

The Inconsistencies in Procedural Law Regarding the Implementation of Collective Agreements in Termination of Employment in Indonesia

¹Salahuddin Gaffar, ²Hamdan Zoelva, ³Agus Mulya Karsona, ⁴Farid Wajdi & ⁵Heru Widodo, ^{1,2} & ⁵ Faculty of Law, Universitas Islam Asyafiyah, Jakarta Indonesia, ³Faculty of Law, Universitas of Padjajaran, Bandung, Indonesia, ⁴ Faculty of Law, Universitas Muhammadiyah Sumatera Utara, Medan-Indonesia, Corresponding Author Email: salgafar.123@gmail.com

Conflicts over termination of employment are one of the issues that frequently occur in work relations. The issuance of Law Number 2 of 2004 provides an alternative to dispute resolution throughout court (non-litigation) channels. In this law, dispute resolution must be resolved using deliberation to reach a consensus through bipartite negotiations. If a deal is reached, it is detailed in a legally-binding collective agreement that applies to both parties. But in reality, collective agreements are frequently rejected, and carrying them out is a difficult task. The aim of this study is to gain a general understanding of the issues and potential remedies relating to inconsistent procedural law regarding the use of collective agreements in terminating employment in Indonesia. To conduct the research, a normative juridical research method was used. This article concludes that the court continues to accept claims against employment termination cases that have been resolved through cooperative agreements and have also obtained proof of registration certificates, which causes the procedural rule regarding the performance of collective contracts in employment termination to be inconsistent. Then, neither party is acting in good faith to implement the established collective bargaining agreement. Besides, it is challenging to decide on the execution of a cooperative agreement from the court. Therefore, a new procedural law concept is needed to guarantee the implementation of collective agreements that can provide legal certainty and protection of rights for the parties.

Keywords: Bipartite, Collective Agreement, and Termination of Employment

INTRODUCTION

For humans, life and work are two sides of the same coin; in order to survive, people must work. As social beings, humans (zoon politicon) have a variety of requirements, such as those for clothes, food, and shelter. Humans must work in order to meet these many requirements since they can make money from their jobs. One has two options for employment: starting their own firm and working for others. This undoubtedly establishes a legal relationship between employees and employers, known as industrial relations. An industrial relation is a framework of interactions between players engaged in the production of goods or services, including employers, employees, and the government, based on the values of Pancasila and the 1945 Constitution (Kunarti, 2009).

Creating harmonious industrial relations is not easy. Instead of creating peaceful industrial relations, in the sense of being calm in doing work and calmly doing business, the tension often arises in the implementation of these industrial relations. Industrial relations conflicts brought on by numerous competing interests frequently result from tensions between employees and employers. A conflict of interest occurs when one person harms another person in carrying out or pursuing his claim (Mertokusumo, 2009). Therefore, conflicts will undoubtedly upset and damage the equilibrium that is needed to build a safe, secure, and ordered environment that is a guarantee of his existence. The balance of the human order in a disturbed society must be restored to its original state (*restituto in integrum*) (Charda, 2017).

As far as is currently known, disputes in the sphere of industrial relations can arise over predefined rights or established working conditions, whether they are found in work agreements, corporate regulations, collective labor agreements, or statutory regulations. Whereas in Law Number 2 of 2004, there are 4 (four) types of disputes: disputes over rights, interests, employment termination, and conflicts between labour unions within the company. Laws and regulations governing the settlement of industrial relations dispute through a long road led to the birth of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes. According to this law, disputes can be resolved by bipartite, mediation, conciliation, arbitration, and labor and industrial relations courts.

Settlement of industrial relations disputes in this law is obliged to make efforts to settle disputes by way of deliberation to reach a consensus as stipulated in Article 3 of Law Number 2 of 2004 called a bipartite settlement effort. If there is an agreement between the two parties involved in the process, the contract is laid down in a collective agreement that is legally obligatory for both parties in accordance with the *pacta sunt servanda* principle. Naturally, these laws are anticipated to give parties to industrial relations issues with legal certainty and protection of their rights, particularly in discussions around employment termination in Indonesia. However, in practice, dispute resolution that takes the shape of a collective agreement does not give the parties legal clarity or protection of their rights, particularly in conflicts involving termination of employment, which is the focus of this study.

METHODOLOGY

This research is a normative juridical descriptive study to describe issues linked to inconsistent procedural law surrounding the use of collective agreements in terminating employment in Indonesia, for further investigation. This research was conducted using library data (secondary data research) in primary legal materials, secondary standard materials, and traditional tertiary materials. The legislative approach is used by investigating all laws and regulations connected to the legal issues under consideration.

