

The Paradigm of Termination of Employment Relationship Against Worker/Labor Suspected in Criminal Action

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Abstract

After the issuance of Law Number 11 of 2020 on Job Creation, several policies in Indonesia are amended, including the Manpower Law, especially regarding the termination of employment relationship on worker/labor suspected of committing a criminal action. This research is a normative legal research that uses a statutory approach and a conceptual approach. The result of this research shows that there has been a change of paradigm on the policy of termination of employment relationship against worker/labor suspected of committing a criminal action, which previously was based on the principle of presumption of guilt and became the principle of efficiency of justice. This happened since the policy on the termination of employment relationship based on the principle of presumption of guilt creates several issues, such as the lengthy period to wait for a legally binding decision, employers are unable to get a substitute worker/labor, worker/labor who has not been working in a long period will find difficulties when he returns to work.

1. Introduction

The “right to decent occupation and living for human being” and “right to fair income and proper treatment in labor relations” have been recognized since the independence of Indonesia as fundamental rights of every individual as regulated under the Article 27 paragraph (2) in conjunction with Article 28D paragraph (2) of the 1945 Constitution of The Republic of Indonesia (UUD NRI 1945). The logical consequence of the

above provisions is the emergence of the state's obligation to respect, fulfill, and protect every individual right¹ to work and earn adequate income in order to enhance his welfare, not merely for work but at the same time ensuring that there are protection and fair treatment in accordance with his dignity as a human being.²

One of the manifestations of the said obligation is realized through the formation of Law Number 13 of 2003 on Manpower to address various labor issues in Indonesia. Among the essential substances regulated therein is the provision on the termination of employment relationship (Pemutusan Hubungan Kerja), or known as PHK. According to F.X. Djumialdji, PHK is the termination of an employment relationship due to a particular reason, which resulted in the termination of rights and responsibilities between a worker/labor and their employer.³ Furthermore, according to D. Danny H. Simanjuntak, PHK is the termination of the employment relationship between worker/labor caused by a number of important factors.⁴ Meanwhile, according to Article 1 paragraph 25 of the Manpower Law, PHK is defined as the termination of employment relationship due to a particular reason which caused the termination of rights and obligations between the worker/labor and their employer. The termination of an employment relationship shall also mean that the rights and obligations between them are also terminated.

In practice, termination occurred because the worker/labor has entered the retirement period, worker/labor has passed away, or has met the end of the contract period, does not cause any issues as both parties already have a common understanding or awareness of when the contract will end. This is different from termination that occurred due to the initiative of one of the parties. For a worker/labor, the impact of termination will be directly felt by them from the psychological, economical, financial aspects.⁵ Imam Soepomo stated that termination for worker/labor is the beginning of all endings, the beginning of the end of having an occupation and the beginning of the end of capability in earning income to suffice themselves and their families who depend on them.⁶ Meanwhile, for the employer, termination brings a disadvantage as he has to discharge a worker/labor who has been trained by spending a lot of cost and already understands the way of work in line with the company's necessities.⁷

¹ Manfred Nowak, *Introduction to International Human Rights Regime* (Leiden: Martinus Nijhoff Publishers, 2002).

² Tanti Kirana Utami and Ahmad Hunaeni Zulkarnaen, 'Perlindungan Hukum Terhadap Pekerja Dalam Pelaksanaan Hubungan Industrial', *Padjajaran Jurnal Ilmu Hukum*, 3.2 (2016), 407-27 <<https://doi.org/10.22304/pjih.v3n2.a10>>.

³ F.X. Djumialdji, *Perjanjian Kerja*, 1 (Jakarta: Sinar Grafika, 2005).

⁴ D. Danny H. Simanjuntak, *PHK Dan Pesangon Karyawan*, 1 (Yogyakarta: Pustaka Yustisia, 2007).

⁵ Zainal Aisikin, *Dasar-Dasar Hukum Perburuhan*, 4 (Jakarta: Raja Grafindo Persada, 2002).

⁶ Imam Soepomo, *Hukum Perburuhan Bidang Hubungan Kerja*, 5 (Jakarta: Djambatan, 1983).

⁷ B. Suwiryo, *Hukum Ketenagakerjaan* (Yogyakarta: LaksBang PRESSindo, 2007).

Although in certain circumstances, termination must be carried out in order to protect the company.

Based on the said grounds, termination is a step that neither employer nor worker/labor hopes to take. An employer and worker/labor have to take any measures to prevent the occurrence of termination by performing rights and obligations as stipulated under the law or employment agreement, collective labor agreement, and company regulations. Even though termination is inevitable, it is still required to consider the provisions under the law so it will not injure the rights of worker/labor and employer.

