

LAW OF THE CONSTITUTIONAL COURT OF THE CONSTITUTION NUMBER 012 / PUU-I / 2003 ON THE DEVELOPMENT OF INDUSTRIAL REVOLUTION 4.0 IN THE CITY OF MEDAN

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ABSTRACT

Entering the industrial revolution 4.0, coupled with competition from ASEAN countries which came into force at the end of 2015 (MEA), in order to deal with the industrial revolution, the Government is required to immediately make a regulation that can balance the rights and obligations of workers / laborers with entrepreneurs. Observing the decision of the Constitutional Court, it can be interpreted that if a worker / laborer commits a serious violation as stated in article 158 of law number 13 of 2003 concerning Manpower, then the employer is not justified in terminating his employment immediately and automatically against the worker / laborer. This research is more in the nature of sociological juridical and empirical juridical research, however first it is preceded by normative research. Analysis and results of the legal review of the Constitutional Court Decision number 012 / PUU-I / 2003, namely Article 158, gives employers the authority to lay off on the grounds that the worker / worker has made a grave mistake without due process of law through an independent and impartial court ruling, therefore Article 158 must be declared as having no binding legal force. Constraints faced in the industrial revolution 4.0, in the city of Medan refer to the case that occurred at PT Capella Medan conducted by company employees by making false financial statements that resulted in the company suffered losses and the company was unable to make decisions directly because it collided with the decision of the Court No. 012 / PUU-I / 2003. It is recommended to the government to conduct a review of the Constitutional Court's decision number 012 / PUU-I / 2003 with an alternative, Employees who commit gross violations while heeding the presumption of innocence, while employees who commit gross violations that do not meet criminal elements given authority to the leadership of the company to take decisive action according to the degree of error.

Keywords: Legal Study, Decision of the Constitutional Court, Industrial Revolution

INTRODUCTION

Indonesia is one of the developing countries on the Asian continent, until 2019, Indonesia is still a developing country, what is meant by developing countries are: "Countries whose quality or welfare of the population is still low or in the stage of development".

From this definition, we also need to know how a country is said to have high welfare. Of course, the welfare of the population of a country can be measured by several indicators or benchmarks, namely:

1. Income per capita
2. Gross Domestic Product (GDP)
3. Life expectancy
4. Human Development Index (HDI)
5. Gini index

From the several benchmarks above, Indonesia is still not able to meet the number or number that is determined to become a developed country, all countries in the world must meet the benchmarks above to become a developed country. Even so, as a developing country, Indonesia itself now inevitably has to and is facing the industrial revolution which has entered the industrial revolution 4.0, plus competition from ASEAN countries which came into effect at the end of 2015 with the establishment of the ASEAN Economic Community, in order to face In the industrial revolution, the government is required to immediately make a regulation that can balance the rights and obligations of workers/laborers and entrepreneurs.

The current regulation that regulates manpower is Law Number 13 of 2003, which has fundamental changes in the spirit of making workers/laborers more prosperous. However, Law Number 13 of 2003 is often debated because there are still loopholes that are considered to weaken workers/laborers and entrepreneurs, in fact there are several articles of the law that are subject to judicial review up to the stage of the Constitutional Court because they are considered detrimental to one party and not in accordance with the law. with the 1945 Constitution and Pancasila.

One of the judicial review conducted before the Constitutional Court on Law Number 13 Year 2003 concerning employment is related to serious disciplinary violations committed by employees as referred to in Article 158 and several other articles related to it.

Observing this decision of the Constitutional Court, it can be interpreted that if a worker/labourer commits a serious violation as stated in Article 158 of Law Number 13 of 2003 concerning Manpower, then the entrepreneur is not justified in immediately terminating the worker/labourer. Based on the things stated above, if it is related to the behavior of a small number of employees in several companies in Medan City and one of them is PT Capela which already knows the meaning of the decision of the Constitutional Court on the basis of the case Number 012/PUU-I/2003. , whether intentionally or not they often commit serious violations during working hours, but these violations do not meet the elements of a criminal offense.

On the other hand, the company leadership does not dare to take decisive action, let alone terminate the employment relationship, this condition positions the company leadership as a weak party, because they do not dare to take decisive action, the effect is that other employees participate in committing violations, so the situation in the company becomes worse. not conducive

and company employees who do have a high temperament often fight against the actions that will be taken by the company's leadership.