RESULTS

The development of human resources is complex and interconnected in many ways. This linkage is with the interests of the workforce during, before and after the employment period and the interests of employers, government, and society. For this reason, a complete and comprehensive regulation is required that includes human resources, enhancing worker productivity and competitiveness, employment placement services, and encouraging industrial relations. As a result, the rule of labor law has evolved from a private law principle to a public law gift, because the state is engaged in regulating the community's social life, including employment. One of the manifestations of human resources development is labour or employment laws (Utami, 2013).

In line with the above statement, Syafa'at (2008) explained that labor/employment law began as an ordinary civil law that departed from the relationship between parties who have a job (entrepreneur) but cannot do their work but require other personnel, namely personnel from the labor/worker side, to carry out their work. Like the principle attached to the agreement, the focus of freedom of contract, the initial work agreement is free. This implies that each party is free to decide the terms of the arrangement in accordance with their free choice. It is a truth that the workers in its development are persons from weaker economic backgrounds. Due to the fragile state of the economy, businesspeople were in a precarious position when it came to negotiating the terms of the agreement.

Beginning with the disparity in the position of the entrepreneur and the worker or laborer, the government should be involved in ensuring that both sides, employers and workers/laborers, are not hurt. The involvement of the government is represented through a set of provisions that are converted into legislative rules. As a result of this circumstance, labor legislation or labor law exists, with the goal of eliminating unequal relationships between employers and workers/labourers (Agusmindah, 2011).

Labour law is a branch of applicable law that serves as the foundation for regulating the working relationship between a worker and an entrepreneur in terms of life and work procedures that are directly related to the working relationship. Meanwhile, according to the definition, labor law encompasses all legal requirements pertaining to labor before, during, or after a working relationship (Kunarti, 2009). In addition, Soepomo (2003) defined labor law as

a system of rules, both written and unwritten, pertaining to an instance in which someone works for another person and receives compensation. Labour law develops along with economic development and aims to provide a balance of relations, interests, rights and obligations between employers and workers (Blanpain, 2006).

Workers and employers both face a number of issues in their working relationships. Conflicts might arise because there are so many different types of issues that cannot always be settled quickly using trial-and-error solutions that are acceptable to both disputing parties. Some of the driving factors for conflict are, among others, differences in opinions and views, differences in objectives, incompatibility of ways of achieving goals, negative influence from other parties, competition, the desire of one party to convey his willingness excessively, and lack of understanding of a statutory regulation invitation (Yetniwati & Meriyarni, 2014). Disputes between employees and employers can develop both because of violations of the law and because they are not violations of the law (Salam, 2009).

According to the rules of laws and regulations, the types of difficulties that develop in work relations, including concerns with disputes over rights, conflicts over interests, disputes over job termination, and disputes between labor unions in one company. The issue of termination of employment is one of the many issues that frequently come up and is the subject of this study. This can be seen from the data submitted by the Indonesian Trade Union Association (ASPEK), which states that from the beginning of 2019 to August 2019 there have been terminations of 3,000 (three thousand) workers (Kontan, 2020). Furthermore, in 2020, based on the results of a survey by Saiful Mujani Research and Consulting (SMRC), it was stated that around 29 million workers experienced layoffs (Liputan6, 2020).

The normative guidelines for resolving these issues have gone through various stages with all the dynamics involved. The first phase began with the issuance of Law Number 22 of 1957 concerning the Settlement of Labor Disputes, specifically regarding the termination of employment as regulated in Law Number 12 of 1964 concerning Termination of Employment in Private Companies. The process is lengthy, beginning with P4D (Regional Labor Dispute Settlement Committee) and progressing to P4P (Central Labor Dispute Settlement Committee) (Tobing, 2018). Assume the parties are unable to accept the P4P decision. In that situation, they can cancel the decision through the State Administrative Court (PTUN) and appeal to the Supreme Court of the Republic of Indonesia (Khakim, 2019).

The prolonged process of resolving industrial relations problems was created by a process that was not simple, took a long time, was cheap, and included authorities from various institutions, demonstrating the poor content of labor procedural legislation in Indonesia at the time. In light of the current situation, the court cannot accept legal clarity and justice as unavoidable criteria for the rule of law (Tobing, 2018). The birth of Law Number 13 of 2003 concerning manpower also does not provide a comprehensive guarantee. Due to its position as a source of material law, the law only controls in general, and it has not been able to give legal certainty and justice in specific industrial relations problems.

The law should provide certainty, justice and benefit to the community (Rato, 2010). The objective of law which is closer to reality is legal certainty and expediency. The standard confidence derived from dogmatic legal teachings is founded on the positivist school of thought in direction, which views the rule as autonomous and independent. According to this school of thought, the goal of the law is nothing more than to ensure the implementation of universal laws. The general nature of legal rules proves that law does not aim at realizing justice and benefits, but solely for certainty (Ridwan, 1999). This is relevant with Mertokusumo (1993) opinion, which asserts that the objective of the law is to produce legal certainty in order to maintain social order.

