

RESOLUTION OF EMPLOYMENT TERMINATION DISPUTES THROUGH THE MANPOWER AND TRANSMIGRATION OFFICE OF BENGKULU PROVINCE

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ABSTRACT

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Research objectives: (1). To find out and analyze the factors that cause employment termination disputes through the Manpower and Transmigration Service of Bengkulu Province. (2) To find out and analyze the implementation of employment termination dispute resolution through the Manpower and Transmigration Service of Bengkulu Province. This research method uses empirical legal research. This empirical legal research method uses a research approach with a non-doctrinal approach. The research results show that: (1). The factors that cause employment termination disputes through the Manpower and Transmigration Service of Bengkulu Province are; The employee does not work according to the work agreement and company regulations, the efficiency of employee reduction, the employee resigns based on personal wishes, and the job is without a work agreement letter/only a verbal work agreement, and the worker receives wages below the Provincial Minimum Wage or Regency/City Minimum Wage provisions, there is a difference in wages. (2) The implementation of dispute resolution regarding termination of employment through the Manpower and Transmigration Service of Bengkulu Province goes through several stages, namely, the first stage is carried out by conducting bipartite negotiations carried out by both parties, namely the entrepreneur/employer with the worker/laborer or trade/labor union. by deliberation to reach consensus and must be completed no later than 30 days from the start date of negotiations. The second stage or next step that needs to be taken is to carry out tripartite negotiations, namely carrying out negotiations with the help of a third party (Bengkulu Province Manpower and Transmigration Service) to resolve the issue of termination of employment.

INTRODUCTION

1.1. Background

Juridically, Law Number 13 of 2003 concerning Employment in Article 136 explains that:

1. Settlement of industrial relations disputes must be carried out by employers and workers/laborers or trade/labor unions through deliberation to reach consensus.
2. In the event that a deliberative settlement to reach consensus as intended in paragraph (1) is not achieved, the entrepreneur and worker/labourer or trade/labor union shall resolve the industrial relations dispute through the industrial relations dispute resolution procedure regulated by law.

Based on the explanation of the article above, that the resolution of industrial relations disputes must be carried out by employers and workers/laborers or trade unions/labor unions through deliberation to reach a consensus,¹ this is a form of protection for workers intended to guarantee workers' basic rights and guarantee equality and treatment without discrimination on any basis to realize the welfare of workers and their families while still paying attention to developments in the business world and the interests of employers.²

In line with the progress of the business world and the interests of entrepreneurs, currently the normative settlement of industrial relations has undergone many changes,³ the most recent being the promulgation of Law No. 2 of 2004 concerning the resolution of Industrial Relations Disputes. As intended by Law No. 2 of 2004 concerning the resolution of Industrial Relations Disputes.⁴

Industrial relations disputes are differences of opinion that result in conflict between employers or a combination of employers and workers/laborers or workers/labor unions due to disputes regarding rights, disputes over interests, disputes over termination of employment relations and disputes between workers/labor unions within one company.⁵

Based on data on the resolution of industrial relations dispute cases in 2021, the Manpower and Transmigration Service of Bengkulu Province in 2021 can be seen in the following table:

¹ Djoko Triyanto, 2004, *Hubungan Kerja di Perusahaan Jasa Konstruksi*, Mandar Maju, Bandung

² Consideration letter d, Law no. 13 of 2003 concerning Employment.

³ Damanik, 2004, *Hukum Acara Perburuhan Menyelesaikan Perselisihan Hubungan Industrial Menurut Undang-Undang Nomor 2 Tahun 2004 Disertai Contoh Kasus*. DSS PUBLISHING, Jakarta

⁴ Asri Wijayanti, 2010, *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta

⁵ Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes Article 1 paragraph (1)

Table 1. Settlement of Industrial Relations Dispute Cases in 2021.

