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The Essential of Termination of Employment Criminal Investigations Viewing From a Restorative Justice Perspective

Podstata ukončenia pracovného pomeru Trestné vyšetrovanie z pohľadu restoratívnej justície

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Abstract:

Work connection is the connection of law between worker/laborer and businessman based on agreement work. This study aims to reveal the essence of termination investigation related to paying wages under minimum wage viewed from a restorative justice perspective. This study used normative legal research focused on studying legal materials that become references. Primary legal materials derived from regulations. However, secondary legal materials are derived from literature studies. The legal materials are sorted and selected based on the character and analytical needs of the problem. The fact of labor crimes investigation in terms of paying wages below the minimum wage was realized when the worker (victim) has been reimbursed for his loss and has forgiven the perpetrator through peace and an agreement made outside or during the case investigation. Thus, there was no longer any basis for the State to continue to process it. If harmonization has been rebuilt, there is no longer any right to apply punishment to the State to the parties who have made peace. The concept of resolving labor cases in terms of paying wages below the minimum wage is realized through a peace process and agreement with the victim-offender mediation (VOM) policy by involving the responsibility of the perpetrators of crime in recovering losses due to criminal acts. Concrete evidence of recovery for victims is stated in an agreement that is agreed upon and signed by the parties. Hence, it has legal validity and juridical reasons to provide and protect the interests and rights of the parties.

Keywords: *Justice restorative, termination investigation (SP3).*

Abstrakt:

Pracovné spojenie je právne spojenie medzi pracovníkom/robotníkom a podnikateľom na základe dohody o práci. Cieľom tejto štúdie je odhaliť podstatu vyšetrovania ukončenia pracovného pomeru súvisiaceho s vyplácaním miezd pod minimálnu mzdu z pohľadu restoratívnej justície. Táto štúdia využívala normatívny právny výskum zameraný na štúdium právnych materiálov, ktoré sa stávajú referenciami. Primárne právne materiály odvodené z nariadení. Sekundárne právne materiály sú však odvodené z literárnych štúdií. Právne materiály sú triedené a vyberané na základe charakteru a analytických potrieb problému. Skutočnosť vyšetrovania pracovných trestných činov z hľadiska vyplácania miezd pod minimálnou mzdou sa uskutočnila vtedy, keď pracovníkovi (obete) bola uhradená strata a odpustila páchateľovi mierou a dohodou mimo alebo počas vyšetrovania prípadu. Štát teda už nemal žiadny dôvod na to, aby ho naďalej spracovával. Ak bola harmonizácia obnovená, neexistuje už žiadne právo na potrestanie štátu voči stranám, ktoré uzavreli mier. Koncepcia riešenia pracovných prípadov v zmysle vyplácania miezd pod minimálnou mzdou sa realizuje mierovým procesom a dohodou s politikou mediácie medzi obeťami a páchateľmi (VOM) zapojením zodpovednosti páchateľov trestných činov do vymáhania strát spôsobených trestnými činmi. Konkrétny dôkaz o uzdravení obetí je uvedený v dohode, na ktorej sa dohodnú a podpíšu strany. Má teda právnu platnosť a právne dôvody na zabezpečenie a ochranu záujmov a práv strán.

Kľúčové slová: *Spravodlivosť, vyšetrovanie ukončenia.*

Introduction

Workforce development is an integral part of national development carried out in Indonesian human development to create a prosperous, just, and equitable society, both materially and spiritually, based on Pancasila and the 1945 Constitution [1]. Various policies have been legalized to create legal ideals, including in the fields of production, monetary, fiscal, and wages. The importance of wages is why the state provides protection rights of wages, guaranteed by the constitution, based on Article 28 D Paragraph (2) of the 1945 Constitution. Wage policies regulated by the state include the minimum wage, structure and scale of wages, overtime pay, wages for not doing work for certain reasons, and form and method of payment of wages. The ideal wage policy must contain the values of Pancasila to achieve true justice for both employers and workers/laborers.

