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Analysis of Termination of Employment Due to Violation of Collective Labor Agreement (Case Study of Decision Number 1326 K/Pdt.Sus-Phi/2023)

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Abstract

Termination of employment carried out by PT Medicinal Cosmetic Industries Indonesia to Tri Dewi Purnama Sari on the grounds of violating the Joint Work Agreement resulted in a dispute between the two until the issuance of Supreme Court Decision Number: 1326 K/Pdt.Sus-PHI/2023. This layoff was carried out by violating labor law due to the existence of a clause in the Joint Work Agreement that was not in accordance with the development of legislation. The difference between the decision of the first instance panel of judges stating that the plaintiff's lawsuit was partially granted and the decision of the Supreme Court of Cassation which stated that the defendant's lawsuit was granted in full resulted in a significant difference in the judge's perspective, considerations, and the provision of the basis for the decision to resolve the dispute that occurred. This study aims to examine the legal considerations (ratio decidendi) used by the Panel of Judges in deciding the dispute and to find out the appropriate case resolution in deciding the dispute. The type of research used in this study is normative legal research conducted through literature review or secondary data. The results of this study indicate that there are errors in the interpretation of the collective work agreement and the calculation of severance pay for workers who are laid off.

Keywords: Termination of Employment, Collective Labor Agreement, Contract law

INTRODUCTION

Labor is an integral part of building the Indonesian nation. This is based on Pancasila and the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which is seen as a state ideology obliging the state to develop the lives of the Indonesian people as a whole. This development is carried out with the aim that the workforce in the country of Indonesia improves in terms of dignity, dignity, and self-esteem so that the needs of the Indonesian people for a sense of justice, prosperity, and well-being both physically and psychologically can be realized (Renita et al., 2021).

The right to work is mentioned in Article 27 paragraph (2) of the 1945 Constitution, which states that "every citizen has the right to a job and a livelihood worthy of humanity." Based on this article, it means that the state must guarantee the right to work for every Indonesian citizen so that they can earn a wage in order to enjoy a decent life. Factually, the world of work involves two parties that are mutually subordinated. The two parties are in an unbalanced position because the employer is a very strong party compared to the workers (Joka & GS Sutopo, 2023)With the existence of an imbalance in the role and strength of the workers and employers. The state facilitates this by making Law Number 13 of 2003 concerning Manpower

(hereinafter referred to as UUK) which takes care of every provision regarding employment relations.

The work relationship is defined in article 1 number 15 of the UUK which reads, "the relationship between employers and workers / laborers based on work agreements, which have elements of work, wages, and orders" Based on this article, the work relationship is the interaction between people while working and the boss as an element representing the employer who performs achievements in accordance with the work agreement. work agreements made by workers and laborers give birth to a legal form with the name work relationship. (Rahmadi, 2011) . Imam Soepomo in Husni, explains that,

"A work agreement is an agreement in which the first party (laborer), binds himself to work by receiving wages from the second party, namely the employer, and the employer binds himself to employ workers by paying wages" (Husni, 2014).

Based on the above understanding, a work agreement is an agreement in which the worker performs work and the employer obtains the results of the work by paying wages to the working party. A work agreement should be a valid agreement if it is in accordance with what is regulated in Article 62 paragraph (1) of the UUK, namely:

"Work agreements are made on the basis of: agreement of both parties; ability or capacity to perform legal acts; the existence of the work promised; and the work promised does not conflict with public order, decency, and applicable laws and regulations"

Based on these provisions, the two parties prepare an employment agreement on the basis of consent, carried out by parties who can be responsible for carrying out legal acts, there is work that is used as the object of the agreement, and work that is permitted by law. This employment agreement also regulates termination of employment.

Losing a job is generally a scary thing for workers who are still actively working. Losing a job in this case is called termination of employment (hereinafter referred to as PHK). Layoff is defined in article 1 number (25) of the UUK which reads

"Termination of employment is the termination of employment relations due to a certain matter which results in the end of rights and obligations between workers / laborers and employers"

Based on the article above, it is explained that the termination of the employment agreement at the same time, the cessation of rights and obligations of both parties is the purpose of layoffs. According to Wijayanti, layoffs are caused by "reasons that cause layoffs, namely economic reasons and reasons caused by extraordinary circumstances" (Wijayanti, 2009). This opinion explains that layoffs occur due to economic reasons and extraordinary circumstances that are urgent for layoffs. According to Djumialji, there are several types of layoffs as follows:

"There are 3 (three) types of termination of employment:

Termination of employment by operation of law.

Termination of employment by workers/laborers.

Termination of employment by employers" (Djumialji, 1987).

Based on this explanation, the types of layoffs include; layoffs by law, layoffs requested by workers, and layoffs carried out by employers. The existence of these types of termination is based on who conducts the termination. The different types of layoffs also affect the rights that will be obtained by the parties in the event of layoffs. The rights to layoffs include workers' rights that are listed and regulated in company regulations and collective labor agreements.

Generally, each company has its own rules. This difference is influenced by the company's field with one another. These regulations can be in the form of company regulations and collective labor agreements according to the number and circumstances of the workers. Collective labor agreements are defined in article 1 number 21 of the UUK which reads

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"A collective bargaining agreement is an agreement that is the result of negotiations between a trade union/labor union or several trade unions/labor unions registered with the agency responsible for the manpower sector and an employer, or several employers or an association of employers that contains working conditions, rights and obligations of both parties."

Based on the above article, it is explained that the agreement originating from negotiations between trade unions and employers is a collective labor agreement. This agreement contains the conditions for working, the rights that will be obtained when working, and the obligations of the parties.

In terms of regulatory hierarchy, collective bargaining agreements are still not higher than the applicable legislation. According to Willy Farianto, the indicators of a good collective labor agreement are explained by

"A good PKB can be assessed through several indicators. Such as not contradicting the laws and regulations, accepted by employers and workers. Then, it does not cause many interpretations, is complete and can reach conditions or actions that will occur in the future" (Ady, 2014).

Based on this, Willy Farianto emphasized that the indicator of a good collective labor agreement is a collective labor agreement that does not conflict with laws and regulations. This is in accordance with the provisions of article 124 of the UUK which reads "Provisions in collective labor agreements may not conflict with applicable laws and regulations" based on this article it is explained that the contents of collective labor agreements must be in accordance with and must not conflict with laws and regulations. Not to contradict what is meant in the explanation of article 124 of the UUK are

"What is meant by not contradicting the prevailing laws and regulations is that the quality and quantity of the contents of the collective labor agreement must not be lower than the laws and regulations."

The elucidation of this article explains that the quality and quantity of the contents of a collective labor agreement must be higher or at least in accordance with the laws and regulations. This makes the provisions in the collective labor agreement must be better / in accordance with the applicable laws and regulations. This restriction on collective bargaining agreements must be considered by each party. the existence of this restriction is what makes collective bargaining agreements different from other agreements in general. However, it is often found that parties do not / do not understand the application of these restrictions.

The case between Tri Dewi Purnama Sari and PT Medicinal Cosmetic Industries Indonesia (hereinafter referred to as PTMECOSIN) is one example of a case as an industrial relations dispute related to layoffs. The dispute case between the two has been determined by the Supreme Court with Case Number 1326K/Pdt.Sus-PHI/2023 which has previously been filed at the first level with decision number 41/Pdt.Sus-PHI/2023/PN Bdg. In the first instance decision, Tri Dewi Purnama Sari explained that she had worked since July 3, 2006 and was appointed as a permanent worker with the position of supervisor of the finished medicine warehouse at PT MECOSIN. During her employment at PT MECOSIN, Tri Dewi Purnama Sari has received one promotion as procurement supervisor and three demotions to the position of gardener. After 15 years of work, Tri Dewi Purnama Sari was terminated by PT MECOSIN in violation of the collective labor agreement in April 2022 with a final wage of Rp 9,394,500.

The reason for the termination was not acceptable to Tri Dewi Purnama Sari, because according to Tri Dewi Purnama Sari as a worker she felt she had received injustice. Tri Dewi Purnama Sari was demoted up to 3 times with no clear reason, experienced tremendous pressure and was not appreciated because she was given inhumane and dangerous tasks because the position of Procurement Supervisor was demoted to packaging warehouse staff, then to

cleaning service, then to a gardener. According to her, PT MECOSIN has violated the law by giving work that endangers her safety, while the work is not included in the employment agreement. based on this, Tri Dewi Purnama Sari believes that PT MECOSIN has violated the provisions of article 169 paragraph (1) letters e and f of the UUK which reads:

"Workers/laborers may submit a request for termination of employment to the institution for settlement of industrial relations disputes in the event that the employer commits the following acts:

e. orders the worker/labor to perform work other than that agreed upon; or

f. providing work that endangers the life, safety, health, and decency of the worker/laborer while such work is not included in the employment agreement"

That for this reason Tri Dewi Purnama Sari believes that she should have received 2 times severance pay, 1 time award for length of service, and compensation pay, but Tri Dewi Purnama Sari was terminated by PTMECOSIN after receiving the 1st and 3rd warning letters with half severance pay, and 1 time award in accordance with the collective labor agreement. That for this reason Tri Dewi Purnama Sari rejected the dismissal because it was considered that the dismissal was not in accordance with the UUK. Based on this, Tri Dewi Purnama Sari brought the matter to bipartite negotiations, but there was no agreement between the parties. after that Tri Dewi Purnama Sari and PTMECOSIN conducted a mediation process, and received written advice from the industrial relations mediator of the Bogor Regency Manpower Office, but still failed to reach an agreement.

