

Juridical Review on Termination of Employment As the Company is in the State of Postponing its Debt Payment Obligation

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ABSTRACT

In an unavoidable circumstance, the work relation between a worker/a labor and an employer can be ended. The imbalance in socio and economic positions places the state, as a regulator and at the same time as a supervisor for the statutory provisions that the limits of permissible particular circumstances that might lead to termination of employment. Those particular circumstances can be found in Law No 11 of 2020 on the Job Creation and its implementing regulations. There is a circumstance under the law that may lead to termination of employment; one of them is a company in the state of postponing a debt payment obligation. The provision is based on Law No 37 of 2004 on the Bankruptcy and Postponement of Debt Payment Obligations. Is this circumstance being appropriate reason for an employer to terminate employment? This research applies a normative judicial methodology based on comparative law. The data used are secondary data from documents. All collected data are processed and analyzed to find the legal issues that later become the object of this research and presented descriptively afterward. The research shows that the postponing debt payment obligation status is an inappropriate reason to terminate employment because that status is actually an opportunity provided for a company to avoid bankruptcy so that the company can operate as usual.

Keywords: *Termination of Employment, Postponing Debt Payment Obligation.*

ABSTRAK

Dalam keadaan yang tidak dapat dihindarkan, hubungan kerja antara pekerja/buruh dan pengusaha dapat berakhir. Ketidakseimbangan kedudukan sosial dan ekonomi menempatkan negara, sebagai pengatur dan sekaligus pengawas ketentuan perundang-undangan bahwa batas-batas keadaan tertentu yang diperbolehkan yang dapat mengakibatkan pemutusan hubungan kerja. Keadaan khusus tersebut dapat ditemukan dalam Undang-Undang Nomor 11 Tahun 2020 tentang Penciptaan Lapangan Kerja dan peraturan pelaksanaannya. Ada keadaan di bawah hukum yang dapat menyebabkan pemutusan hubungan kerja; salah satunya adalah perusahaan dalam keadaan menunda kewajiban pembayaran utang. Ketentuan tersebut didasarkan pada Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang. Apakah keadaan ini menjadi alasan yang tepat bagi pemberi kerja untuk memutuskan hubungan kerja? Penelitian ini menggunakan metodologi yudisial normatif berbasis hukum perbandingan. Data yang digunakan adalah data sekunder dari dokumen. Semua data yang terkumpul diolah dan dianalisis untuk menemukan permasalahan hukum yang kemudian menjadi objek penelitian ini dan kemudian disajikan secara deskriptif. Hasil penelitian menunjukkan bahwa penundaan status kewajiban pembayaran utang merupakan alasan yang tidak tepat untuk melakukan pemutusan hubungan kerja karena status tersebut sebenarnya merupakan peluang yang diberikan perusahaan untuk menghindari kebangkrutan agar perusahaan dapat beroperasi seperti biasa.

Kata kunci: *Pemutusan Hubungan Kerja, Penundaan Kewajiban Pembayaran Utang.*

Introduction

A Process to transform a raw material into the desired form and/or product cannot run by itself, it requires an intervention of the works of a person. Consequently, in this relation, the two parties need each other. Those parties are the owner of raw material (capital) and the labor/worker who does the work. Although both of them need each other, the positions of the two are not equal. Intending to gain from the capital, a capital owner has the full power to decide or place anyone willing to work. While labor/worker only has his/her works to be exchanged with a payment, to meet his/her needs, and whenever possible to support his/her family.

The distinct positions will certainly influence the worker/labor and employer relation. As a person who gives an order, an employer (capital owner) will trap in a situation when he/she feels he/she can do anything, especially she/he feels a worker's life depends on the salary. Therefore, concerning termination of employment as it is stipulated under Law No 11 of 2020 on the Job Creation, the state has a significant role to prevent the employer's arbitrary action on worker/labor.

It is undeniable that in the production activity, an employer might experience some obstacles which influence the financial condition. Therefore, after the employer puts every effort to save a business, an employer may face a position to reduce the workers. In that case, Law on the Job Creation has provided the rooms for an employer to terminate employment due to certain reasons related to its ability to sustain its business¹, those are:

1. The company merges, consolidates, conduct an acquisitions or separation;
2. The company conducts efficiency;
3. The company is closed down;
4. The company go bankrupt; and
5. The company is in the status of postponing a debt payment obligation.