The employment relationship, with all the legal consequences that arise, begins with a work agreement, and the object of the agreement includes the type of work, wages, and terms of the work agreement. Just like other forms of agreement, even though it has its characteristics, it must contain work description, orders, and wages, but in general, it is subject to Book III of the Civil Code. With the work agreement, there will be a bond between the employer and the worker [2].

Criminal sanctions in labor law are often used as a tool by workers to force employers when these basic rights are not fulfilled. However, many irregularities still impact various industrial relations conflicts, resulting in a tug-of-war between the settlement of civil disputes and criminal violations. The simple form of government intervention in wages is the enactment of PP no. 8 of 1981 concerning wage protection. Wage protection, in general, is based on the wage function, which must be able to guarantee the survival of workers/laborers and their families. However, many workers/laborers still carry out work relatively without a work agreement between the worker/laborer and the employer.

The revocation of PP No. 8 of 1981 and the enactment of PP No. 78 of 2015

concerning wages regulates the number of wages, which is determined based on the Governor's decision through the proposal of the wage council so that conflicts between workers/laborers and employers are increasingly open. Wage policy through PP NO. 6 2021 encourages the growth of micro and small businesses because the amount of wage is determined based on an agreement between workers and employers, while for large-scale companies, the wages are standardized according to the Governor's decision through the determination of the Regency/City minimum wage. The amount of wage determined through the GOvernor's decision has generalized all forms of business without distinguishing between large companies and small micro businesses. This situation becomes a burden for micro and small businesses to survive because the minimum wage is applied equally between large companies and small micro businesses. In addition, the revocation of PP No. 78 of 2015 and the enactment of PP No. 36 of 2021 concerning Wages are logical consequences of the amendment to Law no. 13 2003, which was amended by Law no. 11 of 2020 concerning Job Creation, the wage system has undergone many changes. It has affected the investment climate, especially in the micro and small business sector.

In the criminal justice system, the termination of an investigation is the discretionary authority possessed by the Police officials as investigators who are given special authority by law Article 6 Paragraph (1) letter b in conjunction with Article 7 Paragraph (1) letter (i) KUHAP. The activity of stopping the investigation in question is an assessment of a criminal case of employment paying wages under the UMK provisions, which are the authority of PPNS officials as investigators. The assessment is only limited to certain conditions as regulated in Article 109 Paragraph (2) of the Criminal Procedure Code, which limits the assessment process only to three conditions; if there is not enough evidence, it is not a crime, or the investigation is stopped for the sake of the law.

The peace process and the agreement between workers/laborers and employers to end the conflict of labor crimes, and pay wages below the minimum wage provisions, do not necessarily gain legitimacy through the termination of the investigation. Legally, the termination of the investigation into his existence has been regulated in Article 109 Paragraph (2) of the Criminal Procedure Code. If it is continued through the investigation process, this will greatly affect the continuity of the working relationship because there is the potential for company closure and layoffs.

The concept of restorative justice can be used as an instrument for resolving criminal employment cases so that the settlement of cases outside the criminal justice system still has philosophical, sociological, and juridical validity. Philosophically, this concept offers a form of settlement following the reflection of the value of Pancasila's "fair and civilized deliberation." The restorative justice approach has the power to restore relations between the perpetrators and the victims, which is in line with criminal cases in employment. Another strength is to encourage the active participation of criminals (entrepreneurs) with victims (workers/laborers) to meet in deliberation to find ways to resolve criminal cases so that mediation becomes a method and the main key in applying the concept of restorative justice [3].

At the practical and theoretical levels, of course, it must go through philosophical, sociological, and juridical validity so that the interests of the parties can be protected. Therefore, it is necessary to reconstruct the national criminal law as public law *(algemenbelangen)*. The state does not play a full role in retaliation (retributive); this cannot be separated from the new paradigm in criminal law from *lex-*

talonis (retributive justice) towards restorative justice.

