

## HUMAN RESOURCES MANAGEMENT: LEGAL REVIEW OF SEVERANCE PAY DUE TO RETIREMENT OF PENSION AGE

By

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### Abstract

*The relationship between workers and employers in a company is very susceptible to problems, one of the most frequent problems when terminating employment at retirement is the calculation of severance pay that must be paid by employers to workers. Law No. 13 of 2003 concerning Manpower regulates pension money for workers who have experienced layoffs because they have met retirement age. The purpose of this research is expected to be donated to enrich the field of law, namely a variety of information for both workers and employers to place severance pay and other rights in the Indonesian labour law system. The approach method used is a normative juridical approach, using the provisions of the prevailing laws and regulations. This type of discussion is carried out in a descriptive analytic manner, on the data collected based on library research.*

### Keyword :

*Human resources management, Employment and Pension.*

## 1. INTRODUCTION

Termination of Employment (PHK) is an unexpected event, especially from the side of the worker and the employer side because by laying off the worker concerned will lose his livelihood, while from the employer's side compensate the worker.

For workers, the imposition of layoffs due to retirement will eliminate their livelihoods which not only affect the workers concerned, but also their families. Meanwhile, for employers, layoffs create an obligation to provide compensation for layoffs for workers. The more workers who are laid off and the higher the tenure of the workers, the higher the compensation costs that must be prepared by the employer.<sup>1</sup>

The relationship between workers and employers is very vulnerable to problems, one of the most frequent problems due to disagreements is the amount of severance pay.<sup>2</sup>

Considering the magnitude of these implications, in order to avoid disputes between workers and employers, it is necessary to prepare compensation costs and regulations in accordance with government regulations relating to layoffs. In the event of dismissal, the entrepreneur is obliged to pay severance pay and / or compensation money for years of service and compensation for rights that should have been received. The components of the wage that are used as the basis for calculating severance pay, period of service pay and compensation for entitlements that should be received consist of the basic wage and all forms of permanent allowances provided to workers and their families. Apart from wages, the amount of severance pay and reward pay for years of service is also determined by the length of service.

Article 167 paragraph (1) of the Manpower Law, apart from layoffs from employers and

<sup>1</sup> Ari Hernawan. 2016, *Keberadaan Uang Pesangon dalam Pemutusan Hubungan Kerja Demi Hukum di Perusahaan yang sudah menyelenggarakan Program Jaminan*

*Pensiun*. Jurnal Ilmiah Fakultas Hukum Universitas Udayana. Denpasar

<sup>2</sup> Sehat Damanik. 2007. *Hukum Acara Perpekerjaan*. Jakarta: Penerbit Dss Publishing, h. 24

layoffs by workers known as resignation, also known as layoffs for the sake of law, namely dismissal because workers enter retirement age are interesting to observe because in the company it is possible to have a pension security program.

As the object of the author's research is a company X which currently has approximately 140 permanent workers.

From the description above the authors are interested in researching "Legal Reviews About the Implementation of Severance Pay for Termination of Relationships Due to Retirement Age" with a focus on the issue of what obligations an employer should give to workers in the event of termination of employment due to retirement age according to the 2003 Law on Manpower and to what extent Company X imposes its obligations on workers in termination of employment due to retirement age.

## **2. RESHEARCH METHOD**

This research is a normative juridical approach, using the provisions of the prevailing laws and regulations. The success of legal research depends largely on the quality of the research topic. Researchers will easily carry out legal research if the topic chosen is in accordance with the researcher's interest in the field of law to be developed. Another consideration is the availability of legal resources and whether the topic chosen has not been researched by other researchers before. Legal research is conducted to find solutions to emerging legal problems, therefore legal research is a study in order to understand law. The result is to provide a prescription of what should be the problem and how to solve it. The methods of determining the sample and collecting data used in this research are: Primary, which includes the applicable laws and regulations, the applicable regulations in Company X relating to research issues. Secondary, library materials, including materials and results of seminars and articles from the internet. The data analysis method used in this study is a qualitative method, the nature and form of this research report is descriptive-analytical.

## **3. ANALYSIS AND RESULTS**

This section is the most important section of your article. The analysis and results of the

research should be clear and concise. The results should summarize (scientific) findings rather than providing data in great detail. Please highlight differences between your results or findings and the previous publications by other researchers.

