JURIDICAL ANALYSIS ON BIPARTITE NEGOTIATION IN THE EMPLOYEE TERMINATION PROCESS AT PT. J RESOURCES BOLAANG MONGONDOW, INDONESIA

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Abstract - The disputes over termination of employment are common in the industrial relations. Many industrial relations actors settle disputes by filing lawsuits to the Industrial Relation Court. They assume that bipartite negotiation is ineffective in settling disputes of termination of employment in particular. In contrary, a company In Indonesia, named PT. J Resources Bolaang Mongondow, experiences it differently where the bipartite negotiation is well-emphasized in settling disputes of termination of employment. This is also supported by various strategies implemented inside the company to prevent any disputes, particularly the termination of employment that leads to the Industrial Relation Court. This paper uses descriptive analysis as well as normative-empirical legal as the research method. The data was collected through literature review, research papers, essays, national journal, interview, website as well as legal studies. The termination of employment is regulated under Law No. 13 of 2003 concerning Manpower, while the Law No. 2 of 2004 regulates the Industrial Relations Dispute Settlement. Likewise, the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. PER.31/MEN/XII/2008 concerning the Guideline for Settlement of Industrial Relations Dispute through Bipartite Negotiations. The disputes of termination in industrial relations emerge due to the violation of company regulation in the employment contract done by the employee. Nonetheless, PT. J Resources Bolaang Mongondow has been successfully implementing the bipartite negotiations to settle disputes. Law No. 2 of 2004 concerning the Industrial Relations Disputes Settlement requires that it has to be resolved first through bipartite bargaining in deliberation to reach consensus. Strategy determines the effectiveness of bipartite negotiations in a company.

 $\label{thm:condition} \textit{Keywords: Industrial Relations, Termination of Employment, Bipartite Negotiation.}$

I. INTRODUCTION

Basically, humans are living things that have 3 (three) basic needs, namely clothing, shelter and food. To be able to meet their needs, humans must work, either by working for themselves or working for others. In its implementation, both employers and workers have rights and obligations are expected to be able to carry out their respective functions properly. The relationship between employers and workers can be harmonious if both parties understand and implement the mandate of Law No. 13 of 2003 concerning Manpower and related implementing regulations.

The means of supporting labor process is industrial relations. The purpose of industrial relations is the creation of harmonious relations through cooperation between employers and workers. Article 1 number 16 Law No. 13 of 2003 concerning Manpower provides a definition of industrial relations, which is a system of relations formed between actors in the process of producing goods and / or services consisting of elements from entrepreneurs, workers / laborers, and government based on the values of Pancasila and Constitution Republic of Indonesia Year 1945. The scope of industrial relations is workers / laborers, entrepreneurs and government. These three parties form a process in production and / or services based on certain principles and values. In its implementation, entrepreneurs create partnerships and justice, and provide welfare to workers / laborers. Workers / laborers carry out their obligations, channel aspirations in a democratic manner, develop expertise and participate in advancing companies, and government carries out supervision, determines policies, provides services, and takes action on violations of applicable regulations. One form of the implementation of industrial relations is the formation of a collective working agreement in which the contents of the rights and obligations

of the entrepreneur and worker / laborer. The collective working agreement is made by both parties, namely entrepreneur and workers / labor union and is valid within 1 (one) company.

Relationships between workers / laborers and employers will not always run smoothly, so it is important to build good relations between workers / laborers and entrepreneurs. However, it cannot be denied that in every work relationship there must be something that goes harmoniously but there are also those that go wrong. Differences in views and opinions will result in disputes between employers and workers / laborers. Thus, to prove disputes that arise, Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes or PPHI is specifically drawn up. In industrial relations disputes, there are 4 (four) types of disputes, namely disputes over rights, disputes over interests, disputes over termination of employment relations, and disputes between trade unions / labor unions in one company. Disputes that often occur in the continuity of industrial relations are disputes over termination of employment. In every job, one day will certainly end. Termination of a job is done through termination of employment or layoffs. However, the termination of an employment relationship can be caused by various reasons. The right work relationship decision becomes a disagreement with no agreement or process is not in accordance with regulations. Disputes that occur will usually resolve the industrial relations court, both parties, both from employer and worker / laborer, cannot resolve the dispute through bipartite negotiations. Bipartite negotiations are the first steps that must be taken to resolve a dispute carried out by disputing parties. The parties referred to in this case are workers / laborers or trade / labor unions with entrepreneurs. Bipartite negotiations are carried out by deliberation with the aim that disputes that occur can reach consensus.

