

Legal Protection For Workers Who Have Been Terminated For Absenteeism

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Abstract

It is well-known among the public that Indonesia is a country where development in various sectors, especially in the economy, is consistently successful and supported by the government. One of the most prominent sectors is the industrial sector, which is significantly encouraged by the government. This is the aim of this research: first, to explore the legal protection provided for workers whose employment is terminated due to absenteeism. Second, to investigate the legal recourse available if a worker's employment is terminated due to absenteeism. In this research, the author employs a Normative Legal Research Method. In this study, the author contends that the judge correctly interpreted Article 27 paragraph (9) letter e and Article 27 paragraph (10) of the Collective Labor Agreement (CLA) of PTFI (PT Freeport Indonesia) for the periods of 2015-2017, as well as Article 26 paragraph (10) of the CLA of PTFI for the periods of 2017-2019, and Article 168 paragraph (1) of Law Number 13 of 2003 concerning Manpower, along with relevant prevailing laws. Consequently, the decision was accepted, resulting in the termination of the employment relationship between PT Freeport Indonesia and Ferdinandt Mamangkey upon the enforcement of this decision.

Keywords: Legal Protection, Absenteeism, Layoff/Termination, Judge

Abstrak

Sudah diketahui oleh khalayak masyarakat bahwa negara Indonesia merupakan negara dengan pembangunan hampir setiap kali berhasil dan mendukung di bidang perekonomian negara, salah satu yakni pada sektor industri yang paling mencolok sehingga didorong oleh Pemerintah. Inilah tujuan penelitian ini yakni pertama, Bagaimana bentuk perlindungan hukum terhadap pekerja yang diputus hubungan kerjanya karena mangkir kerja? Kedua, Bagaimana upaya hukum apabila ada pekerja yang diputus hubungan kerjanya karena mangkir kerja ?. Dalam penelitian ini penulis menggunakan jenis Metode Penelitian Hukum Normatif. Pada penelitian ini Hakim sudah benar dalam memberikan interpretasi terhadap Pasal 27 ayat (9) huruf e dan Pasal 27 ayat (10) PHI PTFI 2015-2017, serta Pasal 26 ayat (10) PHI PTFI 2017-2019 dan Pasal 168 ayat (1) Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan dan tentang undang undang yang berlaku sehingga putusannya diterima kemudian mengakibatkan hubungan kerja antara PT. Freeport Indonesia dan Ferdinandt Mamangkey harus putus sejak putusan ini diberlakukan.

Kata Kunci: Perlindungan Hukum, Mangkir Kerja, PHK, Hakim

A. Introduction

It is known by the public that Indonesia is a country with development almost every time it succeeds and supports in the field of the country's economy, one of which is in the most striking industrial sector so that it is encouraged by the Government.¹ Supporting the sector also requires appropriate human resources both according to the expertise and skills of each worker.² In every field of work, there is undoubtedly a workforce. This can be called an employment relationship in which it certainly involves employers and workers as legal subjects and every entrepreneur and worker each has the right to legal protection. In addition to legal awareness, doing this productive and creative thing can also strengthen union thinking³. The employer for the worker, in this case, the employer is obliged to pay the worker a salary in return or appreciation for the work done by the worker to the company. Salary payments have a minimum limit set by the government, namely

¹ Handayani and Arifin, "THE DEATH KNELL OF LEGAL EDUCATION IN INDONESIA: A PHILOSOPHICAL REVIEW."

² Arifin, Handayani, dan Virdaus, "Combating Corruption in the Procurement By The Press."

³ Khairunnisa et al., "Building a Positive Mentality for Workers and Counseling the Rights of Workers Who Have Been Laid Off or Who Have Been Impacted by Covid 19."

the governor, which is known as the minimum wage ⁴.

Talking about legal protection is the protection of human rights that are violated by others, and this protection is given to the public in order to enjoy all the rights granted by the law, or in other words legal protection is a variety of efforts that must be made.⁵ In general, the working relationship between employers and workers always runs harmoniously. Even in labor disputes, it often occurs during working hours. In disputes about rights, disputes about benefits, loss of harmony of labor market relations, which can lead to termination of employment ⁶

One of the common problems in employment relationships is the termination of an employment relationship called termination of employment. Termination of employment also means a significant loss of livelihood for the labor force to guarantee unemployment at all costs. Job security and peace of mind should not be overlooked. But in reality, it became clear that layoffs could not be completely prevented.⁷

