

Termination of Work on Workers/ Labor Agreement in Particular Time on Fixed Work

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Abstract

In running a company there are not a few companies that use a certain time work agreement (CTWA). In the provisions of legislation it is permissible according to the nature and type of work that is completed once or while the nature of the settlement is no later than 3 (three) years, seasonal work, work related to new products and casual daily work. In his journey not a few also entrepreneurs who do termination of employment (layoffs) reduce the number of workers because of the strategy to maintain the continuity of its business. Termination of employment (Termination of Employment) is the termination of employment relations between workers / labor and employers. One of them was layoffs by the court, namely layoffs that were decided by the industrial relations court because of a discrepancy over layoffs carried out by one of the parties. This has happened to the decision of the case of the industrial relations court at the Surabaya District Court Number 153/G/2011/PHI.Sby. In the decision, there was a clash of arguments by the parties so that the panel of judges decided the resolution.

Keywords: Employment Agreement, Certain Time, Work Termination

1. Introduction

The use of contract labor can be carried out in two ways, the first is the use of contract labor from contract labor suppliers (outsourcing) and the second is by the way the company directly contracts with the workforce concerned.

Provisions regarding work contracts are regulated in a work relationship that occurs because of an employment agreement. Work relations are relations between employers and workers / labor based on work agreements that have elements of workers, wages and orders. Whereas according to Article 1 points 14 and 15 of Act Number 13 of 2003 concerning Employment a work agreement is an agreement between workers / labor with employers or employers that contains the work conditions, rights and obligations of the parties.

The term of the work agreement can be made for a certain period of time and for a work relationship that is limited by the period of validity, and an indefinite period of time for a work relationship that is not limited to the period of validity or completion of a particular job. Work agreements that are made for a certain time are usually referred to as contract work agreements or non-permanent employment agreements, the status of workers is temporary workers or contract workers. Whereas for agreements made for an indefinite period of time it is usually referred to as a permanent employment agreement and the status of workers is permanent workers (Lalu, 2016).

In the world of employment, work agreements are made for a certain time and indefinite time. Certain time work agreements (CTWA) are made for certain jobs which according to the type and nature or activities of the work will be completed in a certain time. Whereas an indefinite employment agreement is made for certain jobs where the validity period is not specified and can require a probationary period of work of no more than three months provided that the employer is prohibited from paying wages below the applicable minimum wage. Work agreements for a certain time cannot be held for work that is permanent and can be extended or renewed. A certain time work agreement based on a certain period of time can be held for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year. Employers who want to extend the work agreement for a certain time, no later than 7 (seven) days before the agreement ends and have notified the intent in writing to the workers / labor concerned. Renewal of a certain time work agreement can only be held after exceeding the grace period of 30 (thirty) days after the expiration of a long period of work agreement, renewal of a certain time work agreement may only be made 1 (one) time and no later than 2 (two) years (Asri, 2017).

However, in practice in the field there are still provisions of legislation that are not implemented by employers or employees. There are still many employers who employ workers / labor with a contractual status contract of employment at a certain time to work in the production section with a type of work that is continuous.

This situation was experienced by M and friends who worked at corporate PT. M in East Java. While working M and friends are placed in the production section with a type of work that is continuous. Then in ladder September 9, 2010, M and her friends were terminated by PT. M on the grounds that the contract period expires or the validity period of a certain work agreement (CTWA) expires. On this issue M and her friends tried to negotiate and register at the Gresik Regency Manpower Office but did not find a peaceful way.

The next attempt by M and his colleagues was to record his dispute at the Industrial Relations Court at the Surabaya District Court. In the case won by M and friends with the number decision 153/G/2011/ PHI-SBY

(Law RI, 2003).

According to Article 1 number 25 of Law Number 13 of 2003 concerning Employment termination of employment is the termination of employment relations because a certain matter results in rights and obligations between workers / employers and employers. Thus there is no working relationship between workers / employers and employers after the layoffs occur .