According to Jan M. Otto, as quoted by Sidharta (2008), legal certainty in particular cases necessitates the provision of transparent or clear, consistent, and accessible standard regulations established by the sovereign power. For this reason, as stated by Jan M. Otto, it demonstrates that legal certainty can be attained if the legal framework complies with societal demands. Standard rules that can provide legal certainty are born from and reflect the culture of the country (Surya, 2018). Therefore, strong and clear norms in the form of law can achieve legal certainty. In settling disputes or conflicts in society, the law must be firm and open so that anybody may comprehend what a legal provision means.

As a respond to the problems of legal certainty and justice in resolving industrial relations disputes, finally the issuance of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The adoption of this law is expected to provide the parties with legal clarity. Under this law, dispute resolution between workers and employers can be pursued through court (litigation) and outside court (non-litigation). Out-of-court dispute resolution was preceded by dissatisfaction with the dispute resolution process through court, which took a relatively long time and required a lot of money. Furthermore, the parties frequently disagree with the court's rulings, and some parties even feel defeated (Kusmayanti, Karsona, & Fakhriah, 2020).

In accordance with Law Number 2 of 2004, The following methods of out-of-court resolution can be used to address industrial relations disputes:

Bipartite Negotiations

Bipartite dispute resolution is the practice of resolving disagreements through discussion and consensus-building between employees and employers alone, without the involvement of third parties. There are 4 (four) categories of settlement scope available through bipartite negotiations: issues of rights, issues of interest, problems with termination of employment, and disputes between trade unions and other unions in the same company. Following the requirements of Law Number 2 of 2004, the following are the steps of dispute settlement through bipartite negotiations:

- a) If the bipartite negotiations reach an agreement, an agreement will be agreed upon by the parties;

- b) The agreement must be registered at the local court;
- c) The agreement will be made a proof of registration deed;
- d) If the agreement that has been registered is not obeyed by one of the parties, then the injured party can submit a request for execution to the local court to obtain a decision for performance; and
- e) If within 30 working days one of the parties refuses to negotiate or has negotiated but does not reach an agreement, the bipartite is considered a failure.

Meditiation

Black Law Dictionary (Garner, 2009) defines mediation as "A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution". According to this definition, the resolution of disputes through mediation is carried out by a third party, namely a government employee who has the responsibility and is sufficient to become a mediator in accordance with the Ministerial decree, who is tasked with conducting mediation and is required to provide written recommendations to the parties in question. The following are the stages of mediation according to the provisions of Law Number 2 of 2004:

- a) If an agreement is reached, a deal will be agreed by the parties and witnessed by the mediator who will then be registered with the local court to obtain a proof of registration certificate;
- b) If the agreement that has been registered is not obeyed by one of the parties, the aggrieved party may file a request for execution at the local court to obtain a decision for performance;
- c) If no agreement is reached, the mediator will issue a written recommendation and the parties must provide an answer, and if the parties do not answer, it will be considered as refusal; and
- d) If a recommendation is rejected by one of the parties, one of the parties can continue to resolve the dispute in the local court.

Conciliation

In this approach, industrial relations conflicts are resolved by the conciliator, a person who has satisfied the requirements to perform conciliation responsibilities and is required to give the disputing parties written advice to settle the disagreement without delay. At first appearance, the dispute resolution model through conciliation appears to be comparable to the dispute resolution model through mediation. However, according to Bram (2011), there are differences between the two settlement models. The conciliation mechanism, whether active or inactive, is more concerned with the settlement with a third party's consensual approach. The following is the conciliation procedure according to Law Number 2 of 2004:

- a) The parties submit a written request to the conciliator appointed and agreed upon;
- b) The conciliator is allowed to summon witnesses to attend the hearing to be questioned;
- c) The conciliator must keep all information obtained from anyone;
- d) If there is an agreement, an agreement will be made which is approved by the parties and witnessed by the conciliator who will then be registered in the local court; and

- e) If there is no agreement, then the parties must provide a written answer to the conciliator, both agreeing and rejecting and the party that does not give a response is deemed to have refused.

Arbitration

The settlement of industrial relations disputes through this method is carried out by the arbitrator based on a written agreement between the disputing parties in the arbitration agreement letter as the parties' legal bond (Fuqoha, 2020). Decisions reached through arbitration are final and binding on the parties. According to Law Number 2 of 2004, the procedure for resolving disputes through arbitration is as follows:

- a) The arbitration settlement begins with peaceful efforts;
- b) If peaceful efforts are achieved, the arbitrator is obliged to make a certificate that is approved by the parties, and the certificate is registered at the local court to obtain a certificate of proof of registration;
- c) If the remedy fails, the arbitrator will proceed to the arbitration hearing;
- d) The decision of the arbitral tribunal is determined based on the prevailing laws and regulations, agreement, customs, justice and public interest; and
- e) The arbitration award has permanent legal force and is binding on the disputing parties and is final.

