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Efforts to Settle Disputes on Employee Severance Pay in Companies According to the Manpower Act No. 13 of 2003

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ABSTRACT
Disputes or disputes can occur in every human relationship, even considering that legal subjects have long known legal entities, the more parties involved in them. The purpose of this study is to resolve disputes regarding severance pay between workers, laborers and employers. Research Methods The used by the author in conducting this research is using a sociological empirical method. The empirical sociological method is a research that views law as a social phenomenon. Meanwhile, from its nature, this research is a descriptive analysis research. Descriptive method can be interpreted as a problem solving process that is investigated by describing or describing the state of the subject or object of the researcher, namely: a person, institution, community and others, and at the present time based on the facts that appear or as they are. Results According to Article 1 point 16 of Law Number 13 of 2003 concerning Manpower, industrial relations are a system of relations formed between actors in the process of producing goods and/or services consisting of elements of entrepreneurs, workers/laborers, and the government based on values. values of Pancasila and the 1945 Constitution of the Republic of Indonesia. Thus, industrial relations are defined as the relationship between all parties with an interest in the process of producing goods or services in a company. The party with the most interest in the success of the company and in direct daily contact is the entrepreneur or the management with the workers/labourers.

Keywords: Employment, Workers, Severance pay, Disputes, UUD

1. INTRODUCTION

A person who works for another person contains elements of orders, wages and time, there is an employment relationship. This work relationship occurs between the worker or laborer with the employer and is individual in nature (Robinson, 2003). In the process of carrying out this work, both parties each have rights and obligations that must be fulfilled as a result of the employment relationship. The rights and obligations attached to individuals then develop into collective rights and obligations. Generally, workers or laborers are in a weaker position than the employer or employer. Therefore, the nature of this collectivity is then used as a means to provide protection for workers or laborers in order to get good treatment and obtain their rights fairly (Perdana, 2021).

The worker or laborer performs work under the orders of the person who pays his salary. The worker's rights appear simultaneously when the worker or laborer binds himself to the employer or employer to do a job, an example that can be seen immediately is the right to wages. This worker's right only exists when someone becomes a worker, this right is attached only to

ISSN print 2086-6852 and ISSN Online 2598-5892

those who work, when that person is no longer a worker, the rights that once existed on him will automatically disappear (Manning & Roesad, 2007). Disputes or disputes can occur in every human relationship , even considering that legal subjects have known legal entities for a long time, there are more and more parties involved in them. With the rapid development of the style of life, the scope of events or disputes will also be wider. Among those that often get the spotlight are industrial relations disputes. Industrial relations disputes usually occur between workers and employers or between trade unions and organizations in the company. Of the many incidents or incidents of industrial relations disputes or disputes, the most important is the solution for the settlement which must be completely objective and fair and impartial (Israhadi, 2020).

Settlement of industrial relations disputes can basically be resolved by internal/own parties and can also be resolved with assistance from third parties, either provided by the state or from the parties themselves. In a modern society that is accommodated by a public power organization in the form of a state, the forum provided by the state for the resolution of disputes or disputes is usually the judiciary. Judicial institutions, namely, if industrial relations disputes are resolved in the Industrial Relations Court, this does not rule out the possibility that they can also be settled out of court as described previously (Probokusumo, 2022).

According to Article 1 number 16 of Law Number 13 of 2003 concerning manpower, industrial relations are a system of relations formed between actors in the process of producing goods and/or services consisting of elements of entrepreneurs, workers, and the government based on the values of Pancasila. and the 1945 Constitution of the Republic of Indonesia (Vogel, 2003). Thus, industrial relations are defined as the relationship between all parties with an interest in the process of producing goods or services in a company (Rahmatsyah, 2019). The party most interested in the success of the company and in direct daily contact is the employer or management with workers. And based on article 136 paragraph (1) of Law Number 13 of 2003 concerning Manpower, it is explained that the settlement of industrial relations disputes must be carried out by employers and workers or labor unions by deliberation to reach consensus (Pratikno, 2019). It is further explained in Article 3 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, that the settlement of industrial relations disputes must be resolved first through Bipartite negotiations consisting of elements of employers and workers carried out by deliberation to reach consensus. The period of settlement through Bipartite is a maximum of 30 working days from the date of commencement of negotiations (Hamid, 2021).

