



Legal Protection of Resigning Workers' Right Over Separation Pay Compensation in Justice Perspective

Atmari¹; Budiarsih²; Slamet Suhartono²

¹ Doctoral Degree Student of Law of 17 Agustus 1945 University Surabaya, Indonesia

² Lecturer of Law Faculty of 17 Agustus 1945 University Surabaya, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i8.1998>

Abstract

Labor law in Indonesia has not comprehensively provided protection for the rights of resigning workers qualification. Since provisions of labor law does not mention the amount of separation pay for resigning workers. This research is conducted to analyze and find the ratio legis in providing separation pay for resigning workers in the Manpower Act and also the concept of giving separation pay to resigning workers in justice perspective. The research method used in this study is normative legal research by using several approach including philosophical approach, purposive approach, conceptual approach, case approach and historical approach. The result of the study shows that the regulation of separation pay in the Manpower Act is a form of reward for workers given by employers as a reward for devotion and loyalty of workers during a certain period of service. The Regulation of separation pay for resigning workers which reflecting justice is by formulating separation pay for resigning workers equal to the rights of terminated workers because of committing criminal act.

Keywords: *Separation Pay; Workers; Resigning Qualification*

Introduction

Every human or Individuals have a desire to be able to fulfill their daily needs, both primary and secondary needs. Since it is not easy for individuals to achieve something, the individuals have to do several things in fulfilling their daily needs, such as running business or work with their abilities both intellectual and physical. Therefore, each individual has to do their job in order to earn income and fulfill their cost living with their family which is a decent living for humanity.

The State which is originally expected to guarantee the protection of basic workers' rights is looked more repressive and exploitative towards interest of workers / labor. In contrast, the role of the State in industrial relations seems more facilitative and accommodative to the interest of investors. The Indications of low legal protection for workers could be seen from the problems that occur in the resigning workers. In this condition, there is no clear fundamental for determining compensation for resigning worker rights in Act Number 13 Year 2003 concerning Manpower.

There is no legal certainty and legal protection for resigning workers as consequences to the unclear regulations regarding compensation for them. In this case, there is a vague norm on the regulation rights for resigning workers.¹ Legal uncertainty caused by the uncertainty of norms (vague norms) has subsequently resulted to the different judges' decisions in each case that comes to the judiciary regarding the disputes of right arising from termination of employment due to resignation.

Several court decisions towards terminated workers require employers to provide separation pay to workers but do not provide severance pay and long service pay even in the termination between employers and the resigning workers qualification.² Law regarding employer in providing severance pay, service pay and compensation rights pay for workers subject to termination of employment by employers are regulated in Act Number 13 Year 2003 Article 156 paragraph (1). Meanwhile, in the case of workers whose employment relation is terminated due to resigning qualification, the employer is only required to provide compensation rights pay as stipulated in article 156 paragraph (4) of Act Number 13 Year 2003 and separation pay which is the amount and implementation is regulated in the agreement work, company regulations, or collective work agreements based on Article 168 paragraph (3) of Act Number 13 Year 2003.

An interesting legal issue while conducting this study is that there is no legal regulation regarding the amount of separation pay for resigning workers qualification. The regulation regarding separation pay should be able to function as legal protection for workers. The purpose of this study is to find a formulation or model of legal protection as needed for qualification of resigning workers so that the legal objectives to obtain certainty and justice are achieved.³

At this time, there are no legal regulations that comprehensively provide protection for the rights of resigning workers qualification because none of the laws related to the employment mentioned about the amount of the separation pay. Therefore, the writer is interested in conducting study and providing solutions in order to create legal protection for resigning workers qualification from a justice perspective.

Methods

The present study uses normative legal research methods to find solutions to existing legal problems.⁴ The research approaches used are the statute approach and the conceptual approach.

