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LEGAL PROTECTION OF HOMEWORK WORKERS CASE STUDY AT PT. COALINDO ADHIPERKASA BATUAH ENERGY PRIMA KUTAI KARTANEGARA PROJECT

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ABSTRACT

The research aims to determine the form of legal protection for workers laid off due to project closures and the legal remedies that workers can take due to the non-fulfillment of the rights of workers laid off from the case study at PT. Coalindo Adhi Perkasa Batuah Energy Prima Kutai Kartanegara Project. The research was conducted from March to April 2023 at PT Coalindo Adhi Perkasa Batuah Energi Prima Project, Kutai Kartanegara Regency, East Kalimantan, Indonesia. The results of the study show that the legal protection provided by the Company by laid-off workers does not entirely refer to the provisions of the applicable laws and regulations; however, the Company and workers alike, in this case, agree on the contents of the agreement by the Civil Code, namely that the workers are willing to be paid for as long as laid off, which is 50% (fifty percent) of the basic salary and is not by the provisions of the Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages and efforts to resolve industrial relations disputes can be taken if the worker does not get his rights by the Employer will be carried out by way of a request for termination of employment, demands for compensation, bipartite negotiations, mediation or industrial relations courts.

KEY WORDS

Workers are laid off, Wages, Legal Protection.



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INTRODUCTION

Law is something abstract and related to norms in society. Normatively and dogmatically, the Law regulates almost all aspects of human life, from before humans are born to after humans die [1]. The presence of Law in social life helps integrate and coordinate interests that are usually in conflict with each other. Therefore, the Law must be able to incorporate them so that conflicts of interest can be minimized.

Labor law is a system of regulations that regulates the working relationship between workers/laborers and employers or employers/leaders so that there is order, justice, and preventing chaos in the work environment [2].

It was argued [3] that the role of labor law essentially requires that the Law is no longer seen as merely a set of norms but that the Law is also seen as a means of renewing society which must always be able to provide direction that protects, regulates, encourages, plans, mobilizes and controls organization by development stages carried out.

Juridically, the position of workers and employers is the same; this is stated in Article 27, paragraph (1) of the 1945 Constitution. Therefore every human being has the right to a decent living, one of which is by working. To be able to meet the needs of himself and his family adequately. It covers food, drink, clothing, shelter or housing, education, health, recreation, and old age insurance.

Workers/laborers are an essential component for the survival of the Company. Even though as machine technology develops, without workers/labor, the Company will not operate optimally. The primary purpose of a person to work is to earn wages that will be used to continue his life and that of his family [4].

According to [5], the definition of wages is the right of workers/laborers and not gifts from employers. The wage policy is determined as one of the efforts to realize the rights of workers/laborers to a decent living for humanity.

Socio-economically, the position of workers is lower than that of employers. Therefore, empowerment and partnership processes are needed in work that Law protects. In this case, the implementation of the working relationship requires government intervention. The intervention of the government (authority) in labor law is intended to create a fair employment relationship because if the relations between workers and employers who are very different socio-economically are left entirely to the parties, then the goal of creating justice in labor relations will not be achieved, because the strong will always want to dominate the weak [6].

In terms of the type of job protection, overall, the safety of workers/laborers is a public legal norm that aims to regulate labor conditions in companies [7].

With the presence of the Manpower Act, it is hoped that it can guarantee the fundamental rights of workers/laborers and guarantee equality, opportunity, and treatment without discrimination on any basis to realize the welfare of workers/laborers and their families while taking into account developments in the progress of the business world.

However, wages are not uncommon to face problems between workers and employers. Sometimes in the face of the current unstable economic conditions, employers are forced to take steps for business continuity, such as lowering the wages of workers/laborers or not extending contracts that are about to expire. Employment relations are also known as labor relations or industrial relations. According to [8] that in a working relationship, there are at least 3 (three) elements, namely, there is work, there are wages, and there are orders.

Default in contract law has the meaning that the debtor (the party who must carry out an achievement) does not carry out his performance obligation or does not carry it out properly so that the creditor (the party who has the right to fulfill the achievement of the debtor) does not get what was promised by the opposing party.

