

## **Legal Certainty Regarding the Time Limit for Claiming Retired Employees' Rights in Indonesia**

**Umi Nuris Sholikah<sup>1</sup>, Salma Rizkiyah<sup>2</sup>, Winda Ardilla<sup>3</sup>, Natcha Muangsong<sup>4</sup>**

<sup>1,2,3</sup>Faculty of Law, Universitas Negeri Surabaya, Indonesia

[umi.21066@mhs.unesa.ac.id](mailto:umi.21066@mhs.unesa.ac.id)

<sup>4</sup>Faculty of Law, Thaksin University, Thailand

[natcha.h@tsu.ac.th](mailto:natcha.h@tsu.ac.th)

### **Abstract**

Retirement marks the end of the employment relationship between an employee and the company, in which the employee is entitled to resignation, work time remuneration, and compensation rights. However, in the prosecution of his charges there are still obstacles such as the complexity of administrative procedures to the issue of the provisions of due date. Deadline is a form of time limit that has been established for filing a claim, which, when the time limit is passed, a person's right to file a claim is deemed to be expired. Rules concerning delays are governed by a number of legislative regulations, including UNCITRAL and employment laws. Nevertheless, these provisions are often not well understood by employees, especially those who work in small companies or the informal sector. Late filing of claims for employee rights is often due to a lack of socialization and education about the employee's own rights. That affects the decline in the well-being of retired employees. Legal certainty is needed to help fulfill the rights of both working and retired employees.

**Keywords:** Legal certainty, deadlines, retirements, resignations

### **INTRODUCTION**

Retirement is a period in which a person has reached a certain age that requires them to stop working. Termination of employment also results in the termination of the employee's rights and obligations with the company he works for. Retired employees have the right to receive severance pay, long service awards, and replacement rights as a form of appreciation for their services during their work. The existence of employee retirement rights is intended to guarantee the welfare of employees after they enter retirement. In Indonesia, retirement age and pension rights are contained in several laws and regulations that are made so that legal protection for retired employees is guaranteed. However, in practice, there are still many problems related to the prosecution of these pension rights. In this case, it is caused by various factors, ranging from a lack of understanding of the rights they have, ignorance of the procedures that must be taken. The complexity of the procedure often confuses employees who ultimately cannot get the rights they should get.

In addition to the complicated procedures, another issue that often arises is regarding the statute of limitations in claiming employee pension rights. A statute of limitations is a provision that limits the time in which a person can file a lawsuit. After passing a certain time limit, the right to sue is considered lost. This provision is intended to provide legal certainty and prevent prolonged disputes. Regulations regarding the statute of limitations in claiming employee pension rights have been regulated in several laws and regulations, especially in regulations that specifically regulate industrial relations and employment. Regulations regarding the statute of limitations are also regulated in the Civil Code where the statute of limitations is after 30 years have passed and if it has exceeded that time, a lawsuit cannot be filed.

Company policies regarding retirement may not fully explain the complex rights of employees. will be obtained during his/her employment in the company and also regarding the prosecution procedures that can be carried out to obtain these rights. Although the state has made quite clear regulations regarding this in several laws and regulations, the less than optimal supervision in the implementation of these regulations often leads to abuses that result in the non-fulfillment of employee rights. The less than optimal implementation is caused by the lack of socialization of these regulations to employees, especially to employees who work in companies that do not have departments that can help them fulfill their rights, this results in employees not knowing their rights and the time limits that must be considered. As a result, many retired employees realize too late that they have passed the expiration date to claim their rights.[1]

However, there are differences in determining the submission of a lawsuit for disputes over rights, as shown by the different interpretations of the provisions of Article 96 of the Manpower Law with the Constitutional Court Decision (MK Decision) No. 100/PUU-X/2012 with the Supreme Court Circular (SEMA) No. 4 of 2014 concerning the Implementation of the Formulation of the Results of the Supreme Court (MA) Chamber Meeting in 2013 as a Guideline for the Implementation of Duties for the Court which contains different things. The Constitutional Court stated that there is no time limit for workers to claim their rights but the MA stated that there is a time limit determined based on the principle of justice by the Panel of Judges of the Industrial Relations Court. Therefore, the author is interested in further examining the legal certainty of the expiration time limit so that workers affected by the termination of industrial relations can claim severance pay rights.