Discussion

Indonesia is a constitutional state which is responsible for providing legal protection for its citizens. In addition, Indonesia also has an understanding of a *welfare state*. The state can use the law as a means of regulating, organizing and also guarantee the welfare of its people. The State concept for its people welfare is very different depending on what understanding that adheres to. Countries that apply social democracy are often referred as *welfare states*.⁵

¹ Slamet Suhartono, 'Confidentiality and Public Information: Resolving Administrative Dispute about Public Information Disclosure', *Journal of Legal, Ethical and Regulatory Issues*, 2018.

² Yoyok Subagiono, Teguh Prasetyo, and Otto Yudianto, 'The Nature of Termination of Criminal Criminal Attendance Based On Restorative Justice', *International Journal of Scientific and Research Publications (IJSRP)*, 2019 <<https://doi.org/10.29322/ijsrp.9.12.2019.p9655>>.

³ jonneri Bukit, Made Warka, And Krisnadi Nasution, 'Eksistensi Asas Keseimbangan Pada Kontrak Konsumen Di Indonesia', *DiH: Jurnal Ilmu Hukum*, 2018 <<https://doi.org/10.30996/dih.v0i0.1788>>.

⁴ H Isnaini and W Utomo, 'The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution Era 4.0', *International Journal of Innovation, Creativity and Change*, 2019 <<http://www.scopus.com/inward/record.url?eid=2-s2.0-85079637568&partnerID=MN8TOARS>>.

⁵ Slamet Suhartono, 'Decentralization of Natural Resources Management for Making Welfare Society', *The Journal of African & Asian Local Government Studies*, 2014.

The preamble to the 1945 Constitution of the Republic of Indonesia in paragraph IV lists several points of thought that are specifically related to *public welfare* and *social justice* as described in the articles. One of them is Article 27 paragraph (2) of the 1945 Constitution which stated: "*Every citizen has the right to work and a living that is decent for humanity*". As a consequence, the State is obliged to take role in organizing general welfare and ensuring the welfare of every worker / laborer to improve the quality of life through work. That is the instruments for realizing citizens' rights to decent work and livelihoods.¹

The existence of the State in labor law is defined to create justice in the employment relations. Since if the relationship between workers and employers which are very different socially and economically is fully left to the parties, there will be no justice are achieved in employment relations because the strong will always control the weakness one.²

Labor Law provides protection to weak parties in employment relations. In contrast to civil law which departs from the assumption of equal position of the parties, in labor law the parties are in unequal position, where workers generally have a relatively weak bargaining position compared to the employers as providing job. The Labor Law is formed with the aim of balancing the subordination relations by providing legal protection to the workers.

Goffrey Key and James Mott argued: "*The main object of labor law has always been and I venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship... It is an attempt to infuse law into a relation of command and subordination*". This is implemented in the existence of the Manpower Act which is intended to protect workers / laborers who are socially and economically weaker than employers, especially from the employer abuse that could be occurred in the employment relations.⁶ Manpower Act Number 13 Year 2003 bridges the inequality of bargaining positions between workers / laborers and employers and aims to provide guarantees of legal certainty and protection for workers / laborers from the arbitrariness of employers that can arise in the employment relations.⁷

The government carries out its functions as a regulator and provider (*guarantor*). As a regulator, the state has the authority to regulate (*regeling*) through statutory regulations in order to guarantee the implementation of the state's function as a provider, which is being responsible and guarantee a whole minimum standard of living as well as forms of social security.

Basically, an employment relation is a relationship between workers and employers that occurs after an agreement is made where the worker declares his ability to work for the employer by receiving wages and the employer declares his ability to employ worker by paying wages. Such an agreement is called an employment agreement.

