Wages Suspension of Workers During the Process of Termination: Legal Review of Indonesian Law Concerning Job Creation

Aloysius Uwiyono
Faculty of Law, Universitas Indonesia.

Willy Farianto
Faculty of Law, Universitas Indonesia.

Received October 08, 2021; Accepted December 25, 2021
ISSN: 1735-188X

Abstract

The issuance of the Supreme Court Circular No. 3 of 2015 is an important reference in understanding the application of the timing of payment of suspension wages or processing wages. In practice, the Circular Letter of The Supreme Court is often confronted with the Constitutional Court's decision. The debate about the legal position of the Circular Letter is often questioned, so that the decisions of the Court of Justice (Judex Facticie) and the Decision of Cassation (Judex Juris) are the answers in the debate, in which many decisions of judex factie and judex juris in deciding cases are based on the Circular of the Supreme Court. This study attempts to analyze the legal understanding of Article 157A of Job Creation Law and its legal relation to the Constitutional Court's decision Number 37/PUU-IX/2011 and Circular Letter. 3 of 2015 as well as the application of the process wage law before the promulgation of Job Creation Law and its implementing regulations and how it will be implemented in the future. The results show that after the issuance of Circular Letter Number 3 of 2015, the view of the Supreme Court regarding the process fee has become uniform, namely paying the processing fee for 6 (six) months. The consistency of the opinion of the Supreme Court after the Circular Letter No. 3 of 2015 is a legal stance that has become jurisprudence in the Supreme Court. So, it is appropriate for the judges of the Industrial Relations Court in deciding industrial relations dispute cases to follow the jurisprudence. By understanding the application of the judge's law, in the future the application of article 157 A of Job Creation Law regarding the obligation of employers to pay wages and other rights for workers who are being suspended because the process of resolving layoff disputes will still be the same as referring to the previous decision.

Keywords

Legal Review, Workers' Right, Industrial Relations, Job Creation Law.
Introduction

Job Creation Law which was promulgated on November 2, 2020, especially the employment cluster, mostly delegates to the central government to regulate further through government regulations. Therefore, government regulations Number 34, 35 and 36 of 2021 were issued which will take effect on February 2, 2021. Changes, additions and deletions of the Employment Law provisions in the Job Creation Law are a trigger for industrial relations actors to try to interpret the provisions stipulated in the Job Creation Law. labor clusters and their implementing regulations from their respective perspectives and interests, so a deep understanding of the law is needed to avoid or resolve industrial relations disputes (Mulyadi & Subroto, 2011; Farianto, 2019; Kasim et al., 2020). One example that can be exemplified is the provisions of Article 155 of the Employment Law which regulates the legal obligations of employers and workers during disputes and wages and other rights that must be paid while the workers are suspended (Farianto et al., 2018). Since the beginning of the Employment Law was enacted, this provision has given rise to different interpretations regarding the period of payment of wages and other rights for suspended workers (Flambonita & Budiono, 2019; Mudhoffir, & Hadiz, 2021). As a result, after a judicial review, the decision of the Constitutional Court No. 37/PUU-IX/2011, regarding the application for Judicial Review of Law No. 13 of 2003 concerning Manpower against the 1945 Constitution, dated September 19, 2011, stated the phrase "not yet determined" Article 155 paragraph (2) Employment Law is conditionally contradictory to the 1945 Constitution, so it must be interpreted that wages and other rights are paid until the decision has permanent legal force (Mulyata, 2015; Gressella & Yurikosari, 2019; Hamid, 2019; Perdana, 2021). The issue of implementing the Constitutional Court's decision arises because in practice, disputes over rights and layoffs will have permanent legal force, requiring at least 1 year 6 months to 2 years, starting from the bipartite, tripartite, PHI and Supreme Court (cassation). In Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes (UU PPHI) the time for dispute resolution has been set at 30 working days for bipartite and tripartite levels, 50 working days for PHI and 30 working days for Supreme Court (cassation).