However, in reality, efforts to settle industrial relations disputes through the Bipartite mechanism often fail, which is usually caused by employers who stick to their stance or workers who feel that they are still not satisfied with the outcome of the negotiations. So if this happens,

ISSN print 2086-6852 and ISSN Online 2598-5892

employers and workers can settle industrial relations disputes through other procedures that have been regulated by law (Roesli et al., 2017). Based on Law Number 2 of 2004 concerning the settlement of industrial relations disputes, it is explained that if negotiations through the Bipartite mechanism fail, then one or both parties can register the dispute to the agency responsible for the local manpower sector by attaching evidence that the settlement efforts through Bipartite negotiations have been carried out, then the agency responsible for manpower affairs is obliged to offer to the parties to agree on choosing a settlement through conciliation or through arbitration (Hanifah, 2022). If within 7 working days the parties do not make a choice, the agency responsible for manpower affairs delegates the settlement to the mediator.

2. RESEARCH METHODS

The method used by the author in conducting this research is using a sociological empirical method. The empirical sociological method is a research that views law as a social phenomenon. Meanwhile, from its nature, this research is a descriptive analysis research. Descriptive method can be interpreted as a problem solving process that is investigated by describing or describing the state of the subject or object of the researcher, namely: a person, institution, community and others, and at the present time based on the facts that appear or as they are.

3. RESULTS AND DISCUSSION

Efforts to Settle Industrial Relations Disputes Regarding Severance

Pay Severance pay is a sum of money that must be paid by the employer or company to the workforce or its employees. Where this severance pay will be given when the work period has ended or the employment relationship is terminated by the company. Severance pay is not the same as pension. So, when you as an employee have ended their working period, you can receive severance pay as well as pensions. It's a different story if an employee is laid off, then he will only receive severance pay, without a pension as compensation. Business owners must understand the provision of this fee. One way to manage severance pay can be assisted by having an online HRIS. Likewise, workers must understand and do not have to worry about not getting a service fee during their working period (Gaffar et al., 2021).

This is because everything has been officially regulated in the calculation of pension severance pay, Law Number 13 of 2003. For more details, let's look at the laws and regulations governing the calculation of severance pay, pensions (service awards) and WAGES (Right Replacement Money).

1. Legislation governing the calculation of severance pay

ISSN print 2086-6852 and ISSN Online 2598-5892

As previously mentioned, Law number 13 of 2003 has already regulated everything. However, for more details, the regulations are divided into certain articles or points as below.

• Article 156 Paragraph 1

Contains the obligation of business owners to pay severance pay and/or gratuity for years of service (pension) as well as compensation for entitlements that should be received by workers.

• Chapter XII

Regulates everything related to Termination of Employment (PHK) by the company or employer.

• Article 150

Regulates the obligation of employers or employers to provide severance pay for workers or employees in the event of layoffs. The employer in question can be in the form of BUMN, business entity, legal entity or others who employ people in exchange for wages or others.

There is a change in the calculation of severance pay, not in the value or amount but in the period of service. According to the Omnibus Law, this new regulation of the Job Creation Act makes it easier for companies to pay severance pay, but still mandates to minimize layoffs. The change in question is the factor of severance pay. Previously, the severance pay factor was 1-2 times, now it is 0.5-2 times. For severance pay, according to the Job Creation Act point 44 is a revision of Article 156 of the Manpower Law, as follows:

a. Amount of Severance

- Working period of less than one year, receiving severance pay equal to one month's salary
- For working period of more than one year but less than two years, receiving two months' salary
- Two years more but less than three years, receiving three months' salary
- Three years more to less than four years, receiving four months of salary
- Four years to less than five years of work, receiving five months of salary
- Five years to less than six years of service, receiving six months of severance pay
- Six years to less than seven years of service work, the severance pay is seven months of salary
- Seven years to less than eight years of work, receive severance pay of eight months
- Eight years of service and more, receive severance pay of 9 months

b. Work Period Award

- 3 years of service to less than 6 years, receiving an award/pension of 2 months salary
- 6 years of service to less than 9 years, receiving 3 months of salary
- 9 years of service to less than 12 years, earning 4 months salary
- 12 years to less than 15 years, 5 months salary
- 15 years to less than 18 years, 6 months salary