RESEARCH PURPOSES

The objectives to be achieved in this study based on the description above are:

1. To find out the analysis and results of legal studies on the Decision of the Constitutional Court number 012/PUU-I/2003.
2. To find out the obstacles faced in the 4.0 industrial revolution, in the city of Medan, related to the legal provisions regarding employment after the Constitutional Court's decision Number 012/PUU-I/2003, and
3. To find out some alternatives that can be used to solve the problem of the decision of the Constitutional Court number 012/PUU-I/2003 on the development of the industrial revolution 4.0 in Medan City.

LITERATURE REVIEW

The theory used is the theory of legal certainty and the theory of legal responsibility, especially the implementation of the industrial revolution which is currently entering all industrial fields in Indonesia, thus requiring legal certainty.

As it is known that the legal rules that apply in society can be in the form of legislation and customs or customs. Law is a series of rules, regulations, both written and unwritten sequences that determine and regulate the relationship between community members. Law is a set of rules and principles that regulate human life in society. One of the most important functions of law is the achievement of order in human life in society. This is what causes people to live with certainty, meaning that people can carry out the activities needed in social life because they can make calculations with what happened or what they can expect.

The theory of legal certainty asserts that the task of law is to guarantee legal certainty in social relations. There is certainty that is achieved by law. In this task, two other tasks are concluded, namely the law must ensure justice and the law must remain useful. There are 2 (two) kinds of understanding of "legal certainty" namely certainty because of the law and certainty in or from the law. Certainty in law is achieved if the law is as much as statutory law and that in the law there are no contradictory provisions, the law is made based on "recht swerkelijkheid" (legal reality) and in the law there is no There are terms that can be interpreted differently.

RESEARCH METHODS

According to Soerjono Soekanto, research is a scientific activity related to analysis and construction which is carried out methodologically, systematically, and consistently. Research according to its purpose can be defined as an attempt to find, develop, and test the truth of knowledge.

The type of research used is normative legal research (juridical normative), namely legal research that uses secondary data starting with an analysis of legal issues that come from both literature and legislation.

The nature of this research is descriptive analysis, descriptive analysis means that from this research is expected to obtain a detailed and systematic description of the problems to be studied. The analysis is intended based on the description, the facts obtained will be analyzed carefully to answer the problem

RESULTS AND DISCUSSION

Analysis and results of the study of the decision of the Constitutional Court Number 072/PUU-I/2003

Matters relating to labor before, during and after the work period are the definition of manpower according to Law Number 13 of 2003 concerning manpower. According to Law Number 13 of 2003 that the implementation of manpower development is based on the principle of integration through functional coordination of central and regional sectoral boundaries. The principle of national development, especially the principle of democracy, the principle of fairness and equity, is in accordance with the principle of labor development. Parties to Employment Law

1. Manpower is any work that is useful for producing goods and services either to meet the needs of himself or the community which is carried out by everyone and receives wages or other forms of remuneration as a result of the work he does.
2. Entrepreneurs are able to identify business opportunities and can make them happen in the form of goals that must be achieved by a person or group or group of people.
3. A trade union is a group of workers/labourers who have merged to become members of a trade union/labor union.
4. Association or a combination of entrepreneurs is a group of people who join the Indonesian Employers Association or the Chamber of Commerce and Industry or others.
5. The government is the Ministry of Manpower and the local Manpower Office is the institution responsible for the manpower sector

The existence of the Constitutional Court (MK) as a guardian of the constitution raises its own problems in carrying out its duties in deciding a case of reviewing the Constitution by Law. This is inseparable from the Constitutional Court's decisions that are out of line with legal procedures. The issue of the Constitutional Court's decision on the review of the Manpower Law with the 1945 Constitution of the Republic of Indonesia in this case the judge of the Constitutional Court considered that the applicant interpreted the Manpower Act which was contrary to the Constitution, then against the decision NUMBER 012/ PUU-I/2003 can be seen that this decision the judges of the Constitutional Court actually wanted interpretation from academics as a form of scientific interpretation who had expertise in their fields. The judge of the Constitutional Court in the decision Number 012/PUU-I/2003 did not grant the request of the applicant on the grounds that the applicant interpreted a Manpower Act with his own interpretation, therefore the judge of the constitutional court completely rejected the petition from the applicant.

The obstacles faced in facing the industrial revolution 4.0, in the city of Medan, were associated with legal provisions regarding employment after the Constitutional Court's decision Number 012/PUU-I/2003

In the industrial revolution 4.0, actually there were various kinds of obstacles in deciding a settlement when it was associated with legal provisions regarding employment after the Constitutional Court's decision Number 012/PUU-I/2003. There are several settlements through the Industrial Relations Court (PHI), including:

A. Terms and Procedures

The industrial relations dispute lawsuit is submitted to the industrial relations court at the district court whose jurisdiction covers the place where the worker works. In Article 83 of Law Number 2 of 2004 it is explained:

- 1) For the filing of a lawsuit that is not attached with the minutes of settlement through mediation or conciliation, the judge of the industrial relations court is obliged to return the lawsuit to the plaintiff.
- 2) The judge is obliged to examine the contents of the lawsuit and if there is a shortage the judge asks the plaintiff to complete it.

