

Unclear Status of Employment Agreement in Termination of Employment: Legal Analysis of Supreme Court Decision Number 394 K/Pdt.Sus-PHI/2023 Which Does Not Grant Replacement Money for Rights

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Abstract

Hadiyansyah is an employee from an outsourcing company, namely PT Bina Cipta Abadi, who was assigned to work at PT Yuasa Battery Indonesia with a Specific Time Work Agreement (PKWT). After working for 10 years, Hadiyansyah was terminated by PT Yuasa Battery Indonesia on the grounds of company rationalization as a result of the Covid-19 pandemic, but the company did not provide any compensation to Hadiyansyah. The dispute also occurred because Hadiyansyah considered himself an employee of PT Yuasa Battery Indonesia, but PT Yuasa Battery Indonesia did not admit this. There is also unclear status of the work agreement which Hadiyansyah believes is PKWTT, not PKWT like the initial work agreement. As a legal step, Hadiyansyah filed a lawsuit with PHI. In his considerations, the judge stated that Hadiyansyah's lawsuit had no legal basis and was rejected in its entirety. Hadiyansyah submitted a cassation request to the Supreme Court and part of Hadiyansyah's lawsuit was granted through Supreme Court Decision Number 394 K/Pdt.Sus-PHI/2023. This research aims to determine the legal relationship between Hadiyansyah and PT Yuasa Battery Indonesia, as well as to find out the basis for the judge's consideration of not granting Hadiyansyah's request for compensation for rights. The research method used in this research is normative juridical. The results of this research were that the judge correctly applied the law regarding the legal relationship between Hadiyansyah and PT Yuasa Battery Indonesia which did not exist. As for the compensation money which was not granted by the judge, the author provides an opinion which is the judge's reason, namely the difference in legal interpretation regarding compensation money for leaving rights by the Supreme Court, Hadiyansyah's inability to provide evidence, the principles of justice used by the Supreme Court, the Supreme Court Panel of Judges considering legal precedent.

Keywords: Termination of Employment, Work Relationship, Compensation Money.

INTRODUCTION

In Indonesia, the workforce plays an important role in national development. The workforce is an actor of development as well as an economic actor both individually and in groups, so it has a very significant role in national economic activities (Rizal, Apriliani, and Rostika 2018). As one of the drivers of the national economic life system, the productivity of workers' performance also influences the balance of development. The productivity and quality of the workforce will run optimally as it should if accompanied by the fulfillment of workers' rights and protection. Therefore, laws and regulations were made that regulate the rights and protection of workers with the issuance of Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law).

The definition of employment is explained in Article 1 Number 1 of the Manpower Law which states "Employment is everything related to the workforce before, during, and after the work period." In the scope of employment there is a legal relationship between workers and employers which is usually called an employment relationship. Based on the provisions of Article 50 of the Manpower Law, it states that, "Employment relationships occur because of an employment agreement between employers and workers/laborers". The employment agreement itself is defined in Article 1 Number 14 of the Manpower Law that, "An employment agreement is an agreement between workers/laborers and employers or employers that contains the terms of employment, rights, and obligations of the parties".

Regarding the rights and protection of workers in employment relations with employers, this is emphasized in Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that, "Every citizen has the right to work and a decent living for humanity". Legal protection for workers can also be concluded from the provisions of Article 28 D Paragraph (2) of the 1945 Constitution which amends Article 27 Paragraph (2) of the 1945 Constitution, that everyone has the right to work and receive fair and decent compensation and treatment in employment relations.

Legal protection for workers can be realized through the existence of an employment agreement that outlines the rights and responsibilities of each party as an employer and as a worker. The terms of the employment agreement which is an agreement between the employer and the worker cannot be removed or changed without the consent of the parties

(Harahap 2020). So that with the existence of an employment agreement, it can minimize the occurrence of arbitrariness carried out by the employer to treat workers unfairly, one of which is by unilaterally terminating the employment relationship.

When an agreement has been made, a legal employment relationship is created that can be accounted for by both parties. However, in practice, the employment relationship between workers and companies does not always run smoothly. Disputes often occur when the employment agreement period has not expired (Mantili 2021). This can occur due to a lack of understanding or differences in interpretation of the parties involved in the regulations governing employment. As a result of this dispute, it often ends with Termination of Employment (hereinafter referred to as PHK). In Article 1 Number 25 of the Employment Law, PHK is defined as, "Termination of an employment relationship work due to a certain reason which results in the termination of rights and obligations between workers/laborers and employers".

A. Ridwan Halim stated that layoffs are a step to end the employment relationship between workers and employers due to a certain reason (Halim 1990). A certain thing referred to in both definitions can be said to be the reason for layoffs. Termination of employment can occur at the will of the company or workers/laborers, but in practice in the field it is more often found that the company is the party that terminates the employment relationship. In this case, workers suffer more losses than companies, so that provisions regarding the reasons for layoffs are regulated in Articles 153 - 167 of the Manpower Law. However, there are still rules and procedures that must be followed to carry out layoffs, so that unilateral layoffs are still an unjustifiable action (Josviranto 2022). Layoffs must also be carried out based on the agreement of both parties. In accordance with the applicable Manpower Law, it stipulates that companies must seek deliberation to resolve industrial relations disputes and prevent layoffs (Fikriana and Khairani 2023).

From the explanation above, it can be seen that cases between workers and companies are common, especially in cases of work agreements that are not made in writing. This can cause the status of workers to be unclear whether they are included in the PKWT or PKWTT. The unclear status of this agreement is also very detrimental to workers because the company can dismiss workers at any time. This is often used by employers to not provide severance pay, long service awards, compensation for rights and separation money because there is no written agreement that can be evidence of protection of workers' rights (Octavia S and Lie 2023). One similar case occurred between Hadiyansyah and PT YUASA BATTERY INDONESIA and PT BINA CIPTA ABADI.

The chronology of the case began with a lawsuit filed by Hadiyansyah, a man born in 1984 in Tangerang, a private worker, residing in Kampung Kebon Nanas, RT 004, RW 002, Panunggangan Utara Village, Pinang District, Tangerang City, Banten Province to PT Yuasa Battery Indonesia located at Jalan MH Tahmrin Number 1, RT 001, RW 001, Panunggangan Utara Village, Pinang District, Tangerang City, Banten Province and PT Bina Cipta Abadi located at Ruko Boulevard Business Center Complex Soll Marina Block H Number 23-25, Jalan Gatot Subroto Kilometer 5.3, Gandasari Village, Jatiuwung District, Tangerang City, Banten Province which is engaged in outsourcing and outsourcing services. Hadiyansyah works in the Production division at PT Yuasa Battery Indonesia which is engaged in the production of car and motorcycle batteries (accumulators).

