beyond the reach of humans to avoid the event. Force majeure is a legal concept derived from Roman law (vis motor cui resisti non potest) which is adopted in various legal systems (Suherman, 2021). The legal principles of force majeure in Manpower Act related to the explanation of force majeure in Manpower Act are still lacking and there are no rules that explain further related to force majeure situation. The definition of force majeure usually refers to acts of nature (act of God), such as natural disasters (floods, earthquakes, riots, war, and so on).

The legal arrangements related to coercive circumstances of Manpower Act in the provisions concerning Termination of Employment (PHK) in Article 164 paragraph one (1) explains "Entrepreneurs can terminate workers because the company is closed due to financial losses for 2 (two) years continuously or force majeure, provided that the worker is reserve the right to severance pay of 1 (one) time as stipulated in Article 156 paragraph (2) of service period award of 1 (one) time as stipulated in Article 156 paragraph (3) and compensation for rights in accordance with the provisions of Article 156 paragraph (4)". Regarding the arrangement of workers who are terminated unilaterally, it should not be implemented unilaterally and arbitrarily, but layoffs can only be conducted for certain reasons after some efforts for cancelling the layoffs.

The reasons of layoffs to workers are include voluntary resignation by employee concerned, written resignation, resignation due to retirement age, serious mistakes made by the employee, companies experiencing losses, workers being absent from time to time, and died workers. However, when unilateral termination of employment cannot be avoided, then the settlement must be through prior negotiations which have been regulated in the provisions of Manpower Law in Article 151 paragraph (1) which states "Entrepreneurs, workers/laborers, trade unions, and the government need to have an effort to prevent termination of employment." And Article 151 paragraph (2) which states "In every effort has been made, but termination of employment is unavoidable, then the intention of terminating the employment relationship must be negotiated by the entrepreneur and worker when they are not a member of labour union.

Regarding the arrangement of workers who experience termination of employment due to Force Majeure based on two different statutory arrangements. The statutory arrangements are Articles 1244 and 1245 of the Civil Code with Article 164 paragraphs (1) of Manpower Law, while the Civil Code does not provide a form of legal protection to workers related to Force Majeure. The form of legal protection for workers in Indonesia who experience termination of employment has been reflected in Law no. 13 of 2003 concerning Manpower in Article 164 paragraph (1) which regulates legal protection for workers by providing compensation, severance pay, and pension money (Hermawan, 2016).

Juridical Consequences Termination of Employment Due to Force Majeure

According to Sri Soedewi Masjchoen Sofwan, *Overmacht* (forced circumstances) is a condition where the debtor is impossible to comply with the debt (*absolute overmacht*) or it is possible to complete the debt, but it will makes a large unbalanced sacrifice or mental strength beyond human ability and causes serious losses (*relatively overmacht*).

In positive law, a legal regulation or law should reflect the legal certainty and describe the determination of certain rights for an individual or group. Legal certainty is a guarantee conducted by the law in a good or proper way. The assurance is the main goal of law. When the law does not reflect certainty, the law will lose its identity and the law is no longer used as a guide to people's behaviour. Legal certainty can be interpreted as a guarantee for community members that everything will be treated by state or government based on the law, not arbitrarily. Legal certainty is one of the main principles of law implementation and it demands more literal interpretation of statutory provisions. Legal certainty remains one of the more important concepts about the law, yet there has been little serious reflection about it. Its presence tends to be taken for granted in mature legal systems (John Linarelli, 2017).

Husni states that layoffs are an unexpected event, especially among workers since they will lose their livelihood to support themselves and their families. Therefore, all parties involved in industrial relations including employers, workers, or the government need to prevent the termination of employment. Whereas in the explanation of Article 1 number 25 of Law Number 13, 2003 concerning Manpower states "Termination of employment is the relationship work termination due to a certain matter which results in the expiration of the rights and obligations between worker and entrepreneur". Termination of employment for the workers will have an impact on psychological, economic, and financial (Zainal, 2010).

Legal protection is the protection of the honour as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness (Subekti, 2018). Regarding legal protection for workers who have been terminated due to force majeure, the law or regulation related to this matter is Law no. 13 of 2003 concerning Employment, which is contained in Article 164 paragraph (1) that explains entrepreneurs can terminate the employment relationship of workers since the company is closed due to continuous losses for 2 (two) years, or forced majeure, provided that worker is entitled to severance pay of one time as stipulated in Article 156 paragraph (2), the service period award is one time as stipulated in Article 156 paragraph (3) and compensation in accordance with the provisions of Article 156 paragraph (4).

The elucidation of Article 156 paragraph (3) includes: a. annual leave that has not been taken and has not fallen; b. Transportation costs for workers and their families to their new workplace; c. housing replacement as well as treatment and care are set at 15% (fifteen percent) of the severance pay and/or service period award for those deserved; d. other matters stipulated in work agreement, company regulations or collective labor agreement. Meanwhile, the explanation of Article 156 paragraph (4) includes: changes in severance pay, service award money, and compensation for entitlements as referred to in paragraph (2), paragraph (3), and paragraph (4) shall be stipulated by the government regulation. Thus the regulation on termination of employment (PHK) due to force majeure used is based on the provisions of Article 164 paragraph (1) regarding the Manpower Act.

In accordance with the explanation regarding force majeure, when in the future there are problems regarding the termination of employment for workers due to unforeseen circumstances or force majeure, the company should provide the rights of workers who are terminated due to force majeure in accordance with the provisions of applicable laws and regulations called Manpower Law, which in principle regulates legal protection for workers who have been terminated due to force majeure, that contained in provisions of Article 164 paragraph (1) of Manpower Law.

Regarding the legal consequences that will arise concerning the issue of employment termination due to force majeure, it is very clear that it has legal consequences on working relationship between the company and workers, where workers should get the rights while working at the company and the company should give awards to employees. Even though there is a force majeure in the relationship between company and its workers, the workers are entitled to get their rights which have been regulated in the provisions of law or legislation.

CONCLUSION AND SUGGESTION

Conclusion

The regulation for termination of employment that unilaterally granted by business actors can be implemented based on Law no. 13 of 2003 concerning Manpower, this is appropriate and has been clearly regulated in positive legal products in Indonesia. The unilateral termination of employment can only be conducted for certain reasons, in the form of workers resignation based on their decision, writing resignation, workers who making serious mistakes or continuous absenteeism, and when unilateral termination of employment cannot be avoided, the settlement must be resolved through negotiations which have been regulated in the provisions of Manpower Law in Article 151 paragraphs (1) and (2). The juridical consequence of employment termination due to force majeure is that business actors are obliged to compensate workers in employment termination due to force majeure. Besides that, business actors need to give severance pay to workers in accordance with the provisions of Law no. 13, 2003 concerning employment in Article 164 paragraph (1) which regulates legal protection for workers by providing the right to compensation, and in the form of severance pay and pension money.

Suggestion

In terminating the employment relationship, it is necessary to pay attention to the regulations of Law no. 13 of 2003 concerning Manpower with the provision that it provides a form of compensation in accordance with applicable regulations as a form of legal protection to workers, lest what is said as force majeure is used instead of employers to terminate employment. For force majeure, it is deemed necessary to make regulations that better regulate what force majeure is and clarified provision of rights for workers, and given legal certainty that there will be no more losses experienced by the parties or opportunities for those who will act fraudulently based on that situation.

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