One of the industrial relations disputes in the form of termination of employment occurred in a subsidiary of PT. J Resources Nusantara Jakarta, namely PT. J Resources Bolaang Mongondow, based in Kotamobagu, North Sulawesi, Indonesia, which is engaged in the gold mining industry. Termination of employment occurs when one of the workers / laborers is proven to have violated company rules and regulations as stipulated in the collective working agreement. A dispute arises when worker / laborer refuses and asks not to be terminated by trying to convince the company. In addition, worker / laborer utters various reasons to support his argument, in the hope that termination of employment will not occur. However, because termination of employment could no longer be avoided, the company decided to hold bipartite negotiations as the initial mechanism, which must be carried out for the settlement of industrial relations disputes.

In practice, many bipartite negotiations have not been effective. Many factors make bipartite negotiations not the best solution in the process of resolving industrial relations disputes. Bipartite negotiations are an initial mechanism that must be implemented by disputing parties. Bipartite negotiations will not be effective if there is no good faith from each party to discuss and resolve the dispute. This led to many disputes which were eventually resolved through industrial relations courts. In contrast to PT. J Resouces Bolaang Mongondow, which has not yet had any industrial relations dispute cases brought to the industrial relations court, because most disputes can be resolved through bipartite negotiations, particularly disputes over termination of employment. Termination of employment is a very sensitive matter in the world of employment.

II. LITERATURE REVIEW

2.1 Employment law

Molenaar memberikan pengertian tentang hukum ketenagakerjaan, yaitu hukum yang berlaku di suatu negara yang pada pokoknya mengatur mengenai hubungan antara tenaga kerja dengan tenaga kerja atau tenaga kerja dengan pengusaha. Hukum ketenagakerjaan mengatur segala aspek yang berhubungan dengan tenaga kerja pada waktu sebelum, selama, dan sesudah masa kerja. Pasal 1 angka 5 Undang- Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan memberikan definisi pengusaha, yaitu:

Molenaar provides an understanding of labor law, namely law applicable in a country which principally regulates relationship between labor and employers. Labor law regulates all aspects related to labor before, during and after work period. Article 1 number 5 Law No. 13 of 2003 concerning Manpower provides the definition of an entrepreneur, namely:

- 1. An individual, an association, or a legal entity that operates a company that is owned by itself
- 2. An individual, an association, or a legal entity that independently runs a company that does not belong to him
- 3. An individual, an association, or a legal entity located in Indonesia, representing a company as referred to in letters a and b which is domiciled outside the territory of Indonesia.

In Article 1 number 6 of Law no. 13 of 2003 Concerning Manpower, what is meant by the company is:

- 1. Any form of business that is either a legal entity or not, owned by an individual, owned by an association or owned by a private or state-owned legal entity that employs workers / laborers by paying wages or other forms of remuneration.
- 2. Social enterprises and other businesses that have management and employ other people by paying wages or other forms of compensation.

In an employment relationship, of course it is based on an agreement in the form of a work agreement. Based on Article 1601 letter a of KUHPer, a work agreement is an agreement that states that the first party worker binds himself to work with the second party employer for agreed period by receiving a reward in the form of a wage. The work agreement in Article 1 of Law Number 13 of 2003 concerning Manpower states that a work agreement is an agreement between a worker / laborer and an entrepreneur or employer that contains the conditions of employment, rights and obligations of the parties. The relationship between worker / laborer and entrepreneur is called an employment relationship, that is, the legal relationship between entrepreneur and worker / laborer based on a work agreement. In work relations, of course, there must be regulations that can create a harmonious and conducive relationship.

