Antinomy Of Legal Norms Related To Termination Of Employment In The Regime Of Labor Laws And Employment Creation Laws

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ABSTRACT

This papers aim to answer two problematic main. *First*, related to antinomy norm law in termination connection arranged work in regime Constitution employment and Constitution create work. *Second*, impact enforcement to gift penalty for giver work. Study this is study law normative use approach legislation and approach conceptually. Results show a shift paradigm connection between worker and giver related to termination connection work. This is because direction Policy in the regime Constitution employment leads to the protection of workers. Remember, in the Constitution, employment termination connection work only could do through negotiation Between worker and giver work. Whereas in the regime Constitution creates work that enhances more investment and takes sides on giver work. This could see in provision Change Article 151 of the law regulated employment related termination connection work could be done without existing negotiation, especially formerly Among worker and giver work. So that when occurring negation to termination connection work as arranged in Constitution, the *aqua* happened deficiency in enforcement law. Constitution creates work more lead on effort criminalization with giving penalty criminal to giver work.

Keywords: Workers, Givers Work,Termination Relationship Work.

ABSTRAK

Penelitian ini bertujuan untuk menjawab dua problematika utama. *Pertama*, terkait dengan antinomi norma hukum dalam pemutusan hubungan kerja yang diatur dalam rezim undang-undang ketenagakerjaan dan undang-undang cipta kerja. *Kedua*, dampak pemberlakuan terhadap pemberian sanksi bagi pemberi kerja. Penelitian ini merupakan penelitian hukum normatif yang menggunakan pendekatan perundang-undangan dan pendekatan konseptual. Hasil penelitian menyatakan bahwa terdapat pergeseran paradigma hubungan kerja antara pekerja dan pemberi kerja terkait dengan pemutusan hubungan kerja. Hal ini dikarenakan arah kebijakan dalam rezim undang-undang ketenagakerjaan mengarah kepada perlindungan pekerja. Mengingat dalam undang-undang ketenagakerjaan pemutusan hubungan kerja hanya dapat dilakukan melalui perundingan antara pekerja dan pemberi kerja. Sedangkan dalam rezim undang-undang cipta kerja mengarah pada peningkatan investasi yang lebih memihak pada pemberi kerja. Hal ini dapat dilihat dalam ketentuan Perubahan Pasal 151 undang-undang ketenagakerjaan yang mengatur terkait pemutusan hubungan kerja dapat dilakukan tanpa adanya perundingan terlebih dahulu antara pekerja dan pemberi kerja. Sehingga manakala terjadi penegasian terhadap pemutusan hubungan kerja sebagaimana diatur dalam undang-undang *a quo* terjadi deferesiensi dalam penegakan hukum. undang-undang cipta kerja lebih mengarah pada upaya kriminalisasi dengan memberikan sanksi pidana kepada pemberi kerja.

Kata kunci: Pekerja, Pemberi Kerja, Pemutusan Hubungan Kerja.

A. INTRODUCTION

Gaps or disparities in legal norms and practices are commonly found in various fields. This also often happens between one legal criterion and another. Such a method is frequently referred to as the antinomy of legal norms. Conflicts between examples or antinomies of legal standards align with the quality of making a rule or norm that does not consider the principle of accuracy in its formation. One of the factors in the antinomy of legal standards is the difference in aims and objectives. Sometimes the renewal of law is needed to follow legal norms that are too far behind legal facts. Still, this renewal needs to be followed by the consistency of the goals and objectives of forming the previous rules. So it is natural if there is a conflict between the norms contained in the new regulations and the previous governments.

The issue that has been in the spotlight lately is related to the formation of the Job Creation Law contained in Law Number 11 of 2020 Concerning Job Creation, referred to as the job creation law. This law includes 79 laws that are correct, add or revoke the articles contained in the 79 rules. So it is natural that there are hundreds of articles in the law. Such practices are not commonly used in the constitutional system in Indonesia, especially in the formation of rules and regulations. To answer the challenges, strengthen the workforce, and improve the welfare of workers or labourers, the Government considers it necessary to improve the laws and regulations covering employment activities. So the work copyright law also revises Law Number 13 of 2003 concerning Manpower.

Of course, the employment problem did not end when the copyright law was passed. Polemics arise, and fundamental questions arise, whose interests are these laws made for? Suppose the answer is in the interests of the workers. In that case, the fact is that some of the amended articles make workers fall even further into the abyss of power relations that are so far away from employers or employers. For example, about work contract agreements, drafting of work contracts is commonly made by employers, and bargaining or workers' bargaining power is not able to change the contents of work agreements whose contents are not necessarily beneficial to workers. At this early stage, the power relations between workers and

employers are very far away. So it is natural that the workers themselves need protection.