In Article 1267 of the Code of Civil Law, it can be concluded that if a creditor suffers a loss because the debtor defaults, the creditor has alternatives to take legal action or rights as follows: (1) requesting the implementation of the agreement; (2) request compensation; (3) asking for the implementation of the agreement as well as asking for compensation; or (4) in a reciprocal agreement, the cancellation of the agreement can be requested as well as asking for compensation.

In the implementation of compensation, it has been regulated in Article 1267 of the Code of Civil Law, which states that reimbursement of costs, losses, and interest due to non-fulfillment of an agreement is obligatory if the debtor, even though he has been declared negligent, remains negligent in fulfilling that agreement, or if something must be given or it can only be given or done within a time that exceeds the specified time.

This is what workers from PT. Coalindo Adhi Perkasa BatuahEnergiPrima Project located in KutaiKartanegara Regency. Due to the Company's condition that experienced a project closure, the Company took strategic steps for the Company's sustainability. PT. CAP took steps such as transferring employees to several projects that are still in production, not renewing a contract that is about to expire, and laying off employees but not terminating employment (PHK).

The reason for being laid off has been stated in the collective agreement between workers and employers Number 007/CAP-HO/HCMS/PB/III/2023, which states "that due to the condition of the project site which is experiencing problems, the Company must balance the amount of production and operational costs, so from it was decided to lay off employees starting April 1, 2023.

Workers who are laid off often do not get the wages they should, primarily if they work only as laborers in a company. They were laid off just like that without clarity on when to return to work. Meanwhile, if they get wages, the entrepreneur does not provide wages as they should; the wages given are only 50% (fifty percent) of the wages that should be received, namely a minimum of 75% (seventy-five percent). This is not in line with the provisions stipulated in Law Number 36 of 2021 concerning Wages.

Both in Law Number 13 of 2003 concerning Manpower (from now on referred to as the Labor Law) and Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation which was subsequently ratified with the enactment of Law Number 6 of 2023 Concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation to Become a Law, it does not explicitly regulate laid-off workers.

According to the Big Indonesian Dictionary, to lay off the house is to leave or take the day off, freeing workers or laborers from their jobs by telling them to stay home. Judging from this understanding, the reason for releasing the workers is because the workers concerned in the Company are not disciplined. It also has another meaning: the temporary dismissal is not due to the worker's fault but rather a lack of work, money, and production within the Company. The act of laying off in The Black Law Dictionary is defined as a layoff. Layoff is a termination that is carried out temporarily not because of the worker's fault but because of a lack of finances, production goods, or work in the Company. According to Cambridge, the act of laying off a company is a company laying off employees or temporary workers.

The term "sent home" appears in the provisions of the Law, namely Circular Letter Number SE-907/MEN/PHI/PPHI/X/2004 Concerning the Prevention of Mass Termination of Employment, besides that this term can also be found in the Minister of Manpower Circular Letter Number SE - 05/M/BW/1998 of 1998 concerning Wages for Workers Who Are Home Not To Termination of Employment, which regulates: (1) employers continue to pay total wages, namely in the form of basic wages and fixed benefits as long as workers are laid off unless they have otherwise regulated in company regulations or collective work agreements, and (2) if the Employer intends to pay the

workers' wages not in full so that it is necessary to negotiate with the trade unions and workers regarding the number of wages during the layoffs and the length of the layoffs.

One of the contents of the Circular Letter states that for companies that carry out restrictions on business activities as a result of project closures, causing some or all of their workers/laborers to be absent from work, taking into account business continuity, significant changes, as well as the method of payment of workers/laborers' wages, are made by agreement between employers and workers/laborers. Based on the Circular Letter, it allows employers to lay off employees with the condition that they continue to pay their wages.

