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Unfair Practice of Statute of Limitation in the Court of Industrial Relation

Salahudin Gaffar, Agus Karsona, Indra Perwira, Yani Pujiwati

Padjadjaran University, Bandung, Indonesia
Email: salgaffar123@gmail.com

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Abstract

Article 171 of the Law No. 13/2003 j.o. Article 82 of Law No. 2/2004 primarily regulates 1 (one) year statute of limitations for the employees to submit an objection against their employment termination to the Court of Industrial Relations ("CIR"). Suppose they miss such chance; the rights will subsequently vanish. This research focuses on the statute of limitations to submit an objection against the employment termination through juridical-normative approach. The qualitative data is collected through secondary resources acquired by the author from the database published by the relevant institution to the public. The study results show that the court continues to accept and examine the cases despite this statute of limitations. Such a condition injures justice and results in legal uncertainty.

Keywords

Statute of Limitations, Employment Termination, Industrial Dispute Settlement, Court of Industrial Relations, Labor Law

1. Introduction

The law entails a set of rules or norms regulating an expected demeanor to be applicable in coexistence; its implementation is enforced by sanction (Mertokusumo, 2010). Hans Kelsen's natural law theory is heavily influencing the national law system in Indonesia, which developed into positive law. Hans Nawiasky, a student of Hans Kelsen, initiated the Stufenbau theory's birth as a complementary supporting theory to the national law. Hans Kelsen detailed the legal rules which levels are under the basic norms (under the constitution), each group consecutively (Fuady, 2013):

1) The legislation (made by the parliament) and the custom (formed in the society);

2) The statute (more specific rules also made by the parliament) and the ordinance (made by the administrative authority);

3) The material and formal laws. These are the rules to be stipulated by the authorized institutions, particularly the courts, to be applied in concrete cases.

Generally speaking, the development in the legal sector underlies the growth in other sectors; this infers the actualization of the law's function as the tool of development/social engineering, the instrument of dispute resolution, and the instrument of social control, including industrial relations field (Azis, 2011).

At first, the employment relationship between the employers and workers/laborers was only related to civil interests, which was pertinent to the private law aspects. However, when there was a difference of opinions/disputes or problems, then from such point onwards, the intervention and the authority of the government is utterly necessary; this way, the issues shall be related to the public law despite being mainly regulated under the manpower law, either attached to the administrative law or the criminal law (Abdul, 2014).

Dispute in the field of employment relationship commonly known as industrial relation dispute falls under the jurisdiction of the Court of Industrial Relations ("CIR"), Indonesia never creates separate entity to become a vessel for this CIR. The judiciary system trusts this function as a department under the local court instead. At the time of dispute, the party shall have to submit his case to the local district court, but will be immediately channeled to the appropriate department.

Procedural law in the CIR has a more special character than the nature of the private procedural law itself. In the procedural law of CIR, there are subjective and objective or fundamental indicators to the dispute. The subjective indicators are the disputing parties, workers/laborers, worker/labor unions with the employers/employer unions, or other workers/labor unions in a company; both must be heard (*audi alteram partem or eines*).

The objective indicators are the dispute between the parties, which cover the dispute over rights, interests, employment termination, and disputes between worker/labor unions in a company. According to private law, the form of the occurrence of dispute object outside of the four mentioned disputes related to the act shall be under the general judicial environment's competence (Sugeng, 2019).

Specifically related to the employment termination, there is an applicable statute of limitation regulated under Article 171 of Law No. 13 of 2003 Concerning the Manpower (2003) (the "Manpower Law") and Article 82 of Law No. 2 of 2004 Concerning the Dispute Settlement of the Industrial Relations (2004) ("DSIR Law"). These regulations limit the time admissible for the employee to submit their objections against the employment termination within one year as of its issuance.

Unfortunately, judiciary practices show that many employees have to go through various kinds of impediments in fulfilling the allocated time limit. This condition leaves them with no chance to submit their objection to the CIR. This

is a problem, without any consideration to the reason behind the employees' late submission to the CIR, should every employment termination be declared as expired directly? Can it be considered fair if the CIR dismisses the case simply by the fact that the one-year time limit has lapsed, despite there is an imminent sign of unfair practice in the calculation of the statute of limitation?