Indications of problematic articles related to the termination of employment in the work copyright law are contained in article 151. Although not entirely amended against article 151 of Law Number 13 of 2003, there has been a fundamental shift towards negotiations between workers and employers regarding termination of employment. Articles related to worker protection unilaterally have been shifted and underwent significant changes, which are then more inclined towards unilateral termination of employment.

Still, in the context of worker and employer relations, there is an antinomy of legal norms between workers' wages. Law Number 13 of 2003 concerning Manpower regarding the minimum wage is determined by the district or city, but in the work copyright law, the minimum wage is determined by the Governor. Both the Provincial minimum wage and Regency or City drinking wages. So the minimum wage needs to be standardized according to the condition of the worker's location or the district or city of the worker.

In addition, criminal matters also haunt employers. As for the criminal sanctions listed in the work copyright law, there are vague and unclear norms. For example, against punishment due to the employer's obligations regarding the provision of wages. Article 88 E paragraph (2) prohibits employers from giving underpaid wages. If this article is violated, the penalty for imprisonment is at least 1 (one) year, a maximum of 4 (four) years, and a fine of at least Rp. 100,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 400,000,000.00 (four hundred million rupiahs). However, the phrase in the norm needs to clarify which minimum wage is used as a reference because it needs to be explicitly stated. This article then has the potential to become a sentencing *entry point* against the employer himself.

The explanations above are some of the problems with Law Number 11 of 2020 concerning Job Creation, especially regarding employment. Many academics and researchers have also conveyed problematic descriptions regarding the emergence of this copyright law, which is spread in various forms of scientific work. We get the following regarding this scientific work: first, an article entitled Unilateral Termination of Employment Based on the Job Creation Law (Case Study

of PT. Indosat Tbk), written by Axel Deyong Apono and Aisyah Puspitasari Arifiani. [1]The focus of this article review is to highlight the unilateral termination of employment by PT. Indosat Tbk and legal protection for workers affected by the termination of work from the perspective of Law Number 11 of 2020 concerning Job Creation. Second, Criminal Sanctions Against Employers in Law Number 11 of 2020 concerning Job Creation was written by Kalinga Maulana Ibrahim, I Nyoman Sugiarth and I Putu Gede Saputra. [2]This study provides limitations on the discussion of sanctions contained in Law Number 11 of 2013 concerning Job Creation, specifically criminal sanctions in employment.

Furthermore, scientific work in the form of critical notes issued by the Faculty of Law, Gadjah Mada University, in response to the publication of the work copyright law, namely the Policy Paper on Critical Notes Against Law Number 11 of 2020 concerning Job Creation (Approval of the DPR 5 October 2020) Edition 2/5 November 2020, written by a Professor and Lecturer at the Faculty of Law, Gadjah Mada University. [3]The discussion in this critical note is more thorough on establishing a work copyright law and inappropriate content, including a discussion of employment.

Various studies related to changes in regulations related to employment contained in Law Number 11 of 2020 concerning Job Creation as described above, especially workers' wages, termination of workers' rights and criminal sanctions for employers. As for the various studies, none has specifically discussed the antinomy of legal norms for termination of employment and criminal sanctions for employers in Law Number 11 of 2020 concerning Job Creation. So that raises the formulation of the problem in this article as follows: first, what is antinomy norm law in termination connection arranged work _ in Law Number 13 of 2003 concerning

[1] Axel Deyong Apono and Aisyah Puspitasari Arifiani, Unilateral *Termination of Employment Based on the Job Creation Law (Case Study of PT. Indosat Tbk)*, Kertha Semaya Journal, Vol. 9 No. 10 Years 2021, 1896-1906

[2] Kalinga Maulana Ibrahim et al., *Criminal Sanctions Against Employers in Law Number 11 of 2020 concerning Job* Creation, Journal of Legal Construction Volume 3, Number 1, January 2022, 80-84

[3] Sigit Riyanto et al., *Policy Paper Critical Notes Against Law Number 11 of 2020 concerning Job Creation (Approval of the DPR 5 October 2020) Edition 2/5 November 2020*, Faculty of Law, Gadjah Mada University.

Manpower and Law Number 11 of 2020 concerning Job Creation? Second, what is the impact of giving criminal sanctions for giver work?

The research method that the author uses in this article is to use *normative legal research*, namely examining the norms contained in positive law, which positions law as a written or unwritten rule or a decision from an authorized institution. In short, *normative legal research* is research whose object includes basic norms and principles, legal principles, statutory regulations, comparative law, doctrine, and jurisprudence. [4]The basis of legal materials in this article is grouped into two categories of legal materials, namely primary legal materials and secondary legal materials. Primary legal materials consist of Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021 concerning Work Agreements for a Certain Time, Outsourcing, Working Time and Break Time, and Termination of Employment and other supporting books. This article also collects secondary legal materials in the form of data obtained from survey bases and related government agency data.