After receiving the recommendation, Tri Dewi Purnama Sari filed a lawsuit to the industrial relations court (hereinafter referred to as PHI) at the Bandung District Court (hereinafter referred to as PN), which in essence the contents of the lawsuit are to punish PTMECOSIN to pay 2 times severance pay in the amount of Rp. 169,101,000, long service pay in the amount of Rp. 56,367,000, reimbursement of rights from annual leave that has not been taken for 8 days amounting to Rp. 3,578,857, reimbursement of housing and medical treatment and care amounting to 15% of severance pay amounting to Rp. 25,365,150, BPJS Tri Dewi Purnama Sari amounting to Rp. 9,394,500, and process money amounting to Rp. 9,394,500.

Tri Dewi Purnama Sari filed a lawsuit to PHI PN Bandung, the panel of judges issued Decision Number 41/Pdt.Sus-PHI/2023/PN Bdg with the verdict of the aquo case partially granting the lawsuit of Tri Dewi Purnama Sari. The consideration of the panel of judges in this case argued that the reason for PTMECOSIN's termination was because Tri Dewi Purnama Sari still did not show improvement in his performance after being given the 1st warning letter (SP-1) and the 3rd warning letter (SP-3) so that it was considered that Tri Dewi Purnama Sari's work results were not optimal.

Regarding non-optimal performance itself can be considered as an act of discipline against the collective labor agreement if it is stipulated in the PTMECOSIN collective labor agreement itself in article 22.1.1 which reads:

"The company can give a warning letter to employees who make minor mistakes / violations of the rules of discipline and discipline, among others because:

a. failing to observe attendance requirements, such as failing to take attendance in accordance with the company's regulations, frequently arriving late or leaving work prematurely, leaving work hours for personal matters without supervisor approval.
b. Not performing duties in accordance with job descriptions, superior orders or company regulations.
c. Not capable of doing the job even though they have tried in the existing field
d. Disobeying work safety requirements, instructions from superiors, etc.
e. Refusing proper orders from superiors
f. Neglect of duty to the detriment of the company"

The existence of non-optimal performance is reinforced by the 1st warning letter given by PTMECOSIN to Tri Dewi Purnama Sari on July 7, 2021 for canceling the PO for cylinder manufacturing and incorrectly requesting product manager approval. Another mistake was also the 3rd warning letter given on January 7, 2022 because there was a large enough difference between the stock card, accurate system and physical goods in the results of the stock-taking of packaging materials in October 2021.

The panel of judges is of the opinion that the provisions of article 21 paragraph (3) of the collective labor agreement of PT MECOSIN in 2021 which states,

"Termination of employment is the end of an employment relationship between an employee and the company either by resignation of the employee or termination of employment by the company, carried out in accordance with applicable procedures and legislation, namely Law Number 13 of 2003 concerning Manpower and Government Regulation 78 of 2015 concerning Wages (hereinafter referred to as PP 78/2015)."

Based on this article, it is clear that the dismissal in accordance with the collective labor agreement of PTMECOSIN is carried out in accordance with the UUK. The panel of judges is of the opinion that this provision is in accordance with the explanation of Article 124 paragraph 2 of the UUK which reads

"What is meant by not contradicting the prevailing laws and regulations is that the quality and quantity of the contents of the collective labor agreement must not be lower than the laws and regulations."

Based on the above article, it can be concluded that the panel of judges considered that the PTMECOSIN collective labor agreement was in accordance with the laws and regulations so that the collective labor agreement could be used. Then the compensation for layoffs carried out must be in accordance with article 161 of the UUK which consists of:

Table 1.1 Compensation calculation

No.	Description	calculation	Results
a.	severance pay for 15 years of work	9 months×Rp 9,394,500×1	IDR 84,550,500
b.	long service award money	6 months×Rp 9,394,500	IDR 56,367,000
c.	reimbursement of rights	15%×Rp 140,917,500	IDR 21,137,625

So that the right to termination of employment that should be received is IDR 162,055,125. Considering that PTMECOSIN has paid Rp. 92,136,427 on May 10, 2022. Then the amount that has not been paid is Rp.69,918,698. based on this, the panel of judges partially granted Tri Dewi Purnama Sari's lawsuit.

On the decision of the first level judge, PTMECOSIN filed an appeal for cassation at the Supreme Court. In the cassation hearing with the Supreme Court Decision number 1326K/Pdt.Sus-PHI/2023, the decision was different from the previous decision. The Cassation Judge granted PTMECOSIN's appeal in full. This decision corrects the previous decision which

granted the lawsuit in part so it is interesting to know how the judge's legal considerations resulted in a different decision between the PHI Judge's Decision and the Cassation Judge's Decision.

In the Cassation Decision, the Cassation Judge annulled Decision Number 41/Pdt.Sus-PHI/2023/PN Bdg and stated that the PHI at the Bandung District Court had misapplied the law in deciding this case. The cassation judge argued that the legal basis used should be Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as UUCK) in conjunction with PP 35/2021. Based on this, the cassation judge granted PTMECOSIN's cassation request. The cassation request is related to declaring the validity of layoffs and severance pay worth IDR 92,136,427. Considering that PTMECOSIN had paid compensation of Rp 92,136,427 on May 10, 2022, the cassation judge was of the opinion that the termination was in accordance with the provisions of the law. Therefore, Tri Dewi Purnama Sari's claim should be rejected in its entirety.

Thus, there is a clear difference in how the judge ruled on this case. It is interesting to study the compensation for termination of employment that occurs due to violation of the collective labor agreement in accordance with the applicable provisions through the consideration of the judges in the case, because in the process there are different decisions between the PHI judge and the cassation judge. Therefore, the author is interested in researching in the form of a thesis with the title "ANALYSIS OF TERMINATION OF WORK RELATIONSHIP FOR VIOLATING A COLLABORATION AGREEMENT (Case Study of Supreme Court Decision Number 1326 K/Pdt.Sus-PHI/2023)". This research will answer problems related to compensation given in the event of termination of employment due to violation of the collective labor agreement in accordance with applicable laws and regulations

Based on the descriptions of the facts in the background, to facilitate understanding in discussing the problems to be studied, the following problems can be formulated:

1. Is compensation for workers affected by termination of employment due to violation of the collective labor agreement in decision number 1326 K/Pdt.Sus-PHI/2023 in accordance with applicable laws and regulations?
2. Does the enactment of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law automatically change the PTMECOSIN Collective Labor Agreement?

METHODS

This research takes the type of research method is normative legal research. This type of research data will use library materials. Normative legal research, also called normative legal research, is research on laws that are considered standards or rules that apply in society and are used as references for everyone's behavior. (Muhaimin, 2020). In this study, the author will examine the law governing the rights of workers who are terminated for violating the collective labor agreement with a case study, namely the case in Supreme Court Decision Number 1326 K / Pdt.Sus-PHI / 2023

This research uses three approaches, namely statute approach, case approach, and conceptual approach. This research also uses legal material collection techniques in this research, namely literature studies (*library research*) and document studies as a tool for collecting analytical materials. The analysis technique uses the prescriptive analysis method, which is to provide arguments for the results of the research conducted (Muhaimin, 2020). Argumentation in this study is given to provide prescriptions or judgments regarding right or wrong or what should or should be according to the law, in the case in Supreme Court Decision Number 1326 K/Pdt.Sus-PHI/2023.

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RESULTS AND DISCUSSION

A. Research Results

In this study, the author examines the judge's decision that has permanent legal force, this study is carried out on the decision of the supreme court with Decision Number 1326k/Pdt.Sus-PHI/2023. The decision is the result of the judge's consideration of the case that occurred between Tri Dewi Purnama Sari as the Plaintiff and PT MEDICINAL COSMETIC INDUSTRIES INDONESIA (PT Mecosin Indonesia) as the Defendant.

1. Case Position

Tri Dewi Purnama Sari is a worker who has worked for PT Mecosin Indonesia since July 03, 2006 and was appointed as a permanent employee on January 03, 2007 with the position of supervisor of the finished medicine warehouse. Over time, Tri Dewi Purnama Sari was promoted to procurement supervisor with a monthly wage of Rp. 9,394,500.

After working for 15 years, on January 04, 2021, Tri Dewi Purnama Sari was transferred as a procurement supervisor from PT Mecosin's factory located in Bogor to the head office located in South Jakarta. After working for 3 months, on March 1, 2021 Tri Dewi Purnama Sari was assigned to work 2 days at the head office and 3 days at the Bogor factory.