Because workers who are laid off still have the status of workers, workers are still entitled to their rights as workers, including wages and social security. This is in line with the provisions of Article 88 point 28 of Government Regulation in lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation, which contains only Article 88A paragraph (1), which stipulates that workers' rights to wages arise when there is a working relationship between workers and employers. And ends when the employment relationship is terminated. And in the case of social security (BPJS) Health and Employment, the Employer's obligation to continue to provide these benefits is by the provisions contained in the employee's work contract, namely the work agreement for a specific time, one of the articles containing social security, namely in the employee contract PKWT Number 18 /HRD/PKWT/CAN-SITE/II/2022 states "that in addition to compensation for services/wages as referred to in Article 4, the Second party will be given benefits in the form of Health and Employment BPJS." However, this is not mentioned in the collective agreement on being laid off, so there is no legal certainty whether this social security is still valid even though the worker's status is laid off. According to the theory of legal certainty, as put forward by Jan M. Otto as quoted by [9], legal confidence in certain situations requires "the availability of transparent or clear, consistent and easily accessible legal rules issued by state power.

The research aims to find out the form of legal protection for workers who are laid off due to project closures and the legal remedies that workers can take due to the non-fulfillment of the rights of workers who are laid off from the case study at PT. Coalindo Adhi Perkasa BEP KutaiKartanegara Project.

RESEARCH METHODS

A. Time and Place

The research was conducted from March to April 2023 at PT Coalindo Adhi Perkasa BatuahEnergi Prima Project, KutaiKartanegara Regency, East Kalimantan, Indonesia.

Types of research

This type of research is normative research using secondary data in the form of laws and literature books linked to the facts of legal events.

Techniques for Collection and Processing of Legal Materials Direct data collection in the field from competent parties related to the object under study, namely PT. Coalindo Adhi Perkasa BatuahEnergi Prima Project located in KutaiKartanegara Regency.

RESULTS AND DISCUSSION

A. Forms of Legal Protection for Workers Who Have Been Home as a Result of the Closure of the PT. Coalindo Adhi Perkasa BEP KutaiKartanegara Project.

PT. Coalindo Adhi Perkasa BatuahEnergi Prima KutaiKartanegara Project (hereinafter referred to as PT. Coalindo Adhi Perkasa) has included information relating to the identity of the parties, type of work, wages or salaries earned by workers, working hours of workers, as well as the signatures of the parties in the work agreement, which this is included in the formal requirements of a work

agreement as stipulated in the Manpower Act in the provisions of Article 54 Paragraph (1). However, in terms of the contents of the work contract that was made, an explanation regarding the clause on workers being laid off was not included in the PKWT contract (work agreement before workers were transferred/transferred with letter number 080/HC-MUTASI/CAP/IX/2022 on September 1, 2022) . Workers sign a contract at PT. Coalindo Adhi Nusantara (which is a subsidiary of the Coalindo Group) with letter number 18/HRD/PKWT/CAN-SITE/II/2022 on 26 February 2022 as the place of initial acceptance of workers.

In terms of the contents of the Company Regulations that are made, the explanation regarding the laid off workers clause is not included in the Company Regulations of PT. Coalindo Adhi Perkasa in Chapter VI concerning Exemption from Obligation to Work.

PT. Coalindo Adhi Perkasa does not lay off workers because there is no activity for the mining contractor service company. However, laying off workers by laying them off during the legality of the Company's mining permit, which will later use the services of the mining contractor PT. STAMP. This is done to minimize operational funds and reduce company losses, even though the goal of laying off workers has almost the same goal as layoffs by companies in general, namely to minimize company operational funds and maintain company financial stability. In addition, PT. CAP does not conduct layoffs because of wage obligations that must be fulfilled.

In the practice of drafting the Collective Agreement Number 207/CAP-HO/HCMS/PB/III/2023 dated 31 March 2023 concerning being laid off unilaterally, the Employer determines the contents of the agreement without consulting the workers first. The Employer submits a ready-to-use document, in this case the worker (forced/unwillingly) agrees to the contents of the agreement and signs it. Employers do not carry out what has been mandated in the Circular Letter of the Minister of Manpower Number SE-05/M/BW/1998 concerning Wages for Homeworked Workers which states that if employers are to pay workers' wages not in full then it should be negotiated with workers. Furthermore, the Employer also violates Article 1320 of the Civil Code regarding the regulation of the requirements for the validity of an agreement which must meet the conditions for the existence of an agreement from the parties, namely between the worker and the entrepreneur. This condition causes workers to not get the right to freely determine the scope of the contents and terms of an agreement freely. Waiver of the provisions above can cause harm and injustice to workers who are sociologically in a weak position.

