

Critical Study of the Fulfillment of Employee's Rights Post Employment Termination Due to Unperformance

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Abstract. This research examines the fulfillment of workers' rights after termination of employment based on poor performance or unperformance, and evaluates the suitability of legal considerations in Decision Number 763K/Pdt.sus-PHI/2020 with Indonesian labor regulations. Industrial relations disputes, especially those related to termination of employment, often involve differences of opinion between employers and employees. The results show that the fulfillment of workers' rights after termination of employment must be based on Article 161 Paragraph 1 of Law Number 13 of 2003 concerning Manpower, taking into account poor performance as a violation of workers' obligations. Nevertheless, the process of termination of employment must be carried out carefully in accordance with company regulations and applicable laws. The cassation petitioner, in this case the worker, faced obstacles in the late execution, deviating from the principle of justice. The execution time delayed for nine months should not be in accordance with Article 195 HIR which sets a time limit of 8 days after the verdict is read. The research also noted that the compatibility of legal considerations in Decision No. 763K/Pdt.sus-PHI/2020 with Indonesian legal rules was considered slightly inappropriate. The Supreme Court should be more careful in evaluating termination procedures, given the potential fatalities due to basic errors in this case.

Keywords: *Employee Rights Fulfillment, Post-Termination of Employment, Unperformance.*

Abstrak. Penelitian ini mengkaji pemenuhan hak pekerja pasca pemutusan hubungan kerja berdasarkan kinerja buruk atau unperformance, serta mengevaluasi kesesuaian pertimbangan hukum dalam Putusan Nomor 763K/Pdt.sus-PHI/2020 dengan peraturan ketenagakerjaan Indonesia. Perselisihan hubungan industrial, terutama terkait pemutusan hubungan kerja, sering kali melibatkan perbedaan pendapat antara pengusaha dan pekerja. Hasil penelitian menunjukkan bahwa pemenuhan hak pekerja pasca pemutusan hubungan kerja harus berlandaskan pada Pasal 161 Ayat 1 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, dengan mempertimbangkan kinerja buruk sebagai pelanggaran kewajiban pekerja. Meskipun demikian, proses pemutusan hubungan kerja harus dilakukan dengan hati-hati sesuai dengan peraturan perusahaan dan undang-undang yang berlaku. Pemohon kasasi, dalam hal ini pekerja, menghadapi kendala dalam pelaksanaan eksekusi yang terlambat, melenceng dari prinsip keadilan. Waktu eksekusi yang molor selama sembilan bulan seharusnya tidak sesuai dengan Pasal 195 HIR yang menetapkan batas waktu 8 hari setelah putusan dibacakan. Penelitian juga mencatat bahwa kesesuaian pertimbangan hukum dalam Putusan Nomor 763K/Pdt.sus-PHI/2020 dengan aturan hukum Indonesia dinilai sedikit tidak tepat. Mahkamah Agung seharusnya lebih cermat dalam mengevaluasi prosedur pemutusan hubungan kerja, mengingat potensi fatalitas akibat kesalahan dasar dalam kasus ini.

Kata Kunci: *Iklan, Kesadaran Merek, Le Mineral.*

A. Pendahuluan

Worldometer data reveals that Indonesia holds the fourth position globally in terms of population, boasting a total population of 277.7 million. This leads to a progressively diminishing number of employment prospects for individuals, while simultaneously requiring the community to fulfill its own demands. If this trend persists, it will lead to a significant increase in the poverty rate. Hence, prospects exist to engage in endeavors involving substantial quantities, aiming to foster the well-being of the community at large worldwide. As the embodiment of justice and welfare, the law regulates the things that are needed. In this case, the state is authorized to make a regulation between individuals and legal entities. This regulation is also a protector for both workers and employers, so that later both parties are equally balanced in their rights and obligations. In essence, an employment agreement are just in the same within an agreement. Employment agreement regulated in the Law No. 13/2003 concerning Employment and Law No. 2/2004 concerning Settlement of Employment Dispute. if there is a termination of employment, then the rights and obligations of each party must be fulfilled in accordance with the rules of the agreement that has been mutually agreed upon by both parties. It is possible for there to be divergent points of view regarding this matter if the rights and obligations that are articulated in the agreement are not fulfilled. For example in this paper's object the judge's decision in a case of termination of employment in Decision Number 275/Pdt.Sus-PHI/2019/PN.Bdg, it was stated that there was an error in applying the law according to the Supreme Court with Decision Number 763K/ Pdt.sus-PHI/ 2020. In this case, the Supreme Court revoked the Bandung District Court Decision and partially granted the cassation petition from the cassation petitioner. In the end, At first instance, the defendant filed a counterclaim in which he requested that the court reject the plaintiff's claim and asked the court to order the plaintiff to return to work for the defendant company. Interestingly, the judge granted the counterclaim filed by PT Nusantara Jaya Sentosa and rejected all of the plaintiff's claims. For this reason, the plaintiff filed a legal remedy at the next level, namely cassation. In essence, the Supreme Court tried the case by granting the cassation request and canceling the court's decision at the first level. At first instance, the defendant filed a counterclaim in which he requested that the court reject the plaintiff's claim and asked the court to order the plaintiff to return to work for the defendant company. Interestingly, the judge granted the counterclaim filed by PT Nusantara Jaya Sentosa and rejected all of the plaintiff's claims. For this reason, the plaintiff filed a legal remedy at the next level, namely cassation. In essence, the Supreme Court tried the case by granting the cassation request and canceling the court's decision at the first level.