Employment Law

Based on Law Number 13 of 2003 Article 1 paragraph 1 concerning Manpower, the term Manpower has been formulated as all forms/things related to labor before, during, and after the working period.⁸ It can be understood that, what is regulated in the Manpower Law is all matters related to workers/laborers, as well as matters before the working period, including those related to apprenticeships, the need to announce to open job vacancies, and some of them. Talking about employment in its implementation is indeed necessary to fulfill the basic rights and protection of workers and workers or laborers.⁹ The parties in the labor law are very broad, namely not only entrepreneurs and workers/laborers but also other related parties. The breadth of these parties stems from the fact that all parties involved in labor market relations interact with each other according to their position as producers of goods and/or services. The parties in labor law are workers, employers, trade unions, employers and the government/ruler.¹⁰ Thus, the author argues that labor law is the parent of the law that regulates labor. Labor law was originally known as labor law.

Industrial Relations

According to Sentanoe Kertonegoro, the term employment relationship gives a narrow impression that only refers to the relationship between employers and workers. The restrictions on the subject of Industrial Relations legal work in the research are entrepreneurs, employees and the government¹¹. Basically, the subject of industrial relations covers a very broad point of view, namely socio-cultural aspects, business psychology, political law and state defense, so that industrial relations do not only include entrepreneurs and workers, but also the government and society in a broad sense. Thus, the use of the term industrial relations is felt to be more appropriate than labor relations ¹². Then according to Law Number 13 of 2003 concerning Manpower, it is a system of relationships formed between actors in the production process of goods and/or services consisting of entrepreneurs, workers/employees and administrators based on the values of Pancasila and the Constitution of the Republic of Indonesia of 1945. Thus, the author argues that Industrial Relations will be carried out properly by consisting of the substance of the subject and the substance of the

⁴ Angelica et al., "DEMAND FOR LACK OF PAYMENT OF MINIMUM WAGE WORKERS (STUDY OF THE DECISION OF THE INDUSTRIAL RELATIONS COURT NUMBER 195 / Pdt . Sus-PHI/2016/PN . Bdg JUNCTO SUPREME COURT DECISION Andari Yurikosari A . Background of Article 27 paragraph (2) of the Country's Constitution."

⁵ Arifin, Fernando, and Handayani, "Legal Implications of the Second Amendment to the Electronic Information and Transaction Law: Balancing Freedom of Opinion and Public Participation in Digital Democracy: Legal Implications of The Second Amendment to The Electronic Information and Transaction."

⁶ Nur, "Journal of the Pulpit of Justice."

⁷ Handayani, Arifin, and Virdaus, "Liability Without Fault in Environmental Dispute Resolution in Indonesia."

⁸ Arifin, *Philosophy of Science Ontological Review, Epistemology Dann Axi, 1st ed.*

⁹ Flambonita, "Legal Protection of the Rights of Women Workers in the Field of Employment."

¹⁰ Prints, *Indonesian Employment Law*.

¹¹ Handayani and Arifin, "Quo Vadis Child Protection as a Victim Due to the Criminal Conflict of the Two Biological Parents."

¹² Raharjo and Dwi Putri, "Analysis of the Granting of Compulsory Wills to Heirs of Different Religions After the Supreme Court Decision Number 331 K/Ag/2018."

object in order to establish legal relations and bring legal consequences.

Termination of Employment

Talking about termination of employment based on the provisions of Article 1 number (25) of Law Article 13/2003 regulates termination of employment for certain reasons that result in the termination of rights and obligations between workers/employees and employers. Termination of employment means a situation in which the worker stops working from his employer. The fact that termination of employment is the beginning of suffering for the worker means the beginning of the end for the worker, the beginning of the end of the job, the end of their ability to provide for themselves and their families ¹³. Thus, the author argues that the termination of employment will arise from certain reasons that can result in the termination of the rights and obligations of workers and companies. For this reason, it will be expected with great fidelity effectiveness and efficiency to achieve the company's goals of success and health ¹⁴.

The problem of Termination of Employment can occur due to several reasons as stated in Law Number 13 of 2003 Article 154A. There are at least 15 reasons why Termination of Employment needs to be done. In the Industrial Relations Court Case at the Jayapura District Court Number 44/Pdt.Sus-PHI/2019/PN. Jap started Ferdinandt Mamangkey as an employee at PT. Freeport Indonesia since May 21, 2013 with his last position as C4 Security Guard Leader Sr in the Department of Security & Risk Management on June 1, 2016 has committed a work violation, namely not entering the office/absenteeism for more than 5 (five) consecutive working days since June 1, 2016 without a valid reason and acceptable to PT. Freeport Indonesia, the work violation is a violation of PT. Freeport Indonesia as stipulated in the provisions of Article 27 paragraph (9) letter e and Article 27 paragraph (10) of the PHI of PTFI 2015-2017 and Article 26 paragraph (10) of the PHI of PTFI 2017-2019 which the sanction is termination of employment.