Hadiyansyah started working at PT Yuasa Battery Indonesia in February 2010. He was accepted to work by submitting a job application and going through an interview process that qualified him to meet the requirements determined by PT Yuasa Battery Indonesia. During his work, Hadiyansyah worked continuously and never stopped or never signed a fixed-term work agreement with PT Yuasa Battery Indonesia or PT Bina Cipta Abadi, therefore if in the future there is (evidence) of a contract between Hadiyansyah and PT Yuasa Battery Indonesia and PT Bina Cipta Abadi, it can be ascertained that it was not him who made or signed it.

During his work, Hadiyansyah worked on the same type of work, meaning that the work done was a type of work that remained the same, not moving or switching to another type of work, so that his work was certainly the main/core cord, not a supporting cord type of work that existed periodically or seasonally. Suddenly on June 19, 2020, Hadiyansyah was terminated by PT Yuasa Battery Indonesia for reasons of company rationalization as a result of the Covid-19 pandemic. The oddity occurred when PT Yuasa Battery Indonesia did not recognize Hadiyansyah as its employee, but rather as an employee of PT Bina Cipta Abadi, but PT Yuasa Battery Indonesia laid off Hadiyansyah.

Therefore, it is not true regarding the assumption of PT Yuasa Battery Indonesia which according to him Hadiyansyah is an employee of PT Bina Cipta Abadi, because as has been stated that during his work, Hadiyansyah never signed a fixed-term employment agreement (PKWT), what happened was an agreement that was contrary to the provisions of the law carried out by PT Yuasa Battery Indonesia and PT Bina Cipta Abadi by making and preparing it as if Hadiyansyah was an employee of PT Bina Cipta Abadi who was placed at PT Yuasa Battery Indonesia with the aim of none other than to make Hadiyansyah's layoffs cheap, when in fact from February 2010 to June 19, 2020 Hadiyansyah was accepted as an employee at PT Yuasa Battery Indonesia and was registered in the list of wage recipients from PT Yuasa Battery Indonesia, so that his work period was 10 years and 3 months with wages of Rp. 4,199,029 and among the requirements for an employment relationship is the existence of work or work orders and wages from the employer to the worker himself. Due to Hadiyansyah's working relationship with the companies which were unilaterally claimed by the companies as contract workers, it was proven to be just a ruse as a way to get cheap layoffs which if implemented would only benefit the companies but harm Hadiyansyah.

Hadiyansyah did not object to the termination of employment imposed on him, but on the condition that his rights as a worker who would lose his job were compensated as stipulated in the Manpower Law, namely being given severance

pay, service award money and compensation money, as well as other rights as a legal consequence of the termination of employment as a permanent worker, not a contract worker. Therefore, Hadiyansyah filed a lawsuit attached with recommendations or minutes of settlement that were received and registered at the Clerk's Office of the Industrial Relations Court at the Serang District Court on September 14, 2022.

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The decision in Register Number 128/Pdt.Sus-PHI/2022/PN Srg was issued by the Industrial Relations Court in response to the lawsuit filed by Hadiyansyah. The panel of judges considered that Hadiyansyah's lawsuit arguments were legally groundless and must be rejected, so the lawsuit was rejected in its entirety. Hadiyansyah felt that the Industrial Relations Court Decision Number 128/Pdt.Sus-PHI/2022/PN Srg was very burdensome and detrimental to him, so Hadiyansyah filed a cassation application to the Supreme Court with the same lawsuit arguments as before. The Supreme Court then issued a decision to approve Hadiyansyah's lawsuit in part with Decision Number 394 K/Pdt.Sus-PHI/2023.

In its consideration, the Panel of Judges of the Supreme Court stated that the reason for Hadiyansyah's cassation application as the cassation applicant could be justified after carefully examining the cassation memorandum received on January 9, 2023 and the counter cassation memorandum received on January 24, 2023 respectively in connection with the consideration of *Judex Facti* in this case the Industrial Relations Court at the Serang District Court, there was an error in applying the law. That from the legal facts revealed in the trial, it was proven that Hadiyansyah was an outsourcing worker bound by a PKWT with PT Bina Cipta Abadi and was assigned to work at PT Yuasa Battery Indonesia as the employer company with PT Bina Cipta Abadi as the work contracting company.

The employment relationship status between Hadiyansyah and PT Bina Cipta Abadi is bound by a PKWT, however, because the PKWT agreement status between Hadiyansyah and PT Bina Cipta Abadi has lasted for 10 (ten) years and with more than 10 (ten) PKWTs continuously, never interrupted and there is no time gap between one PKWT and another PKWT, then by referring to the provisions of Article 56 paragraph (7) of the Manpower Law, by law the employment relationship status between Hadiyansyah and PT Bina Cipta Abadi has changed to PKWTT or as a permanent worker starting from the time of the deviation from the PKWT or since the third PKWT starting from September 21, 2013 to June 19, 2020 with a work period of 6 (six) years and 9 (nine) months.

In addition, the termination of employment against Hadiyansyah was not carried out on the basis of errors and/or violations of the law committed by Hadiyansyah but because PT Yuasa Battery Indonesia and PT Bina Cipta Abadi did not want to continue their working relationship with Hadiyansyah, therefore, for the termination of employment, Hadiyansyah is entitled to receive termination compensation in the form of severance pay of 1.75 x the provisions of Article 40 Paragraph 2) and a length of service bonus of 1 x the provisions of Article 40 Paragraph (3) of PP Number 35 of 2021.

Therefore, this industrial relations dispute is very interesting to be used as research material and there are differences in the verdict between the first level and the cassation. Based on these problems, the researcher is interested in studying the decision in a study that the researcher entitled "UNCLARITY OF THE STATUS OF THE EMPLOYMENT AGREEMENT IN TERMINATION: LEGAL ANALYSIS OF THE SUPREME COURT DECISION NUMBER 394 K/PDT.SUS-PHI/2023 WHICH DOES NOT GRANTED RIGHTS REPLACEMENT MONEY" with the formulation of the problem: 1) Is there a legal relationship between the plaintiff Hadiyansyah and PT Yuasa Battery Indonesia? 2) What is the basis for the judge's consideration in not granting the plaintiff Hadiyansyah's request to obtain compensation for his rights?