The Author define numerous primary issues that will be studied later in this paper, starting with the background of the issues previously described, "How are the fulfillment of employment rights after employment termination due to unperformance based on employment law and also What is the basis for the suitability of legal considerations in Decision Number 763K/Pdt.sus-PHI/2020 with the employment law that applied in Indonesia?" This research aims as follows:

1. To understand how the fulfillment of employment rights after employment termination due to unperformance based on employment law;
2. To analyze the basis for the suitability of legal considerations in Decision Number 763K/Pdt.sus-PHI/2020 with the employment law that applied in Indonesia.

B. Metodologi Penelitian

This research uses qualitative descriptive research methods, namely analysis of primary, squander, and tertiary legal materials that are presented in the form of narrative inductive conclusion-taking. In this method will start within analyze the Fulfillment of Employee's rights post employment termination, and then analyze the Supreme Court Decision 763K/ Pdt.sus-PHI/ 2020. In this case along with 763K/ Pdt.sus-PHI/ 2020. In this case Law No. 13/2003 concerning Employment and Law No. 2/2004 concerning Settlement of Employment Dispute.

C. Hasil Penelitian dan Pembahasan

Fullfillment of Employee's Rights Post Employment Termination Due to Unperformance

The Supreme Court granted part of the lawsuit filed by the cassation applicant, this was in the form of punishing the cassation respondent to pay compensation money to the cassation applicant in the amount of Rp 58,951,772, - and declared the termination of employment between the cassation applicant and the cassation respondent since the verdict was read. According to the author, the rights of cassation applicants arising from termination of employment are based on Article 161 paragraph 3. There are several things rejected by the supreme court such as salaries not paid by the respondent as of February 2019, holiday allowances, regarding dwangsom, confiscation of bail, and regarding payment of case costs by the defendant. The author has several opinions regarding the fulfillment of the rights received by the cassation applicant, such as the first thing regarding the payment of wages not paid by the plaintiff as of February 2019. The author argues that the decision of the cassation court does not punish the defendant or cassation respondent because the article used as the basis for calculation in the rights of the plaintiff or cassation applicant is due to Article 93 Paragraph 1 of the Manpower Law which reads "... (1) Wages are not paid if the worker/laborer does not do the work..." As the Supreme Court ruled that this dispute was held, the cassation applicant did not meet the target in his work. However, based on the provisions of Article 155 paragraph (3) of Law Number 13 of 2003 concerning Manpower, because the employee/worker concerned is in the process of termination of employment (PHK), the employer is still obliged to pay wages along with other rights that are usually received by workers/laborers.

However, if you look further at article 161 paragraph 1 of the Manpower Law, the provision to terminate employment by employers because workers violate work agreements must be given more warnings by employers three times with a period of 6 months, while considering whether workers still behave the same or not. This will be discussed further by the author in the next discussion point. Furthermore, the thing that was not granted by the Supreme Court was regarding the dwangsom requested by the cassation applicant in his lawsuit to be paid by the cassation respondent in the amount of Rp 100,000, - or one hundred thousand rupiah a day, every defendant or cassation respondent failed to comply with the contents of the decision. In fact, the application of dwangsom is only possible in rulings whose judgments mention a punishment or an order that is not in the form of a sum of money (*condemnatoir*). Thus, dwangsom cannot be imposed if the principal penalty is in the form of payment. However, it should be noted that the application of forced money in industrial relations cases is not effective, there has been no further detailed regulation by the government regarding the limits or provisions for the use of forced money in industrial relations cases.