In terms of wages workers are still entitled to wage rights, this is as stated in the Manpower Act article 93 paragraph (2) letter f, in the provisions of this article requires employers to continue to pay wages if a worker does not work not because he wants to but because not employed by the Company even though the worker is actually willing to carry out the work. This means that workers are not employed not because of the mistakes they have made. Furthermore, workers who are laid off still have status as workers and are bound by work relations with companies, so they are still entitled to their rights as workers, including the matter of wages, this is in line with the provisions of Article 88A Paragraph (1) Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation which states that the right of the worker/laborer to wages arises when a working relationship occurs between the worker/laborer and the entrepreneur and ends when the employment relationship is terminated. The mechanism for providing wages in the Collective Agreement states that the amount of payment of rights from employers is 50% (fifty percent) of the basic salary and fixed allowances. If seen from the existing data, this is not in line with the applicable laws and regulations because legally the form of wages is in the form of money with a minimum proportion of 75% of the basic wage of the total amount of basic wages and fixed allowances. This shows that in practice the Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages is not implemented due to the weak bargaining position of workers/laborers. Skilled workers/laborers can take it or leave it, but non-skilled workers mostly receive wages as is. Because in his mind the important thing is to

work even though he gets a small wage. And this is what sometimes causes problems due to unilateral decision making by the Company.

Furthermore, in terms of laying off workers while there is no work activity, apart from setting wages, a clear period of time must also be provided. This is also stated in the provisions of the Circular Letter of the Minister of Manpower Number SE-05/M/BW/1998. So as to create a legal certainty for all laid-off workers.

Implementation of the BPJS Health and BPJS Employment programs at PT. In essence, CAP has been running, so far employees with active working status pay contributions which are deducted from the employee's salary payroll every month. However, in the Collective Agreement Number 007/CAP-HO/HCMS/PB/III/2023 this matter was not included in the contents of the agreement, so there is no certainty whether this social security will continue or not.

From the research results obtained, basically the legal protection provided by employers to laid-off workers, has not fully referred to the provisions of the applicable laws and regulations, but both employers and workers in this matter agree on the contents of the joint agreement with the contents of the workers willing to be given wages while at home, namely 50% (fifty percent) of the basic salary and allowances.

B. Legal Remedies That Can Be Taken By Workers As A Result Of Not Fulfilling The Rights Of Workers Who Are Laid Off.

Regarding legal remedies that can be taken by workers as a result of not fulfilling the rights of workers who are sent home, they are as follows:

1. Application for Termination of Employment (PHK)

In the case of remuneration, if the Employer does not fulfill his obligations, then the worker can apply for termination of employment to the Company. The criteria for applying for layoffs by workers contain conditions if the Employer does not pay wages for 3 (three) consecutive months or more, even though the Employer pays wages in a timely manner after that. This is as stipulated in Article 154A letter g of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. Furthermore, in Article 156 Paragraph (1), employers are still required to pay severance pay and/or long service pay and compensation pay that should be received, without discriminating based on the reason for the layoff.

2. Request for Compensation

Requests for compensation can be made if the entrepreneur does not carry out the obligations as agreed, then the entrepreneur has committed a default, namely the entrepreneur has not carried out the contractual obligations that should have been fulfilled. The elements of intent and negligence in events that cause harm to workers can be accounted for to the Employer. As a result of not fulfilling the agreement, workers can ask for compensation for losses suffered.

For an obligation to compensate, the Civil Code stipulates that the entrepreneur must first be declared negligent (ingrekestelling). The meaning of the state of negligence is a warning or statement from the worker at the latest when the Employer is required to perform. If the grace period is exceeded, the entrepreneur breaks his promise (default).

As for the form of a statement of negligence in an agreement. If the Employer has been warned or has been expressly billed for his promise as described above, if the entrepreneur still does not carry out his performance, the employee may impose sanctions on the entrepreneur. One of these sanctions is compensation which has been regulated in Article 1243 of the Civil Code which has detailed compensation which includes costs, losses and interest.

3. Settlement of Industrial Relations Disputes Outside the Court

Legal remedies in the context of settling rights disputes, based on the provisions of Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (PPHI) can be carried out administratively, namely settlement can be through Bipartite Negotiations and Mediation.