2.2 Industrial relations

Article 1 number 16 Law No. 13 of 2003 concerning Manpower contains the definition of industrial relations, which is a system formed between actors in the process of producing goods and or services consisting of elements from entrepreneurs, workers / laborers and government, which are based on the values of Pancasila and 1945 Constitution. Article 102 of Law Number 13 of 2003 concerning Manpower is regulated by following functions:

- 1. In carrying out industrial relations, government has the function of determining policies, providing services, carrying out supervision, and taking action against violations of labor laws and regulations.
- 2. In carrying out industrial relations, workers / laborers and workers / labor unions have the function of carrying out work in accordance with their obligations, maintaining order for the continuity of production, channeling aspirations in a democratic manner, developing skills and expertise as well as participating in advancing the company and fighting for the welfare of members and their families.
- 3. In carrying out industrial relations, entrepreneurs and business organizations have the function of creating partnerships, developing businesses, expanding employment opportunities, and providing worker / laborer welfare in an open, democratic and just manner.

In addition, in labor law there is an important role for government to protect both parties by issuing labor regulations so that a harmonious relationship can be created between entrepreneurs and workers / laborers. With the existence of Industrial Relations, it is hoped that it can create a balance between workers / laborers and entrepreneurs, because they need each other. Abdul Khakim in his book entitled The Basics of Indonesian Manpower Law, (Bandung: PT Citra Aditya Bakti, 2014), p. 7-8), said that industrial relations have important principles in the implementation of industrial relations, namely as follows:

- 1. The principle of benefit is that all activities and development carried out must be put to good use. This is for the welfare of people.
- 2. The principle of joint and family effort is the effort of all people carried out together with mutual cooperation to achieve the ideals of nation.
- 3. The principle of democracy is the deliberative settlement of national problems so as to reach consensus.
- 4. The principle of fairness and equality means that results achieved from development must be enjoyed fairly and equitably.
- 5. The principle of life and balance, is the existence of balance in the interests of world and hereafter such as material and spiritual, body and soul, individual and society.
- 6. The principle of legal awareness is that every citizen is required to obey and be aware of the law and oblige the state to enforce the law.
- 7. The principle of self-confidence, in this case development is carried out on the basis of belief in the capabilities and strengths that exist within oneself which is based on the national personality. Thus the process of implementing industrial relations is based on two very important working principles, namely the principles of kinship and mutual cooperation, and the principles of deliberation for consensus.

Based on Article 102 paragraph 2 of Law no. 13 of 2003 concerning Manpower, the functions of workers / laborers and trade / labor unions are:

- 1. Carry out work in accordance with its obligations.
- 2. Maintain orderliness for the sake of production continuity.
- 3. Channel aspirations in a democratic manner.
- 4. Develop skills and expertise and participate in advancing the company, and
- 5. Fight for the welfare of members and their families.

Furthermore, in article 102 paragraph 3 of Law no. 13 of 2003 concerning Manpower, the function of entrepreneurs in industrial relations is to create partnerships; developing a business; expanding employment opportunities; and provide worker / laborer welfare in an open, democratic and just manner. The purpose of industrial relations is to create a working relationship in a conducive and harmonious atmosphere. To achieve this goal, industrial relations has supporting facilities, including:

1. A trade union / labor union

A trade union / labor union is a form of organization from, by and for workers / laborers both inside and outside the company. In fighting for and defending the rights of workers / laborers and their families, this organization is free, open, independent, democratic and responsible.

2. Employers' Organization

An employers' organization is an organization that is democratic, free, independent and responsible, which is formed by Indonesian entrepreneurs. In particular, this organization deals with industrial and labor law to improve the quality of human resources.