After the issuance of Law Number 11 of 2020 on Job Creation (Job Creation Law), which is no doubt a new law in Indonesia that amends the regulation on the termination of employment relationship on detained worker/labor. This amendment can be seen under Article 87 of Job Creation Law, which amended Article 160 of Manpower Law that stipulates:

- (1) In the event a worker/labor is detained by the authorities due to being suspected of committing a criminal action, the employer is not obliged to pay wages but obliged to provide assistance to the dependent family member of the said worker/labor on the following condition:
 - a. For 1 (one) dependent, 25% (twenty five percent) of wages;
 - b. For 2 (two) dependents, 35% (thirty five percent) of wages;
 - c. For 3 (three) dependents, 45% (forty five percent) of wages;
 - d. For 4 (four) dependents or more, 50% (fifty percent) of wages.
- (2) Assistance, as referred to in paragraph (1), shall be provided for a maximum period of 6 (six) months from the first day the worker/labor is detained by the authorities.
- (3) Employers can terminate the employment relationship of a worker/labor who, after 6 (six) months, is unable to carry out his work properly due to criminal proceedings as referred to in paragraph (1).
- (4) In the event that the court decides a criminal case before the 6 (six) month period as referred to under paragraph (3), and the worker/labor is found innocent, the employer is obliged to re-employ the worker/labor.
- (5) In the event that the court decides a criminal case before the end of the 6 (six) months period and the worker/labor is found guilty, the employer can terminate the employment relationship of the worker/labor concerned.

In criminal procedural law, there is a possibility that the worker/labor concerned is detained for inspection purposes. In such a case, the employer is given the authority to terminate the worker/labor without waiting for a

final legally binding decision on the crime he allegedly committed, if after 6 months the worker/labor is unable to carry out his work because he is detained in a criminal process.

The above regulation shows that there has been a shift in the policy paradigm where in this new regulation, the point of emphasis is that worker/labor cannot undertake work due to detention in criminal proceedings and not whether the worker/labor is guilty or not. The basis of this regulation is the principle of fair efficiency. In a simple explanation, the principle of fair efficiency is the use of minimal resources to get maximum results by considering the available alternatives to choose the best alternative.⁸

In relation to the termination due to a worker/labor being suspected in criminal action, the alternative chosen is to give the employer the authority to terminate the worker/labor suspected in committing a criminal action if after 6 months he is unable to perform the job properly due to being detained in a criminal process. However, the employer is still obliged to provide assistance to the dependent family member of the said worker/labor as long as the worker/labor concerned is detained within the said period. It aims to create efficiency as if the employer has to wait until the legally binding decision that stated that the concerned worker/labor is guilty will be consuming a lot of time, even for years. In addition, detained worker/labor cannot perform his work properly, which will disrupt business productivity and company targets if there is no legal certainty regarding the time limit.

This article aims to analyze the change of paradigm of employment relationship against worker/labor suspected in criminal action after Law of Job Creation is being issued which is based on the fair efficiency principle. It is necessary to examine this issue as such changes certainly lead to changes in implementation and legal consequences in relation to the termination of the worker/labor concerned.

Based on this background, the objectives of this research are (a) the regulation on termination of employment relationship against worker/labor suspected of committing a criminal action in Indonesia and (b) the ratio legis of the regulation on termination of employment relationship against worker/labor suspected of committing a criminal action in Indonesia.

⁸ Adhi Anugroho, Ratih Lestarini, and Tri Hayati, 'Analisis Yuridis terhadap Asas Efisiensi Berkeadilan Berdasarkan Pasal 33 ayat (4) UUD 1945 dalam Peraturan Perundang-undangan di Bidang Ketenagalistrikan', *Jurnal Hukum & Pembangunan*, 47.2 (2017), 183-210 <<https://doi.org/10.21143/jhp.vol47.no2.1451>>.

2. Research Method

This research is normative legal research, which puts law as a norm system building consisting of principles, norms, regulations, court decisions, agreements, and doctrine.⁹ Normative research is conducted by analyzing statutory regulations or other legal materials relating to the termination of a worker/labor suspected in a cri This research uses a statutory approach and a conceptual approach.

The statutory approach is carried out by reviewing all laws and regulations related to the legal issues assessed.¹⁰ In this research, the researcher explores all laws and regulations relating to manpower, especially those related to termination, as well as laws and regulations in the field of criminal law.

The conceptual approach is carried out by examining the development of views or doctrines in legal science.¹¹ Through a conceptual approach, ideas that emerge concepts, definitions, and legal principles relevant to the legal issues studied can be identified. This approach is carried out with an understanding of the concepts in manpower law and criminal law.

Authors will compile and analyze relevant regulations and concepts related to manpower law and criminal law to generate constructive and systematic explanations according to the research objectives.

3. Results and Discussion

The Regulation on Termination Of Employment Relationship Against Worker/Labor Suspected of Committing a Criminal Action in Indonesia

In the event the worker/labor is suspected of committing a criminal act, we must refer to the criminal procedure law. Criminal procedural law is a formal criminal law, which is the fundamental law that regulates the enforcement of material criminal law.¹² The material criminal law is regulated under the Criminal Code (Kitab Undang-Undang Hukum Pidana, KUHP) and several other laws.¹³ Meanwhile, the formal criminal law is regulated under the Law Number 8 of 1981 on the Criminal

⁹ Depri Liber Sonata, 'Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Penelitian Hukum', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 8.1 (2015), 15-35 <<https://doi.org/10.25041/fiatjustisia.v8no1.283>>.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)* (Jakarta: Kencana Prenadamedia Group, 2017).

¹¹ Marzuki.

¹² R. Soeroso, *Praktik Hukum Acara Perdata: Tata Cara Dan Proses Persidangan* (Jakarta: Sinar Grafika, 1993).

¹³ Febriansyah Ramadhan, Xavier Nugraha, Patricia Inge Felany, 'Penataan Ulang Kewenangan Penyidikan Dan Penuntutan Dalam Penegakan Hukum Pelanggaran HAM Berat', *Veritas et Justitia*, 6.1 (2020), 172-212 <<https://doi.org/10.25123/vej.v6i1.3514>>.