ISSN print 2086-6852 and ISSN Online 2598-5892

- 18 years to less than 21 years, 7 months salary
- Period working 21 years to less than 24 years, receiving 8 months of salary
- Meanwhile for a period of service of 24 years or more, receiving 10 months of salary

c. Entitlement Reimbursement (UPH), includes:

- Annual leave that has not been used and is still valid
- Cost of accommodation for workers and their families to go to the area where they are accepted to work
- Various points contained in the work agreement or applicable company regulations Changes in the time factor in the calculation of severance pay based on Employment Creation Law by taking into account the reasons for the layoffs. In this regard, the changes include:
    - Multiplied by 0.5: Layoffs are caused by changes in work conditions due to the company being taken over so that workers do not want to continue their work, There is efficiency due to the company losing money, operations are stopped due to continuous losses or not within two years , for reasons of force majeure, the company loses money and is delaying debt payments, workers' violations, the company goes bankrupt.
    - Multiplied by 0.75: This can happen if the company is in a force majeure condition but does not stop operating or closes.
    - Multiplied by 1: Workers do not want to continue working because of the merger of companies, the company is taken over, Performs efficiency to prevent losses, Closes and delays debt payments, but not because of losses, There are acts of violence, threats or abuse and so on that are carried out by employers so that employees ask to be laid off.
    - Multiplied by 1.75: This is done when the employee has entered his retirement period.
    - Multiplied by 2: If a worker in the absence of presence is sick for a long time or has an accident and causes disability so that he is unable to work for up to 12 months, as a way to calculate the employee's death severance pay. The severance pay is automatically handed over to the heirs.

If the working period ends due to termination of employment other than the reasons mentioned above, the company is not obliged to provide severance pay. For example, when a worker stops working voluntarily, violates a work agreement or company rules, it could also be because the worker has committed a criminal act.

2. Bipartite Settlement of Industrial Relations Disputes Regarding Severance Pay according to the Manpower Act Number 13 of 2003.

ISSN print 2086-6852 and ISSN Online 2598-5892

Basically every industrial relations dispute must be settled bipartitely before reaching the level of the Industrial Relations Court. Bipartite is a negotiation between workers/ laborers or trade unions/ labor unions with employers to settle industrial relations disputes.

Bipartite negotiations are regulated in Articles 3 to 7 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. Due to the failure of bipartite efforts made between workers and employers, the parties or one of the parties can take alternative settlements, namely mediation, conciliation, and arbitration.

The potential for termination of employment at the company is due to various indicators of the cause, including the following:

1. Some workers who have committed serious violations have deviated greatly from the existing regulations in the company such as committing criminal acts of stealing cables, copper, immoral acts, and other serious offences.
2. Workers take actions that are quite dangerous for the sustainability of the company, namely smoking in the plastic production section which can cause fires in the factory/company.

Based on some of the definitions of the dispute above, basically a dispute is a conflict or conflict caused by a dispute or a discrepancy in understanding or due to inappropriate interests or rights fulfillment so that it can cause harm to one party. Disputes when related to activities related to employment relations are known as industrial relations disputes. The first step that must be taken to resolve the existence of industrial relations problems is to hold deliberation to hold bipartite negotiations. Settlement through Bipartite Disputes in Industrial Relations must be resolved first through bipartite negotiations by deliberation to reach consensus. This means that before the disputing parties invite a third party to resolve the issue between them, they must first begin the negotiation stage of the parties, which is commonly referred to as the bipartite approach.

Based on Article 1 Paragraph 10 of Law Number 2 of 2004, bipartite negotiations are negotiations between workers/ laborers or trade unions/ labor unions with employers to settle industrial relations disputes. Settlement of disputes through bipartite is regulated in the provisions of Articles 3 to 7 of Law Number 2 of 2004. Settlement through bipartite negotiations must be completed no later than 30 (thirty) working days from the date of commencement of negotiations (Lebergott, 1964). If within a period of 30 (thirty) days one of the parties refuses to negotiate or negotiations have been carried out, but do not reach an agreement, then the bipartite negotiations are deemed to have failed.