Suppose the worker/laborer as the victim has been reimbursed for his losses and has forgiven the perpetrator through reconciliation, whether carried out outside, inside, or during the investigation process. In that case, there should be no basis for the State, through investigators, to (force themselves) to continue the judicial process. The philosophy of punishment that absolutes retributive justice must be followed with restorative punishment. Restorative punishment in the justice system considers that the position of victims harmed or suffering due to crimes against humanity will not be replaced by legal justice. It is only possible if the compensation is to restore it to its original condition.

The concept of restorative justice is inseparable from the New Paradigm of Criminal Law in the World, a new criminal law paradigm that shifts classical criminal law from *lex talionis* or retributive justice by emphasizing restorative efforts oriented to corrective justice and rehabilitative justice. Applying restorative justice principles is designed as an alternative problem-solving method, with alternative sanctions focused on the interest of victims, perpetrators, and the community. Marcus Tullius Cicero, A Roman-born philosopher, jurist, and politician, stated: *"ubi societas ibi ius."* This statement indicates that in every society, there is always a law that functions to regulate behaviour, even if the law is part of the community's cultural development.

In addition, F.K. Von Savigny stated that “law is one aspect of culture that lives in society. Therefore, the law is found in society, not created by the powerful” [4]. Society always produces legal traditions that are different from other societies. For example, civil law and common law legal traditions have different characteristics because the two legal traditions develop and grow in the cultural life of different communities. The principles of restorative justice, which are the principles of law enforcement in settlement of cases, are also contained in the following:

1. Circular Letter of the Head of the Indonesian National Police Number: 8/VII/2018 dated 27 July 2018 concerning the application of Restorative Justice.
2. Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.
3. Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the Indonesian National Police regarding the implementation of the adjustment to the limits of minor criminal acts and the number of fines for quick examinations and the application of restorative justice.
4. Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of criminal acts based on restorative justice.

Based on the theoretical level and empirical facts mentioned above, the researchers are interested in discussing how to implement the peace agreement of the parties with juridical power. Likewise, the settlement of criminal labor cases must be resolved, with the guidance that criminal sanctions will be used as the last resort if legal and other institutions cannot resolve the case, or known as the *ultimum remedium*. Peace agreements must have a concept that can be used as the basis and footing for stopping investigations oriented toward restorative justice. The development of the dynamics of criminal law that is oriented towards restorative

justice in the criminal justice system, especially criminal labor cases, has not been legitimized, so the settlement of criminal employment cases often occurs between legal interests with a civil dimension and the interests of criminal law. Hence, the impact obtained is the settlement of criminal labor cases that are lex specialists. There is no formal law that specifically regulates the settlement of cases of criminal violations involving workers/laborers with employers based on employment relations.

Based on the proposed problem, theoretical discourse can be used as a guideline for solving cases. At the conceptual level, it is intended to be used as a basis for the settlement of criminal cases that emphasize the recovery of victims (restorative justice) at the level of the process of how the parties (workers/laborers and employers) can reach a peace agreement that we know as victim-offender mediation (VOM). We need to understand that restorative justice is not the same as ending a criminal case. In this study, restorative justice is part of the criminal justice system to create legal certainty for justice seekers and protect the rights of victims and perpetrators of crime.

Method

This study is normative legal research that focuses on the study of legal materials that become a reference for the problems discussion, both primary legal materials sourced from laws and regulations, as well as secondary legal materials derived from books. This research uses the statute, conceptual, and philosophical approaches [5].

The technique of collecting legal materials in this research is done using a card system to record each legal material used to analyse the problem. Then the materials are selected and sorted according to the character and analysis needs of the problem discussion. For the time being, legal materials that are less relevant are set aside, but in time they are needed to be used again.

The technique of collecting and processing legal materials begins with a literature study, namely, in the inventory of all legal materials related to the issues to be discussed. First, the study of legislation examines all laws and regulations, directly and indirectly, related to the main theme of this dissertation research. Second, the literature study looks for concepts using theories, doctrines, and legal arguments related to legal research issues.