3. Bipartite cooperation institutions

This institution is a forum for communication and consultation on industrial relations in a company. This institution consists of entrepreneurs and trade / labor unions that have been registered at the agency responsible for manpower affairs.

4. Tripartite cooperation institutions

This institution is a forum for communication, consultation and deliberation on issues in the manpower sector whose members consist of employers' organizations, trade / labor unions and government.

5. Company regulations

This regulation is made by entrepreneur which contains work conditions and company rules. This regulation is made in writing and only made by entrepreneurs without a trade / labor union. Article 1 point 20 of Law Number 13 Year 2003 Concerning Manpower states that company regulations are regulations that are made in writing by companies that contain work conditions and company rules. Company regulations must be made if a company has at least 10 workers and a maximum of 50 workers. Company regulations are drawn up and become the responsibility of company. According to Article 110 paragraph 1 of Law Number 13 Year 2003 Concerning Manpower, in drafting company regulations, the company still takes into account the suggestions and considerations of workers / labor representatives from company. Company regulations must contain at least:

- a. Company rights and obligations
- b. Rights and obligations of workers
- c. Terms of work
- d. Company code of conduct
- e. The period of validity of company regulations
- 6. Collective working agreement

A collective working agreement is the result of an agreement between a trade union / labor union and an entrepreneur, which contains the terms of work, rights and obligations of both parties. According to article 1 number 21 of Law Number 13 of 2003 concerning Manpower, a collective working agreement is the result of negotiations between a trade / labor union or several trade / labor unions registered at the agency responsible for manpower affairs and an entrepreneur, or several entrepreneurs or employers' association which contains the terms of employment, rights and obligations of both parties. If a company already has a collective work agreement, the company regulations no longer apply. In article 124 paragraph 1 of Law Number 13 of 2003 concerning Manpower, collective working agreement contains at least:

a. The rights and obligations of entrepreneurs.

- b. Rights and obligations of trade unions / labor unions as well as workers / laborers.
- c. Period and date of entry into force of the collective working agreement.
- d. Signatures of the parties to make a collective working agreement.
- 7. Participatory manpower laws and regulations, including elements of workers / laborers and entrepreneurs.
- 8. Industrial relations dispute settlement institutions. One of the special courts in general court, namely industrial relations court.

2.3 Industrial relations disputes

Based on Article 1 number 1 of Law no. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, the definition of industrial relations disputes is differences of opinion that result in conflicts between employers or a combination of employers and workers / laborers or trade / labor unions due to disputes over rights, disputes over interests, disputes over termination of employment and disputes between trade unions / labor unions in one company. In the Law on the Settlement of Industrial Relations, there are 4 (four) types of industrial relations disputes, namely rights disputes, disputes over interests, disputes over termination of employment, and disputes between labor unions within the company.

- 1. Disputes over rights
 - Rights disputes are disputes that occur due to the non-fulfillment of rights arising from differences in the implementation or interpretation of provisions in statutory regulations, work agreements, company regulations or collective working agreements.
- 2. Disputes of interest
 - Disputes of interest arise due to disagreements in opinion regarding the making and / or changes of working conditions stipulated in the work agreement, company regulations or collective working agreement.
- 3. Disputes over termination of employment
 - Disputes over termination of employment are disputes that occur because there is no conformity of opinion regarding the termination of employment relationship carried out by one of the parties. In labor law, termination of employment is known in several types, namely:
 - Termination of employment by employers