METHOD

This study uses a normative legal method. Normative legal research is legal research that takes legal facts as a standard in providing perspective on a legal event. This research was conducted by analyzing the Supreme Court Decision Number 394 K/Pdt.Sus-PHI/2023. In this study, there are three types of legal materials used, namely primary, secondary, and tertiary legal materials. The technique of collecting legal materials used is by collecting them based on the issues or problems discussed. Then the three legal materials are classified sequentially based on the source to then be used as a source of analysis in answering the formulation of the problems presented in this study. The legal material analysis technique used in this study is qualitative prescriptive by providing arguments on the results of the processing of legal materials that have been carried out. This argumentation is carried out by researchers to provide an assessment of the truth or falsity of the argument according to the law against the facts or legal events from the research results.

RESULTS AND DISCUSSION

Position Case

The case of the PHK dispute occurred between Hadiyansyah and PT Yuasa Battery Indonesia and PT Bina Cipta Abadi. Hadiyansyah is a former employee of PT Yuasa Battery Indonesia which is engaged in the production of car and

motorcycle batteries (accumulators). It started with Hadiyansyah applying to PT Bina Cipta Abadi which is engaged in outsourcing and outsourcing services as an outsourcing worker bound by PKWT with PT Bina Cipta Abadi. Hadiyansyah was assigned or channeled to work at PT Yuasa Battery Indonesia, with an employment relationship of PT Yuasa Battery Indonesia as the employer and PT Bina Cipta Abadi as the work contractor company. Hadiyansyah has been working since February 2010, accepted to work by submitting a job application and going through an interview process that qualifiedly met the requirements determined by PT Yuasa Battery Indonesia and was placed in the production division with the positions of MCBMF and CHG. During his work, Hadiyansyah worked continuously and never stopped or never signed a fixed-term work agreement with PT Yuasa Battery Indonesia or PT Bina Cipta Abadi, therefore if in the future there is (evidence) of a contract between Hadiyansyah and PT Yuasa Battery Indonesia and PT Bina Cipta Abadi, it can be ascertained that it was not him who made or signed it.

On June 19, 2020, Hadiyansyah was suddenly terminated by PT Yuasa Battery Indonesia on the grounds of company rationalization as a result of the Covid-19 pandemic, but the company did not provide any compensation for the loss of Hadiyansyah's job. While during the Covid-19 pandemic, Hadiyansyah and everyone in general were also in need of living expenses, which means that Hadiyansyah's situation at that time was in a very difficult situation, because as a worker Hadiyansyah was not paid his wages, even though according to the Manpower Law Hadiyansyah was still entitled to wages during the termination of employment process. A dispute also occurred when PT Yuasa Battery Indonesia did not recognize Hadiyansyah as its employee, but rather as an employee of PT Bina Cipta Abadi, but PT Yuasa Battery Indonesia laid off Hadiyansyah.

To resolve the dispute, Hadiyansyah and his attorney took legal action by filing a lawsuit application accompanied by a recommendation or settlement report which was accepted and registered at the Clerk's Office of the Industrial Relations Court at the Serang District Court on September 14, 2022. The decision in Register Number 128/Pdt.Sus-PHI/2022/PN Srg was issued by the Industrial Relations Court in response to the lawsuit filed by Hadiyansyah, the decision of which is as follows:

IN EXCEPTION

- Reject Defendant I's
exception; IN THE SUBJECT
OF THE CASE

1. Reject the Plaintiff's lawsuit in its entirety;
2. Charging the court costs which until today have been set at Rp. 1,120,000.00 (one million one hundred and twenty thousand rupiah) to the State.

The panel of judges opined as their consideration that, the arguments of Hadiyansyah's lawsuit were legally groundless and must be rejected, so the lawsuit was rejected in its entirety. The panel of judges concluded that Hadiyansyah only had an employment relationship with PT Bina Cipta Abadi, not with PT Yuasa Battery Indonesia.

Hadiyansyah felt that the Industrial Relations Court Decision Number 128/Pdt.Sus-PHI/2022/PN Srg was very burdensome and detrimental to him, so Hadiyansyah filed a cassation application to the Supreme Court with the same lawsuit arguments as before. The Supreme Court then issued a decision to approve Hadiyansyah's lawsuit in part with Decision Number 394 K/Pdt.Sus-PHI/2023 with the following verdict:

IN EXCEPTION :

- Reject the Defendant's
exception; IN THE MAIN OF
THE CASE:

1. Granting the Plaintiff's claim in part;
2. Declaring the "termination" of the employment relationship between the Plaintiff and the Defendant effective June 19, 2020;
3. Ordering Defendant II to pay severance pay and long service bonus money to the Plaintiff in the total amount of Rp. 65,273,264.00 (sixty million two hundred seventy three thousand two hundred sixty four rupiah);
4. Reject the Plaintiff's lawsuit other than and beyond;
5. Charging court costs to the State;

In its considerations, the Panel of Judges of the Supreme Court is of the opinion that the reasons for the Applicant of Cassation can be justified after carefully examining the cassation memorandum received on January 9, 2023 and the counter cassation memorandum received on January 24, 2023 respectively in connection with the consideration of the *Judex Facti* in this case the Industrial Relations Court at the Serang District Court, there was an error in applying the law.

Discussion

1. Analysis of Legal Relationship Between Hadiyansyah and PT Yuasa Battery Indonesia

In Article 1 Number 15 of the Employment Law, it explains the employment relationship which reads, "Employment relationship is a relationship between an entrepreneur and a worker/laborer based on a work agreement, which has the elements of work, wages and orders". To analyze whether or not there is a legal relationship between Hadiyansyah and PT Yuasa Battery Indonesia, the author will first examine the elements of the employment relationship as follows:

a. The Existence of Work Done by Hadiyansyah

In an employment relationship, the first element that must be present is work (*arbeid*). Where workers get work that is in accordance with the agreement or contents of the agreement between workers and the company. Technically, it is impossible for a company to recruit workers if there is no work available according to the company's needs. The work that is done is also free as long as it does not conflict with laws and regulations, morality and public order (Wijayanti 2011). Work is interpreted as the existence of activities carried out by workers to produce goods or services for the company. Work must be productive and contribute to the company and the type of work can vary, from physical work to intellectual work.