An employment relation is a relationship that arises between a worker and an employer after a previous agreement that has been made by the party concerned. Workers declare their ability to work for employers by receiving wages, and on the other hand, employers state their ability to employ workers by paying wages. Thus, the employment relation that occurs between workers and employers is a form of work agreement which basically contains the rights and obligations of each party. The elements in the employment relations included: 1) work; 2) command; 3) wage; and 4) Specific Time.⁸

⁶ Hari Wibisono, H. Moch. Isnaeni, and Endang Prasetyawati, 'Authorization Entities (Legal Guarantee Review)', *International Journal of Multicultural and Multireligious Understanding*, 2019 <<https://doi.org/10.18415/ijmmu.v6i6.1210>>.

⁷ Christina Tri Kurniasari, Krisnadi Nasution, and Sri Setyadji, 'Dasar Hukum Pelaksanaan Mitigasi Resiko Kredit Pada Sektor Perbankan Di Indonesia', *Jurnal Akbar Juara*, 2020 <<https://doi.org/10.1016/j.solener.2019.02.027>>.

⁸ Lucky Kartanto and others, 'Curator Authority Related Gijzeling By Directorate General Of Tax For Taxpayer Institution In Bankruptcy With The Good Faith', *International Journal of Scientific and Research Publications (IJSRP)*, 2018 <<https://doi.org/10.29322/ijsrp.8.7.2018.p7944>>.

Labor Law could be private and also public. It is called private because it regulates the relationship between individuals (employers-workers) in making work agreements and it is called public because the government intervenes in labor matters as well as the existence of criminal sanctions in labor law regulations. The relationship between public law toward private law is the relationship between special law or exceptional to general law. Public law is an exception to private law if it is needed by the government to maintain the public interest.⁹

The Labor Law which was originally a private / civil law gradually became a public law. It is because government's intervention is inevitably in the Labor Law.⁷ Agus Yudha Hernoko stated that Civil Law is looking for a new form through state intervention. The state recently tends to multiply enforcing legal regulations (*dwingend recht*) for the public interest to protect weakness interests.¹⁰

Manpower development must be based on philosophy, Pancasila (Ideology of State) and constitutional juridical basis that is the 1945 Constitution as the basic law as well as the operational juridical basis which is the laws and regulations concerning on manpower as the legal basis. In addition, the sociological basis which is based on the cultural values prevailing in society so that it accommodates all the realities of life in society nowadays. It is intended that manpower development is carried out as framework of developing Indonesian people and developing society as a whole. Therefore, the aims of manpower development is to create a prosperous, justice, welfare, and equitable Indonesian people and society, both materially and spiritually.¹¹

Basically, the issue of manpower is a social, political and economic agenda which is essential in modern countries because the manpower problem is not only the relationship between workers and employers, but also more broadly includes the problems of the economic system of a country as well as the politics system. Therefore, the economy and politics of a country will determine the style and color of a manpower system that enforces.¹⁰

Legal protection for workers is a realization of efforts to advance the general welfare. The basic philosophy as stipulated in Act Number 13 of 2003 stated in the consideration formulation considering letter d as follows: "The Protection of workers is intended to guarantee the fundamental rights of workers and to secure the implementation of equal opportunity and treatment without discrimination on whatever basis in order to realize the welfare of workers / laborers and their family by continuing to observe the development of progress made by the world of business".

The formation of a statutory regulation is through stages that have been determined by a statutory regulation.¹² These stages include planning, preparation, the draft law discussion, ratification and promulgation. The stages of the formation of statutory regulations are fully carried out by the authority institution. In this case the House of Representatives (DPR) institution which specifically handles the legislation, and the Government (President) which is coordinated by the minister whose duties and responsibilities in the legislation.¹³

⁹ Hatta Isnaini Wahyu Utomo, 'The Position of Honorary Council of Notary in Coaching Indonesian Notaries', *Journal of Law, Policy and Globalization*, 92 (2019) <<https://doi.org/10.7176/jlpg/92-12>>.

¹⁰ Slamet Suhartono and Asri Wijayanti, 'Recognition and Protection of Religious Sects in Indonesia', *Man in India*, 2017.