In a certain period, a company might experience insufficient profit income to fulfill its obligation, including debt, resulting in financial distress. That condition forces a company to take some extricate measures, among others are: merger, consolidation, acquisition, separation, efficiency (including reducing the workers), closing down and or filing for bankruptcy on its own, or being filed for bankruptcy by its creditor.

If a debtor company is declared bankrupt by the court, all its assets, in general, are confiscated. The management and settlement will be in the hand of a curator.² Starting from the day the bankruptcy is declared, the company loses the right to control and manage its assets.³ Such an arrangement is necessary so that no party takes arbitrary action to confiscate the company's assets to substitute the debt obligation. The bankruptcy declaration is considered the best way to avoid fraudulence that can be committed by a creditor or a company as for as the bankruptcy assets.

The Bankruptcy declaration is not the only way out provided by Law No 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligation to resolve debt and receivable. A company in debt that is unable to fulfill its obligation can file a request to the court to declare

¹ "Article 81 point 42 Law of the Republic of Indonesia No 11 of 2021 on the Job Creation and article 36 point a-f of Government of Republic Indonesia Regulation No 35 of 2021 on Working Agreement on The Specified Time, Outsourcing, Working Time and Resting" (n.d.).

² "Article 1 point 1 Law of the Republic of Indonesia No 37 of 2004 on Bankruptcy and the Postponement of Debt Payment Obligation" (n.d.).

³ "Article 24 of Law of Republic of Indonesia No 37 of 2004 on Bankruptcy and the Postponement of Debt Payment Obligation" (n.d.).

postponement of debt payment obligation status. This mechanism provides a company an opportunity to consider and agree upon a plan to settle its debt and receivable matters without having all of its assets confiscated by a curator. The company still has a right to manage its assets with the approval of management appointed by the court.

Based on the description above, there is an issue whether the postponing the debt payment obligation status obtained by company from a court is appropriate to one of the reason for termination of employment?

Method of Research

This legal research⁴ was conducted by reviewing the documents (normative juridical)⁵ derived from secondary data, namely, primary legislation of Law No 11 of 2020 on the Job Creation, Law No 37 of 2004 on Bankruptcy and Postponement on Debt Payment Obligation and Government Regulation No 35 of 2021 on Working Agreement for Unspecified Period, Outsourcing, Working Hours and Resting Hours and Termination of Employment.

The secondary legal materials are used in this research derived from books and documents⁶ that bring a subject of law on Manpower, bankruptcy and

postponement of a debt payment obligation, and earlier research related to the subject of postponement of debt payment obligation.

Data collecting methods in this research are conducted through library research on the applicable legislations, books, journals, and articles written by the experts.⁷ All secondary data are processed in a qualitative approach based on post-positivism philosophy as a basis to observe the condition of the nature of the object and presented in descriptive form afterward.

Discussion

The existence of Law on the Job Creation has changed the mechanism for termination of employment which was previously regulated by the Law of Manpower. Previously, termination of employment must be preceded by negotiation between employer and trade union or with the concerning worker/labor if the worker/labor is not a member of a trade union. If negotiation does not reach an agreement then termination of employment can only be carried out after obtaining an approval from Industrial relation settlement dispute institution.⁸

Regarding termination of employment, the Law on the Job Creation places negotiation at the next step after an employer notifies the worker in writing and the worker/labor refuses the intention of the termination of employment. If the negotiation does not reach an agreement, therefore, the settlement of termination of employment is conducted in accordance with the

⁴ Rani Sri Agustina, "THE CREDIT RESTRUCTURING AS A FORM OF PROTECTION AGAINST CUSTOMERS DURING THE COVID-19 PANDEMIC," *International Journal of Law Reconstruction* 5, no. 2 (2021): 231, <https://doi.org/http://dx.doi.org/10.26532/ijlr.v5i2.17528>.

⁵ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003). P. 13.