Physical work is a type of work that requires the use of human muscle physical power as the main source to complete tasks. This work often involves repetitive physical activity, lifting weights, or performing quite heavy body movements. Examples of physical work are construction work (builders, heavy equipment operators), agriculture, industry (factory workers), services (janitors, gardeners, couriers), sports and fitness (physical trainers, professional athletes). Intellectual work is a type of work that relies more on a person's cognitive and mental abilities, such as analytical thinking, creativity, problem solving, and decision making. This work generally involves the use of knowledge, information, and ideas to produce something of value. Examples of intellectual work are writers or journalists, researchers, academics or lecturers, lawyers, accountants or auditors, engineers, architects, psychologists and many others.

Related to the conditions experienced by Hadiyansyah, based on the judge's considerations in the Industrial Relations Court Decision at the Serang District Court Number 128/Pdt.Sus-PHI/2022/PN Srg, it was stated that PT Yuasa Battery Indonesia already had work (according to the flow of activities for the implementation process issued by the Association of Automotive and Motorcycle Equipment Industries/GIAMM) which had been reported to the Tangerang City Manpower Office has been examined and received Evidence of Reporting Types of Supporting Work Number 560/4487-HI/2013 dated October 1, 2013. Which was then carried out in a Cooperation Agreement or Cooperation Agreement regarding Contracting of Company Operational Supporting Work dated September 20, 2010, September 20, 2011, September 20, 2013, September 19, 2014, October 1, 2015, October 1, 2016, September 30, 2017, October 1, 2018, October 1, 2019, and October 1, 2020 which have been registered with the Tangerang City Manpower Office and have obtained Proof of Registration of the Employer Company Agreement with the Worker/Labor Service Provider Company, and Proof of Registration of the Work Contract Agreement. Legally, the element of work as an objective requirement of the work agreement has been fulfilled, but the problem is who the work carried out by Hadiyansyah came from. Based on the description above, it is clear that the work carried out by Hadiyansyah was given by PT Bina Cipta Abadi which had carried out the work contract for PT Yuasa Battery Indonesia which required the services of workers/laborers from PT Bina Cipta Abadi. The agreement is made in accordance with the provisions of Article 64 Paragraph (1) of Perpu Number 2 of 2022 which states, "The Company may hand over part of the implementation of the work to another Company through an outsourcing agreement made in writing."

For this reason, it is necessary to pay attention to the type of work that will be given to outsourcing workers or PKWT, as stipulated in the Manpower Law Article 66 Paragraph (1), which has been classified and distinguished in general regarding the type of work, namely "Workers/laborers from companies providing worker/labor services may not be used by employers to carry out main activities or activities that are directly related to the production process, except for supporting service activities or activities that are not directly related to the production process". Supporting work itself is work that helps the smooth operation of a company. This work is not directly related to the main products or services offered by the company, but it is important to ensure that all processes run smoothly. The types of supporting work that are commonly found are cleaning services, security, maintenance, machine operators, product packaging and many more. Supporting work is done by recruiting outsourcing workers so that the company can save costs. Therefore, outsourcing workers are only intended for supporting work that is not the main activity in a company. The main work must be done by permanent workers, not outsourcing workers with indirect employment relationships. In fact, many companies mix up job classifications with the aim of minimizing workers' wages in order to achieve maximum profits (Koto and Hanifah 2023).

The above is related to the case experienced by Hadiyansyah. In his lawsuit at the Industrial Relations Court of the Serang District Court Number 128/Pdt.Sus-PHI/2022/PN Srg Hadiyansyah stated that the work carried out was core work/main cord, not supporting work that was periodic or seasonal. This is believed because Hadiyansyah worked on a permanent type of work and did not move or switch to another type of work. Until the trial, the fact was discovered that it started on November 18, 2009 where Hadiyansyah was declared an intern from the Tangerang Job Training Center (BLK Tangerang) who was placed at PT Yuasa Battery Indonesia with the status of On Job Training (OJT) or intern.

Then on October 8, 2010, an Outsourcing Work Agreement was signed with PT Bina Cipta Abadi which was effective from October 1, 2010 and ended on September 20, 2011 with placement at PT Yuasa Battery

Indonesia in the AMB section. AMB itself at PT Yuasa Battery Indonesia refers to Assembly Maintenance Battery which is tasked and responsible for assembling and maintaining batteries. AMB at PT Yuasa Battery Indonesia is a job done by outsourcing workers, this is because battery assembly work is usually done by temporary workers or workers from outsourcing companies, besides, this job does not require special skills that are only owned by permanent employees of the company so that this job is not a core/main job but rather a supporting job that can be done by outsourcing workers.

Next, on September 30, 2011, Hadiyansyah entered into an Outsourcing Work Agreement with PT Bina Cipta Abadi which was valid from September 30, 2011 and ended on September 20, 2012 with placement at PT Yuasa Battery Indonesia in the MCB MF section. MCB MF most likely refers to the Multi Cell Battery Manufacturing Facility which is responsible for the production of MCB (Maintenance Free) multi-cell batteries. Workers in this section generally have special skills in the fields of electrical and mechanical which are usually possessed by permanent employees of the company. In the MCB MF section at PT Yuasa Battery Indonesia, it is not explicitly stated whether it is core work or supporting work that can be done by outsourced workers, but if reviewed again based on the expertise needed, it is likely that MCB MF is core work at PT Yuasa Battery Indonesia. This is because the work requires special skills and is an integral part of the company's main business operations. However, there is still a possibility that the work at PT Yuasa Battery Indonesia is done by outsourced workers, but the author is of the opinion that the placement permanent work must be guided by applicable laws and regulations. This is to avoid any discrepancy between wages and work performed by workers, in addition to anticipating the non-fulfillment of other workers' rights.