The authors examined qualitative data in the form of judiciary practices in Indonesia, to further analyze the result to give inputs supposedly expected by the rules and regulations from the provision on the statute of limitation. The authors expect that this study will produce a notable input to the judiciary environment in Indonesia particularly in handling the case arising from employment termination within the scope of the statute of limitation.

2. Theoretical Foundation

According to the Positive Law, the sense of justice and law must be enforced to ensure the enforcement is in line with the reality among the society, which has the desire to achieve security and peace (Notohamidjojo, 1970). Justice must be developed under the ideals of law (*rechtidee*) within the State of law (*rechtsstaat*), rather than the State of power (*rechtsstaat*) (Constitution of the Republic of Indonesia, 1945). As the tool functioned to protect the human interest, law enforcement must pay attention to 4 elements, namely: 1) legal certainty (*rechtssicherheit*); 2) legal utility (*zrechtssicherheit*); 3) legal justice (*gerechtigkeit*); 4) legal warranty (*doelmatigkeit*) (Widayati, 2018). The 4 elements shall also be important in the exercise of the statute of limitation. The analysis may be clear by reference to the 1) rules and regulations; 2) judiciary practices; 3) supreme court decision; 4) constitutional court decision (Darmodihardjo, 2002) as elaborated down below.

2.1. Rules and Regulations

The positive law applicable in the field of Industrial Relations entails various rules and regulations from the general private law, including the ones regulating the statute of limitations. Some of the notable rules and regulations concerning the statute of limitations are among others: 1) Civil Code Article 1603t, Article 1946 and Article 1967; 2) Law Number 22 of 1957 concerning Manpower; 3) Regulation of the Government of the Republic of Indonesia Number 8 of 1981 concerning the Protection of Wages; 4) Decision of the Minister of Manpower and Transmigration Number 150 of 2000 concerning the Settlement of the Employment Termination Relations and Determination of Severance Money, Appreciation Money for Working Period, and Money as Replacement of Rights in Companies; 5) Law No. 13 of 2003 Concerning the Manpower (2003) ("Manpower Law"); 6) Law No. 2 of 2004 Concerning the Dispute Settlement of the Industrial Relation (2004) ("DSIR Law").

Indonesian Civil Code defined the statute of limitation as a tool for legal subjects to be imposed with or indemnified from certain obligations (Burgelijk

Wetboek, 1847). A legal subject cannot be imposed with certain obligations prior to the designated time; on the other hand, the same subject may waive its right due to the statute of limitation within the designated time. Besides, it may also work as a tool to obtain rights (*praescriptio*/*extinctive verjaring*) or released from certain rights (*extientieve verjaring*) (Prinst, 1992).

In the sense of procedural law, defendant may sometimes use the statute of limitation to evade claims from the plaintiff (Prinst, 1992). Hence, the judges must always examine the statute of limitation of a case prior to declaring its admissibility (Prinst, 1992). Among the regulations concerning the statute of limitation, this research will only focus on the Manpower Law and DSIR Law.

The issuance of the DSIR Law took over the formal law position, and the Manpower Law took over as the material law. The material law has experienced many changes during the process as numerous submissions for judicial review continue to arise, particularly to the articles inconsistent with other rules and regulations and the applicable Private Procedural Law (Supono, 2014).

Article 171 of the Manpower Law affirms that workers/labors whose employment were terminated without any industrial dispute settlement procedure may submit his objection to such termination to the court no later than 1 (one) year after the date of his employment termination. The DSIR Law Article 82 further reads that this period of 1 (one) year shall be calculated as of the receipt of notification of the termination decision from the employers. This duration applies only to employees with certain conditions, for example if the employment termination was 1) conducted due to significant error at work (Manpower Law, Article 158 (1) and 159); 2) cannot go to work normally for more than 6 (six) months due to criminal proceedings (Manpower Law, Article 160 (3)); 3) occurred due to resignation on the employee's own accord (Manpower Law, Article 162).

One can understand that in short, a statute of limitations may be interpreted as a restriction that may refrain the parties from exercising their right to submit a legal claim while consequently removing their respective rights within a certain period of time. The positive law in this regard will indeed prohibit the CIR to accept any proceedings submitted by the employee with respect to the employment termination, in case it takes place exceeding the time limitation. Now to what extent does this statute of limitation applies?

Indonesian manpower law recognizes two types of statute of limitation. The first is the statute of limitation on the rights arising from the employment relation. This includes among others, underpayment of wages such as overtime pay. Second, the statute of limitation on the rights at the time of the employment termination, for example, severance pay, appreciation money for working period, money as the replacement of their rights (Pangaribuan, 2012).