On July 5, 2021 Tri Dewi Purnama Sari made a mistake by canceling the Purchasing Order (PO) for the manufacture of Mecovit C, Mecosit D, Lancar Asi cylinders to PT Indogravure. One day later, on July 6, 2021 Tri Dewi Purnama Sari made a mistake in requesting Product Manager approval regarding the 60 liter Laserin art work from PT Integras which should still be pending. The mistake was also accompanied by Tri Dewi Purnama Sari's negligence in attending the specified working hours. This mistake caused Tri Dewi Purnama Sari to receive the first warning letter from PT Mecosin on July 7, 2021. This warning letter was also accompanied by a demotion to Tri Dewi Purnama Sari from the position of Procurement Supervisor to warehouse staff.

Tri Dewi Purnama Sari was proven to have made a mistake when checking the results of the Stock Opname of Packaging Materials, in October 2021, which was carried out by PPIC together with the Finance department, which showed that there was a large difference between the Stock Card, Accurate System, and Physical Goods. This error led to a third warning letter by PT Mecosin on January 7, 2022. This warning letter was followed by another demotion from warehouse staff to the General Division of HR-GA Division, Non Staff Rank 5.

After the 1st and 3rd warning letters, PT Mecosin decided to terminate Tri Dewi Purnama Sari in April 2022. PT Mecosin based the termination on the consideration of the results of the performance evaluation of Tri Dewi Purnama Sari who still did not show any improvement in her performance. Therefore, PT Mecosin based its termination on the reason that the worker violated the collective labor agreement. For the termination of employment, PT Mecosin gave Tri Dewi Purnama Sari compensation rights for termination of employment in the amount of Rp 92,136,427 with details:

Table 1.2 Details of Employment Rights

no	Calculations		Results
a	Severance pay equal to 0.5 times the provisions of Article 40 Paragraph (2): 0.5 x 9 x 9,394,500	:	IDR 42,275,250

b	Period of Service Award 1 times the provisions of Article 40 Paragraph (3): 1 x 6 x 9,394,500	:	IDR 56,367,000
c	Reimbursement of rights in accordance with Article 40 Paragraph (4): Annual Leave: 9.394.500 / 21 x 4	:	IDR 1,789,429
d	Total severance pay received by PLAINTIFF : Rp 42,275,250 + Rp 56,367,000 + Rp 1,789,429	:	IDR 93,906,777
	Deducted PPH 21		IDR 92,136,427

The compensation was paid to Tri Dewi Purnama Sari on May 10, 2022.

Not accepting the dismissal, Tri Dewi Purnama Sari submitted a request for registration of industrial relations disputes to the Bandung Manpower Office. Tri Dewi Purnama Sari felt that she had been mistreated by PT Mecosin. The treatment referred to in this case is the treatment as stipulated in Article 169 paragraph (1) letters e and f, UUK which reads

"Workers/laborers may submit a request for termination of employment to the institution for settlement of industrial relations disputes in the event that the employer commits the following acts

e. Ordering workers/laborers to perform work other than that agreed upon;

f. Providing work that endangers the life, safety, health, and decency of workers/laborers while such work is not included in the employment agreement"

Tri Dewi Purnama Sari based the lawsuit on her confession about working not in accordance with her jobdesk when she served as the General Section of the HR-GA Division, Non Staff Rank 5. Tri Dewi Purnama Sari admitted that during her position, she worked as a cleaning service on January 10 and as a gardener on March 1.

The collective labor agreement owned by PT Mecosin was also taken into consideration in the mediation process. This is because the employment agreement regulates the provisions related to layoffs so that it is used as a reference by the mediator. The provisions are contained in article 21 paragraph (3) of the collective labor agreement of PT Mecosin in 2021, which reads

"Termination of employment is the end of a working relationship between an employee and the company, either due to resignation from the employee or termination of employment by the company, carried out in accordance with applicable procedures and legislation, namely Law No. 13 of 2003 and PP 78 of 2021."

Based on the article of the collective labor agreement above, it can be interpreted that this agreement states that the termination provisions in this agreement are in accordance with the UUK. The application of this provision is different in general considering that in that year the UUCK was enacted as a replacement for the UUK. Therefore, the Manpower Office issued a recommendation on September 30, 2022 based on Article 169 paragraph (2) which reads

"Termination of employment for the reasons referred to in paragraph (1), workers/laborers are entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2), long service pay of 1 (one) time the provisions of Article 156 paragraph (3), and compensation pay in accordance with the provisions of Article 156 paragraph (4)."

The article is in accordance with Tri Dewi Purnama Sari's lawsuit, PT Mecosin is required to pay Tri Dewi Purnama Sari's lawsuit in the amount of 2 times severance pay, 1 time of service pay, and compensation pay with a total claim of Rp 254,412,007.

Subsequently, the lawsuit was continued at the Bandung Industrial Relations Court. Based on the lawsuit filed with the Bandung Industrial Relations Court, the Panel of Judges issued a decision which reads:

1. Grant the Plaintiff's claim in part;
2. Declare that the employment relationship between the Plaintiff and the Defendant has been terminated since this decision was read out;
3. Order the Defendant to pay the shortfall in compensation in cash and at once to the Plaintiff, in the amount of Rp 69,918,698 (Sixty Nine Million Nine Hundred Eighteen Thousand Six Hundred Ninety Eight Rupiah);
4. Punish the Defendant to pay process wages for 6 (six) months in cash and at once to the Plaintiff, in the amount of Rp 56,367,000 (Fifty Six Million Three Hundred Sixty Seven Thousand Rupiah);
5. Reject the Plaintiff's claim for other than and the rest;
6. Order the Defendant to pay all costs incurred in this case in the amount of Rp 600,000 (Six Hundred Thousand Rupiah);

The Judges of the Industrial Relations Court in their consideration stated that because the facts that emerged during the trial only proved that the termination was carried out because Tri Dewi Purnama Sari violated the collective labor agreement. So the panel of judges is of the opinion that the compensation given must be in accordance with the proven reason, namely that the worker violated the collective labor agreement. The calculation is still based on the UUK as written in the collective labor agreement of PT Mecosin in 2021.

Objecting to the decision Number 41/Pdt.Sus-PHI/2023/PN Bdg. PT Mecosin filed a cassation to the Supreme Court. The contents of the lawsuit are:

1. Reject the claim of the Cassation Respondent/Claimant in its entirety;
2. Declare that the Cassation Respondent/ Claimant has violated the provisions stipulated in the Employment Agreement, Work Agreement, Company Regulations, or Collective Labor Agreement (CLA) resulting in losses to the Cassation Petitioner/ Defendant;
3. Declare the termination of employment by the Cassation Petitioner/ Defendant to the Cassation Respondent/ Plaintiff as of April 28, 2022 as valid and legally based;
4. Declare the severance pay of Rp92,136,427.00 (ninety-two million one hundred and thirty-six thousand four hundred and twenty-seven rupiahs) paid by the Cassation Petitioner/Defendant to the Cassation Respondent/Claimant on May 10, 2022 as valid and lawful;

The cassation was filed by PT Mecosin to the Supreme Court. The cassation filed resulted in a verdict in the form of:

- Granting the cassation petition of the Cassation Petitioner: PT MEDICINAL COSMETIC INDUSTRIES INDONESIA (PT Mecosin Indonesia);

- Cancel the Decision of the Industrial Relations Court at the Bandung District Court Number 41/Pdt.Sus-PHI/2023/PN Bdg dated August 9, 2023;

The decision in this case was made by the judge in the court based on the facts revealed during the trial.

2. Consider

Judges' considerations are arguments or reasons used by judges as legal considerations that form the basis for deciding cases. Legal considerations are usually found in the "weighing" or "subject matter" conclusions. This judge's consideration is found by paying attention to the material facts and the decision is based on these material facts. In the consideration of the Supreme Court number 1326K/Pdt.Sus-PHI/2023 in its legal decision, it can be seen that the decision has canceled the decision of the industrial relations court judge in a dispute over termination of employment due to violation of the collective labor agreement between Tri Dewi Purnama Sari as the Plaintiff, and PT Medical Cosmetic Industries Indonesia as the Defendant. The Supreme Court based the decision on 4 points as the reason for its consideration, namely:

a. The Plaintiff has been proven to have committed various mistakes and the Defendant has also provided guidance to the Plaintiff in the form of a 1st warning letter and a 3rd warning letter as stipulated in the Collective Labor Agreement;
b. The Plaintiff is also proven to have obtained and received compensation for termination of employment in the amount of Rp 92,136,427.00 by transfer on May 10, 2022 and has been transferred to the Plaintiff's account (vide exhibit T-21 and exhibit T-22);
c. The Plaintiff was proven to have made various mistakes and had received warning letters and the Defendant was forced to terminate the Plaintiff's employment and the Plaintiff was also proven to have received compensation for termination of employment in accordance with the provisions, therefore the dispute between the Plaintiff and the Defendant should be declared resolved and the Plaintiff's claim should be rejected in its entirety;
d. Article 21 paragraph (3) of the Collective Labor Agreement (CLA) of PT Mecosin Indonesia Year 2021 which states, termination of employment is the end of an employment relationship between an employee and the company either upon resignation of the employee or termination of employment by the company, If the termination of employment is carried out in accordance with the applicable procedures and legislation, namely the UUK and Government Regulation No. 78 of 2015 concerning Wages, then the Judex Facti is not justified in concluding that the case a quo still refers to the UUK considering that part of the contents of the UUK have been amended and deleted by the UUCK to become an Act in conjunction with PP 35/21 (the principle of lex posterior derogat legi priori);

Based on this, the Supreme Court judge was of the opinion that the Bandung Industrial Relations Court had misapplied the law. The basis of consideration of the Supreme Court judge Number 1326K/Pdt.Sus-PHI/2023 which canceled the Industrial Relations Court Decision Number 41/Pdt.Sus-PHI/2023/PNBdg. The points of consideration above will be the author's analysis material to answer the problem formulation in this discussion.