Work agreements are made for a certain time or indefinite time, or usually called a Specific Time Work Agreement and a Specific Non-Specific Time Agreement or permanent worker. Certain time agreements are based on the period or completion of a particular job. Work agreements for a certain period of time can only be made for certain jobs which according to the type and nature of the work activities will be completed in a certain time and cannot be held for permanent work.

According to article 1 point 22 of Act Number 13 of 2003 concerning Employment Industrial relations disputes are differences of opinion which result in opposition between employers or joint entrepreneurs with workers / labor or trade unions due to disputes over rights, disputes of interest and disputes over termination of relations employment and disputes between trade unions / labor unions in only one company.

2. Research Design

This type of research is normative juridical, namely the type of research that will study the protection of workers' rights in a certain time work agreement on work that is permanent in the case of the Industrial Relations Court case decision Number 153/G/2011/ PHI.SBY against laws applicable.

The approach method used in this study is the method of legislation approach (statute approach), case approach (case approach) and conceptual approach (conceptual approach).

Legal materials used include primary, secondary and tertiary legal materials. Primary legal materials are legal materials that are authoritative, meaning having authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions (Marzuki, 2016).

Secondary legal materials in the form of all publications about the law which are not official documents. Legal publications include textbooks, legal dictionaries, legal journals and comments on court decisions (Marzuki, 2016).

Tertiary legal material is also a legal material that can explain both primary legal material and secondary legal material, in the form of dictionaries, encyclopedias, lexicons and others (Fajar et.al, 2013)

Legal materials, both primary and secondary, are then combined and interpreted, so that they can find the most appropriate translation and analysis of the problems that have been formulated. Then evaluate the various laws and regulations relating to the case verdict of the Industrial Relations Court Number 153/ G / 2011/ PHI.SBY.

3. Result and Discussion

3.1 Work Agreements

Work agreements can be divided based on [7] :

1. Form of agreement (Article 51 of Act Number 13 of 2003 concerning Labor)
 - a. In writing (Article 51 paragraph (2) of Law Number 13 of 2003 concerning Labor), and
 - b. Written or oral.
2. The period of the agreement (Article 56 of Law Number 13 of 2003 concerning Labor), is divided:
 - a. Certain time work agreements (PKWT), and
 - b. Indefinite time agreement (PKWTT)
3. Agreement system, divided:
 - a. Permanent employment agreement, and
 - b. Non-permanent employment agreement.
4. Implementation of work (Article 64 of Act Number 13 of 2003 concerning Labor), divided:
 - a. Done alone by the company, and
 - b. Part of the work is handed over to other companies through work contract agreements and worker / laborer service providers.

3.2 Termination procedure

In connection with the impact of termination of employment (TOE) which is very complex and tends to cause disputes, the mechanisms and procedures for termination of employment (layoffs) are arranged in such a way that workers / workers continue to get proper protection and obtain their rights in accordance with the provisions (Wahyudi et.al., 2015).

The end of the employment relationship for workers / labor means loss of livelihood and is the beginning of misery. The theory is that workers have the right to terminate employment relations, but in practice the employer ends it up so that the termination is always an end to the employer's relationship (Soepomo, 1995).

According to the way it happened, layoffs can be divided into 4 types, namely by termination of employment, layoffs by workers / labor, layoffs by employers and layoffs on the basis of court decisions.

The problem of layoffs and severance pay is crucial, especially for workers / labor because it concerns the future survival of their lives and their families. Layoffs are a fundamental problem, because unbalanced positions of workers / labor have the potential to lead to unilateral layoffs. Therefore, layoffs must be regulated "rigidly and proportionally" in the laws and regulations on how and conditions that can underlie layoffs, as well as mechanisms for terminating and resolving them (Fahrojih, 2016).

Work relations that are held for a certain period of time in an agreed agreement will break up for the sake of law. With the expiration of the validity period, the employment relationship is terminated by itself, meaning that there is no hint of an end statement or a termination period.

The worker / laborer can make a statement of dismissal of himself or resign if there is an urgent reason from the worker / laborer or on his own volition in this case without any indication of coercion from the other party (Suyanto, 2018).