Responding to the implementation of the suspension fee for the Constitutional Court's Decision Number 37/PUU-IX/2011, the Supreme Court issued Circular Letter Number 3 of 2015 concerning the Enforcement of the Formula for the Results of the 2015 Supreme Court Plenary Meeting as a Guide to the Implementation of Duties for the Court (Circular Letter No. 3 of 2015). In Point B regarding the Legal Formulation of the Civil Chamber number 2 of the Civil Code, it is specifically mentioned regarding serious errors and processing fees in the Industrial Relations Court (PHI), which is then stated that “after the
Constitutional Court's Decision Number 37/PUU-IX/2011, dated September 19, 2011 related to processing wages, the contents of the verdict are punishing paying process wages for 6 months. The excess time in the PHI process as referred to in Law Number 2 of 2004 concerning Settlement of Industrial Relations disputes is no longer the responsibility of the Parties.”

The issuance of circular letter no. 3 of 2015 is an important reference in understanding the application of the timing of payment of suspension wages or processing wages. In practice, the Circular Letter is often confronted with the Constitutional Court's decision (Rohanawati & Wicaksono, 2018; Rahim, 2020; Farza et al, 2019). The debate about the legal position of the Circular Letter is often questioned, so that the decisions of the Court of Appeal (Judex Factie) and the Decision of Cassation (Judex Juris) are the answers in the debate, in which many decisions of the judex factie and judex juris in deciding cases are based on the Circular Letter. Currently Article 155 of the Employment Law has been abolished by the Job Creation Law, and re-arranged in Article 157 A of the Job Creation Law. Thus, it is necessary to conduct a legal review of the process wages as referred to in Article 157 A Job Creation Law.

Problems

How is the legal understanding of Article 157A Job Creation Law and its legal relation with the Constitutional Court's decision Number 37/PUU-IX/2011 and Circular Letter. 3 of 2015. How is the application of the process wage law before the promulgation of Job Creation Law and its implementing regulations and how it will be implemented in the future?

Results

Based on the provisions of Article 157A paragraph (1) and the explanation of Job Creation Law, it is understood that as long as the company and workers/laborers are in the process of settling industrial relations disputes, they must continue to carry out their obligations. Before further review, it must be understood that the process of settling industrial relations disputes is regulated in Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement (UU PPHI). There are 4 types of disputes regulated in the PPHI Law, namely Rights Disputes, Layoff Disputes, Interest Disputes and Disputes between labor unions within one company.

The process of settling industrial relations disputes based on the PPHI Law begins with bipartite, tripartite (mediation/conciliation/arbitration) negotiations and the Industrial
Relations Court. Two types of disputes, namely conflicts of interest and disputes between trade unions in one company, the investigation is only up to the PHI level, there is no legal remedy for both disputes. Disputes over rights and layoffs can take legal action against cassation in the case of Judex factie which is not authorized or exceeds the limits of authority; misapply or violate any applicable law; and failing to fulfill the conditions required by the laws and regulations which threaten the negligence with the cancellation of the decision in question (Asyhadie, 2007; Widodo & Belgradoputra, 2019).

In practice, the judex factie has actually considered and examined the case carefully, but always the party who feels defeated takes cassation. Cassation efforts are often not carried out with good intentions to test judex factie decisions, but are used for reasons to keep getting wages and other rights, using company facilities, etc. This is not only done by workers, sometimes it is found that employers take legal action against cassation with the intention of delaying the payment of compensation for layoffs (Hoesin, 2019; Fahrojih, 2016). By understanding the intention of the cassation legal action and the industrial relations dispute settlement process, the company can conduct an analysis/business judgment regarding the background of the cassation legal action being carried out, whether with good intentions or not (Budiono, 2009; Sembiring et al., 2020). By understanding the background of the legal efforts carried out by workers and employers, they can make risk mitigation while waiting for the cassation decision. It often happens that in the cassation process, workers make political efforts by reporting layoffs by the company to the local and central legislatures (DPR or DPRD), often companies are reported to The National Commission on Human Rights (Komnas HAM) or the Ombudsman or to the labor inspector.

