

## JURIDICAL ANALYSIS ON BIPARTITE NEGOTIATION IN THE EMPLOYEE TERMINATION PROCESS AT PT. J RESOURCES BOLAANG MONGONDOW, INDONESIA

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*Abstract - The disputes over termination of employment are common in the industrial relations. Many industrial relations actors settle disputes by filing lawsuits to the Industrial Relation Court. They assume that bipartite negotiation is ineffective in settling disputes of termination of employment in particular. In contrary, a company In Indonesia, named PT. J Resources Bolaang Mongondow, experiences it differently where the bipartite negotiation is well-emphasized in settling disputes of termination of employment. This is also supported by various strategies implemented inside the company to prevent any disputes, particularly the termination of employment that leads to the Industrial Relation Court. This paper uses descriptive analysis as well as normative-empirical legal as the research method. The data was collected through literature review, research papers, essays, national journal, interview, website as well as legal studies. The termination of employment is regulated under Law No. 13 of 2003 concerning Manpower, while the Law No. 2 of 2004 regulates the Industrial Relations Dispute Settlement. Likewise, the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. PER.31/MEN/XII/2008 concerning the Guideline for Settlement of Industrial Relations Dispute through Bipartite Negotiations. The disputes of termination in industrial relations emerge due to the violation of company regulation in the employment contract done by the employee. Nonetheless, PT. J Resources Bolaang Mongondow has been successfully implementing the bipartite negotiations to settle disputes. Law No. 2 of 2004 concerning the Industrial Relations Disputes Settlement requires that it has to be resolved first through bipartite bargaining in deliberation to reach consensus. Strategy determines the effectiveness of bipartite negotiations in a company.*

**Keywords: Industrial Relations, Termination of Employment, Bipartite Negotiation.**

### I. INTRODUCTION

Basically, humans are living things that have 3 (three) basic needs, namely clothing, shelter and food. To be able to meet their needs, humans must work, either by working for themselves or working for others. In its implementation, both employers and workers have rights and obligations are expected to be able to carry out their respective functions properly. The relationship between employers and workers can be harmonious if both parties understand and implement the mandate of Law No. 13 of 2003 concerning Manpower and related implementing regulations.

The means of supporting labor process is industrial relations. The purpose of industrial relations is the creation of harmonious relations through cooperation between employers and workers. Article 1 number 16 Law No. 13 of 2003 concerning Manpower provides a definition of industrial relations, which is a system of relations formed between actors in the process of producing goods and / or services consisting of elements from entrepreneurs, workers / laborers, and government based on the values of Pancasila and Constitution Republic of Indonesia Year 1945. The scope of industrial relations is workers / laborers, entrepreneurs and government. These three parties form a process in production and / or services based on certain principles and values. In its implementation, entrepreneurs create partnerships and justice, and provide welfare to workers / laborers. Workers / laborers carry out their obligations, channel aspirations in a democratic manner, develop expertise and participate in advancing companies, and government carries out supervision, determines policies, provides services, and takes action on violations of applicable regulations. One form of the implementation of industrial relations is the formation of a collective working agreement in which the contents of the rights and obligations



















resolved through bipartite negotiations. *Superintendent for Employee and Industrial Relations* of the Company, namely Filep Sarapil Tulende, S.H, said that this happened because of transparency between the company, workers and union. Workers and trade unions also understand Law Number 13 of 2003 concerning manpower and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. Transparency means the company is honest and open to workers and trade unions. Workers are always given the opportunity to express opinions on issues that could potentially conflict and workers are given space to communicate with the Company. Thus, a two-way communication is established between the company, workers and labor unions. Workers and trade unions understand the regulations related to Law Number 13 of 2003 and Law Number 20 of 2004 such as collective labor agreements. Thus, if you commit a violation, you can immediately know what rules are being violated, and what are the sanctions. The bipartite negotiation process is carried out in accordance with the Law, where it comes to an agreement set out in the form of a collective agreement. In addition, there is intense communication from both parties and very much maintaining objectivity.

The company also holds an *Industrial Relations program for non-Industrial Relations*. This program is a training provided by the Company to workers and trade unions. In this training, workers and trade unions are given knowledge of work norms, an understanding of the law, an understanding of industrial disputes and their legal basis. Workers are also given an understanding of working professionally. Thus, when a dispute occurs, what is seen by both parties is whether violation actually occurred in accordance with applicable regulations and is supported by existing evidence. Furthermore, whether the rights and obligations have been fulfilled or not. If it has been fulfilled, it will be stated in collective agreement. However, if it has not been fulfilled, it will be discussed by deliberation to reach a consensus until a collective agreement is reached.

According to *Superintendent Employee and Industrial Relations* of the Company, namely Filep Sarapil Tulende, SH, *Industrial Relations training for non-Industrial Relations* is one of the Company's strategies to strengthen and make workers understand the Law, so that on average, direct termination disputes can be resolved through bipartite negotiations only. This strategy is considered quite successful. *Specialist Industrial Relations & Compliance* PT. J Resources Nusantara Jakarta, Anni Kartika, S.H, said that the company considers workers and labor unions as partners because there is a reciprocal relationship in industrial functions.