¹¹ Fajar Sugianto and Budiarsih Budiarsih, 'Menggugah Fondasi Keilmuan Ilmu Hukum Dalam Pengakuan Perkawinan Homoseksual Di Massachusetts Melalui Efisiensi Ekonomi', *DiH: Jurnal Ilmu Hukum*, 2018 <<https://doi.org/10.30996/dih.v0i0.1787>>.

¹² Hatta Isnaini and Hendry Dwicahyo Wanda, 'Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah Dalam Peralihan Tanah Yang Belum Bersertifikat', *Jurnal Hukum IUS QUIA IUSTUM*, 24.3 (2017), 467-87 <<https://doi.org/10.20885/iustum.vol24.iss3.art7>>.

¹³ Slamet Suhartono and others, 'Implementation of Law Number 6 of 2014 Concerning Village for Budgeting Plan in Sidoarjo Regency', 2020 <<https://doi.org/10.2991/aebmr.k.200226.042>>.

Specifically, for the preparation and discussion stages of the draft law, public could take participating and even having the right to provide suggestions both verbally and in writing. In this case, the role of the community is needed to provide their aspirations, both individually and in groups, so that a statutory regulation that has been passed and promulgated will be responsive or in accordance with the community aspirations. Since the good law is the law that live in society.

Act Number 13 Year 2003 regulates of separation pay regarding the termination of employment because the worker / laborer resigns on his or her own will, it applies on Act Number 13 Year 2003 Article 162 as follows:

- (1) If a worker/ labor resign of his or her own will, he or she shall be entitled to compensation pay in accordance with what is stipulated in paragraph (4) of Article 156.
- (2) Workers/ laborers who resign of their own will, whose duties and functions do not directly represent the interest of the employer, beside receiving the compensation right pay according to what is stipulated in paragraph (4) of Article 156 will be given separation pay which the amount and the procedures associated with its payment shall be regulated in work agreements, company regulation or collective work agreements.

Workers / laborers who resign will receive compensation rights pay according to Article 156 paragraph (4) Act Number 13 Year 2003 on Manpower, which consists of:

- a. annual leaves that have not been taken and have not expired;
- b. Return costs for workers / labor and their families to the place where the workers/ laborers are accepted to work;
- c. Compensation for housing allowance, medical and health care allowance is determined at 15% of the severance pay and / or service pay for those who meet the requirements; and
- d. Other matters that are stipulated in the Work Agreement, Company Regulation (PP) or Collective Working Agreement (PKB)

According to the Article 162, the type of rights received by the resigning worker / laborer is not in the form of severance pay or service pay, but only in the form of compensation rights pay which the amount is based on the length of service.

Separation pay is also given to workers who have resigning qualification as stated in Article 168 Act Number 13 Year 2003:

1. Worker / labor who has been absent from work for 5 (five) workdays or more consecutively without any written statement accompanied by valid evidence and the employer has properly summoned 2 (two) times in writing may be terminated from employment because he or she is qualified to resign.
2. A written statement with valid evidence as referred to paragraph (1) must be submitted no later than the first day worker/laborer comes back to workplace.
3. Termination of employment as referred to paragraph (1) the worker / laborer concerned has the right to receive compensation rights pay according to what is stipulated in Article 156 paragraph (4) and shall be given separation pay which the amount and implementation is regulated in the work agreement, company regulation, or collective working agreement.