A lawsuit involving more than one plaintiff can be filed collectively by granting special power of attorney.

As a result of the movement of the digital economy, approximately 100,000 workers lost their jobs in 2018.

The banking, textile, retail, electronics, transportation sectors are vulnerable to layoffs due to digitalization and automation. Layoffs in these sectors will occur more frequently, according to the predictions of the Labor Institute Indonesia in 2019, which will lead to informalization of the workforce and make street vendors (PKL) or independent workers appear more and more. The decision of the Constitutional Court on the judicial review of Article 164 paragraph 3 of Law Number 3 of 2013 concerning employment by making a clear interpretation of efficiency where if the company closes permanently, the entrepreneur may choose the way of layoffs

If the company has taken various efficiency measures as stated in the labor law, including reducing wages, eliminating overtime work, reducing work shifts for top level worker facilities, reducing working days, reducing working hours, laying off workers in rotation, providing pensions for those who meet the requirements. , does not extend the contract for workers whose contract period has expired, and then the Company can perform layoffs. Employers are required to map out what positions will be lost and what new positions will be needed in the company and employment planning in order to anticipate mass layoffs. Thus skills plans and skills transformation can be identified and prepared through training and development planning for each worker. To be able to face the industrial revolution 4.0 or avoid mass layoffs, employers and workers must be able to change work patterns, mindsets and also provide time for training programs, because if skills transformation cannot run quickly, layoffs will occur. Entrepreneurs are no longer too focused on increasing production alone.

The industrial revolution 4.0 creates flexibility that has positive and negative impacts for both employers and workers. However, according to labor regulations, there must be no flexibility, there must be legal certainty that can adopt this change. The government along with employers and workers' representatives must be able to agree to welcome the era of the industrial revolution 4.0 for the common good.

The government and the DPR should immediately follow up after the Constitutional Court's Decision Number 012/PUU-I/2003 dated October 28, 2004. To revise the articles in Law Number 13 of 2003 which no longer have binding legal force. In order to overcome the ineffectiveness of the law that regulates the settlement of dismissal disputes, especially layoffs due to the reason that workers made mistakes in the problem of falsifying financial statements at PT Capella Medan, this revision is very relevant and urgent to do.

Several Alternatives that can be used in Problem Solving the Decision of the Constitutional Court Number 012/PUU-I/2003, on the Development of the Industrial Revolution 4.0 in Medan City

A. Binding Power and Legal Consequences of the Decision of the Constitutional Court Number 012/PUU-I/2003 in the Manpower Act

At the beginning of the promulgation of Law Number 13 of 2003 concerning Manpower (Manpower Law), one of the reasons for Termination of Employment was, because of "grave error", which was regulated in the provisions of Article 158. has been regulated in the Criminal Code, so that to declare a worker to have committed a serious mistake, it must be on the basis of the worker being caught red-handed, there is a confession of the worker concerned or other evidence in the form of an incident report made by the authorities, in the company concerned, supported by two witnesses. If this is fulfilled, the entrepreneur is authorized by law to terminate the employment relationship unilaterally without being obliged to pay compensation for entitlements, severance pay and/or service award money.

B. Employer's Response to the Decision of the Constitutional Court Number 012/PUU-I/2003

In running a company, entrepreneurs are essentially trying to keep costs as low as possible to seek the maximum profit. Prior to the issuance of the decision of the Constitutional Court, which is regulated by law that if a worker eats food under certain conditions, the employer can unilaterally lay off workers (without the need for a stipulation/permit from the Industrial Relations Court). Employers considered that the simple and quick layoff procedure was appropriate, but since October 28, 2004, when the Constitutional Court (MK) with its Decision Number 012/PUU-I/2003 stated that Article 158 of Law Number 13 of 2003 and other related articles because it was judged by the Constitutional Court to be contrary to Article 27 paragraph (1) of the 1945 Constitution. The articles referred to make entrepreneurs no longer able to carry out layoffs because there is no binding legal force. As long as there is an employment relationship and there is no determination of dismissal from the Industrial Relations Court, the wages of workers must continue to be paid by the employer. This unfavorable condition is assessed by the Entrepreneur because of the additional costs that are detrimental to the Entrepreneur. Employers will look for a fast, cost-effective way to make layoffs that make serious mistakes at work.

