THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

THE SUMMARY OF DECISION

CASE NUMBER 114/PUU-XIII/2015

Concerning

Constitutionality of the Deadline for Filing Claims for the Settlement of Industrial Relations Disputes (*Penyelesaian Perselisihan Hubungan Industrial* - PPHI) by Workers/Labours

Petitioner : **Muhammad Hafidz, et al.**

Type of Case : Judicial Review of Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes against the Constitution of the Republic of Indonesia of 1945 (1945 Constitution)

Subject Matter : Judicial Review of the Constitutionality of Article 171 of the Manpower Law and Article 82 of the PPHI Law against the 1945 Constitution.

Verdict :

1. To grant the petition of the Petitioners in part;
   1.1. Article 82 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (State Gazette of the Republic of Indonesia of 2004 Number 6, Supplement to the State Gazette of the Republic of Indonesia Number 4356), in regard to the paragraph in "Article 159", it is contrary to the Constitution of the Republic of Indonesia of 1945.
   1.2. Article 82 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (State Gazette of the Republic of Indonesia of 2004 Number 6, Supplement to State Gazette of the Republic of Indonesia Number 4356), in regard to the paragraph in "Article 159", it has no binding legal force.
2. To dismiss the rest of the Petitioner's petition.

Date of Decision : Thursday, September 29th, 2016

Overview of Decision :

Whereas the Petitioners are labours or workers who are members of the labour organizations submitting a petition for judicial review of Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes against the State Constitution of the Republic of Indonesia in 1945.

In relation to the jurisdiction of the Court, since the petition of the Petitioners is a judicial review of the constitutionality of the norms of law in this case Article 171 of the Manpower Law and Article 82 of the PPHI Law against the 1945 Constitution, therefore the Court has the jurisdiction to adjudicate the petition *a quo*.

In relation to the legal standing of the Petitioners, the Petitioners are labourers or factory workers. Whereas the Petitioners think that their constitutional rights have been impaired to obtain fair recognition, guarantees, protection, and legal certainty as well as equal treatment before the law with the enactment of Article 171 of the Manpower Law and Article 82 of the PPHI Law. As for the two norms of the Law for which judicial review is requested. The Court in its legal consideration regarding the legal standing of the Petitioners, they have met the requirements of legal standing to request the petition *a quo.*

Whereas in relation to the subject matter of the petition, in essence the Petitioners describe as follows:

Whereas the Petitioners think that their constitutional rights have been impaired to obtain fair recognition, guarantees, protection, and legal certainty as well as equal treatment before the law with the enactment of Article 171 of the Manpower Law and Article 82 of the PPHI Law.

According to the Petitioners, the article *a quo* potentially detrimental to the constitutional rights of the Petitioners guaranteed by the 1945 Constitution because it contains legal norms that are unclear, biased, multi-interpreted, creates ambiguity, unfair treatment, and different treatment before the law. With the enactment of article *a quo,* the Petitioners as workers or labours have their constitutional rights impaired to obtain legal certainty, especially in relation to their rights as workers or labours.

To answer the issue of the constitutionality of these norms, the Court further stated in its legal considerations as follows:
Whereas with regard to the substance of the Petitioners' petition regarding the judicial review of Article 171 of the Manpower Law, the Court has stated its stance as stated in the Court's Decision Number 012/PUU-I/2003, dated October 28th, 2004, and the Court's Decision Number 61/PUU-VIII/2010, dated November 14th, 2011.

In the legal considerations of Decision Number 012/PUU-I/2003 dated October 28th, 2004, the Court stated, among other things, as follows:

"Considering whereas the Court may agree with the Petitioners' argument that Article 158 of the law a quo is contrary to the 1945 Constitution in particular Article 27 paragraph (1) which states that all citizens have the same position in the law and government and are obliged to uphold the law and government without exception, because Article 158 authorizes any employer to lay off any worker on the grounds that the labour/worker have committed serious mistakes without due process of law through an independent and impartial court decision, but instead only through the employer's decision supported by any evidence that does not need to be verified according to the applicable procedural law. On the other hand, Article 160 stipulates differently that any labour/worker who is detained by the authorities because that person is suspected of committing a crime but not due to the complaint of the employer, is treated according to the principle of presumption of innocence which until the sixth month still gets some of his/her rights as a worker, and if the court declares the relevant labour/worker is innocent, the employer is obliged to re-employ the labour/worker. This is seen as discriminatory or different treatment in the law that is contrary to the 1945 Constitution,

and the provisions of Article 1 paragraph (3) which states that Indonesia is a state of law, therefore Article 158 must be declared to have no binding legal force;