Furthermore, the thing that was not granted by the Supreme Court was the application for confiscation of bail in the form of land and buildings that stood on the office of PT. Nusantara Jaya Sentosa lingers on Jalan Soekarno Hatta 289, Bandung City, West Java Province. The author of an opinion with the Supreme Court does not grant this because it is contrary to article 227 HIR. If we look at the essence of the guarantee in the article itself, the purpose is to preserve the right not to create or grant new rights. The current development or status of the case has successfully carried out the execution of the judgment on April 5, 2021. Although previously dated March 23, 2021, an execution reprimand letter was issued with number 08/Pdt.Eks-PHI/2021/PN Bdg. In the author's opinion, if the defendant is given a letter of reprimand regarding execution, it means that the defendant is negligent in fulfilling the content of the decision. Although Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes does not specifically regulate the implementation of PHI decisions, based on Article 57 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes which states that the procedural law applicable to PHI is the civil procedural law applicable to the general judicial environment, except those specifically regulated in the law.

The author further argues that using the guidelines as stated in Article 196 HIR which states that if the defeated party is unwilling or neglects to comply with the contents of the decision peacefully, then the winning party submits a request, either orally, or by letter, to the chief justice of the district court as stated in article 195 then the chief justice must order the

summons of the defeated parties and warn that the current party fulfill the decision within the specified time no later than 8 days. Thus, the implementation of the fulfillment of the rights of the cassation applicant or plaintiff should be carried out 8 (eight) days after the verdict is read, which means that if the judgment is read on July 16, 2020, then there should be an execution on July 22, 2020. However, in reality, the execution is only carried out after the execution reprimand and the distance between the date of execution and the date the verdict is read is too far. According to the author, in this case there are two factors, namely, first, the defendant was indeed negligent to the judgment he should obey and the second is the government's attitude that does not care about the progress of the execution of the judgment. There should be further regulations so that later the execution in industrial relations cases is more orderly which is expected to provide justice to the parties concerned.

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The essence of justice itself in a decision according to the author is not just placing who is entitled and not entitled. However, it is necessary to pay deep attention to how the basis for the occurrence of a case or problem also has a relationship with the consequences of the problem, which later there are consequences that must be met and how to implement these consequences.

Suitability of legal considerations in Decision Number 763K/Pdt.sus- PHI/2020 with the employment law that applied in Indonesia

The Supreme Court gave several legal considerations in Decision Number 763K/Pdt.sus-PHI/2020, namely the first regarding the dispute that occurred between the cassation applicant and the cassation respondent not related to Article 153 of Law Number 13 of 2003 concerning employment in the matter of mandatory reemployment of workers (cassation applicant). The author lacks one opinion with no relation to the reemployment of the cassation applicant because, the reason for the termination of employment carried out by the defendant was due to poor performance. In the criteria stated in article 153 paragraph 1 of the Manpower Law, poor performance is not included in these criteria.

However, it is also necessary to pay attention to the processes that have been passed by the parties in this case, as the author argued in the previous point that justice is not necessarily the result of a case in deciding a case but also needs to be seen how the process is in it so that justice can be achieved. Then the author debates by questioning why the Supreme Court did not consider whether or not the termination of the relationship was legal. Before looking at the workers' right to termination of the relationship, it should be seen how the termination of employment is done, whether it is in accordance with the procedure or not. Not letting go of the author's respect for the Judges of the Supreme Court, the author argues that there are indications of misinterpretation in the first-instance decision issued by the Bandung Industrial Relations Court by the Supreme Court regarding termination of employment. From the plaintiff's statement in his petition, said that this termination of employment was carried out orally and further refuted by the defendant on his exception by stating that he had never terminated employment. Then added the defendant's statement by still paying the other plaintiff's rights

regarding the payment of the plaintiff's employment BPJS. Although the defendant did not dispute the non-payment of wages by the defendant in the plaintiff's petition.

According to the author, it is natural if the defendant does not pay the plaintiff's wages on the basis of Article 93 paragraph 1 of the Manpower Law which states that wages are not paid if workers / laborers do not do work. Furthermore, regarding the unperformance or poor performance of the cassation applicant. The performance of cassation applicants who did not meet the target was in the period December 2017 to May 2018 the sales target of 36 units was only achieved 3 units, the period June 2018 to 11 November 2018 the sales target of 24 units was only achieved 6 units and the period December 2018 to February 2019 the sales target was 6 units, sales were 0 (nil). The opinion of the Supreme Court regarding the performance of the plaintiff on which the dispute occurred is correct. According to the author, in addition to looking at the violation of the existing agreement on the employment agreement regarding the target of the Supreme Court also considers the performance of the plaintiff.

