

Juridical Review of Unilateral Termination of Employment by PT Indosat TBK during the Covid-19 Pandemic



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ABSTRACT: This research examined from a legal perspective regarding the unilateral termination of employment by PT Indosat Tbk, during the Covid-19 Pandemic. Two main issues were discussed in this study, the first was the chronology of unilateral termination carried out by PT Indosat Tbk to its employees during the Covid-19 pandemic, and analyzing the legal termination procedural during the Covid-19 Pandemic. This study used a normative juridical research method using secondary legal data. Based on the results of the study, it was known that the chronology of layoffs was carried out by PT. Indosat, Tbk to its workers during the Covid-19 pandemic was unilateral. Meanwhile, the legal termination procedure during the Covid-19 pandemic must go through the stages of negotiations between the employers, in this case, PT. Indosat, Tbk with employees represented by existing labor associations. In its implementation carried out, PT. Indosat, Tbk did not carry out negotiations before carrying out simultaneous termination. In connection with the above, the employer should negotiate first before implementing efficiency by doing the termination of employment (PHK).

KEYWORDS: Termination of Employment; Covid-19; Workers

A. PRELIMINARY

In principle, the relationship between Employers and Workers is a relationship based on an employment agreement. The Employment Agreement is the foundation for the arising of the relationship between the worker/laborer and the employer/company. Therefore, in the world of employment, these agreements are very important and crucial (Darma 2017). Without an employment agreement, workers cannot be ordered by the company and vice versa, the company cannot order workers to do a job for the productivity of the company (Priyonggojati 2019). Article 1 paragraph (1) Government Regulation Number 35 of 2021 concerning Employment Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment defines that Employment Relationship is a relationship between Employer and Worker/Labourer based on an Employment Agreement, which has elements jobs, wages, and orders. The elements in this definition represent the relationship that occurs between the employer and the worker in the employment agreement.

In this era of globalization, of course, an employment agreement is very concerned because it is the basis of the work of employees in certain companies. Every worker will get an honorarium in the form of wages or other names in return for the work that has been done. Wage is a consequence of a job given by the company's workers and there are other elements, namely, there is no order from the company that will move workers to be able to carry out company productivity activities (Abdul Khakim 2007). The employment agreement is different from an agreement regulated in the form of civil law, the conditions for the validity of the cooperation agreement are that the agreement is valid, namely that those who make the work agreement, the existence of a job that is the object of the agreement, those who make the agreement, which in this case is the employer and workers must be those who are legally competent, and the work agreed upon is work that is not prohibited by law and is following moral values (Luthvi Febryka Nola 2018).

At this time, of course, everyone who lives in Indonesia needs a job to fulfill their daily needs, as well as workers who work at PT. Indosat, Tbk. Employees receive a special pride because it is one of the big companies in Indonesia. However, during the current pandemic, there have been many changes, especially the reduction in the number of employees or this case, termination of employment. This is also experienced by PT. Indosat, Tbk, which has experienced the impact of the pandemic and has reduced workers by doing unilateral termination. The termination by PT. Indosat, Tbk was carried out simultaneously, this caused many calls from the workers concerned and labor associations. As conveyed by the Central Board of the Association of Indonesian Trade Unions (Aspek Indonesia) Sabda Pranawa Djati said the termination of employment of hundreds of Indosat employees last Friday (14/2/2020) was carried out "suddenly and not through negotiations with workers". (Jannah 2021)

Terminations are one of the events that are not noticed by the Workers and the Company, especially the termination carried out by the Company, namely layoffs at the initiative of the Company with certain reasons, requirements, and procedures. The

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termination carried out at the initiative of the Company have been following the reasons, requirements, and procedures as determined by the law but will launch it contrary to the constitutional rights of citizens in the field of employment, that legal remedies that can be taken by workers who experience layoffs are efforts the settlement can be carried out through bipartite efforts made between workers or trade unions and the entrepreneur as the decisive party in the employment relationship. The best deliberation effort is to be resolved by the disputing parties and reach an agreement without the intervention of other parties so that an agreement can be produced that is mutually beneficial to both parties, namely reducing costs, energy, and time. (Dwita 2014)

The implementation of Termination of Employment must certainly have a point of justice between the employers, in this case of PT. Indosat, Tbk, and employees or workers represented by Aspek Indonesia, by negotiating first. The implementation of negotiations is the best way to determine the termination of the employment agreement based on the provisions contained in Law Number 13 of 2003 concerning Workforce as the provisions underlying the employment relationship. The termination of employment by PT. Indosat, Tbk who did not notify and discuss with the labor association disappointed the employees because it was a form of agreement between the two parties. So when this happens, it is necessary to conduct an evaluation related to the implementation of the simultaneous termination of employment carried out during the Covid-19 pandemic.