The company also maximizes bipartite cooperation institution forum (LKS Bipartite). LKS Bipartite is a communication medium between workers and employers as well as trade unions. This is done to discuss issues, information, and matters in the work environment that have potential to become disputes. In the company, bipartite institution is carried out very creatively, if in other companies they just sit quietly in a room and are then given *snacks* and coffee, this is not the case at the company. Bipartite worksheets are held outside the work area so that mind is fresher and creates a different atmosphere. In addition to discussing materials that are the subject of discussion in bipartite institution, employers and workers as well as trade unions jointly carry out activities such as *outbound* activities. In fact, sometimes the meetings take place at the homes of trade union members or workers' representatives in turns. Thus a sense of kinship or brotherhood arises, so as to increase a sense of trust in one another. Companies always open themselves to workers and trade unions to discuss issues or information relating to industrial relations.

Then the company also has a disciplinary committee, which is formed by company management. The disciplinary committee members consist of 9 (nine) heads of each department. The function of disciplinary committee is to discuss any violations that have occurred and the potential for termination of employment, without being given a prior warning letter. However, violations discussed are only those that have the potential for termination of employment and do not apply to multilevel violations.

## B.2 Termination Problems Researched

Termination of employment is carried out by the Company against one of its employees, namely Worker, not his real name (Worker), who has served as *foreman* or supervisor. His job is to organize and control the work in the field, then provide reports to his supervisor, namely *supervisor*. Workers have worked for the Company as of August 27, 2013.

Workers commit violations in the form of not coming to work without information for 3 (three) consecutive days, namely on February 5, 6, and 7, 2020. In accordance with Article 60 paragraph 2 of Collective Labor Agreement, Worker is subject to disciplinary action. The sanction given is in the form of a second warning letter, with a validity period of 6 (six) months, starting from the date warning letter is issued. When the second warning letter is still in effect, Worker commits another violation of not coming to work without information on February 15, 2020. Based on Article 60 paragraph 3 of Collective Bargaining Agreement, the second warning letter is upgraded to the third warning letter.

Then the period of validity of third warning letter, worker will not return to work without information on February 17, 18, 19, and 20, 2020. So then on February 21, 2020 the Company sent a summons addressed to





can finally understand and comply with 2019-2020 Collective Labor Agreement of PT J. Resources Bolaang Mongondow and accept the consequences of termination of employment. So that a collective agreement was made based on Article 7 of Law Number 2 of 2004.

Judging from its implementation, disputes over termination of employment in the Company can be resolved through bipartite negotiations. This can happen because there is good communication and no party is harmed. In a collective agreement, the Company pays the rights of Workers, namely in the form of severance pay, reward and compensation money. Then the company registers collective agreement with the clerk of Industrial Relations Court at the District Court to obtain a collective agreement deed.

In addition, during the current Covid-19 pandemic, the number of bipartite negotiations in the Company continues to increase, this is due to the termination of employment for certain time workers who were terminated from work before the end of work contract period. The Covid-19 pandemic that has not ended has forced the company to terminate its workers. However, disputes can still be resolved through bipartite negotiations because of good two-way communication, and the Company provides rights that must be obtained by Workers if their employment relationship is terminated in accordance with prevailing laws and regulations.

Bipartite negotiations in the Company can run effectively because the Company implements labor regulations and arrangements for the settlement of industrial relations disputes. By maximizing bipartite negotiations, there are three benefits for each party, namely saving time, costs and energy. In addition, by maximizing bipartite negotiations, it can reduce the number of cases in industrial relations courts. The successful implementation of bipartite negotiations is supported by the Company's openness to workers and trade unions. The company places great importance on openness and honesty.

The success of bipartite negotiations was also a result of dispute prevention strategy adopted by the Company. The strategy is in the form of a training program, one of which is an *Industrial For non-Industrial* program, namely maximizing bipartite cooperation institution forum and independently forming a disciplinary committee. So that when a dispute occurs and then bipartite negotiations are carried out, both parties already know their respective rights and obligations.

It cannot be denied that the failures and obstacles in bipartite negotiation process occur because companies are dishonest and are not open to communicating with workers and trade unions. When a company does not wish to communicate with its workers, the way it wants to be taken to resolve disputes is through an industrial relations court. Considering that bipartite negotiations are the initial mechanism that must be carried out, sometimes bipartite negotiations are carried out as just a formality so that they do not run effectively. In addition, the failure of bipartite negotiations can be caused by intervention from third parties. Usually when workers or trade unions do not understand procedures for resolving industrial relations disputes, they are very easily influenced by third parties who are not directly related.

## V. CONCLUSIONS

Law Number 13 of 2003 concerning Manpower requires employers / companies and workers / laborers to conduct bipartite negotiations in case of industrial relations disputes, particularly in the case of termination of employment. Termination of employment is the last step in which conditions are met. Strategy of PT. J Resources Bolaang Mongondow in termination of employment was running effectively, so that it could resolve problems without going through tripartite negotiations and an industrial relations court.

PT. J Resources Bolaang Mongondow terminated workers who had been proven to have violated the collective labor agreement, which was supported by available evidence, even though the workers asked that the termination of employment did not occur. The strategy applied by PT. J Resources Bolaang Mongondow in bipartite negotiations, namely open communication with employees, led to the creation of a mutually understanding relationship with each other. Each party understands their position and understands the regulations related to termination of employment. The success of bipartite negotiations at PT. J Resources Bolaang Mongondow by itself has embodied the principles of industrial relations, namely the principle of benefit, the principle of joint effort, the principle of democracy, the principle of fairness and equity, the principle of life, the principle of legal awareness, and the principle of self-confidence. Thus it can be said that PT. J Resources Bolaang Mongondow creates harmonious industrial relations.

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