Separation pay is given in the case of workers who resign on their own will, but specifically for workers whose duties and functions do not directly represent the interests of the employer. It means that

not all workers who resign on their own will are entitled to separation pay. For workers who terminate their employment relation because they are qualified as resign they have the right to receive separation pay without conditions whether their duties and functions represent the interests of the employer directly or not. Companies must consider and appreciate the dedication of workers who have worked with achievements and conditions. Separation pay is money given by employers as an appreciation for worker dedication and loyalty during a certain period of service with good performance and attitude which is as the compensation for the absence of severance pay and service pay. The amount and the implementation of separation pay depend on the authority of the parties' agreement written on work agreement, company regulations or collective working agreement. The implementation also includes the payment period of separation pay.¹⁴

Referring to the theory of John Rawls on justice that deals with Social and Economic Inequalities, Rawls stated that inequalities in socio-economic should be regulated so that the weakest groups are the most having advantages, and each person was given the same opportunity. Provision relating to economic efficiency and welfare must be formulated in such a way to maximize the level of welfare. Thus, the parties who are less is getting a higher chance, and those who are getting into trouble should be alleviated.

Justice expresses equality and harmonious relations between humans. Therefore, in any social interaction, no people or parties may be impaired of their rights and interests. The right of every person is to be recognized and treated according to their dignity, the same degree, the same rights and obligations without differentiating ethnicity, descent, and religion. Justice, in general, referred to as balanced recognition of rights and obligations. In other words, justice is when everyone gets what is their right and everyone gets an equal share.

The provisions regarding the rights of resigning workers compared to the rights of workers who have been terminated because of committing a criminal act seems unfair. In Article 160 paragraph (7) of the Labor Law, it is stipulated that workers who are terminated due to a criminal act will receive 1 (one) time service pay according to the Article 156 paragraph (3) and compensation rights pay according to the Article 156 paragraph (4). Based on these provisions, workers who have been terminated due to a criminal act will still receive service pay.

The provision regarding separation pay for resigning workers also does not provide legal certainty. It occurs if the company does not regulate the amount and implementation of separation pay in the work agreement, company regulations or collective work agreement. Thus, there are no clear parameters in determining the amount of separation pay for resigning workers qualification.

Based on these conditions, it is necessary to formulate an amendment in Act Number 13 of 2003 concerning the regulation of separation pay for resigning workers qualification. In order to construct the amount of separation pay for resigning workers, firstly it should be seen that there is an absence from worker. This absent is not because of criminal act so that the regulation regarding the rights of resigning workers should be the same as the right of a worker who has been terminated due to a criminal act which is earning service pay for 1 (one) time in the provisions of Article 156 paragraph (3) and compensation rights pay according to the provisions in Article 156 paragraph (4).

¹⁴ Yuristo Ardhi Hanggoro, Mare Warka, and Budiarsih Budiarsih, 'Perlindungan Hukum Bagi Penumpang Pesawat Udara Atas Keterlambatan Penerbangan Pada Badan Usaha Angkutan Udara', *Jurnal Akrab Juara*, 2019.

Conclusion

Based on the study that has been conducted, it can be concluded that the provision of separation pays in Act Number 13 of 2003 is a form of reward for workers given by employers as workers' dedication and loyalty during a certain working period with good performance and attitude. Companies are obliged to consider and appreciate the dedication of workers who have worked with good achievements and attitude so that this is reflected in the provision of separation pay.

The regulation of separation pays for resigning worker qualification that reflects justice is by formulating separation pay which equal to the rights of workers who have been terminated due to committing a criminal act, by obtaining service pay for working period of 1 (one) time as stipulated in the provisions of Article 156 paragraph (3) and compensation rights pay according to the provisions in Article 156 paragraph (4). This concept is taken by equating the element of mistakes that has been committed by workers who have committed a criminal act and workers who are absent.

Suggestion

Based on these conclusions, it is recommended that there is amendment to Act Number 13 of 2003. The regulation of separation pays stipulated in Act Number 13 Year 2003 has not fully provided legal certainty for workers' rights since there are no certain regulations regarding separation pay for resigning workers qualification. Therefore, it is necessary to formulate a form of separation pay for resigning workers qualification.