No.	Dispute Issues	Year	Number of Cases
1.	Work termination	2019	10
2.	Work termination	2020	11
3.	Work termination	2021	15

Juridically, legal protection for workers' termination of employment disputes is the fulfillment of basic rights that are inherent and protected because violations of basic rights protected by the constitution are violations of human rights. Protection of workers is intended to guarantee workers' basic rights and guarantee equality and treatment without discrimination on any basis to realize the welfare of workers and their families as well as the interests of employers.⁶

Settlement of industrial relations disputes such as those above can be carried out through mediation by government agencies in the Labor Department outside of court, as regulated in Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes (*Penyelesaian Perselisihan Hubungan Industrial-PPHI*), emphasizes that one way to resolve industrial relations disputes is by using mechanisms outside the court.⁷

According to Article 8 of Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes to 16 of Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes explains that:

Settlement of disputes through mediation is carried out by mediators located in each agency office responsible for the Regency/City employment sector.

Mediation is the resolution of disputes over rights, interests, work relations and disputes between labor unions through one company through deliberation mediated by one or more neutral mediators. The mediator acts as a neutral party, only listening, proposing and advising both parties in the dispute. The decision is left entirely to the disputing parties.⁸

One of the industrial relations disputes that still occur in Bengkulu province is the employment termination dispute. Of the many incidents or incidents of

⁶ Libertus Jehani, 2008, *Hak-Hak Karyawan Kontrak*, Penerbit Forum Sahabat, Yogyakarta

⁷ Rachmat Trijono, 2014, *Pengantar Hukum Ketenagakerjaan*, Penerbit Papas Sinar Sinanti

⁸ Zaeni Asyhadie, 2007, *Hukum Kerja, Hukum Ketenagakerjaan Bidang Hubungan Kerja*, PT. Raja Grafindo Persada, Jakarta

employment termination disputes, the important thing is that the solution for resolution must be truly objective and fair for the parties. Settlement of disputes over termination of employment can basically be resolved by the parties themselves, and can also be resolved with the presence of a third party, whether provided by the state such as the Manpower and Transmigration Service of Bengkulu Province.

Based on the background description above, the author is interested in conducting research with the title; Settlement of Employment Termination Disputes Through the Manpower and Transmigration Service of Bengkulu Province.

1.2. Problem Identification

Based on the background explained above, several problem identifications can be formulated which will then be used as a reference for discussion in this thesis, namely:

1. What are the factors that cause employment termination disputes through the Manpower and Transmigration Service of Bengkulu Province?
2. How is the implementation of employment termination dispute resolution through the Manpower and Transmigration Service of Bengkulu Province?

METHOD

The type of research used is empirical legal research. According to Soerjono Soekanto, what is studied at the beginning of empirical research is secondary data, and then continued with research on primary data in the field, or on the community.⁹ Empirical legal research is a type of research with a non-doctrinal approach. namely research in the form of empirical studies to find theories regarding the process of occurrence and the process of how law works in society or is often called socio-legal research.¹⁰

RESULT AND DISCUSSION

1. Factors Causing Disputes to Occur in Termination of Employment Through the Manpower and Transmigration Service of Bengkulu Province

Termination of an employment relationship based on the provisions of article 1

⁹Soerjono Soekanto, 2010, *Pengantar Penelitian Hukum empiris*, Universitas Indonesia (UI-Pers), Jakarta, 52.

¹⁰ Ronny Hanitijo Soemitro, 1994, *Metodelogi Penelitian Hukum dan Jurimateri*, Ghalia Indonesia, Jakarta

point 25 of Law Number 13 of 2003 is the termination of an employment relationship because certain things result in the end of the rights and obligations between the worker and the entrepreneur. Layoff is a situation where the worker stops working for his employer.