Furthermore, the materials that have been collected and categorized are processed by systematizing these legal materials. Systematization is done by classifying the legal materials to facilitate legal analysis and construction. [5]Legal materials that have been systematically classified will be analyzed using exploratory-qualitative methods. The explorative analysis is an activity to examine something that has yet to be known, yet to be understood, and yet to be well known so that a deep and comprehensive understanding is obtained to get available problem-solving.

B. FINDING & DISCUSSION TERMINATION OF EMPLOYMENT RELATIONS IN LAW NUMBER 13 OF 2003 CONCERNING MANPOWER

Termination of employment is the last resort after various appropriate measures have been taken to prevent termination of employment. That is the principle rigidly

[4]Amiruddin and Zainal Asikin , *Introduction Method Study Law* , (Jakarta: PT Raja Grafindo Persada , 2004), 119.

[5] Soerjono Soekanto , *Introduction Study Law* , (Jakarta: UI Press , 1986), 251-252.

adhered to by Article 151 of Law Number 13 of 2003 concerning Manpower. The following reads Article 151:

Article 151

(1) Entrepreneurs, workers/labourers, trade unions/labour unions, and the Government must make every effort to ensure no termination of employment.
(2) Suppose all efforts have been made, but termination of employment cannot be avoided. In that case, the intention of terminating employment relations must be negotiated by the employer and the trade/labour union or with the worker/labourer if the worker/labour concerned is not a member of a trade union/labour union.
(3) Suppose the negotiations, as referred to in paragraph (2), do not result in an agreement. In that case, the entrepreneur can only terminate the employment relationship with the worker/labourer after obtaining a stipulation from the industrial relations dispute settlement institution.

If you look closely at Article 151 by reading it systematically, you will find rigour in worker protection. The linkages in paragraphs (1), (2) and (3) lock the space for the employer's arbitrariness to terminate the employment relationship unilaterally. This does not mean that this article shackles companies or employers not to be free in developing their businesses or work. Still, companies or employers who have more power than workers tend to lead to great inequality. This is directly proportional to the capacity of a company.

Moreover, paragraphs (2) and (3) aim to protect against termination of employment unilaterally. According to this provision, every form of intent and purpose of termination of employment (PHK) must be negotiated by both parties. If no agreement is reached, then the cessation of work can be fulfilled after obtaining a stipulation from the industrial relations settlement institution. Then the State is present as an institution for resolving industrial relations disputes. Because philosophically, the protection of workers or labourers is a must for the realization of a sense of justice, [6]as has been mandated by the 1945 NRI Law in Article 28D paragraph (2).

[6] Nicodemus Maring, *Review Juridical Implementation Termination Connection Work (PHK) on an ongoing basis Unilateral by the Company according to Laws _ _ Number 13 of 2003 concerning Employment*, Journal Knowledge Legal Opinion Law, Vol. 3 No. 3 of 2015, 6

C. TERMINATION OF EMPLOYMENT IN LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION

Termination of employment or layoffs in Law Number 11 of 2020 concerning Job Creation remains the same if you only read the norms in this law at a glance. However, there has been a significant shift towards the mechanism for termination of employment regulated in the work copyright law. The location of the fundamental difference is the content of the negotiations. Article 151 of Law Number 11 of 2020 concerning Job Creation prioritizes the effectiveness and efficiency of employers or companies. It is sufficient for the employer to notify the intent and purpose of the worker being terminated. [7]Through this notification, the intent and purpose of terminating a worker can be conveyed so as not to open up room for negotiation regarding the meaning and purpose of completing a worker. Of course, this is different from the previous labour regulation regime. Only then must negotiations be opened bipartite if the worker refuses the notification.

The addition of this notification article later allegedly caused many workers to experience a lot of termination of employment. In practice, it is sufficient for the Company or employer to terminate the employment relationship with the worker through notification without having to negotiate in advance the intent and purpose of the worker's status as a worker. Following are the contents of Article 151 of Law Number 11 of 2020 concerning Job Creation after undergoing amendments:

Article 151

(1) Employers, workers/labourers, trade/labour unions, and the Government must make every effort to prevent termination of employment.
(2) Suppose the termination of employment cannot be avoided. In that case, the purpose and reasons for the termination of employment are notified by the entrepreneur to the workers/labourers and the trade union/labour union.
(3) Suppose the worker/labourer has been notified and refuses to terminate the employment relationship. In that case, the termination of employment must be settled through bipartite negotiations between the employer and the worker/labourer and the workers/labour unions.
(4) If the bipartite negotiations, as referred to in paragraph (3), do not obtain an agreement, termination of employment is carried out through the next stage by the industrial relations dispute resolution mechanism.