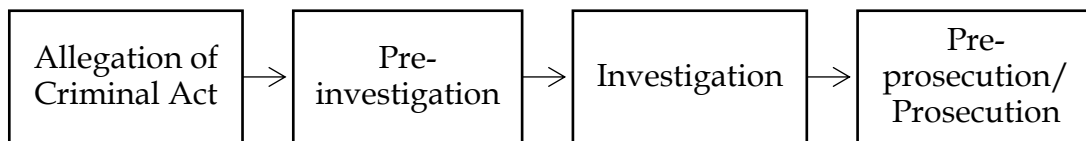
Procedure Code (Kitab Undang-Undang Hukum Acara Pidana, KUHP) as a reference for codified general crimes.¹⁴

Criminal procedural law notably includes three stages of procedures, which are:¹⁵

- a. Pre-trial or pre-adjudication stage;
- b. Trial or adjudication stage;
- c. Post-trial or post-adjudication stage.

The process before the person's trial in court or the pre-trial stage can be seen in the following diagram.

DIAGRAM I. PRE-TRIAL PROCESS IN CRIMINAL PROCEDURAL LAW



Source: Criminal Procedure Code

During the pre-adjudication stage, specifically **since the investigation stage, it is already possible to carry out forceful measures** consisting of arrest, search, confiscation, detention and examination of letters.¹⁶ In relation to the forceful measures, there is a possibility that a worker/labor who is suspected in a criminal act will be detained. Detention will imply that a worker/labor cannot perform his work properly. In such case, the Amendment to Article 160 paragraph (1) of the Manpower Law stipulates that in the event that a worker/labor is detained by the authorities because he is suspected in criminal act, the employer is not obliged to pay wages, but is obliged to provide assistance to the dependent family of the worker/labor for the most 6 months from the first day the worker/labor is detained by the authorities, with the following conditions:

- a. For 1 (one) dependent, 25% (twenty five percent) of his/her wage;
- b. For 2 (two) dependents, 35% (thirty five percent) of their wages;
- c. For 3 (three) dependents, 45% (forty five percent) of their wages;
- d. For 4 (four) dependents or more, 50% (fifty percent) of their wages.

The discussion on the detention of a worker/labor is essential as detention is possible to be carried out at the investigation, prosecution, and trial stage. Based on Article 20 of the Criminal Procedure Code, an investigator is authorized to carry out detention for the purpose of

¹⁴ Xavier Nugraha *et.al.*, 'Analysis of The Offense of Unpleasant Action in Article 335 Paragraph (1) of The Indonesian Criminal Code', *Jurnal Hukum Volkgeist*, 5.2 (2021), 151-159 <<https://doi.org/10.35326/volkgeist.v5i2.678>>.

¹⁵ Maskur Hidayat, 'Pembaruan Hukum Terhadap Lembaga Praperadilan Melalui Putusan Pengadilan', *Yuridika*, 30.3 (2015), 505-524 <<https://doi.org/10.20473/ydk.v30i3.1953>>.

¹⁶ Hartati S Nusi, 'Penangkapan dan Penahanan sebagai Upaya Paksa dalam Pemeriksaan Perkara Pidana', 5.4 (2016), 60-67.

investigation. For prosecution purposes, the public prosecutor has the authority to detain. Meanwhile, for the purposes of judges' examination in court proceedings, whether in district courts, appeals or cassations, the judge concerned has the authority to detain. Detention can be extended in the condition that the investigation in each stage has not yet been completed, but detention measures for the suspect/defendant are still needed.

The period of detention based on the stages of the case, according to the Criminal Procedure Code, is elaborated as follows:

TABLE I. DETENTION PERIOD BASED ON THE STAGE OF THE CASE

Stage	Detention	Extension	Extension Approval
Investigation	20 days	40 days	Public Prosecutor
Prosecution	20 days	30 days	Head of District Court
First Stage Trial	30 days	60 days	Head of District Court
Appeal	30 days	60 days	Head of Appeal Court
Cassation	50 days	60 days	Head of Supreme Court

Source: Criminal Procedure Code

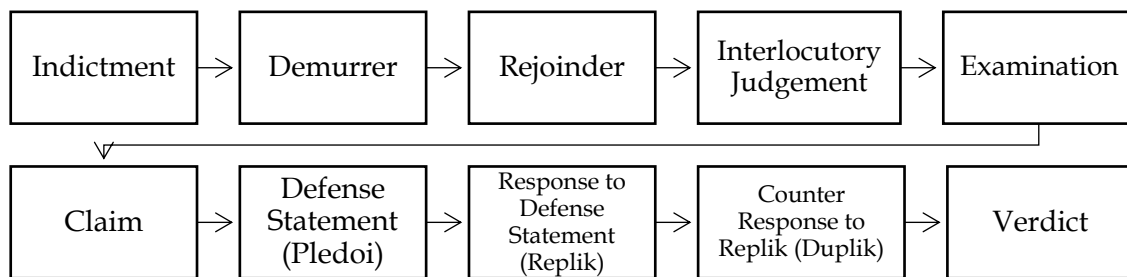
In this regard, the Amendment to Article 160 paragraph (2) of the Manpower Law defined a time limit of 6 months for a worker/labor detained for suspected in a criminal act. This period is the accumulation of detention either during the investigation, prosecution, or trial stages so that there are two possibilities, which are a worker/labor being detained:

- a. For 6 months or less; or
- b. For more than 6 months.