Based on this incident, of course, the government must pay attention as the organizer of the affairs of providing job opportunities, as currently there are policies related to increasing job vacancies as stated in Law Number 11 of 2020 concerning Job Creation. Unilateral termination carried out by PT. Indosat, Tbk encouraged the author to examine more deeply the problem, namely how the chronology of unilateral termination was carried out by PT. Indosat, Tbk towards its employees during the covid-19 pandemic? What is the legal procedure for termination during the Covid-19 Pandemic based on the Job Creation Law?

B. RESEARCH METHOD

In this legal research, the approach method used was normative juridical law research. The normative juridical approach is to examine research problems based on laws and regulations as positive laws. (Diantha 2017) This research was specified as an analytical descriptive study, namely analyzed by describing the object of research. (Depri Liber Sonata 2014) The type of data used was in the form of secondary data consisting of primary and secondary legal materials. The type of secondary data is data obtained from the results of library searches carried out. (Amirudin 2012) The method of collection through literature study by conducting secondary legal data searches. Furthermore, to analyze this legal research, the method used was qualitative analysis.

C. RESULTS AND DISCUSSION

1. Chronology of Unilateral Termination Carried Out by PT Indosat, Tbk to Its Workers during the Covid-19 Pandemic

The existence of a case chronology in revealing the truth and making a decision on a case is very important. (Riduan 2015) Therefore, in this context, it is important to know the chronology of the termination carried out by PT Indosat, Tbk for its employees during the Covid-19 Pandemic. Based on the search conducted, it is known that the chronology of this termination is as follows, it is known that PT Indosat, Tbk as a telecommunications issuer in Indonesia, has terminated employment to 677 employees simultaneously. More than 92% of the 677 employees affected by this business reorganization have agreed to accept the package provided by Indosat. Laid-off workers receive severance pay of up to 70 months of salary, while those with the shortest working period, which is under one year, get 14 months of salary. 57 people strongly reject the termination by PT. Indosat, Tbk which is considered one-sided as stated by the President of the Indosat Workers Union, Roro Dwi Handayani. Of the 677 workers terminated by PT. Indosat, Tbk, those 57 employees consistently continue to fight. It is known that in the past PT. Indosat, Tbk, has been terminated three times since Qatar Telecom entered Indosat.

The termination by PT. Indosat, Tbk this time resulted in the rejection of 57 workers because they were deemed to have violated the rules because the Management did not go through the termination as regulated by the Workforce Law which has now been updated with the Job Creation Law. Workers stated that the terminations were not based on the provisions of the applicable laws and regulations, namely, in particular Article 151 of the Workforce Law, then in the collective labor agreement, they were telling us that if there will be a reduction in employees or termination, the Indosat labor union and company management must sit together and negotiate. Meanwhile, there was no negotiation at the same time as the simultaneous termination. Since the Workers heard the issue that there will be terminations, they had asked the Management for an explanation in December 2019. However, there had never been an answer from the Management who was responsible for the termination process and also act for and on behalf of the Company. Finally, the layoffs were carried out in February 2020. (Monica Wareza 2021)

The termination carried out by PT. Indosat, Tbk, in this case, the employer and the employee, did not go through a negotiation process, as it should be in the employment agreement between the employee and the employer, which requires that negotiations be held before termination of employment, as stated by Ewan, Central Board of the Aspek Indonesia, Sabda Pranawa Djati, that termination actions must be negotiated with the union as the Workers' representative. (Jannah 2021)

Hundreds of employees terminated by PT. Indosat, Tbk are now experiencing many shortcomings and economic problems, especially coupled with the condition of the State of Indonesia, which is currently experiencing the Covid-19 Pandemic. Those

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terminations were carried out by PT. Indosat, Tbk certainly impacts not only on employees but on their families. Based on the disclosure of information on the Indonesia Stock Exchange (IDX), Indosat has been suffered losses since 2018. In the third quarter of 2019, PT. Indosat, Tbk, recorded a net loss of IDR 284 billion. The money saved will be used for other purposes, including improving the quality of service for customers, seeing this the company should be able to provide information in advance to the labor associations as representatives of workers. What has been described above is a chronology of unilateral termination carried out by PT Indosat Tbk to its workers during the Covid-19 Pandemic.