[7] Article 151 paragraph (2) of Law Number 11 of 2020 concerning Job Creation

D. ANTINOMY OF LEGAL NORMS OF TERMINATION OF EMPLOYMENT IN LAW NUMBER 13 OF 2003 CONCERNING MANPOWER AND LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION.

Regarding termination of employment in Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation, it is justified in the same article, Article 151. As for Law Number 11 of 2020 concerning Job Creation, there is an additional Article 151A which contains the following:

Article 151A

The notification, as referred to in Article 151 paragraph (2), does not need to be made by the entrepreneur in the case of:

a. Workers/labourers resign of their own volition;
b. workers/labourers and entrepreneurs end their working relationship under a work agreement for a specific time;
c. workers/labourers reach retirement age by work agreements, company regulations, collective bargaining agreements; or
d. the worker/labourer dies.

This article is considered a form of effectiveness and efficiency in corporate governance or management managing its workers. It is enough for workers to be notified of the aims and objectives of the Company or the employer to terminate the employment relationship. However, in practice, it is precisely this rule that makes protection for workers even weaker. Workers are increasingly vulnerable and experience wide disparities with their employers. Instead of providing security, workers are increasingly falling into a slump. Employers no longer need to negotiate regarding the intent and purpose of a person being dismissed from his job. It is enough to notify the worker regarding the termination of employment in which the meaning and purpose of a worker being terminated are stated. This then makes the antinomy of legal norms towards the system of termination of employment or layoffs in Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation. The previous termination regime of employment relations prioritized negotiations and workers' protection but deviated from the following command or rules contained in the work copyright law.

In the following, the author presents a table of differences in the termination system between Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation:

	Law Number 13 of 2003 concerning Manpower	**Law Number 11 of 2020 concerning Job Creation**
Negotiation Material	The intent and purpose of termination of employment	Rejection of notification of meaning and purpose of termination of employment
Bargaining System	Bipartite	bipartite
Notice	There aren't any	Meaning and definition of termination of employment

E. CRIMINAL SANCTIONS FOR GIVER WORK IN LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION

The contents of criminal sanctions in the law fulfil the formal requirements for including criminal sanctions. This is the same as having criminal sanctions in Law Number 11 of 2020 concerning Job Creation. To protect citizens, in this case, workers and employment procedures, a preventive instrument is needed, namely in the form of criminal sanctions. The conditions of criminal sanctions are pretty varied, such as the death penalty, life imprisonment, imprisonment, confinement and fines, all of which constitute the main punishment. In addition, there are additional penalties in the form of revocation of certain rights, confiscation of certain items and announcement of judge's decisions, all of which constitute other penalties. [8]The justification for criminal sanctions in the employment context under Law Number 11 of 2020 concerning Job Creation is contained in Articles 185 – 188. These articles have changed from the previous employment regulation regime.

The criminal articles included in the regulation are appropriate to protect workers. Still, several contents need to be considered and scrutinized in their inclusion. For example, the punishment is due to the employer's obligations regarding the provision of wages listed in Article 185. One of the consequences for a person or legal entity can be punished according to Article 185, referring to Article

[8] Mahrus Ali, *Fundamentals of Criminal Law*, (Jakarta: Sinar Graphic, 2011), 93

88 E paragraph (2), which prohibits employers from paying wages under drinking. If this article is violated, the penalty for imprisonment is at least 1 (one) year, a maximum of 4 (four) years, and a fine of at least Rp. 100,000,000.00 (one hundred million rupiahs) and a maximum of Rp. 400,000,000.00 (four hundred million rupiahs). However, the phrase in the norm needs to clarify which minimum wage is used as a reference because it is not explicitly stated. This article then has the potential to become a sentencing *entry point* against the employer himself.

F. CONCLUSION

The system of termination of employment in Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation experienced a significant shift at the practical level caused by this regulation. Whether the legislators are aware of it or not, protecting workers through a negotiation mechanism for the intent and purpose of terminating employment brings workers into a safer area. With the system of termination of work in this latest regulation, employers' arbitrariness is getting higher, and the level of inequality between employers and workers is getting higher. So it is only natural that the regulation makers, in this case, the DPR and the Government, change the mechanism for terminating employment to be more based on worker protection.

Creating a work copyright law is intended to improve the investment and business climate. However, the inaccurate phrase in Article 88 E paragraph (2) of Law Number 11 of 2020 concerning Job Creation, which then leads to punishment according to Article 185 of Law Number 11 of 2020 concerning Job Creation, may lead to the criminalization of employer, thereby affecting the investment climate and the business itself.

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