If the worker/labor is unable to carry out his job after 6 months due to being detained in a criminal process, the employer can terminate the work agreement with the worker/labor concerned. Juridically, the word "can" is not coercive (optional), thus the entrepreneur has full authority to conduct or not to conduct such termination.

As for trial or adjudication stage based on the Criminal Procedure Code, it can be seen in the following diagram.

DIAGRAM II. PRE-TRIAL PROCESS IN CRIMINAL PROCEDURAL LAW



Source: Criminal Procedure Code

The verdict can be in the form of conviction (*veroordeling*), ruling out of all claims (*ontslag van alle rechtsvervolging*), or an acquittal (*vrijspraak*). A conviction is imposed when the judge believes that the defendant is legally and convincingly proven guilty of committing the criminal act charged (*vide* Article 193 paragraph (1) of Criminal Procedure Code).¹⁷ It is in line with the Article 183 Criminal Procedure Code, which states that a judge may not impose a sentence on a person unless with at least two valid pieces of evidence that convinced him that a crime occurred and that the defendant was guilty of committing it.¹⁸

The decision to rule out from all claims is sentenced when the judge concludes that the act of which the defendant is accused is proven, but such action is not a criminal act (*vide* Article 191 Paragraph (2) Criminal Procedure Code).¹⁹ Furthermore, an acquittal verdict is sentenced when the judge considers that based on the trial before the court it can be concluded that the defendant is unlawfully and unconvincingly proven by law upon the accused action (*vide* Article 191 Paragraph (1) Criminal Procedure Code).²⁰ In an acquittal verdict, the defendant in detention is ordered to be released immediately, unless there is a valid reason for the defendant to remain in detention, for example, if the defendant is still involved in another case.²¹

In relation to termination, Article 87 of the Job Creation Law which amends Article 160 of the Manpower Law, stipulates that if the court decides a criminal case before 6 months and the worker/labor is found not guilty, the employer is obliged to re-employ the worker/labor. The word “obliged” refers to the obligation of an employer to re-employ the

¹⁷ Kadir Husin and Budi Rizki H., *Sistem Peradilan Pidana Di Indonesia* (Jakarta: Sinar Grafika, 2016).

¹⁸ Fiona L. Pelafu, ‘Pelaksanaan Putusan Pengadilan Dalam Perkara Pidana Berdasarkan Kitab Undang-Undang Hukum Acara Pidana’, *Lex Crimen*, 6.3 (2017), 86–93.

¹⁹ Pelafu.

²⁰ Pelafu.

²¹ Pelafu.

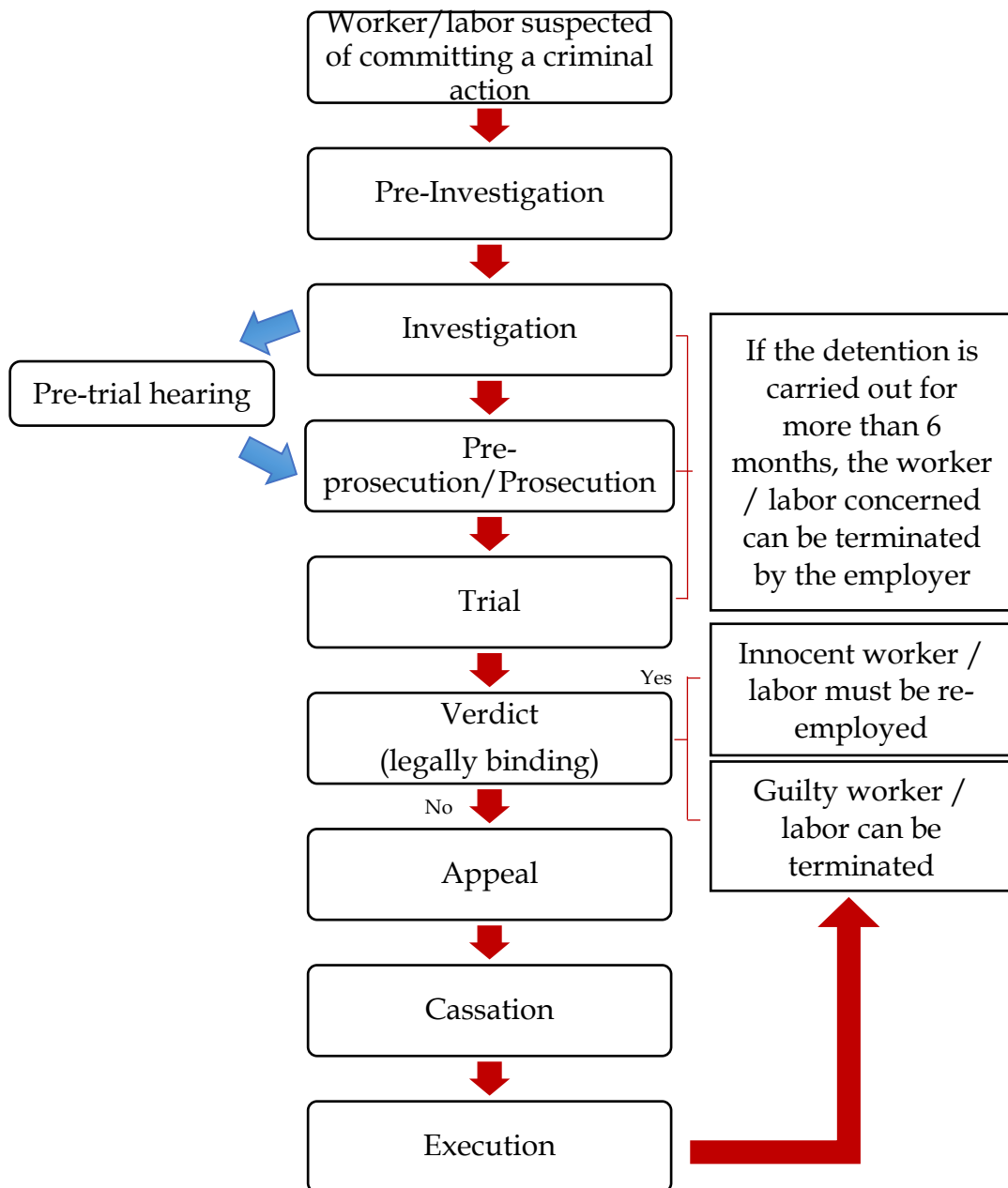
concerned worker/labor. In case that an employer does not re-employ the worker/labor, the employer can be subjected to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100.000.000 (one hundred million rupiah) and a maximum of Rp. 400.000.000 (four hundred million rupiah) as regulated in the Amendment to Article 185 of the Manpower Law.