The peak of the labor dispute carried out by Ferdinandt Mamangkey has caused disharmony in establishing a working relationship between PT. Freeport Indonesia and Ferdinandt Mamangkey in the work environment, so it is an urgent reason for PT. Freeport Indonesia to lay off Ferdinandt Mamangkey in accordance with the provisions of the circular letter of the Minister of Manpower and Transmigration of the Republic of Indonesia No. SE-13/MEN/SJ-HK/I/2005 on January 7, 2005. At the first level, the PHI Jayapura judge gave a verdict stating that it granted the lawsuit in part from PT. Freeport Indonesia and stated that the act of strike carried out by Ferdinandt Mamangkey qualified as a worker resigned as a result of an unlawful strike. On the basis of the PHI Jayapura decision, Ferdinandt Mamangkey finally filed an appeal for cassation whose decision stated, granting Ferdinandt Mamangkey's lawsuit in part and canceling the decision of the Jayapura Industrial Relations Court dated February 28, 2020 Number 44/Pdt.Sus- PHI/2019/PN Jap.

Previous research has discussed disputes over termination of employment due to absenteeism from work that has been carried out. However, this study uses case examples and different perspectives from previous research, namely first, the research conducted by Agus Suprayogi and Vera Janet Darosta with the title "*Termination of Employment for the Reason Workers Violate Company Regulations (Case Study of Supreme Court Decision Number 1088K/PDT. SUS-PHI/2019)*".¹⁵ The differences contained in the journal with this study are related to the point of view of the problem and the calculation of compensation money for workers in contrast to the study author's research, namely in the PHI Serang Decision with case register Number 44/Pdt.Sus-PHI/2019/PN Jap, and the Supreme Court Cassation Decision with case registration number 1192 K/Pdt.Sus-PHI/2020. As for the equation, it is related to absenteeism/strike which has an impact on layoffs in the legal context Employment. Second, by a journal written by M. Abas, Abdul K., Arif W. with the title "*Legal Protection of Workers Who Strike from Employers' Retaliatory Actions Linked to Article 187 of Law Number 13 of 2003 concerning Manpower in conjunction with Article 81 Number (65) of*

¹³ Wijayanti et al., "Asri Wijayanti, Employment Law After Reformasi, Sinar Grafika, Jakarta, 2009, p. 76. 1."

¹⁴ Sasmitaningrum, "The relationship between employee perception of conflict management and employee work loyalty."

¹⁵ Suprayogi and Janet Darosta, "Termination of Employment for Reasons Workers Violate Company Regulations (Supreme Court Case Study Number 1088 K Pdt.Sus-Phi 2019)."

*Law Number 11 of 2020 concerning Job Creation.*¹⁶ There are many similarities with the case of workers who went on strike and finally received layoff sanctions. The difference itself is found in the research method using the empirical legal research method by conducting interviews and observations. And finally, a research written by Sri Rahyu with the title "*Juridical Review of the Implementation of Unilateral Termination of Employment by Companies According to Law Number. 13 of 2003 (Case Study of Supreme Court Decision Number: 37 K/Pdt.Sus/2013)*"¹⁷ the difference lies in the context of layoffs carried out by the PT while the similarity lies in the provisions of labor laws and regulations that regulate layoffs due to strikes. For the explanation of the background of the problem.¹⁸

Based on the decision of the Industrial Relations Court at the Jayapura District Court and the decision of the Supreme Court, the purpose of this research is *first*, What is the form of legal protection for workers who have been terminated due to absence from work? *Second*, what is the legal remedy if there is a worker who is terminated due to absence from work? E. Fernando M. Manulang introduced the concept of legal certainty is a value that essentially offers legal protection for every arbitrary citizen, namely the law gives the responsibility of the state in this case there is a relationship between legal certainty and the state¹⁹.