Basically the best settlement is a settlement by the disputing parties by deliberation for consensus without interfering with other parties, so as to obtain results that benefit both parties.

Bipartite negotiations are carried out to find a settlement by deliberation for consensus carried out by the parties. In the event that deliberations can reach an agreement on a settlement, then a Collective Agreement is drawn up. The agreement made is binding and becomes Law and must be implemented. If the collective agreement is not implemented by one of the parties, the injured party may submit a request for execution to the Industrial Relations Court.

If bipartite negotiations fail, then one or both parties shall register their dispute with the agency responsible for local manpower affairs by attaching evidence that efforts to resolve it through bipartite negotiations have been made.

The next step after bipartite negotiations fail, rights dispute settlement can be done through mediation. Conducted by deliberation by the parties mediated by one or more neutral mediators. The mediator is an employee of a government agency responsible for the field of manpower who fulfills the requirements as a mediator determined by the Minister to be tasked with carrying out mediation and has the obligation to provide written advice to the disputing parties.

In the event that an agreement is reached on the settlement of rights disputes through mediation, a Collective Agreement is made which is signed by the parties and witnessed by the mediator. On the other hand, if an agreement is not reached on the settlement of rights disputes through mediation, the mediator will issue a written recommendation which will be conveyed to the parties. The parties are required to provide a written answer to the mediator whose contents agree or reject the written recommendation.

If the written recommendations are approved by the parties, the mediator helps the parties make a Collective Agreement. Furthermore, if the written recommendation is rejected by one of the parties or the parties, then the parties or one of the parties can continue to settle the rights dispute at the local District Court.

4. Settlement of Industrial Relations Disputes through the Courts

Article 55 of the PPHI Law states that the industrial relations court is a special court within the general court environment.

Settlement efforts through the courts can be carried out at the first level at the District Court, this is in accordance with what is stated in Article 56 of the PPHI Law that the industrial relations court is only tasked with examining, adjudicating, and giving decisions on rights disputes at the first level. And there is no appeal at the High Court, this is intended so that the process of resolving industrial relations disputes is carried out quickly, precisely, fairly and inexpensively [6]. The procedural Law that applies in the industrial relations court is the civil procedural Law in the general court environment, except for what is specifically regulated in the PPHI Law.

Submission of claims for rights disputes shall be submitted to the district court where the worker works and must be accompanied by minutes of settlement through mediation. Submission of a lawsuit must meet formal requirements (requirements to comply with the provisions of the procedural rules based on laws and regulations) and material (requirements related to content or material).

After the lawsuit is filed, an examination will be carried out by the judge and the dispute case will be decided.

The results of the research and discussion that have been carried out, at this time the workers of PT. CAP has not taken any legal action regarding the non-fulfillment of workers' rights by the Company. The author hopes that the research conducted by the author can become a reference later if there are cases of non-fulfillment of workers' rights.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusion

Based on the results of the research and discussion, the conclusions can be drawn, namely as follows:

1. Workers who are laid off still have status as workers and are bound by an employment relationship with the Company, so they are still entitled to their rights as workers, including wages. In practice, the Employer and the worker both agree on the contents of the agreement, namely that the worker is willing to be paid while at home, namely 50% (fifty percent), which is not in line with the applicable laws and regulations.
2. Legal remedies that can be taken by workers due to non-fulfillment of the rights of workers who are sent home can be taken in accordance with what is stated in Article 154A letter g of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, article 1243 of the Civil Code and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (PPHI Law), which was ratified on January 4, 2003. For workers who experience industrial relations disputes are regulated in Article 3 to Article 155 of Law Number 2 of 2004. Settlement of industrial relations disputes in the case of rights disputes, this can be done if the worker does not get his rights from the Employer, namely the employee can make efforts to settle them through bipartite negotiations, mediation and the Industrial Relations Court.

B. Suggestion

1. The government should make more specific rules regarding wage provisions for laid-off workers, and define the criteria for laid-off workers.
2. Academics and related agencies, namely the Manpower Office, should actively provide education and socialization of the importance of workers' rights, and the forms of legal protection provided by the State, including providing education regarding the efforts taken by workers if workers' rights are not fulfilled.

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