Article 96 of the Manpower Law regulates that an employee shall lose its opportunity to claim rights arising from the employment relation after 2 (two) years have passed. Severance is a right arising from the employment termination

which is determined since the beginning of the working period as an absolute right of the workers, thus, an underpayment of severance shall not be qualified as the statute of limitation.

The application of such rules may be seen from the practice of several judicial proceedings as set forth down below in this research.

2.2. Judiciary Practices

One of the most notable precedent in terms of Industrial Relations dispute, is the Decision of the CIR of Bandung Number: 85/Pdt.Sus-PHI/2019/PN.Bdg dated on 24th of July 2019 in conjunction with the Decision of the Supreme Court Number 1093 K/Pdt.Sus-PHI/2019 dated on 16th of December 2019 (**"the Pricol Surya Case"**).

The Pricol Surya Case was adjudicated by a panel of judges consisting of: Suwanto, S. H., as the Chairman of the Panel, Sugeng Prayitno, S. H., M. H., and R. Yosari Helenanto, S. H. M. H., as the members of the panel. It was jointly submitted by 39 persons (the Plaintiffs) whose employments were terminated by PT. Prico Surya (the Defendant) due to their act of illegal demonstration. Their employment termination was effective as of 15th of February 2016, yet they submitted the claim on 25th of March 2019 or more than three years after the employment termination.

Due to the lapse of time, PT. Pricol Surya in its response to the Exception submitted a statute of limitation against the claim from the Plaintiffs. However, the panel of judges **rejected the exception** in the CIR of Bandung on the considerations that the strike committed by the Plaintiffs were invalid; and they were only given 1 (one) to 3 (three) days period between the first and second summon.

The CIR of Bandung accepted a part of claims submitted by the Plaintiffs and annuls the employment termination made by the Defendant. Apart from sentencing the Defendant to pay certain amount of compensations, the CIR of Bandung also declare that the employment relationship between the Plaintiffs and Defendant were supposedly intact. By the offences from the Defendant, the CIR of Bandung then declares the termination of employment relationship between them.

2.3. Supreme Court Decision

Other important case decided by the Supreme Court is the Decision of the Supreme Court of the Republic of Indonesia concerning the dispute on the Employment termination registered under the Number 625 K/Pdt.Sus-PHI/2016 dated on 19th of October 2016 (**"the BNI Case"**).

In the court of the first instance, the case was submitted by Hasmin Hasan and Nawir as the Plaintiffs and PT Bank Negara Indonesia (Persero); PT Persona Prima Utama; Mitra Karya Membangun Foundation ("YMKM") and Swadarma Cooperative of BNI Palu Branch as Defendants I, II, II and IV respectively. The Plaintiffs were outsourcing workers employed by the Defendants, their employ-

ment was terminated on 31st of December 2012. It took them 3 years before submitting claim concerning their wages to the CIR of Palu on 10th of March 2016. In the exception, the Defendants I and II argued that the claim was not appropriately directed (*error in persona*) and that the Plaintiffs have supposedly lose their rights to submit the claim after 3 years have elapsed.

Nonetheless, on 21st of April 2016, the CIR of Palu decided on its decision Number 09/Pdt.Sus-PHI/2016/PN.Pal, to accept a part of the Plaintiffs' claim and sentence the Defendants I to **pay for the normative rights** supposedly paid to the Plaintiffs, with the considerations that the claim made by the Defendant I and Defendant II was already annulled by the Decision of the Constitutional Court Number 012/PUU-I/2003 which stated that Article 171 of the Manpower Law insofar related to Article 158 (1) are contrary with the 1945 Constitution of the Republic of Indonesia.

As such, the Defendants I, II, III and IV jointly submitted an appeal to the Supreme Court, the Defendants were acting as Appellants and the Plaintiffs were acting as the Appellees. The Appellants consider that it is unfair for them to have to pay certain amount of money to the Appellees, despite being normative. The Appellants argue that the Appellees supposedly lose their rights to submit objection to the employment termination after one year has elapsed, and in this case, three years has passed.