B. Discussion of Research Results

1. Fulfillment of Severance Pay for Workers in Decision Number 1326 K/Pdt.Sus-PHI/2023 Based on Applicable Laws and Regulations

a. Reasons for layoffs

Termination of employment is the termination of employment due to a certain reason which results in the end of rights and obligations between workers/laborers and employers. The termination of the employment relationship between workers/laborers and employers must be caused by certain reasons that can cause the employment relationship to end. According to Wijayanti, layoffs are caused by "reasons that cause layoffs, namely economic reasons and reasons caused by extraordinary circumstances" (Wijayanti, 2009). This opinion explains that layoffs occur due to economic reasons and extraordinary circumstances that are urgent for layoffs.

In this decision, the worker sued the employer based on the worker's admission that the worker had been ordered not to work in accordance with his jobdesk. With this admission, the worker bases his claim on the basis that the employer has committed a violation stipulated in Article 36 letter G of PP 35/2021, among others:

"there is a request for termination of employment submitted by the Worker/Laborer on the grounds that the Employer has committed the following acts:

1. mistreat, violently insult, or threaten workers/laborers;
2. persuading and or ordering Workers/Laborers to commit acts contrary to the laws and regulations;
3. Failure to pay wages at the specified time for 3 (three) consecutive months or more, even though the Employer pays wages on time thereafter;
4. Failure to perform obligations that have been promised to workers/laborers;
5. ordering the Worker/Laborer to perform work other than that agreed upon; or
6. providing work that endangers the life, safety, health, and decency of the Worker/Laborer while such work is not included in the Employment Agreement"

Based on this article, the worker claims that the employer has ordered the worker/laborer to carry out work other than that agreed upon, so the worker demands appropriate compensation for him/her.

The claim was not acknowledged by the employer and therefore requires further substantiation, but the author does not find any further information and substantiation in this regard. In the absence of further evidence in this regard, the author is of the opinion to ignore the confession and focus on the facts raised in the judge's consideration. This causes the author to be unable to consider other opinions so that he holds the same opinion as the Supreme Court regarding the reasons why workers are dismissed.

The Supreme Court held the same opinion as the panel of judges. The Supreme Court held in this decision that

"The Plaintiff is proven to have committed various mistakes and to the Plaintiff has also been given guidance by the Defendant in the form of the 1st warning letter and the 3rd (final) warning letter as stipulated in the Collective Labor Agreement (CLA)."

Based on this opinion, it is known that the workers in the decision have violated the collective labor agreement. Related to these considerations, according to the author, dismissal due to violation of the collective labor agreement is a dismissal carried out by the employer. This termination is carried out due to mistakes or disciplinary actions committed by workers. PHK by employers must fulfill certain provisions and reasons. These reasons must be stated in the Law and the collective labor agreement of the company concerned.

In this decision, PT Mecosin has its own collective labor agreement that regulates the rules and regulations within the company. This is contained in article 22.1.1 of the collective labor agreement of PT Mecosin contained in decision No. 41/Pdt.Sus-PHI/2023/PN Bdg which reads

"The company can give a warning letter to employees who make minor mistakes / violations of the rules of discipline and work discipline, among others because :

a. Failure to observe attendance requirements, including: failing to take attendance in accordance with the company's regulations, frequently arriving late or leaving work prematurely, leaving work hours for personal matters without supervisor approval.
b. Not carrying out their duties in accordance with job desc, superior orders or company regulations.
c. Incapable of doing the job despite attempts at the task at hand.
d. Disobeying work safety requirements, instructions from superiors and others.
e. Refusing proper orders from superiors.
f. Committing negligence of his/her obligations to the detriment of the company."

Based on this collective bargaining agreement, it can be seen that regulations related to work discipline have been agreed upon and regulated in writing in this agreement. With the existence of this agreement clause, according to the author, employers have the right to impose penalties on workers who violate these provisions. This is because the provisions related to violations have been regulated in the company's collective labor agreement.

Violations committed by workers described in previous court decisions include workers canceling the purchasing order (PO) for the manufacture of Mecovit C, Mecosit D, Lancar Asi cylinders to PT Indogravure, mistakes in requesting product manager approval regarding the 60 liter Laserin art work from PT Integras which should still be pending, and negligence in attending the specified working hours. This is evidenced by the 1st warning letter given by the employer on July 7, 2021. Another mistake made by workers is an error in the form of a difference in the results of the Stock Opname of Packaging Materials in October 2021. For this mistake, the worker received a 3rd warning letter from the employer on January 7, 2022 until the termination of employment in April 2022.

Based on these errors, the author is of the opinion that the worker has violated the collective labor agreement of PT Mecosin Article 22.1.1 points a, c, d, and f in the form of: not heeding the attendance provisions, not being able to do work even though he has been tried in the field of existing duties, not complying with work safety provisions, instructions from superiors and others, neglecting his obligations to the detriment of the company.

With these facts, the author is of the opinion that the author agrees with the reason for the dismissal of workers. This is based on the mistakes made by workers in accordance with the classification in the contents of the collective labor agreement which contains company rules so that the author agrees with the opinion of the Supreme Court regarding the reasons for workers being terminated, namely that workers are terminated because they have violated the collective labor agreement.

b. Termination of employment using UUCK as the legal basis

Indonesia, as a state of law as affirmed in Article 1 Paragraph (3) of the 1945 Constitution, places law as the main foundation in every aspect of the life of the nation and state. As a state of law, all actions of individuals, communities, and the government must be subject to and obey the applicable laws. In this context, every legal action taken must have a clear and legal basis. Without such a basis, such actions can not only be considered illegitimate, but also contradict the principles of the rule of law that guarantee justice, certainty, and protection of the rights of every citizen. Thus, consistent and rule-based law enforcement is the essence of the establishment of Indonesia as a state of law. In the context of companies, labor law is one of the legal provisions that form the basis of an employer's legal action against workers in industrial relations.

In its development, labor law is a legal provision that often undergoes changes. Initially, this labor law was regulated in the UUK in 2003 until 2020 then in 2020 it was changed in accordance with the UUCK until now. This makes all rules regarding labor law that refer to

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UUK change to UUCK. These rules are also related to regulations on a company scale such as work agreements, company regulations, and collective labor agreements.

In this decision, the employer has decided to lay off the workers. The termination is based on the collective labor agreement of PT MECOSIN in 2021. In the agreement, it is found that the Collective Labor Agreement (CLA) of PT Mecosin Indonesia in 2021 Article 21 paragraph (3) states,

"Termination of employment is the end of a working relationship between an employee and the company either on resignation from the employee or termination of employment by the company, carried out in accordance with applicable procedures and legislation, namely Law Number 13 of 2003 concerning Manpower and Government Regulation Number 78 of 2015 concerning Wages."

Based on this collective labor agreement, it is stated that in the event of layoffs, the procedure must be in accordance with the UUK and Government Regulation No. 78/2015 on Wages. This provision caused a difference of legal opinion between the panel of judges and the supreme court. The supreme court judges argued in this decision that

"That in relation to Article 21 paragraph (3) of the Collective Labor Agreement (CLA) of PT Mecosin Indonesia in 2021 which states, termination of employment is the end of an employment relationship between an employee and the company either on resignation from the employee or termination by the company, In accordance with the applicable procedures and legislation, namely Law Number 13 of 2003 concerning Manpower and Government Regulation Number 78 of 2015 concerning Wages, the Judex Facti is not justified in concluding that the case a quo still refers to Law Number 13 of 2003 concerning Manpower considering that part of the contents of Law Number 13 of 2003 concerning Manpower have been amended and deleted by Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law juncto Government Regulation Number 35 of 2021 concerning Specific Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (lex posterior derogat legi priori principle)"

Based on this opinion, the panel of judges considered that the Judex Facti was not justified in concluding that the case a quo still referred to the UUK considering that part of the contents of the UUK had been amended and deleted by UUCK in conjunction with PP 35/21. This was based by the Supreme Court on the principle of lex posterior derogat legi priori. The author agrees with the Supreme Court that the enactment of collective bargaining agreements must always consider the regulations in force at that time with the facts of these reasons, so the author argues that to address these considerations, it is necessary to use the principle of lex posterior derogat legi priori.