 Termination of employment by employers often occurs either due to mistakes made by workers / laborers or due to company conditions which forcefully have to terminate employment relationship.
 - b. Termination of employment by workers / laborers
 - The worker / laborer party may terminate his / her employment relationship with the consent of entrepreneur. Termination of employment can occur if on their own accord without encouragement from the entrepreneur, the termination of work agreement, resignation in the event the worker / laborer has been absent for at least 5 (five) consecutive working days and has been summoned by entrepreneur 2 (two) times in written. This is stated in article 151 paragraph 3 letter b 1 of Law No.13 of 2003 concerning Manpower.
 - c. Legal termination of employment
 - This happens automatically, namely because the term of agreement between entrepreneur and worker / laborer has ended. In article 61 paragraph 1 of Law No.13 of 2003, work agreement ends when the worker dies, the term of agreement ends, there is a court decision that is legally enforceable and there are certain events contained in company regulations or collective labor agreements that can lead to the termination work relationship.
 - d. Termination of employment by the court (PPHI)
 - With important reasons, employers and workers / laborers can ask the district court to terminate employment relationship. Termination of employment carried out by the court can occur because the company goes bankrupt (based on the decision of Commercial Court), termination of employment if there are workers / laborers who do not meet the requirements for work and are sued through the PPHI agency, termination of employment due to the termination of work agreement.
- 4. Disputes between work unions / labor unions in one company. This dispute occurs because there are different understandings regarding membership in the exercise of union rights and obligations
- 2.4 Employment Termination Disputes

According to Umar Kasim, the problem that often arises in the world of labor is the problem of termination of employment. Termination of employment is a very sensitive issue in the world of employment. So that the role of entrepreneurs is very important and wise in making decisions to terminate employment. Termination of employment has an impact on decreasing the welfare of the community. So that termination of employment should be maximized so that it does not happen, termination of employment relations with workers / labor should be based on the prevailing laws and regulations so as to minimize the occurrence of disputes and be carried out in a good manner. Thus, relationship between the company and workers / laborers can be well established. For example, if worker / laborer is elderly, the termination of employment is carried out in accordance with the law. However, in general, termination of employment occurs because of unavoidable disputes. Termination of employment by companies usually occurs when:

- 1. Inability to carry out their job.
- 2. Having poor disciplinary behavior and attitudes.
- 3. Violating company rules and regulations.
- 4. Conflicts often occur and cannot cooperate with other employees.
- 5. Committing immoral acts within the company.

Termination of employment by employers can occur because worker / laborer commits a violation and has been given a warning letter both SP 1, SP 2, and SP 3. This can lead to termination of employment if the error is repeated repeatedly. In article 161 of Law no. 13 of 2003 states that:

- 1. In the event that worker / laborer violates provisions stipulated in the work agreement, company regulation or collective working agreement, entrepreneur can terminate the employment relationship after worker / laborer has been given the first, second and third warning letters in succession.
- 2. The warning letters as referred to in paragraph (1) are each valid for a maximum of 6 (six) months, unless otherwise stipulated in the work agreement, company regulations or collective working agreement.
- 3. Workers / laborers who experience termination of employment on the grounds referred to in paragraph (1) receive severance pay of 1 (one) time the provisions of Article 156 paragraph (2), reward money for working period of 1 (one) time the provisions of Article 156 paragraph (3) and compensation money according to the provisions of Article 156 paragraph (4).

In paragraphs 1 to 4, article 156 of Law Number 13 of 2003 concerning Manpower states that:

- 1. In the event of termination of employment, entrepreneur is obliged to pay severance pay and / or service pay and compensation for entitlements that should have been received.
- 2. The calculation of severance pay as referred to in paragraph 1 shall be at least as follows:
 - a. The work period is less than 1 (one) year, 1 (one) month of wages;
 - b. Working period of 1 (one) year or more but less than 2 (two) 4 (four) years, 2 (two) months of wages;
 - c. Work period of 2 (two) years or more but less than 3 (three) years, 3 (three) months of wages;
 - d. Working period of 3 (three) years or more but less than 4 (four) years, 4 (four) months of wages;
 - e. Working period of 4 (four) or more but less than 5 (five) years, 5 (five) months of wages;
 - f. Working period of 5 (five) years or more but less than 6 (six) years, 6 (six) months of wages;
 - g. Work period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months of wages);
 - h. Work period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months of wages;
 - i. Work period of 8 (eight) years or more, 9 (nine) months of wages.
- 3. The calculation of work period award money as referred to in paragraph 1 is stipulated as follows:
 - a. Working period of 3 (three) years or more but less than 6 (six) years, 2 (two) months of wages:
 - b. Work period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months of wages;
 - c. Working period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months of wages;
 - d. Work period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months of wages;