Then on September 21, 2012 Hadiyansyah entered into an Outsourcing Work Agreement with PT Bina Cipta Abadi which was valid from September 21, 2012 and ended on September 20, 2013 with placement at PT Yuasa Battery Indonesia in the same section. Furthermore, on October 1, 2013 Hadiyansyah entered into an Outsourcing Work Agreement with PT Bina Cipta Abadi which was valid from October 1, 2013 and ended on October 1, 2014 with placement at PT Yuasa Battery Indonesia in the supporting work section. This section does not specifically explain what work Hadiyansyah was hired for. This Employment Agreement continues to be updated and runs until September 20, 2020.

b. There is an Order Given by the Company

The order is regulated in the Manpower Law Article 1 Number 15 as one of the elements of the employment relationship. In an employment relationship, the company is authorized and obliged to give orders related to work to workers to be carried out. Workers have an obligation to carry out the order as long as it is still within the scope of the agreed work, is rational and does not conflict with the law.

In the Supreme Court Decision Number 394 K/Pdt.Sus-PHI/2023 regarding the industrial relations dispute between Hadiyansyah and PT Yuasa Battery Indonesia and PT Bina Cipta Abadi in the facts of the trial that were revealed, what happened was that there was a practice of outsourcing or handing over the implementation of part of the work or the provision of labor that was in accordance with the Manpower Law as stipulated in Article 64 which reads, "The company can hand over part of the implementation of the work to another company through a work contract agreement or the provision of worker/labor services made in writing". In addition, there is Article 65 which regulates the handover of part of the implementation of the work in the form of a work contract agreement, and there is Article 66 which regulates the handover of part of the implementation of the work in the form of a worker/labor service provision agreement.

In terms of mechanism, outsourcing workers in carrying out their work will receive daily and operational instructions from the employer company that include specific tasks, daily targets, work procedures, and other directions related to operations. In addition, outsourcing workers are usually supervised by managers or supervisors from the employer company. They provide feedback and ensure that work is carried out according to established standards. Meanwhile, the outsourcing company provides orders or instructions related to company policies, employment regulations, work ethics, and other administrative aspects. They also provide initial training or orientation regarding general tasks and company regulations. In addition, the outsourcing company handles HR management that includes payroll, employment contracts, work assessments, and career development, and handles employment issues that may arise.

This is in accordance with the working relationship between PT Yuasa Battery Indonesia and PT Bina Cipta Abadi and Hadiyansyah. Where because of the Cooperation Agreement on the Contracting of Supporting Work for Company Operations between PT Yuasa Battery Indonesia and PT Bina Cipta Abadi, PT Bina Cipta Abadi is fully responsible for the work given by PT Yuasa Battery Indonesia. PT Bina Cipta Abadi has the authority to regulate, direct, and give orders to Hadiyansyah and other outsourcing workers, while PT Yuasa Battery Indonesia will only evaluate the final results of the work. Therefore, it is clear that there is an element of an order received by Hadiyansyah directly from PT Bina Cipta Abadi as the company that oversees Hadiyansyah and gives orders to work at PT Yuasa Battery Indonesia after PT Bina Cipta Abadi won the contract from PT Yuasa Battery Indonesia to complete the project or work needed. Thus, PT Bina Cipta Abadi is fully responsible for the implementation of the work.

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This is in accordance with the working relationship between PT Yuasa Battery Indonesia and PT Bina Cipta Abadi and Hadiyansyah. Where because of the Cooperation Agreement on the Contracting of Supporting Work for Company Operations between PT Yuasa Battery Indonesia and PT Bina Cipta Abadi, PT Bina Cipta Abadi is fully responsible for the work given by PT Yuasa Battery Indonesia. PT Bina Cipta Abadi has the authority to regulate, direct, and give orders to Hadiyansyah and other outsourcing workers, while PT Yuasa Battery Indonesia will only evaluate the final results of the work. Therefore, it is clear that there is an element of an order received by Hadiyansyah directly from PT Bina Cipta Abadi as the company that oversees Hadiyansyah and gives orders to work at PT Yuasa Battery Indonesia after PT Bina Cipta Abadi won the contract from PT Yuasa Battery Indonesia to complete the project or work needed. Thus, PT Bina Cipta Abadi is fully responsible for the implementation of the work.

d. The Wages Received by Hadiyansyah

Based on the provisions of Article 1 Number 15 of the Employment Law, wages are the next element which must exist in order to create an employment relationship between workers and the company. Wages are compensation from the company to workers as compensation for work that has been done. Wages are a basic right of every worker that is guaranteed by law. As also stipulated in Article 88A Paragraph (1) of the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as Perpu Number 2 of 2022, namely "The Rights of Workers/Laborers to Wages arise when an Employment Relationship occurs between Workers/Laborers and Employers and ends when the Employment Relationship is terminated". The amount of wages must be in accordance with the provisions of applicable laws and employment agreements. The definition of wages based on the Manpower Law Article 1 Number 30 is:

"Wages are the rights of workers/laborers received and stated in the form of money as compensation from the entrepreneur or employer to the worker/laborer which is determined and paid according to a work agreement, agreement, or statutory regulations, including allowances for workers/laborers and their families for work and/or services that have been or will be performed."

The payment of wages for outsourcing workers or PKWT has a slightly different mechanism compared to permanent workers or PKWTT. For PKWTT workers, wages are paid directly by the company where they work. While for PKWT workers, wages are paid through the outsourcing company, but the funds to pay the wages of PKWT workers come from the employer company where the employer company pays a service fee to the outsourcing company, which is then used by the outsourcing company to pay workers' wages, allowances, and other operational costs.

The element of wages as an objective condition for an employment relationship has been fulfilled, in the problem that occurred with Hadiyansyah, it is necessary to know where the wages received by Hadiyansyah came from while working to find out which company Hadiyansyah had an employment relationship with. Based on the Decision of the Industrial Relations Court at the Serang District Court Number 128/Pdt.Sus-PHI/2022/PN Srg, there is documentary evidence in the form of a photocopy of Hadiyansyah's pay slip issued by PT Bina Cipta Abadi. This can happen because PT Bina Cipta Abadi as the work contractor company has

made a Work Contract Cooperation Agreement with PT Yuasa Battery Indonesia. So PT Yuasa Battery Indonesia pays the workers' service fees to PT Bina Cipta Abadi according to the agreed agreement. then PT Bina Cipta Abadi pays wages to Hadiyansyah and other PKWT workers according to the details stated in the work contract as workers of PT Bina Cipta Abadi because they have done the work that has been given so that they are worthy and deserve to get wages. Therefore, it is clear that the wages received by Hadiyansyah come from PT Bina Cipta Abadi. In addition to wages, PT Bina Cipta Abadi also fulfilled Hadiyansyah's normative rights as a worker, namely registering Hadiyansyah's BPJS Health and BPJS Employment in the name of PT Bina Cipta Abadi.