Minutes of every bipartite negotiation must be drawn up, signed by the parties. Minutes of negotiations must at least contain the following:

a. Full names and addresses of the parties;

ISSN print 2086-6852 and ISSN Online 2598-5892

b. Date and place of negotiation;
c. The subject matter or reason for the dispute;
d. Opinions of the parties;
e. Conclusions or results of negotiations;
f. The date and signature of the parties conducting the negotiations. (Darwis Anatami, Settlement of Termination of Employment (PHK) Outside Industrial Relations, 2015: 301).

If the bipartite negotiations succeed in reaching an agreement, a Collective Agreement is made that is binding and becomes law and must be implemented by the parties. This Collective Agreement must be registered by the parties entering into the agreement at the Industrial Relations Court at the District Court in the area where the parties entered into the Collective Agreement. In the event that the Collective Agreement is not executed by one of the parties, the aggrieved party may apply for execution at the Industrial Relations Court at the District Court in the area where the Collective Agreement is registered to obtain an execution determination.

In this Law, what is meant by Manpower is all matters relating to the workforce before, during, and after the work period. Meanwhile, the workforce is everyone who is able to do work to produce goods and/or services both to meet their own needs and for the community. Every worker has the same rights and opportunities to choose, get, or change jobs and earn a decent income at home or abroad. The placement of workers is carried out based on the principles of being open, free, objective, fair, and equal without discrimination. Employers who employ workers with disabilities are required to provide protection according to the type and degree of disability. Employers are also prohibited from employing children, female workers who are less than 18 (eighteen) years old are prohibited from being employed between 23.00 to 07.00 and are also prohibited from employing pregnant women workers who, according to a doctor's statement, are dangerous for the health and safety of their womb and themselves if they work between 23.00 hours. until 07.00. Every worker has the right to earn an income that fulfills a decent living for humanity.

Termination of Employment Due to Retirement Age

The provisions governing the right to terminate employment due to entering retirement age related to the implementation of the pension program are specifically regulated in Article 167 (Martikainen et al., 2021). Basically this article intends to regulate that workers who have been enrolled in the pension program are only entitled to a larger amount of the pension benefits or guarantees. (after deducting the set of employee contributions and the results of their development, if any), and 2 times the severance pay plus 1 time the service award plus compensation for entitlements. However, the formulation is less clear and confusing, so it has the potential to give

ISSN print 2086-6852 and ISSN Online 2598-5892

rise to various interpretations that can become a source of dispute. What kind of interpretation is correct, this will be studied.

Before doing that, the following is a complete presentation of the contents of Article 167 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5): retirement age and if the entrepreneur has included the worker/labourer in a pension program whose contributions are fully paid by the entrepreneur, then the worker/labourer is not entitled to severance pay in accordance with the provisions of Article 156 paragraph (2), the service period award is in accordance with the provisions of Article 156 paragraph (3) , but is entitled to compensation money in accordance with the provisions of Article 156 paragraph (4). In the event that the amount of the guarantee or pension benefit that is received at once in the pension program as referred to in paragraph (1) is in fact less than the amount of severance pay 2 times the provisions of Article 156 paragraph (2) and the service period award 1 times the provisions of Article 156 paragraph (3), and compensation for entitlements in accordance with the provisions of Article 156 paragraph (4), the difference is paid by the entrepreneur.

In the event that the entrepreneur has included the worker/labourer in a pension program whose contribution/premium is paid by the entrepreneur and the worker/laborer, then the severance pay is calculated, namely the pension whose premium/contribution is paid by the entrepreneur. The provisions as referred to in paragraph (1), paragraph (2), and paragraph (3) may be regulated otherwise in a work agreement, company regulations, or collective work agreement. In the event that the entrepreneur does not include the worker/labourer who is terminated due to retirement age in the pension program, the entrepreneur is obliged to provide the worker/laborer with 2 times the severance pay as stipulated in Article 156 paragraph (2), the service period reward 1 times the provision in Article 156 paragraph (2). (3), and compensation for rights in accordance with the provisions of Article 156 paragraph (4).