On the other hand, if the court decides the criminal case before the end of 6 months, and the worker/labor is found guilty, the employer can terminate the worker/labor concerned. Juridically, the word “can” does not imply a coercive meaning (optional), therefore the employer has the full right whether to proceed with the termination of employment relationship against the worker/labor who is found guilty before the 6 month grace period.

Furthermore, if the worker/labor or the public prosecutor is not satisfied with the result of the first level court's decision, then legal remedies are available. Legal remedies are the right of a defendant or public prosecutor not to accept a court decision. Based on the Criminal Procedure Code provisions, there are two kinds of legal remedies, namely ordinary legal remedies (*gewone rechtsmiddelen*) and extraordinary legal remedies (*buiten gewone rechtsmiddelen*). The ordinary legal remedy consists of appeal and cassation, meanwhile the extraordinary remedy consists of cassation and judicial review upon a final and binding decision (*inkracht van gewijsde*).

Legal remedies are the rights possessed by the defendant or public prosecutor. As a right, it is dependent on the defendant and public prosecutor to decide whether or not to impose it. If the worker/labor or the public prosecutor decides not to submit a legal remedy, then the said decision will be legally binding and can be executed. After all legal remedies until the cassation have been taken, the decision has permanent legal force and the prosecutor can execute the decision based on the type of decision decided. Then in case the worker/labor is found not guilty before 6 months, the worker/labor must be re-employed. On the other hand, if the worker/labor is found guilty before 6 months, the employer has the right to do the termination. It shall be borne in mind that even if a legally enforceable decision states that the worker/labor is innocent, but he has been detained for more than 6 months, the termination decision cannot be overturned.

DIAGRAM III. IMPRISONMENT PROCESS OF WORKER/LABOR SUSPECTED IN CRIMINAL ACTION IN INDOENSIA



Source: Criminal Procedure Code

Ratio Legis Of The Regulation on Termination of Employment Relationship Against Worker/Labor Suspected of Committing Criminal Action in Indonesia

As previously described, an employer has the right to terminate a worker/labor after 6 months of not being able to perform his work due to

his detention in the process of a criminal case without having to wait for a verdict that declares him guilty. Therefore, the main point of the amendment to Article 160 of the Manpower Law is the detention of a worker/labor who is suspected in a criminal action so that the worker/labor concerned cannot perform his work properly. **The indicator used in the amendment of Manpower Law is not whether or not the worker/labor concerned is guilty or innocent, but rather the absence of the worker/labor concerned due to the criminal process he has to follow.** If after 6 months, the worker/labor cannot undertake his work properly due to his detention, the employer can carry out **the termination. Juridically, the word "can" does not imply a coercive meaning (optional), therefore the employer has the full right whether to proceed with the termination of employment relationship against the worker/labor.** Thus, the period of time given is 6 months, which means that even if a legally binding decision stating that the worker/labor is innocent, but the period has passed 6 months, does not annul the termination decision.

The above regulation is based on a legal principle, which becomes the basis for the legislators to regulate accordingly. According to Paul Scholten, legal principles are the basic thoughts contained within or behind the legal system, which are then formulated in statutory regulations.²² Furthermore, Sudikno Mertokusumo stated that legal principles are the primary thoughts or background of concrete regulations embodied in statutory regulations and judge decisions.²³ From these opinions, a legal principle is the basic thought that functions as the *ratio legis* of statutory regulations. In this case, the regulation of Article 160 of the Manpower Law, which stipulated that an employer can terminate a worker/labor who after 6 months is unable to perform his work due to his criminal process, is based on an economic concept, namely the principle of fair efficiency.²⁴

The analysis of efficiency is an economic concept that uses the theory of Economic Analysis in Law. According to Richard Posner, economic analysis of law is the application of economic principles as rational choices to analyze a legal problem.²⁵ In this case, Posner used an economic science approach based on three principles, which are value, utility, and efficiency.²⁶ Posner's economic analysis was later developed by Robert Cooter and Thomas Ullen with the principles of maximization, balance, and efficiency of the law.²⁷

²² O. Notohamidjoyo, *Demi Keadilan Dan Kemanusiaan: Beberapa Bab Dari Filsafat Hukum* (Jakarta: BPK Gunung Mulia, 1975).