Based on the description of the three elements of the employment relationship above, it can be concluded that there is no direct employment relationship between Hadiyansyah and PT Yuasa Battery Indonesia because the actual employment relationship is between Hadiyansyah and PT Bina Cipta Abadi. While PT Yuasa Battery Indonesia establishes a legal relationship with PT Bina Cipta Abadi through a Work Contractor Agreement or Service Provider Agreement. In some situations, an employment relationship between outsourcing workers and the employer company can occur if:

1. **The work carried out includes core or supporting activities.** Article 65 Paragraph (2) of the Employment Law prohibits outsourcing workers from carrying out core or supporting activities of the company. If a violation occurs, by law, the employment relationship between the outsourcing worker and the service provider company changes to an employment relationship with the employer company.
2. **The service provider company did not fulfill its obligations.** If the service provider company is unable to fulfill its obligations to workers, such as paying wages or providing other normative rights, outsourcing workers have the right to sue the employer company. This is based on Article 54 Paragraph (2) The Employment Law states that employers are obliged to fulfill workers' rights if the worker/labor service provider is unable to fulfill them.

From the explanation above, the author can conclude that neither of the two specific situations occurred to Hadiyansyah. As can be seen, most of the work done by Hadiyansyah is not core work but rather supporting work that can be done by outsourcing workers. In addition, PT Bina Cipta Abadi has also fulfilled its obligations to Hadiyansyah or is considered not negligent in providing Hadiyansyah's normative rights as a worker, namely during the Employment Agreement, PT Bina Cipta Abadi always paid wages routinely every month which can be proven by the existence of a pay slip and BPJS Employment and BPJS Health belonging to Hadiyansyah which have also been registered in the name of PT Bina Cipta Abadi. Therefore, based on this analysis, it can be said that Hadiyansyah is a worker of PT Bina Cipta Abadi who legally with the Employment Agreement and his legal relationship is not transferred to any company including PT Yuasa Battery Indonesia

Hadiyansyah's Status as a Worker Based on Statutory Regulations

In the consideration of the Panel of Judges in the cassation level decision with Number 394 K/Pdt.Sus-PHI/2023 point 1 (one) stated that Hadiyansyah was an outsourcing worker bound by a fixed-term work agreement (PKWT) with PT Bina Cipta Abadi and was assigned to work at PT Yuasa Battery Indonesia in accordance with the cooperation agreement between PT Yuasa Battery Indonesia as the employer and PT Bina Cipta Abadi as the work contracting company. However, it is necessary to consider and look carefully at Hadiyansyah's status as a worker based on the work agreement that has been made with PT Bina Cipta Abadi. The first work agreement was made on October 8, 2010, effective from October 1, 2010 and

ended on September 20, 2011 placed in the AMB section. The second work agreement was made on September 30, 2011, valid from September 30, 2011 and ended on September 20, 2012 placed in the MCB MF section. The third work agreement was made on September 21, 2012, valid from September 21, 2012 and ended on September 20, 2013 placed in the MCB MF section. The next work agreement was made on October 1, 2013, valid from October 1, 2013 and ended on October 1, 2014 placed in the supporting section. In the supporting section, the Work Agreement was renewed 12 (twelve) times until 2020.

This is contrary to Article 59 Paragraph (4) of the Manpower Law which stipulates in the article that, "A fixed-term employment agreement based on a certain period of time may be made for a maximum of 2 (two) years and may only be extended 1 (one) time for a maximum period of 1 (one) year". Meanwhile, Article 8 Paragraph (1) of PP Number 35 of 2021 states that, "PKWT based on the period of time as referred to in Article 5 Paragraph (1) may be made for a maximum of 5 (five) years". Furthermore, Article 8 Paragraph (2) of PP Number 35 of 2021 specifically explains the provisions in Paragraph (1) which reads,

"In the event that the PKWT period as referred to in Paragraph (1) is about to end and the work being carried out has not been completed, the PKWT can be extended for a period of time as agreed between the Employer and the Worker/Laborer, with the provision that the total period of the PKWT and its extensions is no more than 5 (five) years."

In fact, in this case, the PKWT made by Hadiyansyah with PT Bina Cipta Abadi exceeded the time limit, which was 10 (ten) years with an extension of more than 10 (ten) times, continuously and without interruption or without

a break between one PKWT and another PKWT. PT Bina Cipta Abadi in this case has violated labor law by extending Hadiyansyah's PKWT beyond the applicable provisions. Article 59 Paragraph (7) of the Employment Law which reads, "A work agreement for a fixed period that does not meet the provisions as referred to in Paragraph (1), Paragraph (2), Paragraph (4), Paragraph (5), and Paragraph (6) then by law becomes an indefinite period work agreement", then by referring to these provisions by law the employment relationship status between Hadiyansyah and PT Bina Cipta Abadi changes to an indefinite period work agreement (PKWTT) or his status changes to a permanent worker at PT Bina Cipta Abadi since the deviation from the PKWT or since the third PKWT or calculated from September 21, 2013 to June 19, 2020 with a work period of 6 (six) years 9 (nine) months.

2. Basic Analysis of Judge's Consideration for Not Granting Hadiyansyah's Request to Obtain Replacement Money for Rights

Before analyzing further regarding the replacement money, it is necessary to know that there are differences in the rights of PKWTT workers who are laid off by the company or who resign. In the context of PKWTT, have different rights upon termination of a relationship work, based on Article 156 of the Manpower Law, when experiencing a layoff, workers are entitled to severance pay, service award money (UMK), compensation money (UPH), and separation money (if regulated in the Joint Work Agreement or Employment Agreement). Meanwhile, if a PKWTT worker resigns of his own accord in accordance with the provisions of Article 162 of the Manpower Law, the worker is only entitled to compensation money (including untaken leave, housing and medical expenses, and other matters stipulated in the employment agreement), and is not entitled to severance pay and service award money.