Research by means of questionnaire interviews in the field to entrepreneurs aims to find out how the attitude of entrepreneurs in the Medan area. The results of the questionnaire to Entrepreneurs (heads of companies in charge of Human Resources/personnel) in Medan City, the total respondents who were interviewed were only 5 (five) people representing

entrepreneurs within PT Capella Medan. The level of knowledge (understanding) of respondents regarding the Constitutional Court Decision Number 012/PUU/2003 is as follows:

- a. Respondents aware of the Constitutional Court's decision: 50%
- b. Respondents not aware of the Constitutional Court's decision: 50%

The level of respondent's compliance with the laws and regulations after the decision of the Constitutional Court Number 012/PUU/2003 can be judged from the policies taken by the Employer (company leadership) in processing layoffs against Workers who are caught red-handed committing serious mistakes (criminal acts) in the workplace. Respondents are considered to comply with the laws and regulations according to the Constitutional Court's decision, if the respondent follows a normative procedure, namely processing layoffs after a court decision (criminal) has permanent legal force that the Worker is found guilty of committing a crime. The results of the study show the following:

- a. Complying with normative procedures according to the Constitutional Court's Decision : 15%
- b. Not complying with the normative procedures according to the Constitutional Court's Decision : 85 %

C. Several Alternatives that can be used in Problem Solving the Decision of the Constitutional Court Number 012/PUU-I/2003, on the Development of the Industrial Revolution 4.0 in Medan City

The government is making great efforts to stop the practice of human trafficking that occurs in Indonesia. Non-governmental organizations (NGOs) that pay special attention to the safety and welfare of migrant workers are the International Organization for Migration (IOM). Solving industrial relations problems with the decision of the Constitutional Court Number 012/PUU-I/2003 Against the Development of the Industrial Revolution 4.0 in the city of Medan is associated with the case of PT Capella Medan which made the company suffer losses due to false financial statements which resulted in the company experiencing losses, therefore this crime referred to as a serious crime in the industry and can be criminalized so that employees are laid off by the company concerned.

In the case of layoffs, there are several alternative solutions to problems in litigation and non-litigation, layoffs by law can occur due to the expiration of a certain time work agreement, workers reach retirement age, or workers die. Layoffs are due to court decisions that already have permanent legal force, while layoffs by workers themselves can occur purely at the worker's own will without any engineering from other parties, while layoffs that occur by employers are due to violations or mistakes made by workers or perhaps due to other factors. -Other factors such as labor rationalization, company closure due to loss and so on.

CONCLUSION AND SUGGESTION

CONCLUSION

1. Analysis and results of legal studies on the Decision of the Constitutional Court number 012/PUU-I/2003, namely: Article 158 authorizes employers to carry out layoffs on the grounds that workers/workers have committed serious mistakes without due process of law through an independent court decision and impartiality, but it is sufficient only with the decision of the entrepreneur which is accompanied by supporting evidence which does not need to be tested for its validity according to the applicable procedural law by evidence which does not need to be tested for its validity under the law. On the other hand, Article 160 stipulates differently that workers/workers who are detained by the authorities because they are suspected of committing a crime but not on a complaint from an entrepreneur, are treated according to the principle of presumption of innocence which until the sixth month still receives a portion of their rights as workers, and if not guilty, the entrepreneur is obliged to re-employ the worker/worker. This is seen as discriminatory or different treatment in the law that is contrary to the 1945 Constitution, and the provisions of Article 1 paragraph (3) which states that Indonesia is a state of law, therefore Article 158 must be declared to have no binding legal force.
2. Obstacles faced in the industrial revolution 4.0, in the city of Medan, are related to legal provisions regarding employment after the Constitutional Court's decision Number 012/PUU-I/2003: Refers to the case that occurred at PT Capella Medan which was carried out by company employees by making financial reports which resulted in the company experiencing losses and the company could not make a decision directly because it collided with the decision of the Constitutional Court Number 012/PUU-I/2003 which must be done by fulfilling the applicable requirements and procedures.
3. Alternatives that can be used to solve the problem of the decision of the Constitutional Court number 012/PUU-I/2003 are:
 - a. Employees who commit serious violations that meet the criminal element are processed in accordance with applicable law while still observing the principle of presumption of innocence.
 - b. Meanwhile, employees who commit serious violations who do not meet the criminal element are given the authority to take decisive action according to the level of error while still paying attention to the applicable legal provisions.

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