Considering whereas even though Article 159 stipulates, if the labour/worker who has been laid off because of any grave errors according to Article 158, does not accept his/her termination of employment, the relevant worker/labour may file a lawsuit to the industrial dispute settlement institution, then in addition to this provision, this creates an unfair and heavy burden to provide evidence for the labour/worker to prove his/her innocence, as the economically weaker party who should receive more legal protection than the employer, Article 159 regarding this matter also creates confusion in thinking by mixing the criminal case process with the civil case process inappropriately";

Meanwhile, in the legal considerations of the Court's decision Number 61/PUU-VIII/2010, dated November 14th, 2011, the Court stated, among other things, as follows:

[3.14.4] Whereas the Petitioner argued that Article 160 paragraph (3) of Law 13/2003 which states, "Employers may terminate the employment relationship of worker/labour who after 6 (six) months are unable to perform his/her work properly due to the criminal proceedings as referred to in paragraph (1)" and Article 160 paragraph (6) of Law 13/2003 which states, "Termination of employment as referred to in paragraphs (3) and (5) is carried out without the decision of an industrial relations dispute settlement institution" is contrary to Article 28D paragraph (1) of the 1945 Constitution which states, "Everyone has the right to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law";

According to the Petitioner, the provisions of Article 160 paragraph (3) and paragraph (6) of Law a quo, has ignored the principle of presumption of innocence, because the alleged crime committed against the worker/labour is not necessarily proven in court. The provision has given the authority to the employer to be able to terminate the employment relationship of the worker/labour who is suspected of committing criminal act, even though there has been no decision that has permanent legal force on the criminal act committed;

According to the Court, because the criminal case process can last for years it does not guarantee legal certainty (justice delayed justice denied), both for the worker/labour and the employers themselves. However, if any worker is unable to work, it will reduce business productivity so that on a large scale it will disrupt the production target that has become the responsibility of the employer to other party. From the point of view of company efficiency and business certainty, the Law has regulated it properly, and has also maintained a balance between the rights of a worker and the rights of an employer. Included in the balance is that the provision regarding the Termination of Employment does not need to be carried out through the mechanism for a decision of an industrial relations dispute settlement institution because in the provisions of Article 171 it is stated, "… then worker/labour may file a lawsuit to the industrial relations dispute settlement institution within a maximum period of 1 (one) year from the date of termination of employment";

However, the Court is of the opinion that if the relevant worker/labour is found innocent, then that person's good reputation must be reinstated. Any person whose good name has been reinstated must be returned to their original position in accordance with their rights, dignity and value. The employer must accept him back as a worker/labour provided that the employer is not obliged to pay any wages within the grace period

after the expiration of the 6 (six) month grace period as referred to in Article 160 paragraph (5) of Law 13/2003 until he is reinstated as a worker/labour of the relevant employer;

[3.14.5] Whereas the Petitioner argued that Article 162 paragraph (1) of Law 13/2003 which states, "Any worker/labour who resigns on his/her own accord, shall receive compensation for his/her rights in accordance with the provisions of Article 156 paragraph (4)" contrary to Article 28D paragraph (2) of the 1945 Constitution which states, "Everyone has the right to work and to receive compensation as well as fair and proper treatment in the work relationship";

According to the Petitioners, the provisions of Article 162 paragraph (1) of Law 13/2003 have abolished the appreciation and devotion of a worker/labour for his/her service to the company during his/her work, because the provisions a quo and their derivatives have provided an understanding regarding the absence of any rights to the tenure of the worker/labour who resigns in good faith of his/her own free will, except for separation money;

Whereas Article 156 paragraph (4) of Law 13/2003 states, "The compensation money that should be received is as referred to in paragraph (1), including:

a. annual leave that has not been taken or missed.

b. any return cost or expense for any worker/labour and his/her family to the place where the worker/labour is accepted to work.

c. housing reimbursement as well as any treatment and care which are set at 15% (fifteen percent) of the severance pay and/or service pay for those who meet the requirements;

d. other matters stipulated in the work agreement, company regulations or mutual labour agreement";

According to the Court, if working in principle is to preserve the sustainability life by obtaining wages in accordance with his position and achievements, then someone who resigns of his/her own free will, it may be possible that he/she has a new job that is more in line with his/her achievements. This is mostly done by those with education and skills so that they are entitled to better income.