With the explanation above, it is clear that the writing of this article aims to describe or describe the arrangements for Termination of Employment along with an analysis of the Termination of Employment in the decision issued by the Supreme Court Decision Number 44/Pdt.Sus-PHI/2019/PN Jap Jo. Number 1192 K/Pdt.Sus-PHI/2020. Based on this, the author is interested in conducting research on Termination of Employment as will be written in this article with the title "*Legal Protection of Workers for Strikes Leading to Termination of Employment Based on Decision Number 44/Pdt.Sus-PHI/2019/PN Jap*".

B. Research Methods

In this study, the author uses a type of Normative Legal Research Method.²⁰ The approach method in this study is with a legislative approach, including reviewing Law No. 13 of 2003 Jo. PERPPU Number 2 of 2022, Law No. 2 of 2004 concerning Industrial Relations Dispute Resolution, Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time, and Termination of Employment. Of course, it has become a decision that has permanent legal force, namely the Decision of the Industrial Relations Court 44/Pdt.Sus-PHI/2019/PN. Jap Jo. Supreme Court Decision Number 1192 K/Pdt.Sus-PHI/2020 . The secondary legal materials that theoretically do not have permanent legal force are special books related to employment, legal journals, legal media articles. According to Peter Mahmud Marzuki, legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced (Hidayat, 2013).

C. Discussion

1. Forms of legal protection for workers who are terminated due to absence from work

Legal protection is something that should happen in terms of termination of employment related to the correctness of the employee's position in the employment relationship and the reason for termination of employment itself. The reasons used as the basis for termination can be divided into two groups, namely acceptable reasons and unacceptable reasons. Because the success of an organization cannot be separated from the work productivity of its employees²¹. It is important to

¹⁶ Hukum et al., "M. Abas, Abdul K., Arif W."

¹⁷ Rahayu, "JURIDICAL REVIEW OF THE IMPLEMENTATION OF UNILATERAL TERMINATION OF EMPLOYMENT (PHK) BY COMPANIES ACCORDING TO LAW Number. 13 OF 2003 (Case Study of Supreme Court Decision Number: 37 K/Pdt.Sus/2013)."

¹⁸ Handayani dan Hasyim, "Corporate Crime Liability towards Environmental Law in Indonesia."

¹⁹ Larasati and Bakri, "Implementation of Supreme Court Circular Letter Number 4 of 2016 on Judges' Decisions in Providing Legal Protection for Buyers in Good Faith."

²⁰ Arifin and Handayani, "Quo Vadis Policy for the Preparation of the Jokowi Coalition Cabinet Philosophical, Historical, Theoretical and Juridical Review."

²¹ Aviyana and Fatmasari, "The Relationship of Work Discipline to Employee Productivity of Cv. Tirta Makmur Ungaran."

note that there is a provision that workers can be dismissed without permission if proven to have committed serious wrongdoing. For this reason, it will be expected with great fidelity effectiveness and efficiency to achieve the company's goals of successfully healthy.²²

This violates human rights, especially the principle of presumption of innocence. However, workers or employers can be said to be violators or commit an action if they are negligent if it has been expressly decided by the judge and it is very valid and closely related to the law. There is a way to terminate work if the employer is no longer able to fulfill the rights of workers or employees are currently working too much for the Company.²³ Every law that is enforced must have a condition of justice, so without justice the law is useless, so that the law is no longer valuable in the eyes of society, the law applies objectively to everyone, justice is subjective, so the combination of law and justice is not easy.²⁴

In practice, in the case of PHI Decision Number 44/Pdt.Sus-PHI/2019/PN. Jap, the judge who decides the case with the same issue, by deciding the same amar. Where PT. Freeport Indonesia filed a lawsuit stating that there was a violation ticket and a report of alleged violations dated June 7, 2016, it was reported that Ferdinandt Mamangkey had committed a serious work violation whose sanction was layoff, namely not coming to work/absenteeism for more than 5 (five) consecutive working days since June 1, 2016 without a valid reason and acceptable to PT. Freeport Indonesia. In principle, the legal subjects related to employment contracts are the employee and the employer. Legal issues have been widespread and can include employers, employers' unions or APINDO to expand employers²⁵.