The Supreme Court **annulled the decision** from the CIR of Palu on the consideration that the CIR of Palu had an error in implementing the law in its decision. According to Article 82 of the Law Number 2 of 2004 and Article 96 of the Law Number 13 of 2003 which was annulled by the Constitutional Court of the Republic of Indonesia with the decision number 100/PUU-X/2012 dated on 19th of September 2013, the statute of limitation supposedly be 2 years at maximum. The Supreme Court further considered that since the employment relation under a fixed term contract itself was already been expired for 3 years and 2 months before the claim was submitted, then it was **fair** and **legally reasonable** to state that the claim had expired.

2.4. Constitutional Court Decision

The Constitutional Court, through several cases with respect to the statute of limitation made different considerations. In the request of constitutional review in the Decision of the Constitutional Court Number 012/PUU-I/2003 dated on 17th of November 2004 (**"MK Decision No. 012/PUU-I/2003"**), the Constitutional Court adjudged that some articles were declared as in contrary to the 1945 Constitution of the Republic of Indonesia. These articles include Article 158, Article 159, Article 160 paragraph (1) of the Law Number 13 of 2003 concerning Manpower, insofar concerning the sub-clause "…not due to the complaints made by the employers…"; Article 170 insofar concerning the sub-clause "…unless for Article 158 paragraph (1), …"; Article 171 insofar concerning the sub-clause "…Article 158 paragraph (1)…"; Article 186 insofar concerning the

sub-clause "…Article 137 and Article 138 paragraph (1)".

This constitutional review request was submitted by the heads and activists in the labor/worker unions who claim that the Manpower Law applicable then, was not covering the factual interests of the relevant stakeholders, notably the labors' and workers' rights. It is worth to note that with this decision, there must several articles constituted as inapplicable in the positive law, namely:

Article 158 does not have binding legal force since it gives authority to the employer to conduct the employment termination by using grave wrongdoing of the workers/labors as the excuse without appropriate due process of law through an independent and impartial court decision, instead it is sufficient for the employer to make decision supported by the evidences without the necessity to examine the validity according to the applicable procedural law.

Article 159 was removed since such provision created an unfair and heavy burden of proof to the workers/labors to clear their names from guilt. Besides, the enactment of those articles created confusion of thoughts since it mixes the procedures for criminal cases and private cases in improper manner.

Article 160 paragraph (1) insofar concerning the sub-clause "not due to the complaints made by the employer" shall have no binding legal force, hence it reads as, "In the event that the workers/labors are detained by the authorities due to allegation of crime, then the employer shall not obligated to pay wages however obligated to provide support to the families of such workers/laborers under their dependency provided…". This means, if the workers/labors are detained by the authorities due to allegation of crime, whether or not it was due to the complaints made by the employer, then the employer has the obligation to be provide support to the family of the workers/labors under their dependency.

Article 170 insofar concerning the sub-clause "…unless for Article 158 paragraph (1), …" does not have any binding legal force, thus it reads as, "The employment termination does not meet the provisions of Article 151 paragraph (2) and Article 168, unless Article 160 paragraph (3), Article 162 and Article 169, are null and void and the employer is obligated to employ the workers/labors in concern and pay all wages and rights that they should have received." This means, the provision also applied to the workers/labors that had employment termination due to grave wrongdoing.

Article 171 insofar concerning the sub-clause "…Article 158 paragraph (1)…" does not have any binding legal force, thus it reads as, "Workers/labors who experienced employment termination without the stipulation from the authorized industrial dispute settlement institution as referred to in the Article 160 paragraph (3) and Article 162, whereas the workers/labors concerned cannot accept such employment termination, then the workers/labors may submit claim to the industrial relation dispute settlement institution within a maximum duration of 1 (one) year as of the date of their employment termination." This means, this provision also applied to the workers/labors that had employment termination due to grave wrongdoing.

Besides the MK Decision No. 012/PUU-I/2003, the Constitutional Court also issued the Decision of the Constitutional Court Number 100/PUU-X/2012 dated on 19th of September 2013 (**"MK Decision No. 100/PUU-X/2012"**). The case was submitted by Marten Boiliu, an employee at PT Shandy Putra Makmur. His employment was terminated 2nd of July 2009, after his 7 years of employment as of 15th May of 2002 until 30th of June 2009. Upon this employment termination, he had not received neither severance, award money for his service nor for the replacement of his rights. Even though such company's obligation is regulated under the Article 163 paragraph (2) j.o. Article 156 paragraph (2), (3) and (4) of the Manpower Law.