If we look further in Article 1 of the Manpower Law, company regulations are regulations made in writing by employers that contain the terms of work conditions and company rules. Therefore, the plaintiff should comply with the conditions of employment applicable to the company and if it violates, in general, violations of company regulations should have consequences as a result with provisions that do not violate applicable laws and regulations. If you look at other knowledge clusters, namely employee performance, then there should be consideration about why the cassation applicant or plaintiff cannot meet his work target.

Thus, in quantity, the cassation applicant did not meet his work target, namely by not being able to sell the targeted unit. This is related to the quality aspect, where cassation applicants can also be said to be less qualified. Regarding the effectiveness of the performance of the cassation applicant, it can also be said that it is not optimal, it should be with the period given by the defendant can be a reference for the plaintiff to meet the target (the period given by the defendant is also not short). Although there should be further consideration as to what factors caused the cassation applicant to be unable to meet the target. The fulfillment of workers' rights after the termination of employment relations is the obligation of an employer or employer who employs them. Precisely this has been regulated in Article 156 paragraph 1 of Law Number 3 of 2003 concerning Manpower. In the case of termination of workers due to poor performance workers, workers can be said to have poor performance derived from the company's assessment or the company's work evaluation.

The company's assessment standard in assessing its employees depends on company regulations, regulated in article 161 of Law Number 3 of 2003 if workers violate the provisions stipulated in the employment agreement, the company can terminate employment relations provided that workers must be given warning letters three times in a row. If in the end termination of employment is carried out, the worker is entitled to severance pay equal to 1 time each of the severance provisions, work award money, and compensation money in accordance with Article 156 paragraph (4). Furthermore, the opinion of the supreme court regarding such performance according to the statement letter must resign, cannot and is legally justified, because in accordance with the provisions of Law Number 13 of 2003 concerning Manpower, resigning must meet the provisions of Article 162 or the qualification of resigning meets the provisions of Article 168, so the statement letter is contrary to the provisions of the law so it must be set aside. After further review based on Law Number 13 of 2003 concerning resignation regulated in Article 162, namely paragraph (1) explains that workers who resign still have rights according to the provisions in Article 156 paragraph (4). Then the resignation procedure is regulated in Article 162 paragraph (3) and the qualification of workers declared to resign other than of their own volition is only regulated in Article 168, namely those who can be qualified as resignation are workers who have absent work as stipulated in Article 168 paragraph (1). The author shares an opinion with the Supreme Court, in addition to this matter, the author also wants to add about the employment agreement.

Employment relations originate from employment agreements, agreements made generally must be in accordance with applicable principles, one of which is the principle of

freedom of contract. The principle of freedom of contract itself means that every society has the right to make contracts in accordance with its needs provided that it does not violate the rules of norms and decency. In other words, the making of an agreement cannot be made if the content or quality of the agreement itself has no weight. The same goes for employment agreements. The employment agreement must contain at least an element of work, an element of order, an element of wages, and an element of time. As part of the agreement in general, the work agreement must meet the requirements for the validity of the agreement as stipulated in Article 1320 of the Civil Code and also in Article 1 number 14 Jo Article 52 paragraph 1 of Law Number 13 of 2003 concerning Manpower, the definition of an employment agreement is an agreement between workers / laborers and employers or employers containing conditions of work, rights and obligations of the parties.

Furthermore, the Supreme Court held that the use of section 161 as a basis for the fulfillment of the plaintiff's rights was appropriate. Although the author argues, there is a lack of fulfillment of rights in the form of provisions contained in article 156 paragraph 4 regarding reimbursement money should include, annual leave money, workers' costs or return costs, housing and medical reimbursement and other things if contained in the employment agreement. However, this is a natural thing because in a civil chamber, the judge cannot decide more than what is sued. Although there is a slight lack of rights fulfillment points in it.

D. Kesimpulan

Based on the results of research and analysis that the author has done, the following conclusions can be drawn: The fulfillment of workers' rights after termination of employment on the basis of poor performance or unperformance must be based on Article 161 Paragraph 1 of Law Number 13 of 2003 concerning Manpower because poor performance is one of the actions of workers who violate workers' obligations both in company regulations and Law Number 13 of 2003 concerning Manpower and of course by paying closer attention to the process of termination of employment. The implementation of execution as the fulfillment of workers' rights (cassation applicants) after employment relations is slightly deviated from the word fair. The execution that is delayed for nine months from the time the verdict is read, should be carried out a maximum of 8 days from the time the verdict is read as per article 195 HIR.

2. The suitability of legal considerations in decision Number 763K/Pdt.sus- PHI/2020 with the applicable legal rules in Indonesia, according to the author, is slightly inappropriate. The Supreme Court should be more observant about the termination procedure first, because it will be fatal if there is an error from the basis.

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