Reference

- Bukit, Jonneri, Made Warka, and Krisnadi Nasution, 'Eksistensi Asas Keseimbangan Pada Kontrak Konsumen Di Indonesia', *DiH: Jurnal Ilmu Hukum*, 2018 <<https://doi.org/10.30996/dih.v0i0.1788>>
- Hanggoro, Yuristo Ardhi, Mare Warka, and Budiarsih Budiarsih, 'Perlindungan Hukum Bagi Penumpang Pesawat Udara Atas Keterlambatan Penerbangan Pada Badan Usaha Angkutan Udara', *Jurnal Akrab Juara*, 2019
- Hatta Isnaini Wahyu Utomo, 'The Position of Honorary Council of Notary in Coaching Indonesian Notaries', *Journal of Law, Policy and Globalization*, 92 (2019) <<https://doi.org/10.7176/jlpg/92-12>>
- Isnaini, H, and W Utomo, 'The Existence of the Notary and Notarial Deeds within Private Procedural Law in the Industrial Revolution Era 4.0', *International Journal of Innovation, Creativity and Change*, 2019 <<http://www.scopus.com/inward/record.url?eid=2-s2.0-85079637568&partnerID=MN8TOARS>>
- Isnaini, Hatta, and Hendry Dwicahyo Wanda, 'Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah Dalam Peralihan Tanah Yang Belum Bersertifikat', *Jurnal Hukum Ius Quia Iustum*, 24.3 (2017), 467–87 <<https://doi.org/10.20885/iustum.vol24.iss3.art7>>
- Kartanto, Lucky, Warka S. H. Made, M. Hum, S. H. Otto Yudianto, M. Hum, and Fajar Sugianto, 'Curator Authority Related Gijzeling By Directorate General Of Tax For Taxpayer Institution In Bankruptcy With The Good Faith', *International Journal of Scientific and Research Publications (IJSRP)*, 2018 <<https://doi.org/10.29322/ijsrp.8.7.2018.p7944>>
- Kurniasari, Christina Tri, Krisnadi Nasution, and Sri Setyadji, 'Dasar Hukum Pelaksanaan Mitigasi Resiko Kredit Pada Sektor Perbankan Di Indonesia', *Jurnal Akbar Juara*, 2020 <<https://doi.org/10.1016/j.solener.2019.02.027>>
- Subagiono, Yoyok, Teguh Prasetyo, and Otto Yudianto, 'The Nature of Termination of Criminal Criminal Attendance Based On Restorative Justice', *International Journal of Scientific and Research Publications (IJSRP)*, 2019 <<https://doi.org/10.29322/ijsrp.9.12.2019.p9655>>

- Sugianto, Fajar, and Budiarsih Budiarsih, 'Menggugah Fondasi Keilmuan Ilmu Hukum Dalam Pengakuan Perkawinan Homoseksual Di Massachusetts Melalui Efisiensi Ekonomi', *DiH: Jurnal Ilmu Hukum*, 2018 <<https://doi.org/10.30996/dih.v0i0.1787>>
- Suhartono, Slamet, 'Confidentiality and Public Information: Resolving Administrative Dispute about Public Information Disclosure', *Journal of Legal, Ethical and Regulatory Issues*, 2018
- , 'Decentralization of Natural Resources Management for Making Welfare Society', *The Journal of African & Asian Local Government Studies*, 2014
- Suhartono, Slamet, Ahmad Mahyani, Wiwik Afifah, Dwi Putri Sartika, and Risyah Tatamara, 'Implementation of Law Number 6 of 2014 Concerning Village for Budgeting Plan in Sidoarjo Regency', 2020 <<https://doi.org/10.2991/aebmr.k.200226.042>>
- Suhartono, Slamet, and Asri Wijayanti, 'Recognition and Protection of Religious Sects in Indonesia', *Man in India*, 2017
- Wibisono, Hari, H. Moch. Isnaeni, and Endang Prasetyawati, 'Authorization Entities (Legal Guarantee Review)', *International Journal of Multicultural and Multireligious Understanding*, 2019 <<https://doi.org/10.18415/ijmmu.v6i6.1210>>

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).