Unfortunately, the appellee in this case submitted his contention to the CIR on 11th of June 2012, which apparently 3 years after the employment termination entered into effect. Appellee's submission was supposed to be inadmissible due to the provisions in Article 96 of the Manpower Law which stated that, where the period of 2 (two) years applied to the statute of limitation.

Nonetheless, the Constitutional Court views that due to the severity of impact to the labors/workers, Article 96 of the Manpower Law was declared as in contrary to the 1945 Constitution of the Republic of Indonesia and has no binding power. In its decision, the Constitutional Court considered that appellant's right to claim wages for the worker/laborer and all payments arising from the employment relation were resulted from the sacrifices made by the appellant in the form of work. The appellant will have the ownership over his work, similar to the concept of ownership to the goods. Such employee's ownership must be protected as long as the employee does not conduct any harmful act towards the employer. Certain lapse of time in fact cannot remove the employer's rights to the wages and all payments. The wages and all payments arising from the working relationship are private proprietary and may not be taken over arbitrarily by anyone, either by individuals or through the provisions under the rules and regulations. Therefore, according to the Constitutional Court, Article 96 of the Manpower Law is proven to be in conflict with Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution (Khumaidah et al., 2014).

As such, the constitutional decision arising the rights for the workers to claim for payment for wages and all other payments due to the working relationship at any time after the occurrence of such rights. After the issuance of such decision, the legal subjects and legal actions of the workers and the employers before this Decision shall be considered as valid. However, the related regulations, namely Article 30 of the Government Regulation 8 of 1981 as an article adopted by Article 96 of the Law 13 of 2003 must be declared as having no binding legal force.

With the aforementioned considerations, the Constitutional Court declares that Article 96 of the Manpower Law has no legal force and thus, the Appellant has a legal stance to have his rights fulfilled.

3. Research Methodology

This research used the normative-juridical method as the approach to arrange

analysis. It primarily used secondary data from the existing and applicable laws as well as precedent from the judicial decisions. To elaborate the content of the research, descriptive-analytical method is used to describe comparable cases occurred in Indonesia up to this date, starting from the court of the first instance, the Supreme Court, until the Constitutional Court.

Finally, the analysis itself was arranged in qualitative approach to find proper result in answering the subject matters questioned in the research. The authors expect that this research will in turn deliver sensible argument for the judiciary environment in Indonesia notably in issuing fair and reliable decisions for the workers/laborers as they commonly become the victim in this regard.

4. Discussion

The positive law in Indonesia designed to respect the *Stubenfau* theory, where the material and formal laws must adhere to both the legislation and statute made by the parliament.

In the sense of the industrial relationship, such a notion means that both use of Manpower Law as the material law and the DSIR Law as the formal law must adhere to the 1945 Constitution of the Republic Indonesia.

Employment termination in the view of positive law, supposedly adhere to the statute of limitation. Article 171 of the Manpower Law and Article 82 of the DSIR Law jointly regulate that workers/laborers will only have one-year limit to submit their objections to the CIR as of the effective date of their employment termination.

At the first glance, this will incite assumptions that the mentioned regulations are applicable to all cases of employment termination. Pangaribuan also stated that many people believe that there shall be no exception to the statute of limitation which can allow the workers/laborers to do the contrary, including the judges in the judiciary environment. (Pangaribuan, 2017)

This is clearly seen from the judicial practices occurred in Indonesia. In the Pricol Surya Case, the judges declare the case as admissible however at the same time consider that the workers'/laborers' strike was invalid. Such a decision was made despite the fact that there were 3 years of gap between the employment termination and submission of the case, and two calls for settlement from the company due to the strike. The most important matter in this regard is that the CIR of Bandung still continue to examine the case without due regard to the statute of limitation and even impose obligation to the defendant to pay for compensation.

On the other hand, in the BNI Case, the CIR of Palu and the Supreme Court were issuing different consideration and thus resulting into contradicting decisions. The CIR of Palu was trying to adhere to the MK Decision No. 012/PUU-I/2003 by declaring that the defendants' claim with regards to the statute of limitation was inapplicable in this case. Thus, the defendants were sentenced to pay the outstanding normative rights to the plaintiffs.