2. Legal Procedures and Requirements of Termination during Covid-19 Pandemic

In principle, the law consists of a set of statutory regulations that are interconnected and related to each other to create social order. (Yusriyadi 2008) Law is broadly divided into two types, namely material law and formal law relating to certain legal procedures. (Satjipto Rahardjo 2009) Material law is manifested in the form of statutory regulations containing prohibitions, and recommendations for certain actions, while formal law is in the form of rules that contain certain procedures such as criminal procedural law, civil procedural law, state administrative procedural law, and other procedural laws. (Sudikno Mertokusumo 2006) In the context of this research, procedural law related to termination is a requirement that must be met in the context of enforcing workforce law in Indonesia.

Referring to Article 61 of Law Number 13 of 2003 concerning Manpower, it stipulates that "The employment agreement ends when the worker passes away, the expiration of the term of the termination agreement, there is a court decision and/or a decision or determination of an industrial relations dispute settlement institution that has permanent legal force or there is certain circumstances or events that are stated in the employment agreement, company regulations, or collective employment agreement that can cause the employment relationship to end. The employment agreement does not end due to the death of the employer or the transfer of rights to the company due to sale, inheritance, or grant. In the event of a transfer of the company, the rights of the workers/laborers become the responsibility of the new employer, unless otherwise stipulated in the transfer agreement which does not reduce the rights of the workers. If the employer, an individual, passes away, the heirs of the employer may terminate the employment agreement after negotiating with the worker/laborer. If the worker/laborer passes away, the heirs of the worker are entitled to their rights under the applicable laws and regulations or the rights regulated in the employment agreement, company regulations, or collective employment agreement."

Furthermore, Article 62 of Law Number 13 of 2003 stipulates that "if one of the parties terminates the employment relationship before the expiration of the period specified in the employment agreement for a certain time, or the termination of the employment relationship is not due to the provisions as referred to in Article 61 paragraph (1), the party terminating the employment relationship is required to pay compensation to the other party in the number of the worker's wages until the expiration of the term of the employment agreement."

After reading the article above and applying it in the context of this research, where PT. Indosat, Tbk did not conduct deliberation with workers before termination of employment, it can be seen that if one of the parties terminates the employment relationship before the expiration of the term or the end of the employment relationship not because of the provisions as referred to in Article 61 paragraph 1, the party terminating the employment relationship is required to pay compensation to the other party. Termination of Employment by PT. Indosat, Tbk, was included in industrial relations disputes, the termination of which must go through the applicable procedures and this had been done by the company, namely by negotiating with the employees.

The stages of terminations are regulated in the laws and regulations, the first is deliberation. In the event of terminations, the first procedure that must be carried out is to conduct deliberation by the company with employees. Here the purpose of deliberation is to reach a consensus, known as bipartite. With this deliberation, both parties will hold talks to find the best solution for the company and employees.

The second stage is the mediation assisted by the Workforce Office. If the problems that occur cannot be resolved through deliberation, then assistance is needed from the local Workforce Office (Disnaker). To find a way to resolve whether through mediation or reconciliation. Third Stage: Legal Mediation, when at the stage of assistance the Workforce Office is unable to resolve the problem between the two parties, then legal remedies can be taken up to court. If the final result is that the dismissal is still carried out, it is submitted by submitting a written application to the industrial relations dispute settlement agency and accompanied by the reasons why the termination was carried out. This institution is commonly known as the Industrial Relations Court (PHI).

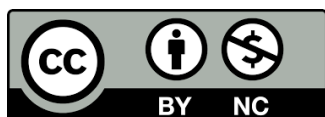
Fourth Stage: Collective Agreement, if it turns out that in the deliberation process at the bipartite level an agreement has been reached, this can be written in a Collective Agreement. The agreement must be signed by both parties and registered with the local Industrial Relation Court. The same thing needs to be done if there is an agreement at the level of mediation and conciliation with the assistance of the Workforce Office. Fifth Stage: Providing severance pay, in the event of termination of employment, the company is obliged to provide severance pay or long service awards to employees. The rules for providing severance pay and award money have been regulated in Article 2 and Article 3 of Workforce Law no. 13 of 2003.

D. CONCLUSION

Based on the results of the study, it was known that the chronology of terminations carried out by PT. Indosat, Tbk to its workers during the Covid-19 pandemic was carried out unilaterally. Meanwhile, the legal procedural termination during the Covid-19 pandemic must go through the stages of negotiations between the employers, in this case, PT. Indosat, Tbk with employees represented by existing labor associations. In its implementation PT. Indosat, Tbk did not carry out negotiations before carrying out simultaneous termination. In connection with the above, the employer should negotiate first before implementing efficiency by way of termination of employment (PHK).

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