"Successful" Retirement Guarantee or Benefit – Article 167

As it is known that based on Law Number 11 of 1992 concerning Pension Funds (Pension Fund Law), in principle, pension benefits must be paid on a monthly basis. Only up to a limit of 20% is allowed to be paid in one lump sum and that too is based on the choice of the worker/labourer. Can the sentence "... which is received at once ..." in paragraph (2) then be interpreted to mean that only the 20% is used as a basis for comparison? If the worker/labourer chooses not to receive the first 20% payment of the pension benefit at once but chooses to pay it all on a monthly basis, then the existence of this paragraph (2) will not work. Why ? Because there is no part of the pension benefits that can be used as a basis for comparison (all are received on a monthly basis). Thus, in addition to receiving pension benefits, workers/labourers will also receive

ISSN print 2086-6852 and ISSN Online 2598-5892

2 times severance pay plus 1 time service award plus compensation for entitlements. This fact is inconsistent with paragraph (1) where workers/ laborers are only entitled to compensation for entitlements. Thus, perhaps the correct interpretation of the formulation of paragraph (2) is that all (100%) guarantees or pension benefits that are the rights of workers/laborers are used as the basis for comparison, not only the 20%. What about defined benefit pension plans that use a monthly formula? Although it is not regulated, to find out the amount of guarantee or pension benefit that will be used as a basis for comparison, an actuary can easily calculate it, namely the present value of the series of guarantee payments or monthly pension benefits in question.

Workers Participate in Paying Contributions – Article 167 Paragraph 3

Regarding this paragraph (3), although the formulation seems to be only for defined contribution pension plans as described in the explanation of the Manpower Act, this does not mean that this paragraph cannot be applied to defined benefit pension plans. For information, the Pension Fund Law recognizes 2 types of pension plans, namely defined benefit pension plans (programs whose benefits are determined in advance, both those that use a lump sum formula – for example the provision of severance pay and long service awards, as well as monthly formulas – such as pensions. civil servants), and a defined contribution pension plan (a program whose contributions are determined in advance – identical to the savings or old-age insurance program from Jamsostek). The meaning contained in paragraph (3) is that workers/labor contributions are not part of the pension benefits that can be used as a basis for comparison. So it must be reduced first. Meanwhile, the meaning of "workers/labor contributions" should not be the principal of the contribution alone, but includes the results of its development. The sentence "... severance pay ..." in paragraph (3) can also cause confusion if the meaning is not clarified. Does this sentence mean that the comparison is only limited to severance pay as referred to in Article 156 paragraph (2), or does it also include service pay and compensation? In order to be consistent with the formulation in paragraph (1), the correct interpretation may have to include service pay and compensation.

Amount of Reimbursement of Rights – Article 156 Paragraph 4

How to correctly determine the amount of compensation for entitlements, in particular Article 156 paragraph (4) letter c, namely the replacement of housing as well as treatment and care of 15% of severance pay and or service payment for those who meet the requirements, when we calculate the value as referred to in Article 167 paragraph (1), paragraph (2), and paragraph (5)? In Article 167 paragraph (1), the amount of compensation for entitlements is 15% multiplied by 1 time severance pay and 1 time service award, while in Article 167 paragraph (2) and paragraph (5) it is 15% multiplied by 2 times severance pay and 1 time service award? Or in Article 167 paragraph (2) and paragraph (5), the amount of compensation is the same as in Article 167

ISSN print 2086-6852 and ISSN Online 2598-5892

paragraph (1), which is 15% multiplied by 1 time severance pay and 1 time service award? For a period of service of 24 years or more (check the scale in Table 2), the compensation for entitlements in Article 156 paragraph (4) letter c is 2.85 months of wages (15% x (1 x 9 + 1 x 10), if severance pay is defined only 1 time), and 4.20 months wages (15% x (2 x 9 + 1 x 10), if the severance pay is defined as 2 times). So there is a difference of 1.35 months wages. Since the sentence for compensation for entitlements in the verses above does not mention the number of times, unlike the formula for severance pay (there are 2 times) and service pay (there is a term for 1 time), can we understand that the meaning is only 15? % multiplied by 1 time severance pay and 1 time service award, or vice versa as is commonly interpreted so far?