- e. Work period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months of wages;
- f. Work period of 18 (eighteen) years or more but less than 21 (twenty one) years, 7 (seven) months of wages;
- g. Work period of 21 (twenty one) years or more but less than 24 (twenty four) years, 8 (eight) months of wages;
- h. Working period of 24 (twenty four) years or more, 10 (ten) months of wages.
- 4. 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 failed;
 - b. Return costs or fees for workers / laborers and their families to the place where workers / laborers are accepted to work;
 - c. Housing compensation as well as medication and treatment is set at 15% (fifteen percent) of the severance pay and / or service pay for those who meet the requirements;
 - d. Other matters stipulated in work agreements, company regulations or collective labor agreements.

2.5 Industrial relations dispute settlement

In the Law of the Republic of Indonesia Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, dispute resolution can be pursued through court channels and also through channels outside the court, namely:

- 1. Bipartite negotiation is negotiation between an entrepreneur or a combination of employers and workers / laborers or trade / labor unions which is conducted internally by the company. If bipartite negotiations reach an agreement, two parties form a collective agreement and register it at the local Industrial Relations Court. However, if during the negotiation process there is no agreement, disputing parties must resolve the dispute through a tripartite negotiation mechanism.
- 2. Tripartite negotiations are negotiations between employer and workers / laborers that involve a third party. Tripartite negotiations consist of mediation, conciliation and arbitration.
 - a. Mediation is a process of dispute resolution carried out by deliberation mediated by a mediator from the Ministry of Manpower who resolves rights disputes, disputes over interests, layoffs and disputes between labor unions in a company. If an agreement is reached, a collective agreement will be made and registered at Industrial Relations Court. However, if mediation does not reach an agreement, mediator will provide a written recommendation and if both parties agree with recommendation, it will be registered with Industrial Relations Court. However, if one of the parties rejects recommendation, he can file a claim to Industrial Relations Court.
 - b. Conciliation is a deliberative settlement that will be mediated by conciliator but not from Manpower Office but elected by both parties.
 - c. Arbitration, namely the settlement of disputes outside Industrial Relations Court which can be reached through a written agreement submitted to an arbitrator who is personally chosen by parties and arbitration decision is final and binding.
- 3. The settlement is carried out through Industrial Relations Court Procedural law, namely by using Civil Procedural Law.

Furthermore, based on the Regulation of Minister of Manpower and Transmigration Number PER.31 / MEN / XII / 2008 concerning Guidelines for the Settlement of Industrial Relations Disputes through Bipartite Negotiations, the stages of bipartite negotiations are as follows:

- a. The stage before negotiation
 - 1) The party who feels aggrieved must take initiative to communicate the problem in writing to the other party.
 - 2) The party that feels aggrieved is an individual worker who is not a member of a trade / labor union and may authorize the management of trade / labor union in the company concerned to be able to assist workers in negotiations.
 - 3) From the employer or company management and / or who is given mandate must handle dispute resolution directly.
 - 4) A trade union / labor union or entrepreneur can request a companion from their respective organizational apparatus.