²³ Sudikno Mertokusumo, *Penemuan Hukum (Sebuah Pengantar)* (Yogyakarta: Liberty, 2001).

²⁴ Anugroho, Lestari, and Hayati.

²⁵ Richard A. Posner, *Economic Analysis of Law*, 4th edn (Boston: Little Brown and Company, 1992).

²⁶ Romli Atmasasmita, *Teori Hukum Integratif Rekonstruksi Terhadap Teori Hukum Pembangunan Dan Teori Hukum Progresif* (Yogyakarta: Genta Publishing, 2012).

²⁷ Atmasasmita.

From the above opinions, it can be seen that efficiency is an essential principle in the economic analysis of law approach. Efficient is simply the minimum possible use of resources to achieve maximum results.²⁸ Efficiency refers to the state of making choices under conditions of scarcity. In an economic scarcity, it is assumed that individuals or societies try to maximize what they want to achieve by doing their best with limited resources. Humans have rationality so that humans are able to calculate (according to their level of rationality) the options available, henceforward making decisions that are deemed best for them.²⁹ Since humans have rationality, humans as economists can consider existing alternatives to choose the best alternative as an activity to maximize the results (maximization).³⁰ In other words, humans with their rationality tend to be willing to achieve their goals in the most efficient way.

The assessment of a law or policy that fulfills the element of efficiency can be measured by two concepts, Pareto Efficiency and the concept of Kaldor-Hicks Efficiency. Pareto efficiency is measured based on whether the policy or legal changes make someone's condition better without deteriorating someone else's condition. In other words, there are only parties who benefited and no parties were disadvantaged.³¹ Meanwhile, the Kaldor-Hicks Efficiency was born with the aim of developing a more applicable measure of efficiency than Pareto efficiency. The Kaldor-Hicks concept is an efficiency concept that allows the emergence of an aggrieved party as a result of policy or legal changes as long as the injured party is compensated.³²

The *ratio legis*, the principle of fair efficiency, according to Microeconomic Principles, which incidentally is the embodiment of economic analysis of the law on the regulation of layoffs according to the Manpower Act after the Job Creation Law, can be juxtaposed with the 3 legal ideals according to Gustav Radbruch, which is a embodiment in the formulation of criminal law policies as can described in the following table:

²⁸ Irene van Staveren, *Efficiency Dalam Handbook of Economics and Ethics*, 4th edn (Cheltenham: Edward Elgar Publishing, 2009).

²⁹ Fajar Sugianto, 'Efisiensi Ekonomi sebagai Remedy Hukum', *DIH Jurnal Ilmu Hukum*, 9.18 (2013), 85-92 <<https://doi.org/10.30996/dih.v9i18.276>>.

³⁰ Robert Cooter and Thomas Ulen, *Law and Economics*, 6th edn (Boston: Addison Wesley, 2012).

³¹ Leigh Stafford Raymond, *Private Rights in Public Resources: Equity and Property Allocation in Market-Based Environmental Policy* (Washington DC: Resources for The Future, 2003).

³² Richard O. Zerby Jr., *Efficiency in Law and Economics* (Cheltenham, 2001).

TABLE II. CORRELATION OF THE PRINCIPLE OF FAIR EFFICIENCY IN ACCORDANCE WITH MICROECONOMIC PRINCIPLES WITH 3 (THREE) LEGAL OBJECTIVES

Fair Efficiency Principle in accordance with Microeconomic Principles	Comparison with Legal Aspirations	Explanation of <i>Ratio Legis</i>
Efficiency	Justice and Benefit	<p>Layoffs after 6 months in the framework of the Manpower Law after the Job Creation Law gives the authority to reduce company assets (workers) that are unproductive and not profitable for the company, but do not sacrifice too much the interests of families who are dependents on workers by obliging the provision of assistance to workers' families and requiring employers re-employment if proven innocent.</p> <p>The layoff arrangement in this framework makes employers and workers as well as workers' families, each as seekers of justice, experience increased satisfaction which is correlated to their respective welfare. The satisfaction of the parties as justice seekers certainly shows the fulfillment of the legal ideals of justice and benefit</p>
Balance	Justice and Legal Certainty	<p>On the one hand, workers who violate the law can undergo law enforcement that is rationally commensurate, but on the other hand the law enforcement process does not cause consequences (costs) that are increasingly detrimental to certain parties.</p> <p>Such arrangements demonstrate justice for the employers and workers' families, without compromising the interests of</p>

		law enforcement for the workers themselves, which must be carried out in accordance with the <i>due process of law</i> (certainty) .
Maximization	Expediency	The regulation of layoffs according to the Manpower Law after the Job Creation Law provides legal protection for the benefits obtained by each party in the layoff process, namely employers, workers and dependent families of workers. Unlike the previous arrangement which eliminates the benefits to the entrepreneur significantly. The protection of the benefits of these parties shows the fulfillment of the legal ideals of benefit.