The principle of lex posterior derogat legi priori is one of the principles in law, namely the principle of preference. According to Agustina,

"The principle of legal preference is a legal principle that designates which law takes precedence to be applied, if a legal event is related or subject to several regulations" (Agustina, 2015).

Based on the quote above, the principle of legal preference is a legal principle that is used as a guide in using a legal basis that is more applicable or more relevant to the case at hand. The principle of legal preference has a role in resolving conflicts between positive legal norms. In this decision, the Supreme Court used the principle of lex posteriori derogate legi priori according to Zaeni,

"The principle of lex posteriori derogate legi priori is a principle that means that the newer rule of law overrides the old rule of law where the law that applies later cancels the previous law as far as it regulates the same object" (Zaeni, 2012).

Based on the quote above, this principle is a legal principle that prioritizes new legal provisions that are legalized and applicable and overrides old legal provisions. According to the author, based on this principle, the collective labor agreement of PT Mecosin in 2021 should refer to UUCK because UUCK is a law made to update the norms in UUK. With the existence of a new law that replaces the UUK, legal products that previously referred to the UUK must be considered to be adjusted back to the UUCK.

With this opinion, PT Mecosin is obliged to pay severance pay for layoffs to workers based on Article 52 of PP 35/2021 which reads

"Employers can terminate the employment of workers/laborers due to the reason that workers/laborers violate the provisions stipulated in the Work Agreement, Company Regulations, or Collective Labor Agreement and have previously been given the first, second, and third warning letters in a row, then workers/laborers are entitled to:

a. severance pay amounting to 0.5 (zero point five) times the provisions of Article 40 paragraph (2);
b. long service award money amounting to 1 (one) time the provisions of Article 40 paragraph (3); and
c. compensation money in accordance with the provisions of Article 40 paragraph (4)."

Based on this article, the compensation that must be paid is severance pay equal to 0.5 times the provisions of Article 40 paragraph (2); long service pay equal to 1 time the provisions of Article 40 paragraph (3); and compensation in accordance with the provisions of Article 40 paragraph (4). According to the author, this consideration indirectly overturns the consideration in the previous decision which reads,

"Mecosin Indonesia, dated July 11, 2022 (vide exhibit T-6); Considering, that to be understood by the parties to the dispute, the Collective Labor Agreement is one of the autonomous laws in the field of Manpower, which in the case a quo the Collective Labor Agreement of PT Mecosin Indonesia in 2021, is valid and binding like a law for the Plaintiff and the Defendant, as long as the Collective Labor Agreement in quality and quantity is not lower than the applicable laws and regulations (vide explanation of Article 124 paragraph (2) of Law Number 13 of 2003 Concerning Manpower);

Menimbang, bahwa Pasal 21 ayat (3) Perjanjian Kerja Bersama PT Mecosin Indonesia Tahun 2021 menyatakan, pemutusan hubungan kerja adalah berakhirnya suatu hubungan kerja antara karyawan dengan perusahaan baik atas pengunduran diri dari karyawan maupun pemutusan hubungan kerja oleh perusahaan, dilaksanakan sesuai prosedur dan perundang-undangan yang berlaku yakni UU No. 13 of 2003 and PP 78 of 2021; Considering, that based on the provisions of Article 21 paragraph (3) of the Collective Labor Agreement of PT Mecosin Indonesia Year 2021, the Panel of Judges is of the opinion that it is based on the law if the termination of employment that occurred between the Plaintiff and the Defendant in the case a quo with all its legal consequences refers to and is based on the provisions stipulated in Law Number 13 of 2003 concerning Manpower;"

Based on this consideration, the panel of judges is of the opinion that the Collective Labor Agreement is one of the autonomous laws in the field of Manpower that is applicable and binding like a law for the Plaintiff and the Defendant, as long as the Collective Labor Agreement is not inferior in quality and quantity to the applicable laws and regulations.

Basically, the author does not fully reject the consideration of the Panel of Judges. In fact, it is true that the Collective Labor Agreement is not lower in quality and quantity than the prevailing laws and regulations, but the author does not agree if this applies to Article 21

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paragraph (3) of the collective labor agreement of PT Mecosin. This is because as a law, UUK must pay attention to other things in it. The author will agree to this consideration if the provisions related to the right of termination are written specifically related to the multiplication of rights, for example, if there is a layoff, the worker is entitled to severance pay for termination of employment amounting to 2 times the provisions regulated by law. The drafting of such an agreement is not only better in quality and quantity than the law, but it will also make the agreement adapt itself to future laws.

The emergence of different views related to the agreement can also be viewed in terms of its interpretation. This interpretation will also strengthen the author's arguments against the reasons and viewpoints that the author presents. The 2021 collective labor agreement article 21 paragraph (3) applicable in PT Mecosin which reads

"Termination of employment is the end of a working relationship between an employee and the company either on resignation from the employee or termination of employment by the company, carried out in accordance with applicable procedures and legislation, namely Law Number 13 of 2003 concerning Manpower and Government Regulation Number 78 of 2015 concerning Wages.

From this agreement, the author does not find any problems at the beginning of the sentence that mentions

"termination of employment is the end of a working relationship between an employee and the company either on resignation from the employee or termination of employment by the company"

The sentence is clear and reasonable because it is similar to the definition of layoffs in UUK article 1 number 25 which reads

"Termination of employment is the termination of employment relations due to a certain matter which results in the end of rights and obligations between workers / laborers and employers"

Based on this article, it states that termination of employment occurs due to a certain reason, which in the collective labor agreement of PT Mecosin is explained in more detail with the resignation of the employee or termination of employment by the company. With these arguments, there is no problem with the sentence.

The problem lies in the sentence

"carried out in accordance with applicable procedures and legislation, namely Law Number 13 of 2003 concerning Manpower"

Grammatically, in the explanation, there is the word "applicable legislation" then followed by the word "namely UUK" as if to make that the agreement explicitly states that the law used in the agreement is UUK. However, the use of language meaning must be done by paying attention to the context as well. Pragmatic linguistics is a science that uses context as the main tool for understanding meaning.

Pragmatics is the study of the relationship between language and context that is programmatized or encoded in the structure of language. The context is very influential for speakers in producing text and also very influential for speech partners, listeners, or readers in understanding the text (Saifudin, 2019). By paying attention to the context, readers can find the meaning of the use of a writing.

PT Mecosin's collective labor agreement came into effect in 2021. In this context, the words "applicable legislation" can refer to the legislation in force during that year. The legislation in force in that year was the UUCK. This makes the author argue that the word "namely UUK" as a word to describe and represent the laws that apply in the labor environment. For this reason, the author argues that the appropriate law to be used in this case is the UUCK.

c. Calculation of the right to termination of employment received by workers

There are many reasons for termination that are commonly used by employers to terminate their employees. These reasons also come with their own consequences. These consequences are in the form of granting rights to layoffs in the form of granting rights. The provision of these rights is very important for workers who are dismissed. This is because termination is an event that has a huge psychological and financial impact on them and their families.

In the consideration of this decision, the dismissal of workers was caused by workers violating the company's collective labor agreement. This has been explained by the author in the previous discussion. Because workers who are laid off are entitled to compensation in accordance with the applicable law, namely UUCK in conjunction with PP 35/2021 in the amount of IDR 92,136,427 based on these considerations, the author tries to criticize the calculation behind the compensation for worker layoffs worth IDR 92,136,427.

Calculations related to termination rights consist of severance pay, long service pay, and compensation pay. In calculating severance pay and tenure awards, important variables in employment are needed. This is regulated in article 40 paragraphs (2) and (3) of PP 35/2021, namely:

"article 40 paragraph (2)

Severance pay as referred to in paragraph (1) shall be given with the following provisions:

a. service period of less than 1 (one) year, 1 (one) month wage;
b. service period of 1 (one) year or more but less than 2 (two) years, 2 (two) months wages;
c. service period of 2 (two) years or more but less than 3 (three) years, 3 (three) months wages;
d. service period of 3 (three) years or more but less than 4 (four) years, 4 (four) months wages;
e. service period of 4 (four) years or more but less than 5 (five) years, 5 (five) months wages;
f. service period of 5 (five) years or more, but less than 6 (six) years, 6 (six) months wage;
g. service period of 6 (six) years or more remains less than7 (seven) years, 7 (seven) months wage;
h. service period of 7 (seven) years or more remains less than 8 (eight) years, 8 (eight) months wages; and
i. service period of 8 (eight) years or more, 9 (nine) months wages article 40 paragraph (3)

The long service award money as referred to in paragraph (1) is given with the following provisions:

a. service period of 3 (three) years or more but less than 6 (six) years, 2 (two) months wages;
b. service period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months wages;
c. service period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months wages;
d. service period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months wages;
e. service period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months wages;
f. service period of 18 (eighteen) years or more but less than 21 (twenty one) years, 7 (seven) months wages
g. service period of 21 (twenty-one) years or more but less than 24 (twenty-four) years, 8 (eight) months wages; and

h. service period of 24 (twenty four) years or more, 10 (ten) months wages"

Based on this article, in order to calculate severance pay and compensation pay, the wages and length of service of the dismissed worker must first be known. Based on the decision, it is known that the worker has worked for 15 years with a final salary of Rp 9,394,500.

