

Hak pesangon bagi tenaga kerja asing di Indonesia atas terjadinya pemutusan hubungan kerja ditinjau dari Undang-undang nomor 13 tahun 2003 : studi kasus Putusan nomor: 410K/Pdt.Sus/2008 =
Severance rights for foreign workers in Indonesia upon the termination of employment in terms of Law number 13 year 2003 : case study
Decision number 410K/Pdt.Sus/2008

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Abstrak

Dalam hal Pemutusan Hubungan Kerja (PHK) terdapat hak-hak dari pekerja/buruh yang harus dipenuhi oleh pengusaha manakala hubungan kerja di antara kedua belah pihak berakhir. Hak atas pesangon merupakan salah satu komponen hak yang wajib diberikan oleh pengusaha kepada pekerja/buruh. Akan tetapi tidak semua pekerja/buruh berhak atas pemberian pesangon. Hanya pekerja dengan status hubungan kerja yang terikat pada Perjanjian Kerja Waktu Tidak Tertentu yang dapat memperoleh hak pesangon atas terjadinya PHK, sedangkan pekerja dengan status hubungan kerja yang terikat pada Perjanjian Kerja Waktu Tertentu tidak berhak memperoleh pesangon. Dalam perkara PHK antara pengusaha dengan Tenaga Kerja Asing (TKA) perlu dikaji lebih lanjut hak yang dapat diterima oleh TKA sehubungan dengan statusnya sebagai pekerja yang terikat pada Perjanjian Kerja Waktu Tertentu. Dalam penelitian ini dibahas 2 permasalahan yaitu: bagaimana pemberian hak pesangon bagi TKA atas terjadinya PHK dan dalam kasus Pemutusan Hubungan Kerja antara PT Linfox Logistic Indonesia dengan Rodney John Guy yang merupakan tenaga kerja asing, apakah hakim memutuskan memberikan hak pesangon bagi yang bersangkutan. Penelitian ini adalah penelitian penelitian hukum doktrinal (normatif) dengan menggunakan analisis deskriptif analitis. Penelitian ini menyarankan agar dibuat Keputusan Menteri yang secara khusus mengatur mengenai pengaturan Perjanjian Kerja Waktu Tertentu bagi TKA.

.....In the case of Termination Of Employment (PHK) there are rights of workers/labor to be met by operators when the working relationship between the two sides ended. The right to severance pay is one component of the rights that must be given by the employee of workers/laborers. But not all workers/laborers are entitled to severance pay provision. Only workers with working relationship status is tied to a Work Agreement Not Particular Time may obtain severance rights on the occurrence of layoffs of Termination of Employment (PHK), while workers with working relationship status is tied to a particular time work agreement is not entitled to severance. In the layoff between undertakings with foreign labor(TKA) should be more acceptable to the right foreign workers (TKA) with respect to its status as an employee who is bound to a Work Agreement Particular Time. In this study addressed 2 issues, namely how the entitlement to severance pay upon the termination of foreign workers and in the case of termination of employment between PT Linfox Logistic Indonesia and Rodney John Guy which is foreign labor, the judge decides whether to grant severance for the person in charge. This research is the study of law doctrial (normative) using analytical descriptive analysis. This study suggested to made a Minister Decision that specifically relates the Employment Agreement Setting Specific Time for TKA.

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