Moreover, if the relevant person at work has previously mastered various abilities and skills and gained experiences that increase his/her bargaining power. Therefore, according to the Court, the right of any worker who resigns voluntarily should only receive compensation for his/her rights in accordance with the provisions of Article 156 paragraph (4) of Law 13/2003 and it is not contrary to the 1945 Constitution which requires fair and proper treatment in work relationship;

[3.14.6] Whereas Article 171 of Law 13/2003 states, "Any worker/labours who experience termination of employment without the decision of the competent industrial relations dispute settlement institution as referred to in Article 158 paragraph (1), Article 160 paragraph (3), and Article 162, and the relevant worker/labour cannot accept the termination of employment, then the worker/labour may file a lawsuit to the industrial relations dispute settlement institution within a maximum period of 1 (one) year from the date of termination of his/her employment";

Whereas the Petitioners argue, the Article a quo along the phrase "within a maximum period of 1 (one) year from the date of termination of his/her employment" is contrary to Article 28D paragraph (1) of the 1945 Constitution which states, "Everyone has the right to recognition, guarantee, protection and fair legal certainty as well as equal treatment before the law" or at least it must be interpreted "after a decision has permanent and binding legal force (inkracht van gewijsde)";

According to the Petitioner, the provisions of Article 171 of the Law a quo, regarding the phrase "within a maximum period of 1 (one) year from the date of termination of his/her employment", does not provide legal protection because it has provided limits for any worker/labour seeking justice;

Whereas, before giving any consideration to the Petitioner's argument a quo, the Court needs to explain that in Decision 012/PUU-I/2003, dated October 28th, 2004, the Court has stated that Article 171 of Law 13/2003 regarding the paragraph in "… Article 158 paragraph (1) ..." is contrary to the 1945 Constitution. This is related to Article 158 of Law 13/2003 which was also declared to be contrary to the 1945 Constitution in the same decision. Although Article 171 of Law 13/2003 contains a phrase referring to "Article 158 paragraph (1)", according to the Court, the reasons for the constitutionality of the Petitioner's petition a quo are different from the reasons for the constitutionality in the petition Number 012/PUUI/2003. Since the Petitioner's petition a quo is not the same as the previous case proposition, therefore the petition a quo does not violate the principle of ne bis in idem, so that the Court can still carry out judicial review in accordance with Article 42 of the Constitutional Court Regulation Number 06/PMK/2005 on Procedural Guidelines in Judicial Review Cases;

In relation to the phrase "within a maximum period of 1 (one) year from the date of termination of his/her employment" in the provisions of Article 171 of Law 13/2003, the Court considers that the maximum period of one year is a proportional period to balance the interests of the employers and the workers/labours and it is not contrary to the Article 28D paragraph (1) of the 1945 Constitution. Such limitations are even important for fair legal certainty so that the problem does not drag on and can be completed in a not too long period of time;

Whereas in relation to the Petitioners' argument against Article 171 of the Manpower Law, the Court needs to explain that in Decision Number 61/PUU-VIII/2010, dated November 14th, 2011, as described above, the Court has declared its dismissal of the petition *a quo*. According to the Court, the reasons for the constitutionality of the Petitioners' petition in this case *a quo* are the same as the reasons for constitutionality in petition Number 61/PUU-VIII/2010. Therefore, all considerations in the Decision of the Constitutional Court Number 61/PUU-VIII/2010 shall also apply to the decision in the petition *a quo*. Therefore, according to the Court, the Petitioners' petition regarding the Article 171 of the Manpower Law is *ne bis in idem*;

Whereas in the meantime, with regard to Article 82 of the PPHI Law, due to the provisions of Article 159 of the Manpower Law it has been declared as in contrary to the 1945 Constitution through Court Decision Number 012/PUU-I/2003 dated October 28th, 2004, and has been declared to have no binding legal force, so that because Article 82 of the PPHI Law also regulates the existence of Article 159 of the Manpower Law, the legal considerations in examining Article 159 of the Manpower Law shall also apply to the examination of Article 82 of the PPHI Law;

Based on all of the above legal considerations, the Court subsequently rendered

the verdicts which stated as follows:

1. To grant the petition of the Petitioners in part;
   1.1. Article 82 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (State Gazette of the Republic of Indonesia of 2004 Number 6, Supplement to the State Gazette of the Republic of Indonesia Number 4356), regarding the paragraph in "Article 159" is contrary to the Constitution of the Republic of Indonesia of 1945.
   1.2. Article 82 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (State Gazette of the Republic of Indonesia of 2004 Number 6, Supplement to State Gazette of the Republic of Indonesia Number 4356), in regard to the paragraph in "Article 159", it has no binding legal force.
2. To dismiss the rest of the Petitioner’s petition.