Workers who resign or are laid off are entitled to compensation. This is regulated in PP Number 35 of 2021 Article 40 Paragraph (1) which reads, "In the event of Termination of Employment, the Employer is obliged to pay severance pay and/or length of service awards, and compensation for the rights that should be received". Furthermore, Paragraph (4) explains the compensation for rights,

"The replacement money for rights that should be received as referred to in paragraph (1) includes:

- Annual leave that has not been taken and has not yet expired;
- Costs or expenses for the Worker/Laborer and his/her family to return to the place where the Worker/Laborer was accepted to work; and
- Other matters stipulated in the Employment Agreement, Company Regulations, or Collective Employment Agreement."

From the provisions above, regarding severance pay, long service award money and replacement money for rights are no different as regulated in the Manpower Law, but are regulated less in PP Number 35 of 2021 (Nababan et al. 2022). Under certain circumstances, PP Number 35 of 2021 allows employers to provide less severance pay to workers whose employment is terminated as regulated in Article 42 Paragraph (2), Article 43 Paragraph (1), Article 44 Paragraph (1), Article 45 Paragraphs (1) and (2), Article 46 Paragraph (1), Article 47, Article 52, and Article 56 (Nababan et al. 2022). Based on the principle of *lex superior derogate legi inferior*, lower legal regulations will be paralyzed by higher legal regulations (Masma Rahmita 2020), which means that implementing regulations must not conflict with the laws above them because if this happens, the implementing regulations will no longer apply.

Based on the problem of termination of employment that occurred to Hadiyansyah, in the argument of the lawsuit filed by Hadiyansyah regarding the severance compensation that he is entitled to receive is:

Layoff Compensation Calculation Table by Hadiyansyah

Work Experience : 10 years or more		Wages according to UMP 2022
a.	Severance Pay : 1 x 9 x Rp. 4.280.214,-	Rp. 38.521.926,-
b.	Long Service Award Money : 4 x Rp. 4.280.214,-	Rp. 17.120.856,-
c.	THR Money 2020 : 1 x Rp. 4.199.029,-	Rp. 4.199.029,-
d.	Replacement Money in the form of unused : 12 days x (Rp. 4.199.029,- : 22)	Rp. 1.108.543,-
Total		Rp. 60.950.354

In addition to the compensation above, Hadiyansyah also argued that the termination of employment carried out by the Defendants to him was still unilateral and the basis for the termination of employment was due to the impact of Covid-19, while at that time Hadiyansyah and everyone in general were also in need of living expenses, which means that Hadiyansyah's situation at that time was in a very difficult situation, because as a worker who was not paid his wages, even though according to the Manpower Law he should still be entitled to wages during the termination of employment process until the verdict in the case was read/pronounced, the amount of which is as follows:

Wage Calculation Table During the Case Settlement Process

2020: 6 months x Rp. 4,199,029,-	= Rp. 25,194,174,-
Year 2021 : 12 months x Rp. 4,262,854,-	= Rp. 51,144,180,-
Total	= Rp. 76,338,354,-

So if added up, the severance compensation demanded by Hadiyansyah is Rp. 137,288,708,- (one hundred and thirty seven million two hundred and eighty eight thousand seven hundred and eight rupiah). In the Supreme Court Decision Number 394 K/Pdt.Sus-PHI/2023, the Panel of Judges granted Hadiyansyah's cassation application, one of the main points of which was to request that his rights in the form of compensation as described above be paid. Hadiyansyah was declared entitled to receive severance pay in the form of severance pay of 1.75 x the provisions of Article 40 paragraph (2) and length of service award money of 1 x the provisions of Article 40 paragraph (3) of PP Number 35 of 2021 with the following calculations.

Calculation Table of Termination Compensation Money by the Panel of Judges

Plaintiff's Rights	Total
Severance Pay 1.75 x 7 x Rp. 4,280,214,-	Rp. 52,432,622,-
Long Service Award Money 3 x Rp. 4,280,214,-	Rp. 12,840,642,-
Total	Rp. 65,273,264,-

Based on the calculation above, the author tries to explain that the severance pay determined by the Panel of Judges of the Supreme Court is 1.75 (coefficient) x 7 (length of service) x Rp. 4,280,214,- (four million two hundred eighty thousand two hundred and fourteen rupiah) (wages in 1 month according to the 2022 Tangerang City UMP) obtained from the length of service calculated by the Supreme Court as PKWTT, namely 6 (six) years 9 (nine) months, which based on the provisions of Article 40 Paragraph (2), if the length of service is more than 6 (six) years but less than 7 (seven) years, severance pay will be given in the amount of 7 (seven) months' wages. So that if totaled it will produce a total of Rp. 52,432,622,- (fifty two million four hundred thirty two thousand six hundred twenty two rupiah), but the use of a coefficient of 1.75 is still being debated because this coefficient is not in accordance with the Manpower Law and Government Regulation Number 35 of 2021 where both regulations state that the coefficient in providing severance pay is only 1 (one) time, unless the employer lays off workers because the worker/laborer has entered retirement age so that the worker is entitled to severance pay of 1.75 (one point seventy five) as regulated in the provisions of Article 56 of Government Regulation Number 35 of 2021, while in 2022 Hadiyansyah will only be 38 (thirty eight) years old. Therefore, the author assesses that the judge's consideration in deciding the coefficient for providing severance pay is based on Hadiyansyah's fairly long work period and has made a significant contribution to the company, so that workers with a longer work period are entitled to a larger severance pay.

Then the calculation of the length of service award money is 3 x Rp. 4,280,214,- (four million two hundred eighty thousand two hundred and fourteen rupiah) with a total of Rp. 12,840,642,- (twelve million eight hundred forty thousand six hundred and forty two rupiah). If we look at the PKWTT work period carried out by Hadiyansyah, the calculation is in accordance with Article 40 Paragraph (3) of PP Number 35 of 2021 which states that if the work period is 6 (six) years or more but less than 9 (nine) years, then a length of service award money of 3 (three) months' wages will be given.

Based on the calculation of severance compensation decided by the Supreme Court, the author sees that the Panel of Judges did not provide compensation for the rights that should have been given to Hadiyansyah, namely in the form of compensation for leave rights that had not been taken. Where this condition is in accordance with Article 45 Paragraph (2) which requires,

"Employers can terminate the employment relationship of workers/laborers for reasons of circumstances."

force majeure which does not result in the Company closing, then Workers/Laborers are entitled to:

- a. Severance pay of 0.75 (zero point seventy five) times the provisions of Article 40 Paragraph (2);
- b. Long service bonus money of 1 (one) times the provisions of Article 40 Paragraph (3); and
- c. Replacement money for rights in accordance with the provisions of Article 40 Paragraph (4)".