⁶ Palmawati Tahir., Muhamad Muslih., dan Rani Sri Agustina, "MUI HALAL CERTIFICATION ON MILKFISH SATAY AS AN EFFORT TO SUPPORT NATIONAL FOOD SECURITY," *LEGAL STANDING JURNAL ILMU HUKUM* 4, no. 1 (2020): 233-46, <https://doi.org/http://dx.doi.org/10.24269/ls.v4i1.2670>.

⁷ M. Nasir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 2003). P. 27.

⁸ "Article 151 subsection (2) and subsection (3) Law of the Republic of Indonesia No 13 of 2003 on Manpower" (n.d.).

industrial relation settlement dispute mechanism.⁹

Article 165 of The Law on Manpower stipulates that an employer may terminate the employment of the company's workers/labors because the company goes bankrupt. The workers/labors shall be entitled to severance pay amounting to 1 (one) time the amount of severance pay stipulated under subsection (2) of Article 156, reward pay for period of employment amounting to 1 (one) time the amount stipulated under subsection (3) of Article 156 and compensation pay for entitlements according to subsection (4) of Article 156. The amount of calculation of severance pay is stipulated in Article 156 subsection (2) of the Law of Manpower, in conjunction with Article 40 subsection (2) of Government Regulation Number 35 of 2021, as follows:

1. For a working period of less than 1 (one) year, 1 (one) month wage;
2. For a working period of 1 (one) year or more but less than 2 (two) years, 2 (two) months wages;
3. For a working period of 2 (two) years or more but less than 3 (three) years, 3 (three) months wages;
4. For a working period of 3 (three) years or more but less than 4 (four) years, 4 (four) months wages;
5. For a working period of 4 (four) years or more but less than 5 (five) years, 5 (five) months wages;
6. For a working period of 5 (five) years or more but less than 6 (six) years, 6 (six) months wages;
7. For a working period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months wages;
8. For a working period of 7 (seven) years or more but less than 8 (eight) years, 8 (years) months wages;

⁹ "Article 81 point 37 Law of the Republic of Indonesia No 11 of 2020 On the Job Creation" (n.d.).

9. For a working period of 8 (eight) years or more but less than 9 (nine) years, 9 (nine) months wages.

While the calculation of the sum of money paid as a reward for service rendered during the term of employment shall be determined as follows:

1. For a working period of 3 (three) years or more but less than 6 (Six) years, 2 (two) months wages;
2. For a working period of 6 (Six) years or more but less than 9 (nine) years, 3 (three) months wages;
3. For a working period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months wages;
4. For a working period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months wages;
5. For a working period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months wages;
6. For a working period of 18 (eighteen) years or more but less than 21 (twenty-one) years, 7 (seven) months wages;
7. For a working period of 21 (twenty-one) years or more but less than 24 (twenty-four) years, 8 (eight) months wages;
8. For a working period of 24 (twenty-four) years or more, 10 (ten) months wages.

In addition, the form and amount of compensation pay for entitlements that should be received by the worker/labor under article 156 subsection (4) of the Law of Manpower as follow:

1. Annual leaves that have not expired and not have taken;
2. Costs or expenses for transporting the worker/laborer and his or her family back to the point of hire;
3. Compensation for housing allowance, medical and health care allowance is determined at 15%

(fifteen percent) of the severance pay and or reward for years of service pay for those who are eligible;

4. Other compensations are stipulated under the work agreement, company regulations, or collective agreements.

Meanwhile, the form and amount of compensation pay for entitlement that should be received by worker/labor as it is stipulated in article 40 subsection (4) of Government Regulation No 35 of 2021, as the following:

1. Annual leaves that have not expired and not have taken;
2. Costs or expenses for transporting the worker/labor and his or her family back to the point of hire;
3. Other compensations are stipulated under the work agreement, company regulations, or collective agreements.

At the minimum, Law on the Job Creation does not only regulate termination of employment because the company is in bankruptcy. Its implementing regulation, Government Regulation No 35 of 2021 stipulates that in the case of termination of employment due to the company is in bankruptcy the worker/labor entitle to severance pay of 0, 5 (zero point five) of article 40 subsection (2), reward pay for period of employment amounting to 1 (one) time of article 40 subsection (3) and compensation pay for entitlements in accordance with article 40 subsection (4). However, it also gives rights for an employer to be able to carry on termination of employment because the company is in the condition of postponing debt payment obligation in accordance with article 46 of Government Regulation No 35 of 2021 as implementing regulation of The Law on the Job Creation.