However, such decision was annulled by the Supreme Court when the defendants submitted an appeal on the ground of the one-year limit to submit objection against the employment termination. The Supreme Court considered that the appellees (which were once plaintiffs to the court of the first instance) indeed had the rights to claim for outstanding wages after 2 years; however the MK Decision No. 100/PUU-X/2012 has annulled such provisions from both Article 82 of the DSIR Law and Article 96 of the Manpower Law.

Both MK Decision No. 012/PUU-I/2003 and the MK Decision No. 100/PUU-X/2012 were often used as the legal basis in judges' consideration before the CIR. The CIR is a special civil court established after the DSIR Law was enacted. Even though several provisions still use general private procedural law in the *Herzien Inlandsch Reglement* ("HIR") and *Rechtreglement voor de Buitengewesten* ("RBG"), the CIR primarily use DSIR Law as its procedural law.

It is important to note that the Constitutional Court only annul Article 96 of the Manpower Law in the MK Decision No. 100/PUU-X/2012 concerning the duration to claim for wages. There was no annulment of Article 82 of the DSIR Law concerning the duration to submit claim with respect to the employment termination in the same Constitutional Court decision.

Meanwhile, with respect to the MK Decision No. 012/PUU-I/2003, it is clear that its implementation among the CIR judges is still weak. This is explicitly shown in the consideration made by the CIR of Bandung in the Pricol Surya Case, as well as the Supreme Court in annulling the decision from the CIR of Palu in the BNI Case.

The Constitutional Court declared that Article 158 and Article 159 of the Manpower Law are contrary to the 1945 Constitution, whereas it subsequently stated that both have no binding legal force. It means the Constitutional Court has annulled both articles, referring to Article 82 of the DSIR Law and Article 171 of the Manpower Law.

The Article 171 of the Manpower Law limitedly regulates the reasoning applicable to the statute of limitations for the claim concerning the Employment Termination submitted after one year has elapsed, then any reason for the Employment Termination otherwise than Article 160 paragraph (3) and Article 162 of the Manpower Law shall not be qualified as the statute of limitations even though the workers/labors submit the claim more than one year after their employment termination. Otherwise, the case shall be deemed as inadmissible.

As may be seen in the judiciary practice, there is confusion among the CIR judges in exercising their obligation of legal discovery (*rechtvinding*). It is often misinterpreted that the judges have this obligation in any case, while in fact this function may only be executed in case of laws/legislation from the colonial era to make sure ensure its implementation is appropriate with the current situation and conditions, or in the absence/unclear regulations. In case of national law, the judges are expected to decide by implementing the content of the laws/legislations, since it already signifies the binding relationship created by the legislator (People's

Representative Assembly together with the Government) on behalf of the people of Indonesia. Particularly in terms of the enactment of the customary law or unwritten law, then the judges must explore the legal values living in society, or in short, finds the law appropriate with the necessity at such era.

Many judicial proceedings still use the articles which supposedly have no legal force as the basis to issue their decisions. The MK Decision No. 100/PUU-X/2012 was meant to enable the workers/employers to claim their outstanding wages even after two years have passed by declaring Article 96 of Manpower Law as having no binding legal force. However, it does not give any limitation on what course does the workers/laborers may collect the outstanding fulfillment of their normative rights to their employers. This leaves the decision as an ambiguous precedent that may be opened to broad interpretation. An implementing regulation is necessary in this regard to help the CIR judges understand the context of the regulations and resulting into uniform stance. It is unfortunate that up to this date the Ministry of Manpower and Transmigration has not done so.

By the unclear stance among the CIR judges, the authors believe that in time, both Manpower Law and DSIR Law shall need new provisions to bridge the gap of understanding. The birth of CIR was supposed to give new hope to the justice seekers, particularly the workers/laborers by the existence of the statute of limitations in submitting their claim. Unfortunately, the practices are showing otherwise.

5. Conclusion

Many judges in the CIR environment are still faced with improper use of the MK Decision No. 012/PUU-1/2003 when they are faced with a submission that correlates with the statute of limitation which uses Article 171 of the Manpower Law or Article 82 of the DSIR Law as the legal basis. The issuance of both MK Decision No. 012/PUU-1/2003 and MK Decision No. 100/PUU-X/2012 has destabilized the applicability of the Manpower Law as the positive law. Consequently, people must always pay attention to the two decisions in order to obtain proper comprehension of the Manpower Law.