If a company has difficulties that can affect employment, the company can carry out procedures according to the Minister of Manpower and Transmigration Circular Number SE-904 / MEN / PPHI / X / 2004 concerning Prevention of Termination of Mass Employment Relations.

According to the general provisions of Article 1 Number 4 of Act Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, termination of employment disputes is a dispute arising from the lack of conformity of opinion regarding the termination of employment relations carried out by one of the parties. The judicial institution that has the authority to decide on all industrial relations disputes is the industrial relations court.

Efforts to lay off by the court are carried out if previously there have been peace efforts but have not produced an agreement. Before a layoff dispute was submitted to an industrial relations court, a dispute over layoffs must be pursued in a bipartite manner, namely deliberations between workers and employers.

3.3 Protection of the rights of workers / labor in certain time-based employment agreements on permanent work

Labor protection aims to ensure a harmonious working relationship system without pressure from strong parties to the weak parties. For this reason, employers are obliged to implement the safeguard provisions in accordance with the applicable laws and regulations (Wahyudi, 2015).

In the case of the Industrial Relations Court's decision Number 153 / G / 2011 / PHI.SBY there are conflicting arguments between the Plaintiff (worker / laborer) and the defendant (employer) there are conflicting arguments for permanent employment or seasonal work. Employers postulate that the work given to workers / labor is seasonal or depends on ordering orders, but according to the workers / labor' argument that the work employed to them is in the production section and continues.

If it is associated with the regulations governing a Specific Time Work Agreement, namely the Decree of the Minister of Manpower and Transmigration number Kep-100 / Men / VI / 2004 of 2004 concerning Certain Time Work Agreements that the type and nature of work are permitted to use work agreements at a certain time namely :

- a. Work that is completed once or while the nature of the settlement is a maximum of three years;
- b. Seasonal work;
- c. Jobs related to new products, new activities or additional products that are still in trial or exploration;
- d. Daily / freelance work.

Seeing this provision, work in the production section is clearly included, including ongoing work, while the employers' argument states that the work employed is seasonal. According to the author, this is inappropriate because it is in accordance with Article 4 of the Decree of the Minister of Manpower and Transmigration Number Kep-100 / Men / VI / 2004 of 2004 concerning Certain Time Work Agreements that Work that is seasonal is work that depends on the season or weather.

Based on the explanation above, the employment agreement between the employer and the worker constitutes an Unspecified Time Work Agreement (PKWTT) and the work agreement is not in accordance with the laws and regulations so that if there is a Termination of Employment (PHK) then the worker / laborer has the right in accordance with Article 169 paragraph (2) of Law Number 13 of 2003 concerning Manpower namely severance pay 2 (two) times the provisions of Article 162 paragraph (2) of Law Number 13 Year 2003 concerning Employment, money for working period 1 (one) times the provisions of Article 156 paragraph (3) Law Number 13 of 2003 concerning Manpower and change of rights money in accordance with the provisions of Article 156 paragraph (4) of Law Number 13 Year 2003 concerning Labor.

4. Conclusion

1. Termination of employment (PHK) can be distinguished into legal termination of employment, layoffs by

workers, layoffs by employers / employers and layoffs by courts. Legal layoffs occur because of the completion of the contract period that both parties have agreed to insofar as the contract does not conflict with the laws and regulations. Workers' layoffs occur when the worker / laborer resigns for certain reasons and without coercion from any party. Termination of employment by an employer is carried out if a company has difficulties that can affect employment, but the procedure for layoffs must be adjusted to the laws and regulations. Whereas the termination of employment by the court is an industrial relations court if there is a discrepancy in terminating the employment relationship by one of the parties.

2. In the case of a certain time work agreement that is not in accordance with the provisions, the work agreement of a certain time changes to an indefinite time employment agreement since the existence of a work relationship. Work agreement that is not in accordance with the laws and regulations if there is a Termination of Employment (PHK) then the worker / laborer has the right in accordance with Article 169 paragraph (2) of Law Number 13 of 2003 concerning Labor.

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