Regarding compensation for rights, Article 40 paragraph (4) of PP 35/2021 regulates the provisions related to compensation for rights as follows:

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

a. annual leave that has not been taken and has not been forfeited;

b. return costs or fees for the Worker/Laborer and his/her family to the place where the Worker/Laborer was hired; and

c. other matters stipulated in the Employment Agreement, Company Regulation, or Collective Labor Agreement"

Based on this article, reimbursement of rights can be in the form of annual leave that has not been taken and has not been canceled, the cost or cost of returning home for workers and families, and matters stipulated in the agreement and regulations in the company. In this decision, it is admitted by the employer that there are 4 days of leave remaining. Regarding the reimbursement of rights in labor agreements, company regulations, and collective labor agreements, the author did not find any discussion related to this matter in the decision.

Layoffs to workers are caused by workers violating the company's collective labor agreement. based on the provisions of Article 52 paragraph (1) of PP 35/21 which reads

"Employers can terminate the employment of workers/laborers due to the reason that workers/laborers violate the provisions stipulated in the Work Agreement, Company Regulations, or Collective Labor Agreement and have previously been given the first, second, and third warning letters in a row, then workers/laborers are entitled to:

a. severance pay amounting to 0.5 (zero point five) times the provisions of Article 40 paragraph (2);

b. long service award money amounting to 1 (one) time the provisions of Article 40 paragraph (3); and

c. compensation money in accordance with the provisions of Article 40 paragraph (4)."

Based on this article, it can be understood that workers who violate the provisions of the Work Agreement, Company Regulations, or Collective Labor Agreement can be terminated by employers while still paying workers' rights in the form of 0.5 times severance pay, 1 time of service award money and compensation money. Then the calculation of compensation received according to the article is as shown in the following table:

Table 1.3 Calculation of Employee Severance Pay

no	Calculations		Results
a	Severance pay equal to 0.5 times the provisions of Article 40 Paragraph (2): 0.5 x 9 x 9,394,500	:	IDR 42,275,250
b	Period of Service Award 1 times the provisions of Article 40 Paragraph (3): 1 x 6 x 9,394,500	:	IDR 56,367,000
c	Reimbursement of rights in accordance with Article 40 Paragraph	:	IDR 1,789,429

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	(4): Annual Leave: 9.394.500 / 21 x 4		
d	Total severance pay received by PLAINTIFF : Rp 42,275,250 + Rp 56,367,000 + Rp 1,789,429	:	IDR 100,431,679

Based on this table, the calculation related to the rights experienced by workers consists of severance pay of 0.5 times the provisions of Article 40 Paragraph (2) in this case amounting to 0.5 times 9 months wages multiplied by monthly wages of 9,394,500 with a total severance pay of Rp 42,275,250, long service pay consisting of 1 time the provisions of Article 40 Paragraph (3) amounting to 1 times 6 times Rp. 9.394,500 with a total service award of Rp 56,367,000, and compensation pay in accordance with the provisions of Article 40 Paragraph (4) with annual leave that has not been taken is 4 days multiplied by 21 working days multiplied by monthly wages of 9,394,500 with a total compensation pay of Rp 1,789,429. The total severance pay received by the Plaintiff is Rp 42,275,250 plus Rp 56,367,000 plus Rp 1,789,429 for a total of Rp 100,431,679.

The total severance pay that should have been received by the worker was IDR 100,431,679. The amount of severance pay includes severance pay, long service pay, and compensation pay that should have been received by the worker based on the information in the decision. In the calculation of compensation in the decision, taxes are also imposed, among others:

Table 1.4 Calculation of severance pay after PPH 21

no	Calculations	:	total
A	0% x IDR 50,000,000	:	Rp 0
B	5% x IDR 50,000,000	:	IDR 2,500,000
C	15% x IDR 431,679	:	IDR 64,751
D	2.500.000 + 64.751	:	IDR 2,564,751
Severance Pay After Tax	100.431.679-2.564.751	:	IDR 97,866,888

Based on these calculations, it is known that there are differences between the author's calculations and those contained in the decision. Based on this, there has been a calculation error related to workers' rights in the decision. The error was in the form of the lack of accuracy of the panel of judges in determining the calculation of workers' severance pay. In this decision, the severance pay mentioned is IDR 92,136,427, while the severance pay that should have been received is IDR 97,866,888. Therefore, there has been a shortage of severance pay that should have been received by workers amounting to Rp 5,730,461.

Based on the explanation above, there is an error in the calculation of workers' severance pay. In the decision, there are 2 things that are affected by this miscalculation, including the compensation rights that should have been obtained and the compensation rights that have been paid. Error is something that must be avoided in a decision. Based on the explanation above,

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in making a decision it must be done totally and thoroughly. This is in accordance with the principle in the judge's decision which reads "The verdict must adjudicate all parts of the lawsuit" by examining the entire lawsuit, it will simultaneously re-examine whether there are errors in the previous decision. This re-examination is carried out to avoid errors that can lead to other interpretations / interpretations in reading the decision because errors in the decision will greatly affect the decision.

If the error occurs in the calculation of compensation and the compensation that has been paid, what is needed is an immediate correction of the writing in the decision, however, if the error occurs only in the calculation of compensation and the compensation that has been paid is in accordance with the evidence that has been submitted, the decision must be amended by partially granting the decision and correcting the error in this decision. This error is not entirely the fault of the supreme court judge. This error initially lies in the PHI decision. In the decision, the initial error was in the defendant's explanation regarding the severance pay that had been paid. the existence of this fact is basically a court fact that should be disputed by the parties so that the calculation error appears. With this argument, the parties' lawyers contributed to the mistakes made by the supreme court judge.

Back to the initial problem in this writing. With the difference between the severance pay that must be paid and the severance pay that has been paid, the author considers that the severance pay given is not in accordance with the law. The author bases this argument on the verdict by ignoring any errors in writing made by the supreme court judge. With this argument, the defendant must pay a shortfall of Rp 5,730,461, making the severance pay received by the worker not in accordance with what he should get. The discrepancy is in the form of a lack of the amount that should be paid from Rp 92,136,427 mentioned by the cassation decision to Rp 97,866,888. Therefore, the panel of judges should have decided to grant the defendant's cassation in part and ordered the defendant to pay the worker's severance pay of Rp 5,730,461.

2. Enforceability of Collective Labor Agreements against New Legislation

Statutory provisions are always changing. These changes are certain with the existence of a very famous legal adage that reads *Het recht hinkt achter de feiten aan* This adage means that the law is always limping after the changing times. This proves that the law will always follow the changes. Laws often undergo renewal, for example, laws in labor law.

Labor law is one of the legal provisions that often undergoes changes. At first, this labor law was regulated in the UUK in 2003 until 2020. Then, in 2020 it was changed in accordance with the UUCK until now. This makes all rules regarding labor law that refer to the UUK change to the UUCK. These rules are also related to regulations on a company scale such as work agreements, company regulations, and collective labor agreements.

Collective labor agreements are made on the basis of agreement by way of deliberation or negotiation between labor unions and employers. This agreement can be made if there are more than 10 workers in a company and there is a labor union. Collective labor agreements must fulfill the requirements to be valid. Collective labor agreements must be made based on the principle of freedom of contract and there must be no coercion or pressure from any party. they must also be based on good faith, honesty, and openness of the parties.

a. Creation of collective bargaining agreements

Collective labor agreements are made on the basis of agreements by way of deliberation or negotiation between trade unions and employers. The involvement of trade unions in the negotiation of collective labor agreements is highly influenced by the number of trade unions and trade union members in a company. Article 18 paragraph (1) of PERMENAKER 28/2014 explains that

"In the event that there is one trade union/labor union in a company, but it does not have more than 50% (fifty percent) of the total number of workers/laborers in the company, then the trade union/labor union may represent workers/laborers in negotiations for a collective labor agreement with the employer if the trade union/labor union concerned has received the support of more than 50% of the total number of workers/laborers in the company through voting"

Based on the above article, it can be concluded that in the event that there is 1 trade union but does not have more than 50% members, then the trade union can conduct a vote to all workers as a sign of support that the trade union / labor union represents the wishes of more than 50% of workers / laborers in the company. If there is more than one, Article 19 paragraph (1) of PERMENAKER 28/2014 also explains that

"In the event that there is more than 1 (one) trade union/labor union in a company, the trade unions/labor unions entitled to represent workers/laborers in negotiations with employers shall be a maximum of 3 (three) trade unions/labor unions, each of whose members shall be at least 10% (ten percent) of the total number of workers/laborers in the company."

Based on the above article, if there is not only 1 trade union in the company, then the right to represent workers in negotiations with employers is a maximum of 3 (three) with a minimum of 10% members. With the system, the number of 3 (three) unions entitled to represent workers in negotiating collective labor agreements is determined according to the largest number of members. If after the three unions have been determined, there are still other unions that have a minimum of 10% members of the total workers in the company, then they can join the three unions.