### **Termination of Employment**

According to Law no. 13 of 2003 concerning Manpower, what is meant by termination of employment is the termination of a work relationship due to certain matters resulting in the termination of rights and obligations between workers and employers.

The term termination of employment is a scourge for every worker, because workers and their families will experience suffering and their survival is threatened by loss of employment and workers' income due to termination of employment.

Termination of employment that occurs due to the expiration of the time (retirement) stipulated in the work agreement does not cause problems because the parties concerned are both aware of the end of the employment relationship so that each has tried to prepare himself to face this reality. However, termination of employment due to retirement age can lead to disputes and have an impact on both parties, especially from workers and employers, which inevitably cause reactions that cannot accept reasons, especially related to the amount of pension money.

In connection with the consequences of termination of employment, especially for workers and their families, Imam Soepomo is of the opinion that termination of employment for workers is the beginning of all terminations, the beginning of ending having a job, the beginning of ending the ability to pay for the daily needs of his family, the beginning from ending the ability to send children to school and so on.<sup>3</sup>

### **Reasons for Termination of Employment**

When termination of employment occurs, a difficult period begins for workers and their families, therefore to help or at least reduce the burden on workers who are laid off, the law requires or obliges employers to provide severance pay, reward pay, and compensation money.

The reasons for layoffs play a major role in determining whether or not the worker is

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<sup>3</sup> Imam Soepomo. *Pengantar Hukum Perpekerjaan*. Cet. V Djambatan : Jakarta. 1983.hlm.124

entitled to severance pay, reward and compensation pay. The regulations regarding severance pay, reward pay and compensation pay for rights are regulated in article 156, article 160 to article 169 Law no. 13 of 2003 concerning Manpower. According to Law no. 13 of 2003 concerning Manpower, the company can be responsible in various conditions as below:

1. Resignation of one's own accord.
2. Resignation in writing of one's own accord due to the termination of the employment relationship.
3. Resignation due to reaching retirement age.
4. Workers make serious mistakes.
5. Workers are detained by the authorities.
6. The company goes bankrupt / the company experiences a loss.
7. Workers are constantly absent.
8. The worker dies.
9. Workers commit violations.
10. Change of status, merger, consolidation or change of ownership.
11. Termination of Employment for Efficiency Reasons.

According to Darwan Prints, with a work relationship, workers are entitled to wages in return for their work, while the employer / entrepreneur is entitled to services / goods from the work of the worker in accordance with the agreed work agreement. Termination of employment between workers and employers should not be done arbitrarily, but there are certain things that must be fulfilled by both parties so that the dismissal does not injure the sense of justice between the two parties.<sup>4</sup>. "The dismissal of employees certainly has a huge impact on the company, especially the issue of funds. Because the dismissal of employees requires a large enough fund, among others, to pay for retirement or employee severance pay and to pay other benefits. Likewise, at the time of employee withdrawal, the company also issued a large amount of money for compensation payments and employee development. With the employee dismissal, of course it has a very strong influence on the employees themselves. By being dismissed from his job, it means that the employee can no longer fulfill the maximum needs of the employee and his family. On this basis, the

human resource manager must be able to calculate the amount of money that should be received by the retiring employee, so that the employee can meet his needs to the level that is considered sufficient "<sup>5</sup>.

### **Liability of the Company in case of employment termination due to retirement**

Entrepreneurs can terminate the employment of workers / laborers because they have entered retirement age. In the event of termination of employment, there are obligations that must be fulfilled by the entrepreneur. The entrepreneur's obligations as an obligation so as not to eliminate the workers / laborers' right to old age security which is mandatory in accordance with the prevailing laws and regulations.

The obligations that must be fulfilled by employers according to article 167 of the Manpower Act can be described as follows:

In the event that an entrepreneur has enrolled workers / laborers in a pension program whose contributions are fully paid by the entrepreneur. Employers can terminate the employment relationship of workers / laborers because they are entering retirement age and if the entrepreneur has enrolled workers / laborers in a pension program whose contributions are fully paid by the entrepreneur, the entrepreneur only adds a right assignment fee, and the entrepreneur is not obliged to pay severance pay and period awards. work, so that the rights earned by workers are pension program money plus rights-assignment money.