- 5) In the event that worker who feels that his rights have been harmed is not a member of trade / labor union and number is more than 10 (ten) workers, then he must appoint a representative in writing which is agreed upon by a maximum of 5 (five) people from worker who feels that he is being harmed.
- 6) In the case of a dispute between trade unions / labor unions within one company, each trade union / labor union will appoint a representative of a maximum of 10 (ten) people.

b. Negotiation Stage

- 1) The two parties concerned take inventory and identify problems.
- 2) The two parties prepare and agree on a written order and set a schedule for negotiations.
- 3) In the order that has been established, two parties can agree that during negotiations both parties continue to carry out their obligations accordingly.
- 4) The two parties conduct negotiations in accordance with agreed order and schedule.
- 5) If one of the parties is not willing to continue negotiation, the parties or one of parties can register dispute with agency responsible for manpower affairs in the district / city where the worker works even though it has not reached 30 (thirty) working days.
- 6) After reaching 30 (thirty) working days, negotiations can be continued as long as the parties agree.
- 7) At every stage of negotiation, a minutes must be made signed by parties and if one of the parties is not willing to sign it then it is recorded in the minutes concerned.
- 8) The final result of negotiation is made in the form of a final minutes which at least contains the full names and addresses of the parties, date and place of negotiation, subject matter or object in dispute, opinions of the parties, conclusions and dates and signatures of the parties.
- 9) The draft final minutes is prepared by entrepreneur and signed by both parties or one of the parties if the other party is not willing to sign.

c. The stage after negotiation

- 1) If the parties reach an agreement, a collective agreement will be made signed by the negotiating parties and register it at the industrial relations court in the district court where the parties enter into a collective agreement.
- 2) If the negotiation does not reach an agreement or fails, then one or both parties will register the dispute with the agency responsible for manpower affairs in the district / city where the worker works, by attaching evidence that the settlement efforts through bipartite negotiation have been carried out.

III. METHOD

This type of research is descriptive analytical. It is intended that the results of research can provide a complete description as a whole and can describe the results of the analysis of a problem being researched. To be able to achieve a comprehensive and descriptive research, this research is carried out with normative-empirical legal research that refers to the written regulations that apply in Indonesia, and is supported by the results of interviews with related parties. The type of data in this study is secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials, and is supported by primary data obtained directly from sources through interview techniques. Then this research uses an approach to legal systematics, namely an approach to the legal materials that are collected. The data analysis is qualitative in nature. Processing of legal materials in this study uses a deductive method, where this research draws a conclusion from general problems to specific problems.

IV. RESEARCH RESULT AND ANALYSIS

B.1 Bipartite Negotiation Strategy at PT. J Resources Bolaang Mongondow

PT. J Resources Bolaang Mongondow (Company) is engaged in the gold mining industry, located in Kotamobagu, North Sulawesi, Indonesia. There are many industrial relations disputes that occur within the Company, particularly disputes over termination of employment (dismissal disputes). Of all the dismissal disputes that occurred at the Company, none have reached industrial relations court. Most disputes can be

resolved through bipartite negotiations. Superintendent for Employee and Industrial Relations of the Company, namely Filep Sarapil Tulende, S.H, said that this happened because of transparency between the company, workers and union. Workers and trade unions also understand Law Number 13 of 2003 concerning manpower and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. Transparency means the company is honest and open to workers and trade unions. Workers are always given the opportunity to express opinions on issues that could potentially conflict and workers are given space to communicate with the Company. Thus, a two-way communication is established between the company, workers and labor unions. Workers and trade unions understand the regulations related to Law Number 13 of 2003 and Law Number 20 of 2004 such as collective labor agreements. Thus, if you commit a violation, you can immediately know what rules are being violated, and what are the sanctions. The bipartite negotiation process is carried out in accordance with the Law, where it comes to an agreement set out in the form of a collective agreement. In addition, there is intense communication from both parties and very much maintaining objectivity.

The company also holds an *Industrial Relations program for non-Industrial Relations*. This program is a training provided by the Company to workers and trade unions. In this training, workers and trade unions are given knowledge of work norms, an understanding of the law, an understanding of industrial disputes and their legal basis. Workers are also given an understanding of working professionally. Thus, when a dispute occurs, what is seen by both parties is whether violation actually occurred in accordance with applicable regulations and is supported by existing evidence. Furthermore, whether the rights and obligations have been fulfilled or not. If it has been fulfilled, it will be stated in collective agreement. However, if it has not been fulfilled, it will be discussed by deliberation to reach a consensus until a collective agreement is reached.