Source: Author's Analysis

Suppose it is constructed in termination due to the worker/labor committed in a criminal act, then in that case, this regulation adopts the Kaldor-Hicks Efficiency theory as these changes tend to be beneficial for the employer. The employer can terminate the worker/labor concerned if after 6 months he is unable to perform his work. The inability to perform this work can interfere with the business productivity and company targets so that to achieve efficiency, the employer is given the authority to carry out a termination.

On the other hand, a worker/labor can be terminated if after 6 months he cannot perform his work due to his detention. However, this regulation still seeks to provide justice for worker/labor by providing the said 6 months period and providing compensation in the form of assistance to the families of the worker/labor concerned from the first day he was detained as regulated in the Amendment to Article 160 paragraph (2) of the Law Employment. The employer has the right not to pay wages as long as the worker/labor is detained as a manifestation of the no work no pay principle, but is obliged to provide assistance to the family of the detained worker/labor considering the worker/labor concerned also has family dependents who must be supported. This regulation is a manifestation of the principle of fair efficiency, which is used as the basis for the Amendment to Article 160 of the Manpower Law.

This regulation is different from the previous regulation, which emphasized the guilt/innocence of the worker/labor for being terminated. Previously, in Article 158 of the Manpower Law jo. Article 170 of the Manpower Law, which in its development was annulled by the Decision of the Constitutional Court No. 012/PUU-I/2003. The ratio decidendi used by the court, which is Article 158 of the Manpower Law in conjunction with Article 170 of the Manpower Law does not reflect legal protection for the worker/labor as it gives the authority for the employer to carry out termination unilaterally without due process of law through an independent and impartial court decision. Whereas the qualification of an action classified as a serious offense under Article 158 of the Manpower Law is a criminal act and, therefore, the settlement must refer to the procedural law stipulated under the Criminal Procedure Code.³³ To respond to the said decision, the Minister of Manpower and Transmigration enacted a circular letter Number: SE.13/MEN/SJ-KI/I//2005 to explain that termination due to worker/labor committing a criminal act can only be done after a legally binding criminal decision. Based on the explanation above, a worker/labor who is suspected in a criminal act can only be terminated if there has been a legally binding criminal decision stating that the worker/labor concerned is guilty.

This regulation is a manifestation of the principle of presumption of innocence. The principle of presumption of innocence is one of the most urgent and fundamental principles in providing direction for the criminal justice system. Under Indonesian law, the principle of presumption of innocence can be found in the General Explanation number 3 letter c of the Indonesian Criminal Code, which essentially states that every person who is suspected, arrested, detained, prosecuted, and or brought before a court, must be presumed innocent until a court ruling declares his guilt and obtains permanent legal force. The use of the phrase "must be" in the explanation above shows that every criminal case process must be carried out based on the presumption of innocence starting from the investigation stage to the final legally binding decision. In other words, a worker/labor who is suspected in a criminal act must be presumed innocent until a criminal verdict has permanent legal force stating that he is proven to have committed a criminal act.

This principle is essentially a form of human rights protection when an individual faces the law in the judicial process. According to Mardjono Reksodiputro, the elements of presumption of innocence are the main principles of protecting the rights of citizens through a fair legal process

³³ Dadan Herdiana, 'Pemutusan Hubungan Kerja karena Kesalahan Berat Ditinjau dari Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan dan Undang-Undang Nomor 2 Tahun 2004 Tentang Penyelesaian Perselisihan Hubungan Industrial', *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, 5.1 (2018), 394-410 <<http://dx.doi.org/10.32493/SKD.v5i1.y2018.1540>>.

(due process of law) which includes at least: 1) protection against arbitrary actions by state officials, 2) that only the court has the right to determine whether the defendant is guilty, 3) that the trial must be open (not confidential) and 4) the suspect/defendant must be guaranteed to defend himself fully.³⁴

This principle becomes essential in connection with worker/labor termination to grant legal certainty to the worker/labor in which termination can only be done when the worker/labor is declared guilty. This principle is also aimed to prevent arbitrarily termination against worker/labor considering the position of the employer that is by far stronger than the worker/labor, both socially and economically, which makes the employer can easily investigate or arrange strategies to meet the evidence required to carry out termination. Therefore, it is necessary to prove through the court that the worker/labor is proven to have committed a criminal act or not. Considering that the Criminal Procedure Code aims to seek and obtain or at least to approach the complete truth of a criminal case so that the application of criminal law can be carried out appropriately and fairly against the person who commits the criminal act.³⁵

Thus, it can be seen that in its development, there has been a shift of paradigm from prioritizing the presumption of innocence to fair efficiency. It is because the worker/labor can be considered as company assets. Assets are all economic resources or wealth owned by the company expected to benefit their business in the future.³⁶ With the assets owned by the company, the business can continue to operate smoothly. Assets are not only in the form of cash, land, buildings, supplies, or equipment. Nonetheless, assets can also be in the form of human resources, namely worker/labor.

As a company asset, a worker/labor is given training sessions so that the worker/labor knows the way of work in line with the company's necessities. The hope is that worker/labor can provide added value to companies, such as increasing company competitiveness and providing business development innovations. In addition, worker/labor also plays an essential role in maintaining the company's image because a worker/labor with a good reputation will give a good image to the company. Therefore worker/labor as a human resource is needed for the sustainability of the company. Without the presence of the worker/labor, the company is unable to perform well.