At that time, Hadiyansyah was laid off due to the company's rationalization due to the impact of Covid-19. If calculated based on Hadiyansyah's PKWTT work period of 6 (six) years and 9 (nine) months where the effective date of Hadiyansyah no longer being an employee of PT Bina Cipta Abadi is June 19, 2020, then the leave that can be cashed is, (6 days of leave / 22 working days in June) x (Rp. 4,199,029, - x 0.75) = Rp. 858,892, - (eight hundred fifty eight thousand eight hundred ninety two rupiah).

In the Supreme Court Decision Number 394 K/Pdt.Sus-PHI/2023, it is not stated what is the basis for the judge's consideration in deciding the calculation of compensation, especially compensation for rights that are not given. Therefore, the author tries to provide an opinion on why the Panel of Judges excluded compensation for rights from the severance pay which is the basis for Hadiyansyah's lawsuit. First, there is a difference in interpretation by the Panel of Judges regarding the regulations related to compensation for leave rights where in the legal considerations of the Supreme Court Decision (MA) Number 001/K/Pdt.Sus-MK/III/2015 it is indicated that the Supreme Court does not support the provision of compensation for leave rights for workers who are laid off, although it does not explicitly state that workers who are laid off are not entitled to compensation for leave rights that have not been taken, the Supreme Court has reasons because annual leave is considered a worker's right to rest and recover, not as a right to get money by exchanging untaken leave, but in some cases, the court did decide to provide compensation for leave rights to workers who were laid off. This can happen because workers can prove that the company has prevented workers from taking annual leave or they are required to work continuously (Hakim and Haryanto 2023).

Second, Hadiyansyah could not show the Panel of Judges regarding the provision of leave replacement money in the company policy or collective labor agreement (PKB). Actually, workers and companies can make an agreement on compensation or incentives as a replacement for untaken leave. This agreement can be regulated in the employment agreement or in company regulations, or when agreed upon when the right in question arises. In other words, the replacement for leave does not automatically arise by itself, but must be agreed upon and regulated in the employment agreement or company regulations. In this case, Hadiyansyah was unable to provide sufficient evidence or the absence of an agreement containing compensation money for untaken leave between Hadiyansyah and PT Bina Cipta Abadi to convince the Panel of Judges to grant his lawsuit.

Third, to claim the right to leave that has not been taken, Hadiyansyah must be able to prove to the Panel of Judges that he has the right to leave that has not been taken and the amount. This evidence can be in the form of records of unused leave, company regulations that confirm the right to leave, or other documents that support the claim. Because in the decision at the first level and at the cassation level Hadiyansyah could not show such evidence, the Panel of Judges of the Supreme Court did not grant Hadiyansyah's claim regarding the replacement money for leave right.

Fourth, in deciding a case, the judge must consider the principles of justice. This includes aspects such as equality, fair treatment for all parties, and impartial law enforcement. In this situation, Hadiyansyah experienced layoffs during the Covid-19 pandemic where both PT Yuasa Battery Indonesia and PT Bina Cipta Abadi must have also experienced financial difficulties. So the Supreme Court considered in its decision that the payment of severance compensation to Hadiyansyah be given to more urgent obligations or those regulated by law.

In addition, the Panel of Judges often considers legal precedents, namely previous decisions in similar cases that have been decided by a higher court or by a similar court. These precedents can provide guidance on how previous laws are applied in similar cases. Thus, the judge's considerations in making a decision have been based on the facts revealed in the trial and the applicable law. Although judges also have discretion or freedom to use their personal judgment in deciding cases, there are still guidelines that the Panel of Judges cannot ignore as their considerations.

CLOSING

Conclusion

Based on the formulation of the problem and the results of the discussion that have been presented previously, the following conclusions can be drawn:

1. That the analysis of the elements of employment relationship can be concluded that in order to be said that Hadiyansyah has a legal relationship with PT Yuasa Battery Indonesia, the elements of employment relationship must be fulfilled in accordance with the provisions of Article 1 Number 15 of the Manpower Law. However, in fact, these elements are not fulfilled, because there is indeed no direct relationship between Hadiyansyah and PT Yuasa Battery Indonesia.
2. In the Supreme Court Decision Number 394 K/Pdt.Sus-PHI/2023 regarding the claim, it was not granted by the Supreme Court, but the Judge did not provide an explanation and legal basis used as a reference for his consideration. So the author provides an opinion on why the Panel of Judges excluded the replacement money from the severance

compensation which was the basis for Hadiyansyah's lawsuit, namely the difference in legal interpretation regarding the replacement money for leave rights by the Supreme Court, Hadiyansyah's inability to provide evidence regarding the agreement or leave rights that had not been taken, the principle of justice used by the Supreme Court in making a decision, the Panel of Judges of the Supreme Court considered legal precedents.

Suggestion

Based on the results of the discussion that has been presented, the author has the following necessary suggestions:

1. For Judges, in deciding a case, it must contain clear and explicit reasons. In this case, the decision handed down by the judge was lacking in providing a complete legal basis. The Panel of Judges of the Supreme Court Agung should explain and dissect each point of Hadiyansyah's lawsuit as the Plaintiff and provide the explanation of the legal basis one by one. For example, in the judge's consideration regarding the refusal to grant the replacement money for leave rights that Hadiyansyah wanted to claim. The Supreme Court Judge did not explain the reasons and legal basis that became the reference for the Judge not to grant Hadiyansyah's lawsuit.
2. For companies, companies must better understand the laws and regulations governing PKWT and PKWTT. Where both work agreements have different rights and obligations and workloads. In addition, in the case of PKWT, the company may not extend it by ignoring the applicable rules, it is necessary to pay attention and ensure that the procedures and certain limits in exercising its rights and obligations are in accordance with and comply with the procedures stipulated in the law or other regulations related to employment. If not, the status of the work agreement should be changed from PKWT to PKWTT.
3. For the community, especially PKWT workers, if they experience similar conditions where the work agreement is continuously renewed, it is necessary to know the rights that should be obtained from the company that is bound by the work agreement. Don't just keep quiet because there are rights of workers who are harmed that must be fought for.

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