Furthermore, it is necessary to understand the obligations of employers and workers, where based on the provisions of Article 50 and Article 1 number 15 of the Employment Law, the working relationship between employers and workers is based on a work agreement, which has elements of work, wages and orders. These three elements must be present in the employment agreement, and can simply be used to understand the rights and obligations of employers and workers arising from an employment relationship (Trisnamansyah, 2017; Ramadhan & Diamantina, 2020). In this section, it will be analyzed with the elements of work which Uwiyono et al. (2014) defines as an achievement that must be carried out by the worker himself, so that it can be understood as the obligation of the worker and the right of the entrepreneur to obtain the results of the work carried out by the worker (Asikin, 2010; Sutedi, 2009). Employers in this case also have an obligation to provide work for workers who have an employment relationship and
workers are also entitled to do the work that has been agreed upon (Sihombing & Hamid, 2020).

In certain circumstances the rights and obligations related to the elements of work may be deviated by employers and workers. For example, workers are allowed not to work in the event of illness, female workers menstruate on the first and second day, perform worship according to their religious orders, take leave and carry out association activities, etc. (vide Article 93 paragraph (2) Employment Law). Employers are permitted by Employment Law and Job Creation Law not to provide employment to workers when the employer relieves workers of their work or is suspended. Article 155 of the Employment Law before it was deleted had regulated this matter and currently the suspension is regulated in article 157A of the Job Creation Law. Basically, Article 157A paragraph (1) Job Creation Law is identical to Article 155 paragraph (2) Employment Law which states that "as long as the decision of the industrial relations dispute settlement institution has not been determined, both the entrepreneur and the worker/labourer must continue to carry out all their obligations."

The Constitutional Court in its decision Number 37/PUU-IX/2011 interprets this obligation as an obligation to pay processing fees/suspension wages. In practice, suspensions are not only for waiting for the industrial relations dispute settlement process but also for the investigation process when alleged violations by workers are found or for the process of avoiding layoffs when financial problems occur in the company. Provisions regarding suspension can also be agreed upon by employers and trade unions in the CLA or regulated in company regulations.

In the event that the employer prevents workers from carrying out their work by the Employment Law and Job Creation Law, it is declared a criminal offense with a minimum penalty of 1 year and a maximum of 4 years with a maximum fine of IDR 400 million. As for workers who do not carry out their obligations or do not work, according to Article 154A paragraph (1) letter 'j' Job Creation Law and Article 51 PP 35/2021, the actions of workers are referred to as reasons for layoffs due to absenteeism with the right to compensation for layoffs in the form of compensation for rights and money separate.

**Discussion**

Provisions regarding the cause of the termination of the employment agreement due to a court decision which has permanent legal force are interesting as the basis for the analysis of the termination of the obligations of the entrepreneur and worker. Starting from Article
1 number 25 of the Employment Law which states that the termination of the employment relationship is the termination of the employment relationship due to a certain matter which results in the termination of the rights and obligations between the worker and the entrepreneur. Layoffs can basically happen by law or by agreement or by a court decision. This means that everything stated in the provisions of Article 61 paragraph (1) Job Creation Law is the cause or reason for the layoff. The cause of the termination of the work agreement due to the death of the worker, the expiration of the term of the work agreement and the completion of a particular job can be qualified as layoffs by law. Whereas what is meant by mutual agreement termination is termination of employment which is the result of the meeting of the desires of employers and workers to carry out layoffs, in practice it can occur due to the offer of an attractive layoff package or because of the desire of both parties to end the dispute on termination of employment.