Result and Discussion

Equality before the means that every citizen must be treated fairly by law enforcement officials and the government. In criminal law enforcement procedures, there are two opinions regarding which should be seen: *actus reus or mens rea.* In general, in the investigation, the investigator will automatically see from the actus reus. Criminal liability is the person's responsibility for the crime he has committed. Criminal liability is a mechanism built by criminal law to react to violations of the "agreement to reject" a certain act.

Employment criminal cases are unlawful acts committed by workers or employers who violate work agreements, company regulations, collective labor agreements, and the Manpower Law, whose criminal sanctions are only regulated in the Manpower Act, the principle of lex specialis derogat legi generali. The provision of criminal sanctions is the last institution if other legal institutions cannot resolve it; this is a logical consequence of the ultimum remedium.

In settlement of criminal labor cases at an early stage, inspections are carried out

by labor inspectors, their function of providing guidance and searching for and finding events suspected of employment crimes so that an Inspection Note can be issued with the application of articles that are following the formal offense with the criminal incident. This process in the Police is the same as an "investigation" action. The procedure for the guidance, supervision, and issuance of the Supervision Note is a logical consequence of the ultimum remedium principle so that the violator eliminates the violation by fulfilling the order of the Audit Note.

The issuance of the Examination Note means that the investigator has obtained at least two pieces of evidence. Furthermore, it is ordered for entrepreneurs who violate basic rights based on a predetermined time as the principle of propriety. The time for fulfilling basic rights (alleged article) is regulated in the Minister of Manpower Regulation Number 33 of 2016 concerning Procedures for Labor Supervisions. If the entrepreneur has fulfilled it, then the employment crime case is considered to have been completed based on the entrepreneur's awareness of its compliance or the parties' agreement through a collective agreement (PB). The process of resolving cases of such a model without having to issue SP3 because the process is outside the litigation process (pro-justitia).

Since the logical consequence of non-compliance with the Examination Note, the criminal case has been increased in the investigation process (pro-justitia). Based on the explanation, a labor crime case can continue to the investigation process when the entrepreneur does not properly carry out the Inspection Note order. Furthermore, the labor inspector publishes an Incident Report (LK) called the Police Report (LP).

The criminal justice process consisting of investigation, arrest, detention, prosecution, examination at trial, and sentencing is very complex. The legal process includes several stages: investigation, prosecution, trial, and legal effort. The period for conducting a pre-prosecution is 14 (fourteen) days from when the investigator receives the dossier as stipulated in Article 138 Paragraph (2) of the Criminal Procedure Code. The legal process has been detailed in Law Number 8 of 1981 or KUHAP. The legal process is inseparable from after the prosecutor received a notification letter for the investigator's start of the investigation (SPDP), based on Article 109 paragraph (1) of the Criminal Procedure Code. Since then, there has been a legal relationship between Police investigators/PPNS officials as investigators and the public prosecutor in carrying out examinations at the pre-adjudication stage. If the investigation case file is incomplete, the public prosecutor can return it. The investigator must immediately carry out additional investigations following the provisions in Article 110 Paragraph (3) of the Criminal Procedure Code.

In this case the process of investigating a criminal case, the investigator must provide evidence regarding the problem that has been carried out. Suppose the Public Prosecutor feels that there is not enough evidence. In that case, 2 (two) things may happen, namely, returning the case file to the investigator or deciding to stop the prosecution because there is insufficient evidence. If the file is returned to the investigator, this will slow down the settlement of the case, which in this case relates to the detention period of the suspect. If the period of detention has exceeded the limit, the suspect must be released by law from detention as stipulated in Article 24, paragraph (4) of the Criminal Procedure Code. Against the insufficiency of at least two pieces of evidence, the investigator must immediately terminate the investigation (P-14) by issuing SP3 and notifying the public prosecutor.

Article 80 of the Criminal Procedure Code authorizes the two institutions to

submit pre-trial applications. The authority of the public prosecutor in Article 80 of the Criminal Procedure Code is based on the withdrawal of the investigation Commencement Order (SPDP) based on Article 109 paragraph (1) of the Criminal Procedure Code. Thus, the public prosecutor is authorized to carry out horizontal supervision through pre-trial instruments. This is a logical consequence of the authority of Police investigators/PPNS oficialt as investigators in conducting assessments both based on statutory regulations and based on their discretion given by law whose existence is contained in Article 1 number 2 of the Criminal Procedure Code.