Layoffs for workers are the beginning of the end of having a job, the beginning of the end of their ability to pay for the daily living needs of themselves and their families. So, termination of employment is an unexpected event. Layoffs must be used as a last resort if there is an industrial relations dispute.¹¹ Employers in dealing with workers should establish good relations with their workers. Termination of employment is the beginning of the suffering that will be faced by a worker and the people who are his or her dependents (his or her family). Therefore, employers, workers/laborers, trade unions and the government must make every effort to ensure that employment relations do not terminate.

The problems that arise in fixed-term employment agreements include the following;

a. Extension of Employment Agreement

A work agreement can be entered into for a certain time or for an indefinite time. The issue of extension is not a problem with Indefinite Time Work Agreement then called PKWTT (*Perjanjian Kerja Waktu Tidak Tertentu*) because this type of work agreement continues until the work agreement ends. Law Number 13 of 2003 does not regulate the extension of PKWTT, because it is impossible for PKWTT to be extended because the worker/laborer has become a permanent employee, which is different for Specific Time Employment Agreement then called PKWT (*Perjanjian Kerja Waktu Tertentu*). PKWT can be held for a maximum of two years and may only be extended once for a maximum period of one year (Article 59 paragraph (4) Law No. 13 of 2003). PKWT ends when the time has expired. Work agreements that have expired can be extended. If an entrepreneur wishes to extend a work agreement, then no later than seven days before the PKWT ends, he or she will notify the worker/laborer concerned in writing of their intention. For workers/laborers being bound by PKWTT is more profitable than being bound by PKWT in terms of the end of the work agreement. The longest PKWT only lasts three to four years, while in PKWTT it can be much longer.

According to Article 61 paragraph (1), the Employment Agreement ends if: (a) the worker dies, (b) the term of the employment agreement expires, (c) there is a court decision and/or decision or determination of an industrial relations dispute resolution institution which has legal force. still, (d) the existence of certain circumstances or events stated in the

¹¹ F.X. Djumialdji, 2005, *Perjanjian Kerja Edisi Revisi*, Sinar Grafika, Jakarta

work agreement, company regulations, or collective work agreement which can cause the end of the work relationship.

b. Consequences of Company Transfer

Both PKWT and PKWTT work agreements do not end due to the death of the entrepreneur or the transfer of rights to the company due to sale, inheritance or gift. In the event of a company transfer, the rights of the workers/laborers become the responsibility of the new entrepreneur, unless otherwise stipulated in the transfer agreement which does not reduce the rights of the workers/laborers. If an individual entrepreneur dies, the entrepreneur's heirs can terminate the work agreement after negotiating with the worker/laborer. Likewise, in the event that a worker/laborer dies, the heirs of the worker/laborer have the right to obtain their rights in accordance with applicable laws and regulations or the rights that have been regulated in the work agreement, company regulations or collective work agreement (Article 61 of Law No. 13 of 2003).

c. Unilateral Termination of the Employment Agreement

Furthermore, if one of the parties to the agreement terminates the employment relationship before the end of the period stipulated in the employment agreement for a certain period of time, then the party terminating the employment relationship is obliged to pay compensation to the other party in the amount of the worker/laborer's wages until the expiration date of the employment agreement (Article 62 Law No. 13 of 2003). So, if a worker/laborer is bound by PKWT for two years, if he has only worked for two months and wants to end the employment relationship, then the worker is obliged to provide compensation to the employer of 24 months (two years) minus two months, namely 22 months multiplied by salary. during one month.

d. Employee/Labor Benefits

Whether a worker/laborer is bound by a PKWT may or may not receive benefits can be read in the work agreement made by the entrepreneur with the worker/laborer, because according to Article 1338 BW, an agreement made legally applies as law for those who make it. However, this does not mean that the employment agreement can regulate whatever the company wishes. Article 54 paragraph (2) Law no. 13 of 2003 states that a Specific Time Work Agreement must not conflict with company regulations, collective work agreements and applicable laws. In the Explanation of Law no. 13 of 2003 states that what is meant by not conflicting with Article 54 paragraph (2) is that if a company has company regulations or a collective work agreement, then the contents of the work agreement, both quality and quantity, must not be lower than the

company regulations or work agreement. together at the company concerned.