After calculating the members of each trade union, a membership verification committee consisting of representatives of trade union/labor union administrators in the company is conducted, witnessed by representatives of the agency that organizes government affairs in the field of manpower and employers. Verification of trade union/labor union membership is carried out based on proof of membership cards or written statements from workers/laborers in the company for workers/laborers who do not have membership cards, and proof as employees in the company. according to the author, it is important to carry out this verification so that the agreement is guaranteed to fulfill the legal requirements related to the enactment of the collective labor agreement. With the verification of trade union membership, the subjective requirement of the collective labor agreement is the capacity of the parties to make the agreement. The time limit for this verification process is 1 month after the verification request is made.

After verification in article 21 of PERMENAKER 28/2014 states that;

"Negotiations for the making of the PKB begin by agreeing on the rules of negotiations which at least contain:

a. purpose of making rules;
b. the composition of the negotiating team;
c. the length of the negotiation period;
d. negotiation materials;
e. the place of negotiation;
f. negotiation procedures;
g. means of settlement in the event of a negotiation impasse;
h. the validity of negotiations; and
i. negotiation fee"

Based on the above article, it can be concluded that before starting the negotiation of a collective labor agreement, there needs to be an agreement regarding the rules that will be used as a guide during the negotiations. The composition of the negotiating team and the method of

settlement in the event of a negotiation deadlock are important things to be negotiated first. Article 22 of PERMENAKER 28/2014 explains that

"In determining the negotiating team for the preparation of the PKB as referred to in Article 21 letter b, the employer and the trade union/labor union shall appoint a negotiating team as needed, provided that each of them shall have a maximum of 9 (nine) persons with full power of attorney."

Based on the above article, it can be understood that the negotiating team consists of a maximum of 18 people consisting of a maximum of 9 people representing employers and a maximum of 9 people representing trade unions with full authority. Full power of attorney in this case means that the negotiating team represents and has full authority over the object of delegation of power. It is also important to negotiate a way of settlement in the event of a negotiation deadlock.

This arrangement is to ensure the completion of the collective labor agreement even though later it is possible that there will be interventions and suggestions from outside parties in the process of making it. Basically, this collective labor agreement must be reached because the law mandates the establishment of collective labor agreements as autonomous regulations in companies that have more than 10 workers with one or more trade unions. this makes it important for every company to have a collective labor agreement.

In one (1) company, only one (1) Collective Labor Agreement can be made that applies to all workers/laborers in the company concerned. If the company has branches, then a parent collective labor agreement is made which will apply to all branches of the company. Then, derivative collective labor agreements can also be made that will apply in each branch of the company. The master collective agreement contains provisions that apply generally to all branches of the company and the derivative collective agreement contains the implementation of the master collective agreement that is adjusted to the conditions of each branch of the company. If the parent collective labor agreement has taken effect but the derivative collective labor agreement at the company branch has not been agreed upon, the parent collective labor agreement will still apply (Ridwan. P, 2019).

After the negotiation, the employer registers the collective labor agreement with the agency that organizes government affairs in the field of manpower. The submission of registration is explained in article 30 paragraph (3) of PERMENAKER 28/2014 that,

"Submission of PKB registration as referred to in paragraph (1) must attach a manuscript of the PKB that has been signed by employers and trade unions/labor unions on a sufficient stamp duty."

The application for registration of a collective bargaining agreement in accordance with the above article must include an attachment to the text of the collective bargaining agreement that has been signed by the employer and the labor union on stamp duty as a sign that the parties agree to the registration.

After registration, the responsible official in the field of manpower must examine the completeness of the formal requirements and/or the text material of the collective labor agreement. The official who checks the completeness of the requirements of the collective labor agreement is in accordance with Article 31 paragraph (5) of PERMENAKER 28/2014 which reads,

"In the event that the requirements as referred to in paragraph (2) are not fulfilled and/or there are CBA materials that conflict with statutory regulations, the official responsible for manpower as referred to in paragraph (1) shall inform the parties to fulfill the requirements and/or correct the CBA materials that conflict with statutory regulations."

Based on the above article, it can be concluded that if the requirements are not fulfilled and/or there is material for a collective labor agreement that contradicts the laws and

regulations, the Official examines the completeness of the formal requirements and/or the material of the collective labor agreement text and can convey to the parties to fulfill the requirements and/or correct the material for the collective labor agreement that contradicts the laws and regulations. according to the author, this examination is carried out to ensure the legal requirements for the enactment of a collective labor agreement in the form of not contradicting the law.

Article 31 paragraph (6) of PERMENAKER 28/2014 also explains if the parties still agree that,

"In the event that the parties continue to agree to what is referred to in paragraph (5), the official responsible for the field of labor as referred to in paragraph (1) shall make a note on the registration decision letter."

Based on the above article, it can be concluded that it is appropriate for the agreement that the agreement of the parties is very necessary, but the limitations on the provisions of the agreement in labor law cannot be denied so that the official responsible for the field of labor must make a note on the registration decision letter. The note contains articles that are contrary to labor laws and regulations. This indicates that even though there is an examination from a third party, namely the official in the field of labor, it still does not change the main requirement of an agreement, namely the agreement of the two parties. this is because the agreement is a relationship between the two parties that bind each other and applies like a law that binds the parties. (Refly R, 2014)

b. Principles of Agreement

As an agreement, it must pay attention to the applicable agreement concepts. The concept of the agreement in question is the concept of an agreement regulated in the Civil Code (hereinafter referred to as KUHPer). In the Civil Code, an agreement is defined in Article 1313 of the Civil Code as "an agreement is an act by which one or more persons bind themselves to one or more other persons" This article states that an agreement is the result of more than one person binding themselves. This engagement does not always become an agreement, so it must pay attention to the conditions for making an agreement in Article 1320 which reads

"For the validity of an agreement, four conditions are required:

1. Agreement of those who bind themselves,
2. Capacity to enter into an agreement
3. A certain thing
4. A lawful cause"

Based on this article, the agreement is said to be valid if the agreement has elements such as the article above. These include: agreement of the parties, capacity of the parties, things to be agreed upon, and not contrary to the law.

In the collective labor agreement article 21 paragraph (3) of the collective labor agreement of PT Mecosin in 2021 reads

"Termination of employment is the end of a working relationship between an employee and the company, either due to resignation from the employee or termination of employment by the company, carried out in accordance with applicable procedures and legislation, namely Law No. 13 of 2003 and PP 78 of 2021."

Based on the agreement, it states that the provisions related to layoffs are carried out in accordance with applicable procedures and legislation, namely the UUK. Basically, there is nothing wrong with this article. According to the author, layoffs must indeed be carried out in accordance with applicable procedures and legislation. However, the mention of UUK as the applicable law is not appropriate if you look at the year this collective labor agreement was enacted. The author bases this opinion on the fact that UUCK has been enacted as a replacement

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for UUK since 2020. Therefore, the author wants to criticize the collective bargaining agreement of PT Mecosin with the principles of agreement law. There are several principles in the agreement. The principles in the agreement include:

1) The principle of freedom of contract

The principle of freedom of contract is a principle that generally has a free choice to enter into an agreement. This principle contains a view that people are free with whom they enter into an agreement, free about what is agreed and free to set the terms of the agreement. The limitation of the principle of freedom of contract is also based on the idea of preventing injustice and welfare in social life. Injustice and welfare arise when the principle of freedom of contract becomes a tool for one party who is more powerful or who has more bargaining power to the other party. Thus, the more powerful party can impose its will and wishes on the other party, especially for agreements where the socio-economic structure is clearly inequality.

According to Siregar,

"If the principle of freedom of contract is applied, there is a high possibility of inequality in the making of employment contracts and the fulfillment of rights. Therefore, in making employment contracts, the principle of freedom of contract is limited to the minimum standards set by the laws and regulations on labor" (Siregar & Pranata, 2024).

Based on this opinion, the exemption of the principle of freedom of contract will cause inequality in contract making, so it must be limited to the minimum standards set by laws and regulations. According to the author, the parties in employment agreements and collective bargaining agreements are both the same, both are workers who work for employers with differences in numbers.

The difference in bargaining power between workers and trade unions is not much different, so the principle of freedom of contract cannot be fully applied, if it is still fully applied, there is a possibility of inequality in the making of collective labor agreements and the fulfillment of rights. Therefore, in the making of collective labor agreements, the principle of freedom of contract is limited to the minimum standards set by the laws and regulations concerning labor. With this argument, the author concludes that the parties are free to choose the parties and who are bound in the agreement; determine or choose the cause of the agreement to be made; determine the object of the agreement; determine the form of an agreement; and accept or deviate from the provisions of the law that are complementary. The provisions of the law referred to in this case are facultative laws. The nature of this law applies to legal rules that contain approval. The facultative rule is complementary or subsidiary, which means that the permitted action is not mandatory. By its nature, this legislation can be accepted or rejected by the parties.