The author analyzes that the beginning of this industrial relations dispute was caused because Ferdinandt Mamangkey in his answer had denied the postulates of PT. Freeport Indonesia by postulating basically Ferdinandt Mamangkey admitted that his absence on June 1, 2016 was because he was reported by his wife for alleged domestic violence (KDRT) on May 2, 2016 so that Ferdinandt Mamangkey had to undergo a police detention process for 18 days from May 2, 2016 to May 20, 2016. With the approval of Ferdinandt Mamangkey's superiors, his absence at that time was then given leave in order to solve his problem, but before the issue of land sales was completed, the leave period had expired, where Ferdinandt Mamangkey experienced a series of problems that had to be solved in order to be calm in working and this had been conveyed to his superiors, therefore Ferdinandt Mamangkey requested to be rehired in his original position at PT. Freeport Indonesia. Which Ferdinandt Mamangkey and PT. Freeport Indonesia is a representative of the trade union, namely the Head of the Work Unit of the Chemical, Energy and Mining Workers Union of the All Indonesia Workers' Union PTFI (PUK SPKEP SPSI PTFI). The purpose is to provide protection, to defend rights and benefits and to improve the welfare of employees/employees and their families²⁶.

The strike carried out by Ferdinandt Mamangkey at PT. Freeport Indonesia is a legitimate strike. Because there are facts at the trial that from the testimony of the witness Adrias Maxi as Ferdinandt Mamangkey's superior, and the witness Russel Taruk and the witness Ferdinandt Mamangkey, namely Arianto Kankan, who are in accordance with each other, which says that it is true that Ferdinandt Mamangkey did	Compensation for the remaining days of leave	Rp. 4.262.767
15% from severance pay = 6 (months of wages) x Rp9.134.500,00 = Rp54.807.000,00 and service award money = 3 (months of wages) x Rp9.134.500,00 =	Rp. 12.331.575	

²² Amrani, "Efforts to Eradicate Corruption with Anti-Money Laundering Regimes: An International Perspective."

²³ Dio Aprilianto*, "Articles Implementation of the Murabahah Agreement in the Financing of Indonesia's Responsible Business Capital Due to Cross-Border Haze Pollution Legal Protection of Personal Data Theft and the Dangers of Using Online Loan Applications (<https://protectionforrights.org/>)".

²⁴ Suparyanto and Rosad (2015, "CONSIDERATIONS OF THE SUPREME COURT GRANTING THE PUBLIC PROSECUTOR'S CASSATION IN HUMAN TRAFFICKING CASES (CASE STUDY IN SUPREME COURT DECISION NO. 1507K/PID. SUS/2016)."

²⁵ Wijayanti, "Suing the Concept of Labor Relations."

²⁶ Ibrahim, "The Existence of Trade Unions/Trade Unions in an Effort to Prosper Workers."

<p>not go to work/absent for 5 (five) consecutive working days without written testimony supplemented with valid evidence is a work violation, the sanction of which is termination of employment. There were also negotiations through several stages by both parties. In the Cassation Decision, Ferdinandt Mamangkey submitted an appeal to PT. Freeport Indonesia to request an examination at the cassation level and cassation memory and request to cancel the Industrial Relations Court's Decision at the Jayapura District Court Class IA dated February 28, 2020 Number 44/Pdt.Sus- PHI/2019/PN Jap. However, the cassation application was rejected by the Panel of Judges because it was proven that Ferdinandt Mamangkey had committed a work violation, namely not going to work/absenteeism for 5 (five) working days or more consecutively. In this case, PT. Freeport Indonesia must provide severance pay to Ferdinandt Mamangkey in accordance with the provisions of Article 156 paragraph (1) of Law Number 13 of 2003 concerning Manpower Jo. Perppu No. 2 of 2022 concerning Job Creation states that "In the event of termination of employment, employers are required to pay severance pay and/or service award money and compensation money that should be received"²⁷. The purpose of making labor laws and regulations is to protect the weak, in this case Ferdinandt Mamangkey's side, based on the author's analysis of the judge's decision at the Cassation Level which canceled the decision at the Industrial Relations Court against the case of termination of employment due to absence from work by PT. Freeport Indonesia is in accordance with the laws and regulations stipulated in article 162 of Law No. 13 of 2003²⁸. The forms of protection offered by the government are the enforcement of regulations that bind workers/employees and employers, the provision of counseling and the implementation of the labor market relations process. "Industrial Relations is basically the process of fostering communication, consultative reflection and negotiation and all the elements that exist within the company"²⁹. According to</p>	<p>Rp27.403.500,00 up to $15 \times (\text{IDR } 54,807,000.00 + \text{IDR } 27,403,500,00 + \text{IDR } 82,210,500,00) = \text{IDR } 12,331,575.00$</p>	
<p>Relocation of Pendiem</p>	<p>Rp. 500.000</p>	
<p>Stock Replacement Unit</p>	<p>Rp. 925.995</p>	

²⁷ Fspmi, "JUXTAPOSITION OF LAW NO. 13 OF 2003 CONCERNING MANPOWER LAW NO. 11 OF 2020 CONCERNING JOB CREATION WITH PERPPU NO. 2 OF 2022 CONCERNING JOB CREATION."