Several problems experienced by workers/laborers in Bengkulu province when terminating their employment relationship before the contract period expires and the solutions, firstly, the type of work regulated in Law Number 13 of 2003 concerning Employment, need to be understood because how to resolve problems that lead to termination of employment, each type of work regulated in Law no. 13 of 2003 is not the same.

The implementation of legal protection for workers/laborers in Bengkulu Province requires special attention, because in the practice of contracting out work there are many irregularities or violations of terms and conditions. Legal protection from the government is very necessary for Industrial Relations in general and workers in particular. Protection from the government can take the form of supervision and firm action against companies that neglect or even abuse the rights of workers/laborers. Things like this are intended to provide a sense of security and comfort for workers/laborers in carrying out their responsibilities, both at work and within the worker/laborer's family.

2. Implementation of Dispute Settlement of Employment Termination Disputes Through the Manpower and Transmigration Service of Bengkulu Province

Based on Article 1 number 1 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, what is meant by an industrial relations dispute is a difference of opinion which results in conflict between employers or combinations of employers and workers/laborers or trade/labor unions due to disputes regarding dispute rights. interests, employment termination disputes and disputes between workers/labor unions within one company.

The existence of a joint work relationship between the company, especially the Manager and the workforce, means that each party has rights and obligations. Likewise, if the employment relationship is terminated, it means that the Manager is required to fulfill the rights and obligations towards the workforce in accordance with the conditions at the time of the employment contract.¹²

If an industrial relations dispute occurs, there are 2 (two) ways to resolve the industrial relations dispute, namely by bipartite negotiations and tripartite negotiations. If it turns out that industrial relations dispute resolution cannot be resolved through bipartiate negotiations, then the stage used to resolve the dispute is settlement through tripartite, namely mediation.

Based on the provisions of Article 10 of the *Pengadilan Hubungan Industrial Law*, it is regulated that no later than 7 (seven) working days after receiving the

¹² Zaeni Asyhadie, 2007, *Hukum Kerja, Hukum Ketenagakerjaan Bidang Hubungan Kerja*, PT. Raja Grafindo Persada, Jakarta; F.X. Djumaldji, 2005, *Perjanjian Kerja Edisi Revisi*, Sinar Grafika, Jakarta

delegation of dispute resolution, the mediator must have conducted research on the situation of the case and immediately hold a mediation session.¹³ The mechanism for resolving industrial relations disputes through mediation is implemented as follows:

1. Settlement through mediation is carried out no later than 30 (thirty) working days from receiving the delegation of dispute resolution;
2. The mediator can summon witnesses or expert witnesses to attend the mediation session to request and hear their statements;
3. If it turns out that an agreement has been reached during the mediation session, a Collective Agreement is drawn up which is signed by the parties, witnessed by the mediator and then registered at the Industrial Relations Court at the District Court in the jurisdiction of the disputing parties;
4. If it turns out that an agreement cannot be reached during mediation, the mediator makes written recommendations;
5. The mediator must issue written recommendations no later than 10 (ten) days after the mediation session is held;
6. The disputing parties must submit written responses or answers to the mediator's recommendation no later than 10 (ten) days after the mediator's recommendation is received;
7. If it turns out that the disputing parties do not provide written responses or answers, they are deemed to have rejected the mediator's recommendation;
8. In the event that the disputing parties are able to accept the mediator's recommendations, no later than 3 (three) days a Joint Agreement must be drawn up and then registered at the Industrial Relations Court at the District Court in the area of legal domicile of the disputing parties to obtain a certificate of registration;
9. In the event that no agreement is reached and/or the parties refuse the mediator's recommendations, one of the parties can continue to resolve the dispute by filing a lawsuit with the Industrial Relations Court at the District Court in the jurisdiction of the worker/laborer.