In article 46 of Government Regulation No 35 of 2021, a company in a postponing debt payment obligation status that leads to a termination of

employment is driven by two factors; the company is or is not suffering a loss. Termination of employment of a company that is in the postponing debt payment obligation status due to the company is suffering a loss, the worker/labor is entitled to severance pay amounting 0, 5 (zero point five) of article 40 subsection (2), a reward pay for period of employment to 1 (one) time of article 40 subsection (3) and compensation pay for entitlement under article 40 subsection (4). On the termination of employment due to a company in a postponing debt payment obligation status which does not suffer a loss, thus the worker/labor entitles to receive severance pay amounting to 1 (one) time of article 40 subsection (2), a reward for period of employment amounting to 1 (one) time of article 40 subsection (3) and compensation pay for entitlement under article 40 subsection (4).

Previously, postponement of debt payment obligation (*surseance van betaling*) in Law no 4 of 1998 on Ratification of Government Regulation to replace Law No 1 of 1997 stated as postponement of payment. According to article 222 of Law of Bankruptcy and Postponement of Debt Payment Obligation, a request of postponement of the debt payment obligation is submitted by a debtor who has more than one creditor, when the debtor is estimated unable to continue to pay the debt that is due and collectible with an intention to propose a reconciliation including an offer to pay a part or all debt to creditor. The Law also provides the same rights for creditor which predicts that the debtor is unable to continue to pay the debt that is due and collectible with an intention to provide an opportunity for a debtor to propose reconciliation plan that include an offer to pay a part or all debt to the creditor.

Fred B.G Tumbuan argued that the postponement on debt payment

obligation is not a situation where a debtor is unable to pay its debt or insolvent. A postponement of the debt payment obligation is a room provided to a debtor to resolve financial distress to carry on its life.¹⁰ Similar to Tumbuan, Hasdi Haryadi stated that postponement of the debt payment obligation is an opportunity provided to the debtor to restructure his/her debt that includes payment part or all the debt to the creditor. If this runs well, then eventually sustain his/her business.¹¹

The postponement of debt payment obligations is an opportunity provided by law so that creditors and debtors can renegotiate the settlement of debt and receivable between the two through the intermediary of a board appointed by the court. If the request is approved, the maximum period is 270 (two hundred and seventy) days from the postponement of debt payment obligation is declared.

Therefore, the postponement of debt payment obligations is actually a kind of moratorium given to debtors to plan to repay all or part of their debts, including restructuring the debt.¹²

According to Zainal Asikin (2001:102), The Objective of the postponement of debt payment obligations is to make it possible for a debtor to improve the company's economic condition which is trapped in

economic pressure. Therefore, based on the aforementioned objective, not all companies which are unable to pay their debts (debtors) must be declared bankrupt because the in postponing of debt payment obligations status, the companies are given an opportunity to make an effort and at the same time arrange their debt structure.

Rachmadi stated¹³ that the postponement of debt payment obligations did not result in the company (the debtor) not being able to carry on a business anymore, still, it able to carry on a business. There are several differences between the mechanism for settling debts through postponement of debt payment obligations and bankruptcy. The party declared in a postponing of debt payment obligations status is not as bad as the party declared bankrupt. Because bankruptcy will eliminate its ability to take any action against his/her own assets, while the party who is declared in postponing the obligation to pay debts does not lose his rights to the assets, it only need an approval from the management appointed by the court for every action he/she will take in relation to the asset. Sutan Remy Sjahdeini argued that postponing the obligation to pay debts is an effort made by the debtor to avoid bankruptcy or an effort to avoid the liquidation of assets when the debtor has or will be in an insolvency state.