²⁸ Rahayu, "JURIDICAL REVIEW OF THE IMPLEMENTATION OF UNILATERAL TERMINATION OF EMPLOYMENT (PHK) BY COMPANIES ACCORDING TO LAW Number. 13 OF 2003 (Case Study of Supreme Court Decision Number: 37 K/Pdt.Sus/2013)."

²⁹ Sasongko, "Legal Protection of Workers with Disabilities Based on Law Number 13 of 2003 concerning Manpower."

<p>Adrian Sutedi, there are only two ways to protect workers/employees. There must be regulatory compliance, including synchronization between legal norms vertically and horizontally in the labor system³⁰.</p> <p>On the one hand through labor laws, since the law guarantees the provision of decent work by the state, its protection in the workplace (health, occupational safety and adequate remuneration) to social security after retirement. The second is from the Trade Union/Trade Union (SP/SB). Because through SP/SB the workers/employees can express their wishes, negotiate and demand the rights they should have. SP/SB can also represent workers/employees in the making of collective labor agreements (PKB) that regulate the rights and obligations of workers/workers to employers within an agreement framework that serves as a guideline in labor market relations.³¹ This is what results in many layoffs on the basis of serious errors. The classification of a labor mistake in light or severe has a great impact on the acquisition of post-layoff rights, therefore it must be clear and acceptable to both parties that the truth is so as not detrimental to the worker. Authorization of labor status. The status of the worker in question includes certainty regarding the date of starting work, the component of the last wage, and the position or position of the worker in the company. This affects workers' rights in obtaining severance pay, work award money, and compensation in medical and housing³².</p> <p>Even based on Article 97 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, it states that "In the decision of the industrial relations court, it is stipulated the obligations that must be carried out and/or the rights that must be received by the parties or one of the parties for any settlement of industrial relations disputes". Therefore, Ferdinandt Mamangkey, whose position has been terminated by PT. Freeport Indonesia is therefore linked to Article 168 paragraph (3) of Law Number 13 of 2003 concerning Manpower, PT. Freeport Indonesia was sentenced to pay the rights of Ferdinandt Mamangkey with a 6-year service period in the amount of Rp27,154,837.00 (twenty-seven million one hundred and fifty-four</p>		
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³⁰ Wijayanti, "Towards a Fair Indonesian Labor Law System."

³¹ et al., "LEGAL PROTECTION OF WORKERS' RIGHTS IN FIXED-TIME EMPLOYMENT AGREEMENTS IN EMPLOYMENT."

³² Wijayanti, *Post-Reform Labor Law*.

thousand eight hundred and thirty-seven rupiah) with the following details:		
Reimbursement Allowance		
Separation Money	1 (month wage) x IDR 9.134.500,00	Rp. 9.134.500
TOTAL		Rp. 27.154.837

Source: Industrial Relations Court Decision Number 44/Pdt.Sus- PHI/2019/PN Jap.

The most important legal protection for workers for Termination of Employment is related to the correctness of the employee's status in the employment relationship and the truth of the reason for termination of employment. The reasons used as a basis for imposing layoffs can be divided into two groups, namely the reasons that are allowed and the reasons that are not allowed to be terminated. What needs attention is the provision that if workers are caught making big mistakes, they can be laid off without permission ³³. The arrangement to resolve layoffs based on Employment Law will be handled by the Industrial Relations Court which is an ad hoc court of the District Court. Rights of dismissed workers In the event that the employment relationship is terminated, the employer is obliged to pay severance pay and/or service award money and compensation that should be received (Article 156), including:

- a. Severance Pay
- b. Lifetime Award Money
- c. Reimbursement of Rights. ³⁴.