Relation to Retirement Programs When Funding Is Done

Article 167 paragraph (1) states that in the event that the entrepreneur has implemented a pension program, regardless of the results obtained from it, the worker will still receive compensation for entitlements. Meanwhile in Article 167 paragraph (2) it is stated that in terms of the amount of pension benefits (after deducting the set of worker/labor contributions and the results of their development, if any – Article 167 paragraph (3)) it turns out to be less than 2 times the severance pay, 1 time work, and compensation for entitlements, the difference is paid by the entrepreneur (Roesli et al., 2019). Because the element of compensation for rights is also used as a basis for comparison, the value being compared will certainly be greater. Entrepreneurs' expenses are also getting bigger. If what the formulation of these paragraphs is trying to achieve is that the pension benefit (after deducting the set of worker/laborer contributions along with the results of their development, if any – Article 167 paragraph (3)) should not be less than 2 times the severance pay plus 1 time the term award. work plus compensation for entitlements, why then in Article 167 paragraph (1) entrepreneurs who have implemented a pension program still have to provide compensation for rights to workers/laborers? It is possible that this rationale is not true, and what is true is indeed what is formulated in Article 167 paragraph (1) and paragraph (2), that entrepreneurs still have to pay compensation for entitlements even though they have implemented a pension program. If this is indeed what is meant, then when an entrepreneur who has not implemented a pension program but wants to fund this Manpower Act's obligations (because he is aware that without regular and systematic funding it can burden the company's cash flow) through a Pension Fund (both the Employer Pension Fund) or Financial Institution Pension Funds), then the obligation for compensation cannot be funded because it is always an on-top value. This situation is in contrast to the entrepreneur who if he does not use it through the Pension Fund, his obligation is only 2 times the severance pay plus 1 time the service award plus the compensation for entitlements only (Article 167 paragraph (5).

ISSN print 2086-6852 and ISSN Online 2598-5892

The existence of termination of employment (PHK) for workers is the beginning of suffering and misery that befell the workers, even for their families. However, in practice layoffs still occur everywhere. Termination of employment as mandated by Law Number 13 of 2003 is something the company should not do as much as possible. This is mandated in Article 151 which states, "entrepreneurs, workers or laborers, and the government, with all efforts must try to prevent termination of employment". It is affirmed in Article 152 of the Manpower Law that the application for the determination of the termination of the employment relationship must be submitted in writing to the Industrial Relations Dispute Settlement Agency along with the reasons on which it is based. Thus, workers who will be laid off know the reasons that are used as the basis by the entrepreneur or company. Article 154 states that a stipulation on a permit application for termination of employment will only be issued if the negotiation between the entrepreneur and the worker fails. However, the determination of the permit is not required if:

a. Workers are still on a probationary period, if it has been previously required in writing;
b. The worker submits a written resignation request at his/her own request without any indication of coercion or intimidation from the company where he/she works;
c. Workers reach retirement age;
d. The worker has died.

According to a number of articles contained in Law No. 13 of 2003, employers can terminate their employment with the following provisions:

a. If the worker has committed a serious mistake (Article 158);
b. If the worker violates the provisions of the collective labor agreement (Article 161);
c. If the worker is caught in a criminal act or detained by the authorities (Article 160);
d. If the company changes ownership status (Article 163);
e. If the company closes due to continuous losses for 2 years (Article 164);
f. If the company must perform efficiency (Article 156);
g. If the company goes bankrupt (Article 165);
h. If the worker dies (Article 166);
i. If the worker enters retirement age (Article 167);
j. If the worker is absent for 5 (five) days without notification (Article 168).

4. CONCLUSION

From the research that has been carried out by the researcher, the following conclusions are obtained The settlement of industrial relations disputes between workers and employers through Bipartite has basically been carried out according to the provisions that have become their

ISSN print 2086-6852 and ISSN Online 2598-5892

guidelines or guidelines but has been ineffective, due to several obstacles that occur and Lack of understanding of the parties, both from the company/employer and workers regarding the stages, processes and provisions of employment as well as the settlement of industrial relations disputes through mediation. The company regulations are not strong enough so that it becomes gray in mediating between the two parties.

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