The legal reasons for layoffs by legislation are divided into two, namely layoffs at the initiation of entrepreneurs and at the initiation of workers. Article 154A of Job Creation Law and Article 36 of PP 35/2021 stipulate the reasons for layoffs by employers and the reasons for layoffs at the initiation of workers are regulated in the provisions of Article 154A paragraph (1) letter 'g' Job Creation Law and Article 36 letter 'g' Gov. Reg No. 35/2021. Disputes for termination of employment are disputes that arise because of the inconsistency of opinion regarding the termination of the employment relationship by one of the parties (Article 1 paragraph (4) of the PPHI Law). The highest law on dismissal disputes is basically an agreement, meaning that at every level of the process of resolving a dismissal dispute, it can end with an agreement between the employer and the worker, either at the bipartite, tripartite, PHI or Cassation level. The bipartite level is essentially a space for employers and workers/labor unions to find a way out of disputes that occur without intervention from other parties. The PPHI Law provides 30 working days for the dispute resolution process at the bipartite level. In practice, if bipartite is carried out with a clear company attitude, the time required is only about 10 working days. The tripartite level for dismissal disputes is only possible through mediation or conciliation. The practice of mediation is more often chosen by employers and workers who fail to do bipartite. Recommendations which are the product of the mediator in practice are interpreted more as a ticket to enter the settlement stage through the PHI. This is caused by various factors such as the subjectivity of the mediator, employers and workers and dissatisfaction with the mediator's recommendation. The settlement time at the mediation level by the PPHI Law is set for 30 working days. Employers or workers who refuse the recommendation will file a claim for dismissal to the industrial relations court which covers the legal area where the worker works. At the PHI the legal process is carried out
by examining claims, documentary evidence and witnesses by a panel of judges consisting of career judges and ad hoc judges from representatives of employers' associations and trade unions. The PPHI Law stipulates a completion time of 50 working days. The decision of the PHI is very dependent on the results of the examination in the trial. In general, the decisions of the PHI are to declare the employment relationship to end or to employ workers in their original positions and positions.

The implementation of the obligation to pay suspension wages/process wages was felt after the issuance of Circular Letter No. 3 of 2015. In many Supreme Court decisions to correct the Judex Factie decision regarding the payment of suspension wages/process wages, here are some quotes from Judex Juris legal considerations of the Supreme Court's decision. Based on these decisions of the Supreme Court, it can be understood that the opinion of the Supreme Court regarding the suspension fee/process wages in the settlement of dismissal disputes is a maximum of 6 months, in accordance with the Circular Letter Number 3 of 2015. The Supreme Court often improves the decision of the Industrial Relations Court which decides that the processing fee is more than 6 months to a maximum of only 6 months. In the event that the Industrial Relations Court has decided on the processing fee for 6 months, the Supreme Court will uphold the decision of the Industrial Relations Court as seen in decision no. 1436 K/Pdt.Sus-PHI/2017.

The Supreme Court's legal considerations in its decision are based on Circular Letter Number 3 of 2015 which states that 'regarding process fees, the content of the decision is to punish employers to pay processing fees for 6 (six) months'. Prior to the issuance of Circular Letter No. 3 of 2015, the Supreme Court had a difference of opinion regarding the payment of process wages. However, the construction of a 6-month wage process has already begun to be seen in several Supreme Court decisions prior to 2015, for example decision No. 336 K/Pdt.Sus/2009 and decision no. 158 K/Pdt.Sus/2007. In both decisions, the Supreme Court is of the opinion that the decision of the Industrial Relations Court regarding the processing fee must be corrected with legal considerations that the processing fee received by workers should only be 6 months.

**Conclusion**

Based on the description above, it can be understood that there are 4 types of industrial relations disputes, but only three are disputes between employers and workers (disputes on rights, layoffs and interests). Thus, in the event of a dispute, the employer is obliged to continue to allow workers to do their work and workers are obliged to continue working. Employers are excluded from suspending workers or workers who are sick, carrying out
religious activities, association activities, etc. Thus Article 157A paragraph (1) Job Creation Law concerning the implementation of obligations by employers can be deviated by legal actions in the form of suspension as regulated in Article 155 paragraph (3) Employment Law in conjunction with 157A paragraph (2) Job Creation Law, while the obligation of workers to work can be deviated based on Article 93 paragraph (2) of the Employment Law. The obligation of an entrepreneur who performs a suspension is the obligation to pay wages and other rights. This is different from the obligations of entrepreneurs who dispute rights or interests, because their obligations are work.

After the issuance of Circular Letter Number 3 of 2015, the view of the Supreme Court regarding the process fee has become uniform, namely paying the processing fee for 6 (six) months. The consistency of the opinion of the Supreme Court after the Circular Letter No. 3 of 2015 is a legal stance that has become jurisprudence in the Supreme Court. So, it is appropriate for the judges of the Industrial Relations Court in deciding industrial relations dispute cases to follow the jurisprudence. By understanding the application of the judge's law, in the future the application of article 157 A Job Creation Law regarding the obligation of employers to pay wages and other rights for workers who are being suspended because the process of resolving layoff disputes will still be the same as referring to the previous decision.

References