If we compare the methods of resolving bipatriate disputes with mediation, the difference is the inclusion of outside parties other than the disputing parties. In bipatrit negotiations are limited to the disputing parties, while in mediation, there is an outside party, namely the mediator, who enters as a mediator to try to resolve the dispute. Settlement through conciliation is carried out to resolve interest disputes, employment termination disputes, or disputes between workers/labor unions.

¹³ Goresan Pena Hukum, *Penyelesaian Perseleisahan Hubungan Industrial*, diakses dari: <http://goresanpenahukum.blogspot.com/penyelesaian-perselisihan-hubungan.html> diakses pada tanggal 02 Mei 2021; Dewi Tuti Muryati, *Pengaturan Penyelesaian Sengketa Non Litigasi*, diakses dari: <http://ilib.usm.ac.id/sipp/doc/jurnas/gdl-usm--dewitutimu-87-1-pengatur-e.pdf>. pada tanggal 02 Mei 2021

If the parties do not determine the option of settlement through conciliation or arbitration within 7 (seven) working days, then the agency responsible for the field of employment delegates the resolution of the dispute to a mediator, namely an employee of the government agency responsible for the field of employment who meets the requirements as follows. a mediator appointed by the Minister to carry out mediation and has the obligation to provide written advice to disputing parties to resolve rights disputes, interest disputes, employment termination disputes, and disputes between workers/labor unions in only one company. However, if settlement through conciliation or mediation does not reach an agreement, then one of the parties can file a lawsuit with the Industrial Relations Court. As stated in Article 5 of the PPHI Law. Then, Article 55 of the PPHI Law states that the Industrial Relations Court is a special court within the general court environment.¹⁴

Every industrial relations dispute, including layoff disputes, must be resolved first through bipartite negotiations. Bipartite negotiations are carried out by means of deliberation between workers and employers. If an agreement is not reached during bipartite negotiations, one or both parties will register their dispute with the agency responsible for the employment sector. Furthermore, the Manpower and Transmigration Service will offer the parties to resolve through conciliation or through mediation for layoff disputes.

Settlement of layoff disputes through mediation is carried out by mediators located in each agency office responsible for district or city employment. Mediators who play a role in resolving industrial relations disputes are employees of government agencies responsible for the field of employment who fulfill the requirements as mediators determined by the Minister to carry out mediation and have the obligation to provide written advice to the disputing parties to resolve disputes over rights, disputes interests, employment termination disputes, and disputes between trade unions/labor unions in just one company.

CONCLUSION

Based on the results of research regarding resolving disputes in employment relations The factors that cause employment termination disputes through the Manpower and Transmigration Service of Bengkulu Province highest due to employee reduction efficiency. Then other causes in succession starting from Employees resign based on personal wishes; Workers receive wages below the Provincial or Regency/City Minimum Wage (*upah minimum kabupaten/kota - UMK*) provisions, there is a difference in wages; Employment Without a work agreement letter/only a verbal

¹⁴ Dewi Tuti Muryati, *Pengaturan Penyelesaian Sengketa Non Litigasi*, diakses dari: <http://ilib.usm.ac.id/sipp/doc/jurnas/gdl-usm--dewitutimu-87-1-pengatur-e.pdf>. pada tanggal 02 Mei 2021

work agreement; and Workers do not work according to work agreements and company regulations.

The implementation of dispute resolution regarding termination of employment through the Manpower and Transmigration Service of Bengkulu Province goes through several stages, namely, the first stage is carried out by conducting bipartite negotiations carried out by both parties, namely the entrepreneur/employer with the worker/laborer or trade/labor union in deliberation to reach a consensus and must be completed no later than 30 days from the start date of negotiations. The second stage or next step that needs to be taken is to carry out tripartite negotiations, namely carrying out negotiations with the help of a third party (Bengkulu Province Manpower and Transmigration Service) to resolve the issue of termination of employment

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