The cassation decision in this study explains that in the collective labor agreement of PT Mecosin in 2021 article 21 paragraph (3) of the collective labor agreement of PT Mecosin in 2021 reads

"Termination of employment is the end of a working relationship between an employee and the company, either due to resignation from the employee or termination of employment by the company, carried out in accordance with applicable procedures and legislation, namely Law No. 13 of 2003 and PP 78 of 2021."

Based on this article, it is known that the article talks about the provisions of layoffs that must be carried out in accordance with UUK procedures. The author argues that the provisions related to layoffs and laws governing employment are imperative legal rules, so that the provisions related to both cannot be avoided by both parties. this makes the law in force in the year the agreement was made, namely UUCK, must be used as a reference for the agreement.

2) Pacta Sunt Servanda Principle

The principle of legal certainty or also known as the principle of pacta sunt servanda is a principle related to the consequences of an agreement. The principle of pacta sunt servanda is the principle that judges or third parties must respect the substance of the contract made by the parties, just like a law. They may not intervene in the substance of the contract made by the parties. The principle of pacta sunt servanda can be summarized in Article 1338 paragraph (1) of KUHPer which stipulates that every agreement made legally shall apply as a law to those who make it.

However, in certain circumstances this principle can be overridden. According to Wirawan,

"if there are other interests that must be realized. The reasons that can deviate are if the agreement is contrary to laws and regulations, decency, public order. Not only that, in its development there are other considerations that can override this principle, namely if there are greater state interests or there are interests of citizens (children) that must be protected." (Wirawan, 2023)

This opinion explains that the principle of pacta sunt servanda can be overridden if the agreement is contrary to law, decency, and public order. In the explanation in the previous point, according to the author, the application of the layoff provisions in the collective labor agreement at PT Mecosin is something that is not appropriate for legislation. According to the author, judges or third parties can override this principle so that it is possible to decide the right legal consequences related to industrial relations disputes between PT Mecosin and workers. This makes it permissible for the cassation judge to override the termination provisions stipulated in the collective labor agreement to refer to the UUCK rather than the UUK, however, this is only used in terms of determining legal consequences without changing the collective labor agreement. This is because as an agreement, it cannot be amended or invalidated except by agreement of the parties.

3) Principle of Good Faith

Referring to the provisions of Article 1338 paragraph (3) of the Civil Code which reads "an agreement must be carried out in good faith" what is meant by good faith means carrying out the agreement in good faith. This means that in implementing the agreement, honesty must run in the heart of a human being. It should be noted that understanding the substance of good faith in Article 1338 paragraph (3) of the Civil Code should not be interpreted grammatically, that good faith only appears limited to the stage of contract execution, good faith must be interpreted in the entire contractual process. This means that good faith must underlie the parties' relationship at the pre-contractual, contractual and contractual execution stages.

This principle is very important to be held by the parties because in the event of a dispute of opinion due to an agreement, the parties will always work together to find a solution that is mutually beneficial to both parties. In the collective labor agreement of PT Mecosin, the author believes that there is a good intention from both parties in making the collective labor agreement, although in its application the two parties have different opinions in interpreting the agreement. According to the author, the collective labor agreement is a crucial agreement made by employers and employees to regulate the rights and obligations of employers and employees as long as the employment relationship is still running, so this work agreement must be good. good that the author means is good in terms of quality and quantity; and minimal errors or vagueness that can cause disputes in it. Therefore, the author wants both parties to agree to withdraw the collective labor agreement as regulated in Article 1338 paragraph (2) of the Civil Code which reads

"an agreement cannot be revoked other than by agreement of both parties, or for reasons which the law has declared sufficient for that"

Based on the article above, the agreement cannot be changed / withdrawn except by agreement of the parties. However, agreements that cause differences in interpretation by the parties cannot be left unchecked. In response to this, the author feels it is important to withdraw the collective labor agreement first. The withdrawal is carried out in order to restore the applicable regulations in the company back in accordance with the law while the parties can immediately negotiate again to make improvements to adjust the clauses related to the termination provisions to comply with the applicable law, namely UUCK.

4) Consensualism Principle

The principle of freedom of contract contains a view that people are free to make or not make agreements, free with whom they enter into agreements, free about what is agreed and free to determine the terms of the agreement. However, it is important to note that freedom of contract as implied in the provisions of Article 1338 paragraph (1) of the Civil Code does not stand alone. The principle is in a complete and solid system with other related provisions, namely the principle of Consensualism.

The principle of consensualism becomes important when in today's practice, often the principle of freedom of contract based on an honest inner attitude (good faith) is not fully understood by the parties, giving rise to a tendentious impression of an unbalanced and one-sided contractual relationship. Unbalanced contractual relations are sometimes faced with freedom of contract which is based on the basic assumption that the parties to the contract have a balanced bargaining position, but in reality the parties do not always have a balanced bargaining position, and for this reason, according to the author, the principle of consensuality is very important, this principle of consensuality will later serve as a basic guideline to provide a balanced bargaining position for the parties and this is reflected in the inner attitude of the parties in the form of good faith.

The principle of consensualism as concluded from the provisions of Article 1320 BW number (1) relating to agreement or toestemming), stating that the agreement has been born simply by the existence of an agreement, should not also be interpreted solely grammatically related to the commitment of legal responsibility. The principle of consensualism emphasizes the "agreement" of the parties which originates from the good faith of the parties facing the contract, namely the parties "agree" to uphold their commitment and responsibility in law, namely the parties have an inner attitude of trust in the good faith of the parties, which is based on "one word and one act". So it should be emphasized that those who face the contract are "gentlemen", so that a "gentleman agreement" will also be realized between the parties (Nurwullan & Siregar, 2019).

5) Personality Principle

The principle of personality is a principle that determines that a person who will perform and or make a contract is only for individual interests. This can be understood from the provisions of Article 1315 and Article 1340 of the Civil Code. Article 1315 of the Civil Code reads "In general, a person cannot enter into an obligation or agreement other than for himself". Meanwhile, article 1340 of the Civil Code reads "Agreements are only valid between the parties that make them". However, this provision has an exception as introduced in article 1317 of the Civil Code which reads "An agreement may also be made for the benefit of a third party, if an agreement made for oneself or a gift to another person contains such a condition". This article constructs that a person can enter into an agreement for the benefit of a third party with a specified condition. Meanwhile, Article 1318 of the Civil Code does not only regulate

agreements for themselves but also for the benefit of their heirs and for people who obtain rights from them (Hulaify, 2019).

Based on the explanation of the procedures and principles in making collective labor agreements, there are no specific provisions related to automatic renewal following the development of laws and regulations. However, the author finds that agreements must always follow the development of imperative regulations. This leads the author to conclude that a good agreement is one that can facilitate future agreements. At the same time, if an agreement is contrary to imperative regulations, the parties can involve third parties to provide the fairest legal consequences possible if the legal consequences arising from the agreement are deemed not to provide justice for the parties. By doing so, the author also encourages the parties to be in good faith to improve the agreement by jointly withdrawing the enforcement of the collective labor agreement for improvement. By doing this, it also answers the author's question that collective labor agreements cannot be valid automatically following the development of new laws and regulations.

CLOSING

Summary

1. In this decision, the author agrees with the opinion of the Supreme Court that layoffs must pay attention to the UUCK on the grounds of the application of the posterior legi priori principle. However, the author finds that there is an error in the calculation of the amount of workers' severance pay. Based on the author's calculations, the author finds that the amount of workers' severance pay should be Rp 97,866,888. because there is a difference of Rp 5,730,461. This error affects 2 things, namely the workers' severance rights that should be paid and the workers' severance rights that have been paid. If the error lies in both, then the cassation judge is correct in giving a decision. However, if the error lies in the calculation of the rights that should be paid only, then the cassation judge must change the verdict to grant in part.
2. A collective labor agreement is an agreement in the field of employment. As an agreement in the field of employment, a collective bargaining agreement has agreement concepts that must be adhered to while also having to pay attention to laws in the field of employment that are always updated. The five principles used in this research state that the enforcement of the collective labor agreement is not appropriate, so as a third party the panel of judges can determine the appropriate legal consequences in resolving the dispute. This only applies to determining legal consequences without changing the agreement. To change the agreement still requires the agreement of the parties to immediately withdraw the enforcement of this collective labor agreement so that improvements can be made to it. For this reason, the collective labor agreement cannot automatically enforce the latest laws and regulations.

Advice

The suggestion for the decision is that the Supreme Court clarify the error in the decision. This clarification can be done by correcting this decision regarding the clarity of the location of the calculation error in the decision. This also makes it better for a judge to pay more attention to all claims and rebuttals from the Plaintiff and Defendant so that there are no more mistakes in the future.

At the same time, the author would also like to provide advice to the makers of the collective bargaining agreement considering that this problem arose due to differences of opinion in interpreting the collective bargaining agreement. The author advises labor unions and employers to immediately improve their collective labor agreements in accordance with what should be based on the concept in the agreement. This improvement is done to adjust the collective labor agreement to the new law, namely UUCK.

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