Unfortunately, many practitioners in the field of labor law use a different approach on this matter, including the judges. They only read purely from Article 171 of the Manpower Law, and do not put together further considerations by referring to the Constitutional Court decisions. This is resulting in the absence of valid reason in their point of view to annulling any claim on the employment termination which is submitted around the statute of limitation subject matters.

In interpreting the statute of limitation set forth in Article 171 of the Manpower Law, the judge must consider that this article may be used with respect to the termination of employment due to grave wrongdoing as stipulated in Article 158 paragraph (1), allegedly conduct criminal act not due to the complaints from the employer as stipulated in Article 160 (3) and due to resignation as stipulated in Article 162. Taking into account that the MK Decision No. 012/PUU-1/2003

has annulled Article 158, and then this means any objection to the employment termination submitted by the employer with other reasons outside of the mentioned previously, including due to the grave wrongdoing as stipulated under Article 158, must still be considered as admissible.

Similarly, in comprehending Article 82 of the DSIR Law, the judges must be aware that this article correlates with Article 159 and Article 171 of the Manpower Law. Article 159 permits the workers/laborers to submit their objection against an employment termination due to grave wrongdoing, as stipulated under Article 158. As this article is already annulled by the MK Decision No. 012/PUU-1/2003 due to the heavy burden of proof, thus it can no longer be used as the legal basis for the judges to reject a case based on the statute of limitation in Article 82 of the DSIR Law. The same applies to Article 171 of the Manpower Law, although it is still applicable in the event of Article 160 (3) and Article 162 of the Manpower Law. For this reason, it is unlikely to appropriate for the judges to use Article 82 of the DSIR Law in considering the inadmissibility of the employment termination case due to the statute of limitation.

As may be seen from the Pricol Surya Case where the judges consider that the employment relationship between the workers/laborers was supposed to be intact since the demonstration conducted by the workers/laborers was invalid, thus making them innocent from Article 158 paragraph (1). On that basis, the 3 years gap from the employment termination cannot be considered as expiration of the workers'/labors' rights to submit claim, since the employment was not legally terminated according to Article 171. This clearly reflects judges' misinterpretation of the applicability of Article 171, whereas any use of Article 158 paragraph (1) was supposed to be invalid since the issuance of the MK Decision No. 012/PUU-1/2003.

The same occurred to the use of Article 96 of the Manpower Law as the basis for the company to evade its obligation to pay for the normative rights of the workers/laborers. The MK Decision No. 100/PUU-X/2012 has clearly stipulated that wages are proprietary rights. Thus, its claim cannot be restricted by a certain statute of limitation. Nonetheless, the judges in the Supreme Court with respect to the appeal submitted in the BNI Case still accept the two years limit for the workers/laborers to claim for their normative rights. Even though the CIR of Palu had correctly implemented the MK Decision No. 100/PUU-X/2012 by declaring the workers/laborers can still obtain their normative rights, this was dismissed by the Supreme Court at the time of appeal.

The authors view that on such a condition, Indonesia is in urgent need of guidelines for the judges to act upon the employment termination cases. Particularly on the restriction as to what subject matters might be used as the legal basis to limit workers/laborers' rights to submit their objection to the CIR within one-year limit. Without this kind of guidelines, it is utterly hard to have all judges in the CIR across Indonesia to practice the same view in issuing decision, mainly due to their compliance to conduct legal discovery (rechtvinding). Even though in this case, they should have no obligation to do so since the regulation

is deriving from the national law, not from the colonial era.

As the legal problem in Indonesia might arise due to various causes, either for its judiciary system, legal instruments, inconsistency of law enforcement, intervention of power, or legal protection, the most highlighted one is the law enforcement itself.

Law enforcement is a process that has already been determined through the norms in the positive law, where within such process; some steps must be undergone in order to result in justice and legal certainty. Inconsistency of law enforcement as elaborated above will continue for years.

Society is already used to witness how the law in action is different from the law in the book. This includes the practice in the CIR, where the judges cannot even comply with the precedent in issuing a uniform decision within the judiciary environment.

One of the senior judges, Bismar Siregar once said:

"*If in order to enforce justice of law, I must sacrifice the legal certainty, then I will sacrifice the law. The law is just a facility or instrument, while justice is the purpose. So, why should the purpose is sacrificed for the facility?*"

Such a statement must be considered admirable and may serve as a proper living example for other judges in the court of any instance throughout Indonesia, in issuing decision within their jurisdiction.

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Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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