Getting equal treatment before the law, certainty and fair legal guarantees, protection and recognition are the rights of everyone that must be fulfilled by the state, this is stated in the constitution of the Indonesian state, namely the 1945 Constitution ³⁵. In this case, Ferdinandt Mamangkey gave his power of attorney to Yuliyanto, S.H., M.H., Nicolas Dammann T, S.H., Nita Sri Apricia Sibarani, S.H., M.H., Bovit Siregar, S.H., Aswin Abrian, S.H., advocates and assistants at the law office of Yuliyanto, S.H., M.H., & Associates. As for legal protection, if a third party is harmed by a power of attorney that exceeds its designation, the third party must first consider the provisions of the power of attorney, whether it has been agreed that the excess in the power of attorney has been agreed. If it is done with the approval of the JPU, a third party can pursue the JPU.³⁶

2. Legal remedies if there are workers who are terminated due to absence from work

Talking about efforts to have industrial relations disputes often occur in any job. Industrial relations disputes are procedures or mechanisms for resolving cases regulated in the PHI Law and in Law Number 2 of 2004 Chapter IV which regulates the Settlement of Industrial Relations. Legal remedies are a process for every citizen his rights as a citizen when there is a problem This law is the protection of the government Citizens can appeal to the court according to existing knowledge ³⁷. The first procedure is carried out by Bipartite negotiations, which is a mechanism where the relationship between labor and employers must be resolved, initially it will be achieved through consensus negotiations or deliberation first ³⁸.

However, in the case of Ferdinandt Mamangkey, there is still no common ground between the two on the issue of industrial relations disputes related to termination of employment due to absence from work. The article regulates the provisions on bilateral cooperation institutions 106 Law 13/2003, which means that companies are obliged to do so with at least 50 employees is a Bipartite Cooperation business, abbreviated as Bipartite LKS. Then it continues to the second

³³ Law, "Andari Yurikosari (Corresponding Author)."

³⁴ Fspmi, "JUXTAPOSITION OF LAW NO. 13 OF 2003 CONCERNING MANPOWER LAW NO. 11 OF 2020 CONCERNING JOB CREATION WITH PERPPU NO. 2 OF 2022 CONCERNING JOB CREATION."

³⁵ Suparto, "The Problem of Testing Laws and Regulations in the Supreme Court (Study of Supreme Court Decision No. 65 P/HUM/2018)."

³⁶ Surbakti, "LEGAL ANALYSIS OF THE USE OF POWER OF ATTORNEY THAT EXCEEDS ITS PURPOSE (Study of the Decision of the Supreme Court of the Republic of Indonesia Number 1189K/Pdt/2017 and the Decision of the Cibinong District Court Number 104//Pdt.G/2012/Pn. Cbn.)."

³⁷ Putri Ayu1, "Error In Persona in a Dispute of Rights Lawsuit in the Industrial Relations Court."

³⁸ Prints, *Indonesian Employment Law*.

negotiation, namely tripartite, which is where negotiations between workers and employers and involve a third party as a facilitator. In this case, PT. Freeport Indonesia, a letter of recommendation from the mediator of the Mimika Regency Manpower Office, Papua Province dated September 9, 2019 in the form of a Minutes on Industrial Relations Dispute Resolution, then finally did not reach an agreement on September 15, 2016. Therefore, the next action is carried out at the level of Industrial Relations Settlement (PHI) in accordance with 14 paragraphs (1) of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes ("Law 2/2004"). Considering that the problem could not be resolved at the Mediator level, it was forwarded to the Industrial Relations Court (PHI) and PHI with the Kasisi Decision Number P1192 K/Pdt.Sus-PHI/2020 stating that the layoff was qualified as a layoff due to absenteeism.

PKWT is based on the time required to do a certain job, or what is often called temporary work, while with PKWTT the period of time is not fixed or referred to as a dense state employee In employment relationships, employers prefer the employment contract system compared to permanent employees ³⁹. This is related to the exclusion of Ferdinandt Mamangkey where he mentioned that he was an indefinite time worker (PKWTT) or a permanent worker at PT. Freeport Indonesia since May 21, 2013 until now. However, the allegation was denied by the judge because Ferdinandt Mamangkey with his position as C4 Security Guard Leader Sr in the Security & Risk Management Department at PT Freeport Indonesia had violated the rules of the employment agreement.

Therefore, Ferdinandt Mamangkey filed an appeal to the Supreme Court (MA) and the Supreme Court with Number P1192 K/Pdt.Sus-PHI/2020 and by applying to cancel the PHI Decision Number 44/Pdt.Sus-PHI/2019/PN Jap and Ferdinandt Mamangkey were rehired and cleared of his good name by PT. Freeport Indonesia. In this case, the author agrees with the Judge because it is proven that Ferdinandt Mamangkey has violated the employment agreement, then Ferdinandt Mamangkey's cassation application was rejected by the Supreme Court Judge. In addition, according to the nature of the employment contract based on the provisions of Law No. 13 of 2003 Jo. Perppu No. 2 of 2022 Article 56, fixed-time employment contracts and non-fixed-time employment contracts are distinguished. A fixed-time work agreement as intended in paragraph (1) is based on the duration or implementation of a certain activity ⁴⁰. Reviewing the Decision of the Industrial Relations Court Number 44/Pdt.Sus-PHI/2019/PN. Jap and Supreme Court Decision Number 1192 K/Pdt.Sus-PHI/2020 which is the cassation level in the case of termination of employment carried out by Ferdinandt Mamangkey at PT. Freeport Indonesia. There are 3 similarities, namely :