What if the amount of guarantee or pension benefits received at the same time in the pension program turns out to be less than the amount of money which is 2 times the severance pay and 1 time the award for years of service? Article 167 states that the difference must be paid by the entrepreneur.

In the event that the entrepreneur has enrolled the worker / laborer in a pension program whose contributions / premiums are paid by the entrepreneur and the worker / laborer.

If the entrepreneur has enrolled the worker / laborer in a pension program whose contributions / premiums are paid by the entrepreneur and the worker / laborer, then what is calculated with severance pay is the

<sup>4</sup> Prints Darwan. *Hukum Ketenagakerjaan Indonesia*. PT Citra Aditya. Bandung. 2000. Hlm. 132

<sup>5</sup> Imam soepomo. *op cit*. hlm 137

pension whose premium / contribution is paid by the entrepreneur.

3. In the event that the entrepreneur does not include workers / laborers who have experienced termination of employment due to retirement age in the pension program.

If the entrepreneur does not include workers / laborers who have experienced termination of employment due to retirement age in the pension program, the entrepreneur is obliged to provide the workers / laborers with 2 times severance pay plus 1 time service pay and plus compensation for entitlements.

It is mentioned above that if an entrepreneur has included workers / laborers in a pension program whose contributions / premiums are paid by the entrepreneur and the worker / laborer, then what is calculated with severance pay is the pension whose premium / contribution is paid by the entrepreneur. In this case the Manpower Law has illustrated the calculation in the explanation as follows:

For example, the severance pay that should be received by workers / laborers is Rp. 10,000,000.00 and the amount of pension guarantee according to the pension program is Rp. 6,000,000.00 and in the arrangement of the pension program, it has been determined that the premium is borne by the entrepreneur at 60% (sixty percent) and by the worker / laborer at 40% (forty percent), then:

The calculation of the result of the premium paid by the entrepreneur is  
 $60\% \times \text{Rp. } 6,000,000.00$

= Rp.

3,600,000.00

The amount of compensation whose premium is paid by the worker / laborer is

$40\% \times \text{Rp. } 6,000,000.00$

= Rp.

2,400,000.00

So the shortfall that still has to be paid by the entrepreneur is

$\text{Rp. } 10,000,000.00 \text{ less } \text{Rp. } 3,600,000.00$

= Rp.

6,400,000.00

So that the money received by workers / laborers at the time of layoff due to retirement is:

- a. Rp. 3,600,000.00 (compensation from pension program organizers whose premiums are paid by employers 60%)
- b. Rp. 6,400,000.00 (originating from shortage of severance pay that must be paid by entrepreneurs)
- c. Rp. 2,400,000.00 (compensation from pension program organizers whose premium is paid by workers / laborers)

### **Pension Money Calculation**

There are 3 types of pension money components that are mentioned in Article 167 of the Manpower Law, namely: 1. severance pay, 2. Employment Rewards, and 3. Rights compensation. The calculation for each component of the pension money is as follows:

#### **1. Calculation of severance pay**

Severance pay is money given to workers or employees at the time of termination of employment by the employer / company based on the length of time worked by the worker / company concerned and the amount of compensation per hour<sup>6</sup>.

The calculation of severance pay stipulated under Article 156 paragraph 2 of Law no. 13 of 2003 are:

- a. working period of less than 1 year  
= 1 month of wages
- b. working period of 1 year or more but less than 2 years  
= 2 months of wages
- c. work period of 2 years or more but less than 3 years  
= 3 months of wages
- d. working period of 3 years or more but less than 4 years  
= 4 months of wages
- e. working period of 4 years or more but less than 5 years  
= 5 months of wages
- f. working period of 5 years or more but less than 6 years  
= 6 months of wages
- g. work period of 6 years or more but less than 7 years  
= 7 months of wages

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<sup>6</sup> Halim Ridwan. *Hukum perpekerjaan*

*dalam Tanya jawab*. Ghalia Indonesia. 1984. Hlm.