Out of all the alternative dispute resolution methods mentioned above, bipartite settlement is the first step that must be taken by employers, employees, and labor unions in the area of labor disputes (especially issues with the termination of employment) in order to resolve industrial relations disputes by deliberation and reach a consensus (Ridwan & Nurhakim, 2020). Bipartite dispute resolution must be completed within 30 (thirty) working days of when negotiations began. In this bipartite process, if an agreement can be reached that benefits both parties, the arrangement is included into a collective bargaining agreement. The provisions regarding collective agreements in the bipartite settlement are regulated in Article 7 of Law Number 2 of 2004 as follows:

- a) If deliberation can reach a settlement agreement, a collective agreement is signed by the parties;
- b) Collective agreements are binding and become law and must be implemented by the parties;
- c) Collective agreements must be registered by the parties at the industrial relations court at the district court in the territory of the parties have entered into a collective agreement;
- d) Collective agreements that have been registered are given a certificate of proof of collective agreement registration and are an integral part of the cooperative agreement;
- e) If the collective agreement is not carried out by one of the parties, then the injured party can submit a request for execution to the industrial relations court at the district court in the area of the collective agreement registered to get an order of performance; and is domiciled outside the district court where the collective agreement is registered, then the applicant for

commission can submit a request for implementation through the industrial relations court at the district court in the area of domiciled.

- f) If the applicant for execution domicile of the execution applicant to be forwarded to the industrial relations court at the district court which is competent to carry out the execution.

Efforts to settle disputes through bipartite negotiations, which are subsequently poured into the above-mentioned collective agreement, must be evaluated for their effectiveness and their relationship to legal clarity and the preservation of the parties' rights. In practice, collective agreements that have been agreed upon and registered and have executorial legal force are still being sued in court by one of the parties. Ironically, the court allowed the complaint against the collective bargaining agreement and rendered a contrary decision. As was the case in the dispute over the termination of employment between Frigoglass Indonesia Company and Lin Maizar Supriatna, who was questioned by the Bandung Industrial Relations Court. The conflict has been resolved through bipartite negotiations and has obtained a collective agreement that has been registered with the industrial relations court. The result is paradoxical in fact. The trial is being continued by the panel of judges at the Industrial Relations Court until a ruling is issued that differs from the collective bargaining agreement that has been reached.

In addition to the incidents mentioned above, the termination of Hefer Simatupang by Rotaryana Prima Company illustrates other cases of inefficient collective agreements and lack of legal certainty. Hefer Simatupang is a manager at Rotaryana Prima Company was later fired because his men fled with company money. The dispute was resolved using bipartite, both Hefer Simatupang and Rotaryana Prima Company has agreed to end the employment relationship. As compensation, Rotaryana Prima Company must pay severance pay of 160 million rupiahs, and the agreement is written into a collective contract because there was no good faith on the part of Rotaryana Prima Company to carry out the deal's contents, Hefer Simatupang submitted a request for execution to the Central Jakarta District Court. However, the court has yet to issue an executive order (hukumonline, 2008).

In the perspective of contract law in Indonesia as reflected in Article 1338 paragraph (1) of the Civil Code states that every agreement made legally applies as law for those who make it (*pacta sunt servanda*). This means that every legal agreement has the same power as the law (Nuroini, 2015). Collective contracts based on the term agreement should also be binding and apply as law to the parties, as stated by the terms of Article 7 paragraph (5) of Law Number 2 of 2004.

The existence of Law Number 2 of 2004 which requires that a dispute be resolved bipartite. Bipartite negotiations aim to settle disagreements through discussion to reach agreement, therefore this is done to ensure that a settlement won't leave hurt feelings or bad impressions among the parties involved (Suwajdi, 2019). Additionally, this rule is intended to give parties legal clarity and protection, particularly workers who frequently find themselves in a precarious position. But the reality is different. In response to this, Saleh and Mulyadi (2012) revealed that for more than 50 years—since the Old Order, the New Order, and the Reformation



Order—the politics of resolving labor-management conflicts have been unable to produce a legal product that can give workers or laborers legal certainty.

CONCLUSION

The issue of procedural law inconsistencies regarding the implementation of collective agreements in employment termination in Indonesia occurs because the court continues to accept claims against employment termination cases that have been resolved through cooperative agreements and have obtained proof of registration certificates. Then neither party shows any willingness to implement the joint agreement. Furthermore, obtaining a judicial decision on the implementation of a cooperative agreement is difficult. As a result, a new procedural law idea is required to ensure the implementation of collective agreements that can give legal clarity and rights protection for the parties.

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