³⁴ Marjono Reskodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum, Lembaga Kriminologi Universitas Indonesia, 1995).

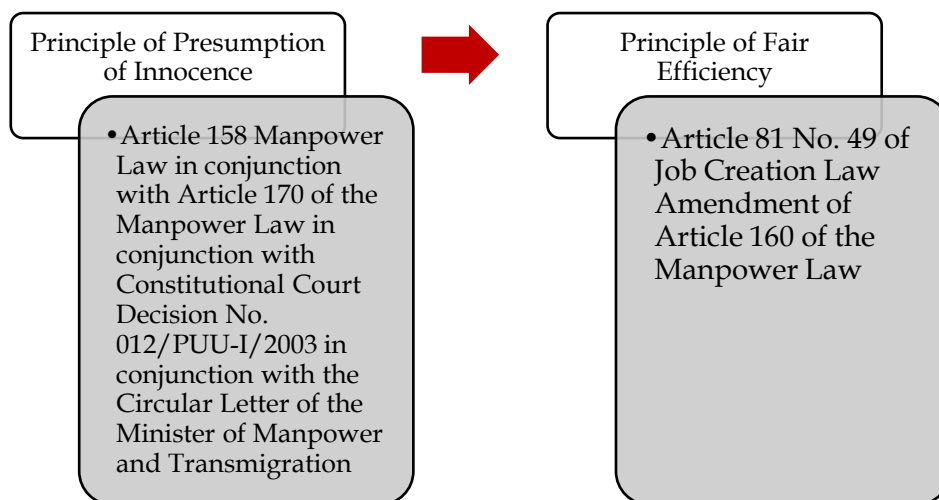
³⁵ Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2002).

³⁶ Doli D. Siregar, *Manajemen Aset: Strategi Penataan Konsep Pembangunan Berkelanjutan Secara Nasional Dalam Konteks Kepala Daerah Sebagai CEO's Pada Era Globalisasi & Otonomi Daerah* (Jakarta: Gramedia Pustaka Utama, 2004).

The role and function of worker/labor are to help smoothen the productivity and maximize performance using time effectively and efficiently. Conversely, if the worker/labor is not working productively and efficiently, then the worker/labor will be an impediment to the company. Worker/labor is expected to continue to attend and to complete the work that is his obligation. The absence of worker/labor can create more work for other workers/labor or neglect the vital work that should be done. Including in the case of a worker/labor who is unable to carry out his work properly due to his detention in criminal proceedings, it will undoubtedly interfere with the business productivity and company targets if it is not immediately resolved. If the employer has to wait until the criminal verdict has permanent legal force, it will take a long time, even years. In such a case, the employer cannot find a replacement worker/labor because he is still involved in a working relationship with the worker/labor who is suspected of committing the crime. Even if a criminal verdict has permanent legal force declaring that the worker/labor is innocent, a worker/labor who has not worked for a long time will experience difficulties if he has to keep up with the company's pace, which in fact, will continuously develop.

Based on the explanation above, a law based on the presumption of innocence still leaves a number of problems, so that a paradigm shift is needed based on the principle of fair efficiency. It is to create efficiencies for the company by granting the employer the authority to carry out the termination against the worker/labor who after 6 months is unable to perform the job because of being detained. However, on the other hand, it also provides compensation to the worker/labor concerned through assistance to his family from the first day the authorities detain the worker/labor.

DIAGRAM IV. COMPARISON OF THE PARADIGM SHIFT IN TERMINATION DUE TO WORKER/LABOR SUSPECTED OF COMMITTING CRIMINAL ACTION



Source: Manpower Law and Manpower Law post Job Creation Law.

4. Conclusion

In the event that a worker/labor is suspected of committing a criminal act, the criminal process follows the stages stipulated in the Criminal Procedure Code starting from pre-investigation, investigation, pre-trial lawsuit (optional), pre-trial/prosecution, trial, and verdict. Since on the level of investigation, there is a possibility of the worker/labor concerned being detained for the purpose of inspection. In that case, the employer can terminate the worker/labor with the fact that the worker/labor is unable to do the job because he was detained in the criminal process. After the first level decision, there are legal remedies (appeal and cassation) if one of the parties is not satisfied with the first level decision. If no legal remedy is filed, the first level decision is a decision with permanent legal force. The executable decisions are decisions that have permanent legal force. If the worker/labor is found innocent before 6 months, the worker/labor must be re-employed. On the other hand, if the worker/labor is found guilty before 6 months, the employer has the right to terminate his job.

The regulation of employment termination after 6 months of the worker/labor's inability to perform the job is an embodiment of the principle of fair efficiency, which aims to create efficiency for the employer while still providing compensation to the worker/labor through assisting his family. The assistance is provided for a maximum 6 months from the first day of the worker/labor detained by the authorities. The *ratio legis* of that regulation is the existence of a problematic situation when the legal policies are based on the principle of presumption of innocence which is the disruption of productivity and company targets due to the worker/labor's absence in performing his obligation. Therefore, the Amendment to Article 160 of the Manpower Law authorizes the employer to terminate a worker/labor if after 6 months unable to perform his work due to detention under the criminal process.

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