Equation	Judge of the Jayapura Industrial Relations Court	Supreme Court Justices
Parties	<p>Declaring that PKB and PHI PTFI 2015-2017 and PKB and PHI PTFI 2017-2019 are valid and binding for the Plaintiff and the Defendant as well as all workers of the Plaintiff and also declaring that Ferdinandt Mamangkey is indeed proven to have committed a work violation, namely not going to work/absenteeism selama lebih from 5 (five) consecutive working days without any reason</p> <p>which is valid, and has been summoned 3 (three) times in a row in a proper and written manner, where the sanction for work violations.</p>	<p>That there are reasons for Ferdinandt Mamangkey's reasons which cannot be justified because it turns out that Ferdinandt Mamangkey has been proven to have committed a work violation, namely not going to work/absenteeism for 5 years</p> <p>(five) or more consecutive working days, where the violation of the work dilakukan by Ferdinandt Mamangkey is a work violation and in this Cassation decision it is also explained the evidence that Ferdinandt Mamangkey has indeed violated the collective agreement between himself and PT. Freeport Indonesia.</p>

³⁹ Hariri, "Enforcement of Corruption and Reform."

⁴⁰ Wijayanti, "Suing the Concept of Labor Relations."

Special Power of Attorney	The reason is that in establishing a working relationship between PT. Freeport Indonesia and Ferdinandt Mamangkey in the work environment, so it is an urgent reason for PT. Freeport Indonesia to lay off the Defendant in accordance with the provisions of point 4 of the circular letter of the Minister of Manpower and Transmigration of the Republic of Indonesia No. SE-13/MEN/SJ-HK/I/2005, dated January 7, 2005.	The judge also confirmed that PT. Freeport Indonesia at the Cassation level and meets the legal requirements of a power of attorney and has mentioned the need for specifically from the lawsuit, namely the lawsuit PT. Freeport Indonesia due to the actions of Work violation due to absence from work by Ferdinandt Mamangkey. Then it is linked to the consideration Judex Facti, in this case the Industrial Relations Court at the Court The state of Jayapura does not misapply the law or violate the law yang berlaku dengan pertimbangan.
Amar Verdict	Regarding the verdict, it was also said that the working relationship between PT. Freeport Indonesia and Ferdinandt Mamangkey have broken up since this verdict was pronounced. As well as PT. Freeport Indonesia must pay the rights of Ferdinandt Mamangkey	The same is true of the Industrial Relations Court's decision on the Court of Appeal The State of Jayapura in this case is not contrary to the law and the law, so the application for cassation filed by Ferdinandt Mamangkey must be rejected by the Judge.

According to the author, the Supreme Court Judge's consideration at the cassation level in Decision Number 1192 K/Pdt.Sus-PHI/2020 with the argument that the Industrial Relations Court was correct in applying the article in accordance with the provisions of Article 27 paragraph (9) letter e and Article 27 paragraph (10) PHI PTFI 2015-2017, as well as Article 26 paragraph (10) PHI PTFI 2017-2019 and Article 168 paragraph (1) of Law Number 13 of 2003 concerning Manpower.

D. Conclusion

Based on analysts on the Termination of Employment that occurred between Ferdinandt Mamangkey and PT. Freeport Indonesia, it can be concluded that the Termination of Employment is because Ferdinandt Mamangkey is proven to have committed a work violation, namely not coming to work/absenteeism for more than 5 (five) consecutive working days without a valid reason, and having been summoned 3 (three) times in a row in a proper and written manner. In the PHI Decision Number 44/Pdt.Sus- PHI/2019/PN Jap, it is correct in interpreting Article 27 paragraph (9) letter e and Article 27 paragraph (10) PHI PTFI 2015-2017, as well as Article 26 paragraph (10) PHI PTFI 2017-2019 and Article 168 paragraph (1) of Law Number 13 of 2003 concerning Manpower and about the applicable law so that the decision is accepted and then results in the employment relationship between PT. Freeport Indonesia and Ferdinandt Mamangkey have had to break up since this decision was enforced.

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