From the above elaboration, that the postponement of debt payment obligation is an opportunity for the debtor to be able to resolve his debt dispute by taking steps to reconcile and renegotiate with the creditors so that the debtor can avoid general confiscation of his/her assets and can still continue a business. The postponement of the of debt payment obligation itself aims to avoid bankruptcy that leads to the liquidation of assets. The postponement of debt payment obligations is not only

¹⁰ Novita Sari, "Tinjauan Yuridis Pembatasan Jangka Waktu Penundaan Kewajiban Pembayaran Utang Terhadap Debitor," *Kertha Patrika* 39, no. 2 (2017), <https://doi.org/https://doi.org/10.24843/KP.2017.v39.i02.p02>.

¹¹ Cholifatun Nisa', "AKIBAT HUKUM PENGESAHAN PERDAMAIAN (HOMOLOGASI) TERHADAP PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG DALAM HAL DEBITORNYA PERSEROAN TERBATAS," *Jurist-Direction Law Journal* 2, no. 2 (2019), <https://doi.org/http://dx.doi.org/10.20473/jd.v2i2.14225> 11 citation on Dimensions.

¹² Rachmadi Usman, *Dimensi Hukum Kepailitan di Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2004). P. 101.

¹³ Usman.p. 101-103.

intended for the interest of a debtor but also for the interest of a creditor. In addition, the purpose of debt payment obligation is to avoid bankruptcy, provide an opportunity for debtors to continue their business without any pressure to pay off their debts to creditors and to make their business healthy. So, the ultimate goal of postponement debt payment obligation is to reconcile between the debtor and creditor to mutually agree and set out in a reconcile plan which will be determined later by the court.

Thus, the condition of a company declared by the court to be in a postponement of debt payment obligations status is not the same as the condition of a company that has been declared bankrupt. Companies that are declared in a postponement of debt payment obligations status still have the opportunity to continue to carry on its business, especially if the opportunity is used in cooperation with workers/laborers and is committed to restoring the company's financial situation so that the company will regain an ability to fulfill its debt payment obligations. Even though the company is experiencing a loss, it is still given the right to be able to perform efficiency (reduction) of the workforce by providing severance pay of 0.5 (zero points five) Article 40 subsection (2), a period of service reward of 1 (one) time. 40 subsection (3) and compensation for rights in accordance with Article 40 subsection (4) based on Article 43 subsection (1) of Government Regulation Number 35 of 2021. Likewise, if the company wants to make labor efficiency (reduction) to prevent losses, the workers/ workers are entitled to severance pay in the amount of 1 (one) time in Article 40 subsection (2), a reward of period of employment in the amount of 1 (one) time in Article 40 subsection (3) and compensation for entitlements under Article 40 subsection (4) in accordance with Article 43

subsection (2) Government Regulation Number 35 of 2021.

Likewise, referring to the provisions of Article 39 subsection (1) of Law on Bankruptcy and Postponement of Debt Payment Obligations, it is stated that, "Worker who works for the Debtor can terminate the employment, and conversely, the Curator may terminate him/her by taking into account the period of time according to the agreement or provisions of the applicable laws and regulations, with an understanding that the employment relation can be terminated with a minimum notice of 45 (forty-five) days in advance. In fact, the Law on Bankruptcy and Postponement of Debt Payment Obligations, which regulates the mechanism for postponing debt payment obligations, does not include this situation as one of the reasons that can be used for debtors to terminate the employment relation of their workers/laborers. Moreover, the true purpose of postponing debt repayment obligations is to avoid bankruptcy which has an impact on the confiscation of all debtor's assets, which at the same time provides an opportunity for the debtor to continue and improve his/her business.

Closure

Based on the above discussion, it can be concluded that the postponement of the debt payment obligation is an opportunity provided by law so that creditors and debtors can discuss the settlement of debts between the two, and prevent the debtor from bankruptcy which has an impact on the confiscation of all their assets.

Therefore, in the author opinion, the regulation on termination of employment for the reason that the company is in the state of postponing debt payment obligations in Article 81 point 42 of the Law on the Job Creation and Article 46 of Government Regulation Number 35 of 2021, is not relevant

because the purpose of postponing debt payment obligations itself is an opportunity for a debtors to continue and improve their business, which can benefit debtors, creditors, including workers/laborers. In addition, in overcoming losses or at least preventing losses, the company is in fact still given the right to terminate employment under Article 43 of Government Regulation Number 35 of 2021.

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