It is necessary to determine the status of a person as a suspect if, in the end, the investigator stops the investigation because there is not enough evidence or the event is not a criminal act, which is related to the investigation process and the investigation itself. Article 1 number 2 of the Criminal Procedure Code it is stated, "An investigation is a series of actions by an investigator in terms of ad according to the method regulated in this law to seek and collect evidence which with that evidence makes clear about the criminal act that occured and in order to find the suspect." Furthermore, Article 1 number 5 of the Criminal Procedure Code "Investigation is a series of actions of investigators to seek and find an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the method regulated in this law."

Based on the explanation of the law, the investigation is not a stand-alone action or separated from the investigation function. The investigation is an integral part of the investigation function. Hence, the function of the investigator is to find out whether an event (which is suspected of being a criminal act) can be continued in the process of further investigation by the investigator or must be stopped. Suppose it turns out that from the investigation results, the investigator does not obtain sufficient evidence to prosecute the suspect, or the evidence obtained is not sufficient to prove the suspect's guilt. In that case, the investigator may terminate the investigation.

Suppose the investigation and examination results show the investigator expressed an opinion that the allegation against the suspect is not a criminal act as regulated in the Criminal Code. In that case, the investigator is authorized to stop the investigation. Likewise, an investigation is terminated because it is not a criminal event. It is very difficult to draw a firm line about whether an action committed by a person is included in the scope of a criminal act, whether it is a crime or a violation. From the legal aspect, the relationship between workers/laborers and entrepreneurs stems from civil relations (private law), which regulates the relationship between one person and another, emphasizing individual interests.

Terminating the investigation for the law is the discretion of the investigator based on the authority of attribution by law. Case waiver is a way where there is no need to (punish) someone guilty even though that person has been proven guilty based on the principle of opportunity that applies to the prosecutor's jurisdiction. Andi Hamzah stated that "In the principle of opportunity, the prosecutor may decide not to prosecute a criminal case if the prosecution cannot be carried out or is inappropriate or undesirable or if the prosecution is more detrimental to the public interest or the government than if the prosecution was carried out" [6].

Several factors can also stop the investigation, such as insufficient evidence. Insufficient evidence is interpreted if the investigator does not obtain enough evidence to prosecute the suspect or if the evidence obtained is insufficient to prove the

suspect's guilt [7]. It was found that the alleged incident was not a criminal act after the investigation was carried out. The termination of the investigation for the sake of law was following the reasons for the abolition of the right to obey and the loss of the right to carry out the crime regulated in Chapter VIII of the Criminal Code, as formulated in the provisions of article 76, 77, and 78. The investigation can be terminated if the reason is outside the law, such as holding a mediation or carrying out a settlement based on the legality of positivism.

Conclusion

The essence of justice and providing justice is to restore the "lackness" of the relationship between workers/laborers and entrepreneurs who are distributed in the tangible form of statements and acceptance of forgiveness. Based on the analysis and discussion above, it can be concluded that the essence of stopping the investigation of labor crimes in terms of paying wages below the minimum wage is realized when the worker/labor (victim) has been refunded and has forgiven the perpetrator through reconciliation through investigators to continue to process the investigation. Similarly, the compensation agreement or the ability to compensate (restitution) the victim due to a criminal act has been restored. Therefore, it does not see a principal reason to apply the law literally for the proven act. Even the existence of such punishment does not provide benefits to the parties, the last point of punishment (punishing unnecessary). Peace between perpetrators and victims is a process that can be used as the basis for realizing justice so that it must be declared free from all legal demands. With the above legal considerations, the peace between the perpetrator and the victim is used as the basis for the termination of an investigation based on law. In this context, peace becomes an effective and efficient instrument to restore the condition of victims due to criminal acts. If harmonization has been rebuilt, then there is no longer any right to impose a sentence to the State on the parties who have made peace.

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