- h. work period of 7 years or more but less than 8 years = 8 months of wages
  - i. work period of 8 years or more = 9 months of wages
2. Calculation of period of service reward money.
- Employee award money ("UPMK") is a service fee as a reward from employers to workers / laborers related to the length of their tenure. The calculation of the award money is based on Article 156 paragraph 3 of Law no. 13 of 2003 as follows:
- a. working period of 3 years or more but less than 6 years = 2 months of wages
  - b. work period of 6 years or more but less than 9 years = 3 months of wages
  - c. work period of 9 years or more but less than 12 years = 4 months of wages
  - d. 12 years of service or more but less than 15 years = 5 months of wages
  - e. working period of 15 years or more but less than 18 years = 6 months of wages
  - f. work period of 18 years or more but less than 21 years = 7 months of wages
  - g. service period of 21 years or more but less than 24 years = 8 months of wages
  - h. service period of 24 years or more = 10 months of wages.

#### **Calculation of right replacement money**

Rights compensation which should have been received under article 156 Law No.13 / 2003:

- a. Annual leave that has not been taken and has not failed
- b. costs or fees for workers / laborers and their families to return to the place where the workers / laborers are accepted to work;
- c. housing compensation as well as medication and care is set at 15% (fifteen percent) of the severance pay and / or service pay for those who meet the requirements;
- d. other matters stipulated in the work agreement, planning regulations or collective working agreement.

#### **Basic Principles of Retirement in Company X**

Each worker will arrive at the end of his / her job, when the working age has been determined by Company X, this is referred to as retiree. A worker who is declared retired is assessed on his ability to work productively. The determination of the working age period is different for each type of work depending on the type of work. The ages for workers are as follows:

- a. For non-administrative employees, it is between 45 and 50 years.
- b. For administrative staff is 55 years
- c. For certain employees it is between 65 and even 70 years.

Company X has also paid attention to paying attention to workers who are facing retirement, namely:

1. The retirement preparation period can be given for 6 months prior to retirement.
2. Workers in the retirement preparation period are conditioned as follows:
  - a. Released from office and can be appointed as staff in certain units.
  - b. Must be present at the office
  - c. Receive regular income
  - d. Receive permanent welfare
  - e. Can be involved in office activities
  - f. Given the opportunity to take part in a retirement preparation training program

#### **Calculation of severance pay for workers at retirement age**

In providing layoff money, Company X refers to the Manpower Act No. 13 of 2003 that component money can consist of one or more components, namely: Severance pay, employee awards and rights compensation money. The amount of severance pay given during service as a worker is as follows:

- a. work period of less than 1 (one) year, 1 (one) time of last month's fixed income;
- b. work period of 1 (one) year or more but less than 2 (two) years, 2 (two) months of wages;
- c. work period of 2 (two) years or more but less than 3 (three) years, 3 (three) times the last month's regular income;
- d. working period of 3 (three) years or more but less than 4 (four) years, 4 (four) times the last month's regular income;

- e. working period of 4 (four) years or more but less than 5 (five) years, 5 (five) times the last month's regular income;
- f. work period of 5 (five) years or more but less than 6 (six) years, 6 (six) times the last month's regular income;
- g. work period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) times the last month's regular income;
- h. work period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) times the last month's regular income;
- i. work period of 8 (eight) years or more, 9 (nine) times the last month's fixed income.

The amount of work period award paid during the period of service as an employee is as follows:

- a. working period of 3 (three) years or more but less than 6 (six) years, 2 (two) times regular income;
- b. work period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months of wages;
- c. work period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) times regular income;
- d. work period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) times regular income;
- e. work period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) times regular income;
- f. work period of 18 (eighteen) years or more but less than 21 (twenty-one) years, 7 (seven) times regular income;
- g. work period of 21 (twenty-one) years or more but less than 24 (twenty-four) years, 8 (eight) times regular income;
- h. work period of 24 (twenty-four) years or more, 10 (ten) times regular income;

The amount of compensation for entitlements given during service as a worker is as follows: money given to employees at the time of dismissal as a substitute for annual leave that has not been taken, and is calculated on the basis of effective work days.

#### 4. CONCLUSION

In the event of termination of employment, both workers and workers are obliged to comply with Law 13 of 2003 concerning Manpower. The law requires that if there is a termination of

good employment due to retirement age, the entrepreneur is obliged to provide a pension in accordance with article 167 of Law 13 of 2003 concerning Manpower. From the existing regulations in Company X, it can be seen that the company has given its obligations in the form of a pension which consists of components of severance pay, employee rewards and compensation for rights to workers in accordance with Law No. 13 of 2003 concerning Manpower.

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