## **DISCUSSION**

### **1. Legal Certainty Regarding the Expiration Date for Claiming Retired Employees' Rights**

Employment law is designed to protect the weak, especially workers and laborers, and to realize social justice in the implementation of employment relations. It is undeniable that workers and employers often have different interests. For workers, their main goal in working is to earn wages and improve their welfare for the quality of life for them and their families. Therefore, workers instinctively try to maintain their jobs, because losing a job means losing income and welfare, which has the potential to result in unemployment and hardship. On the other hand, employers often view workers as a burden on production costs because they run their businesses with the aim of achieving maximum profit with minimal capital. Often, conflicts occur between employees and employers because of these differences in interests. There are 4 types of disputes in industrial relations, namely: disputes over rights, disputes over interests, disputes over termination of employment, and disputes between trade unions or workers in one company. The most common disputes related to termination of employment, usually caused by differences of opinion between employers and workers. On the other hand, disputes over rights occur because of differences of opinion about how or how regulations and employment agreements are interpreted or implemented. An example of termination of employment is retirement. Based on Article 156 of Law Number 6 of 2023 concerning Job Creation, employers are required to pay severance pay, service award money, and replacement money for rights that should have been received. Therefore, workers who retire are entitled to receive severance pay, service compensation, and replacement of rights.[2]

The definition of statute of limitations is closely related to the time period in the context of severance pay claims, so there is a definition, namely the limitation or time period for filing a severance pay claim. A statute of limitations is a legal mechanism that limits the time for filing a claim. This applies to ensure legal certainty and stability of legal relations by preventing disputes that are too long, a statute of limitations is a time limit that has been regulated by law to be able to file a lawsuit or claim for violated legal rights. After the statute of limitations ends, the right to file a claim is considered no longer valid, even though the right may still exist substantively.

Article 96 of the Employment Law stipulates that demands for payment of wages for workers or laborers, as well as all payments arising from the employment relationship, expire within two years after the right arises. However, with the Constitutional Court Decision No. 100/PUUX/2012, the Constitutional Court rejected this provision by stating that Article 96 of the Employment Law has no binding legal force because it is contrary to the 1945 Constitution. The Constitutional Court rejected the same as the right to ownership of objects, the right to

ownership of tangible objects of work that requires protection as long as the right does not release it, the Constitutional Court stipulated that wages and all payments originating from the employment relationship must be protected as labor rights as long as the worker does not take actions that are detrimental to the employer. Wages and all payments originating from the employment relationship may not be taken over arbitrarily by someone, either personally or legally. As a result, wages must be commensurate with work results. According to the Court, Article 96 of the Employment Law is contrary to Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution. [3]

The rights of pension workers are one of the three mechanisms for resolving PHI, this is included in the category of rights disputes, namely disputes that occur due to unfulfilled rights caused by different interpretations or implementations of laws and regulations, work agreements, company regulations or collective work agreements. Bipartite negotiations are the first mechanism for resolving industrial relations disputes. This is a negotiation between employers, associations of employers, and workers or labor unions in companies that are in dispute. In principle, if there is a dispute, the first step that must be taken is bipartite negotiations, which must be resolved through deliberation within 30 days. However, negotiations will be considered a failure if at the time of the negotiations one of the parties rejects or an agreement is not reached within that time. If both parties have reached an agreement, a joint agreement is made that is binding on both parties. The second is tripartite negotiations, in these negotiations employers and workers work together with a third party who functions as a mediator, conciliator and arbitrator. Tripartite negotiations can be through mediation carried out in cases of disputes over rights, interests of layoffs or workers' unions in one company through deliberations facilitated by a neutral mediator from the district or city employment agency office, tripartite negotiations can also be through conciliation and arbitration, conciliation is carried out to resolve disputes over interests, layoffs, and disputes between workers' unions through a neutral conciliator registered at the district/city employment agency office and arbitration which includes disputes related to interests or workers' unions involved in one company can be resolved through arbitration. Arbitration is carried out outside the industrial relations court and it is agreed in writing by both parties in dispute that they will submit the settlement of the dispute to the arbitrator, the arbitrator's decision is binding on both parties and is final. However, if no agreement is reached in the tripartite negotiations, the dispute will be brought to the Industrial Relations Court to be decided. [4]

If a bipartite agreement and mediation are not reached, the lawsuit will be filed with the Industrial Relations Court. The court that handles industrial relations disputes is the Industrial Relations Court. This court is the first and final instance court for disputes of interest and disputes between trade unions or labor unions in one company. In addition, this court also functions as the first instance court for disputes regarding rights and termination of employment (PHK). The time required for workers to file a lawsuit with the Industrial Relations Court must be in accordance with the object being sued. In the case of a dispute over rights which is a claim for rights arising from an employment relationship, does it require that the employment relationship between the worker and the employer is still ongoing or the process of termination of employment has begun or not. In the case of a dispute over termination of employment which is a claim for rights that have arisen due to termination of employment, must there be a will or a process of termination of employment first. This difference is important because it relates to different expiration provisions. Since the Job Creation Law was passed, it is expected to be able to attract investment in Indonesia, but at the same time there is also an inequality between workers and employers in employment relationships that are still unfair. However, deregulation and flexibility are increasing, which then weakens the protection of workers as regulated by Law No. 21 of 2000. This can be seen from the many rejections of the discussion and ratification of the Job Creation Law, because it is considered to regulate articles that do not provide protection and welfare for workers that have previously been better regulated in the Manpower Law. Examples include the elimination of sectoral minimum wages, extension of worker contract periods, and expansion of the use of outsourcing mechanisms. In addition, this law also re-regulates the statute of limitations for filing lawsuits for termination of employment. This makes the process increasingly dominant and makes employers more flexible in terminating employment, thus narrowing the room for workers and unions to defend and fight for their rights. The Constitutional Court has read out the Decision on the Application for Formal Review of the Job Creation Law on November 25, 2021, the main points of which are as follows:

1. Declaring that the Establishment of the Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditional binding legal force as long as it is not interpreted as "no improvements are made within 2 (two) years from the time this decision is pronounced";

2. Declaring that the Job Creation Law remains in effect until improvements are made to its formation in accordance with the time limit as determined in this decision;
3. Ordering the legislators to make improvements within a maximum period of 2 (two) years from the time this decision is pronounced and if improvements are not made within this time period, the Job Creation Law will become permanently unconstitutional;

Article 96 of the Manpower Law that was removed by this Article includes things like wages, overtime pay, bonuses, benefits in kind, and others that are rights arising from employment relationships. Initially, the regulation on this expiration stated that workers can only claim wages and other rights arising from employment relationships within a maximum of 2 (two) years of the worker receiving the rights. However, on September 19, 2013, the Constitutional Court (MK) issued Decision No. 100/PUU-X/2012 aimed at testing the constitutionality of Article 96 of the Manpower Law.

The Constitutional Court ruled in its decision No. 100/PUUX/2012 dated 19 September 2013 that wages and all payments related to employment relationships are personal rights that may not be taken arbitrarily by anyone, either individuals or through provisions of laws and regulations. Based on this legal consideration, the Constitutional Court ruled that Article 96 of the Manpower Law is unconstitutional and has no binding legal force. Although the Constitutional Court has determined that Article 96 of the Manpower Law has no binding legal force. However, the Supreme Court still does not submit. This can be seen from SEMA No. 4 in 2014, in the provisions regarding the Implementation of the Formulation of the Results of the 2013 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court, it is stated that "The formulation of Article 96 of the Manpower Law which has been tested through the Constitutional Court Decision No. 100/PUUX/2012 dated September 19, 2013 does not issue a new norm. Therefore, when deciding on the issue of expiration, Article 100 of the Industrial Relations Law in conjunction with Article 5 of Law No. 48 of 2009 concerning Judicial Power remains a consideration for judges in considering a sense of justice. This statement shows that the Supreme Court ignores the erga omnes nature of the Constitutional Court's decision, which has the potential to cause legal uncertainty in resolving industrial relations disputes, especially regarding disputes over rights in the Industrial Relations Court as a first-level court and in the Supreme Court as a cassation court. However, on the other hand, the government and the Indonesian House of Representatives as parties bound by the Constitutional Court Decision have followed up on the Constitutional Court Decision No. 100/PUU-X/2012 on September 19, 2013 by revoking Article 96 of the Manpower Law. This can be seen in Article 81 number 34 of the Job Creation Law which states that "Article 96 is abolished." With the implementation of the Job Creation Law, the validity of the Constitutional Court Decision No. 100/PUU-X/2012 should be further strengthened. Therefore, the deadline for filing a lawsuit related to wages and other payments originating from employment relationships by workers must be understood and applied without any time limit.[3]

## CONCLUSION AND SUGGESTIONS

Expiration is the time limit for filing a claim for one's rights, but with the Constitutional Court Decision No. 100/PUU-X/2012, the provisions regarding the expiration in the Manpower Law are considered to be contrary to the 1945 Constitution, so that workers have the right to demand payment of their rights without an expiration time limit. However, the Supreme Court in SEMA No. 4 of 2014 still applies the expiration time limit based on considerations of justice. This creates legal uncertainty regarding the rights of retired employees, especially in terms of Industrial Relations Settlement.

The revocation of Article 96 of the Manpower Law in the Job Creation Law as reflected in Article 81 number 34 of the Job Creation Law strengthens the validity of the Constitutional Court's decision. This legal uncertainty occurs because of the conflict of interests between workers and employers. Workers have the right to severance pay, compensation for work periods, and other replacement rights and are often faced with complications in claiming their rights because there are differences in interpretation of existing laws and regulations. Based on this legal problem, the author suggests that the rules regarding the time for filing a lawsuit must be consistent so that parties in industrial relations can obtain legal certainty in claiming workers' rights.

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