According to Superintendent Employee and Industrial Relations of the Company, namely Filep Sarapil Tulende, SH, Industial Relations training for non-Industrial Relations is one of the Company's strategies to strengthen and make workers understand the Law, so that on average, direct termination disputes can be resolved through bipartite negotiations only. This strategy is considered quite successful. Specialist Industrial Relations & Compliance PT. J Resources Nusantara Jakarta, Anni Kartika, S.H, said that the company considers workers and labor unions as partners because there is a reciprocal relationship in industrial functions.

The company also maximizes bipartite cooperation institution forum (LKS Bipartite). LKS Bipartite is a communication medium between workers and employers as well as trade unions. This is done to discuss issues, information, and matters in the work environment that have potential to become disputes. In the company, bipartite institution is carried out very creatively, if in other companies they just sit quietly in a room and are then given *snacks* and coffee, this is not the case at the company. Bipartite worksheets are held outside the work area so that mind is fresher and creates a different atmosphere. In addition to discussing materials that are the subject of discussion in bipartite institution, employers and workers as well as trade unions jointly carry out activities such as *outbound* activities. In fact, sometimes the meetings take place at the homes of trade union members or workers' representatives in turns. Thus a sense of kinship or brotherhood arises, so as to increase a sense of trust in one another. Companies always open themselves to workers and trade unions to discuss issues or information relating to industrial relations.

Then the company also has a disciplinary committee, which is formed by company management. The disciplinary committee members consist of 9 (nine) heads of each department. The function of disciplinary committee is to discuss any violations that have occurred and the potential for termination of employment, without being given a prior warning letter. However, violations discussed are only those that have the potential for termination of employment and do not apply to multilevel violations.

B.2 Termination Problems Researched

Termination of employment is carried out by the Company against one of its employees, namely Worker, not his real name (Worker), who has served as *foreman* or supervisor. His job is to organize and control the work in the field, then provide reports to his supervisor, namely *supervisor*. Workers have worked for the Company as of August 27, 2013.

Workers commit violations in the form of not coming to work without information for 3 (three) consecutive days, namely on February 5, 6, and 7, 2020. In accordance with Article 60 paragraph 2 of Collective Labor Agreement, Worker is subject to disciplinary action. The sanction given is in the form of a second warning letter, with a validity period of 6 (six) months, starting from the date warning letter is issued. When the second warning letter is still in effect, Worker commits another violation of not coming to work without information on February 15, 2020. Based on Article 60 paragraph 3 of Collective Bargaining Agreement, the second warning letter is upgraded to the third warning letter.

Then the period of validity of third warning letter, worker will not return to work without information on February 17, 18, 19, and 20, 2020. So then on February 21, 2020 the Company sent a summons addressed to

Mr. Jamal's home address, regarding the meeting at February 22, 2020, but Worker did not fulfill the call. Then on February 23, 2020, the Company issued a notice of termination of employment with a multilevel violation category with the form of consecutive absenteeism or absenteeism to workers. By giving this letter, Worker did not accept the termination of employment by the Company, so that on February 24, 2020, the Company and Worker conducted bipartite negotiations. In the bipartite negotiations, the Company was represented by *Industrial Relations* section, which was under *HRGA* (*Human Resources and General Affairs*) department.

B.3 Implementation of Bipartite Negotiations

Bipartite negotiations between the Company and Workers began on February 24, 2020, Workers came to fulfill the call of the Company along with trade union officials, because Workers were members of workers' union. During bipartite negotiations, workers stated that they were still subject to the applicable 2019-2020 Collective Labor Agreement. However, initially the employee asked the company not to apply termination sanction, and was willing to make a statement letter, and would not repeat violation again.

Sanctions for violations committed by workers are contained in Article 60 paragraph 4 letter O of 2019-2020 Collective Labor Agreement, namely termination of employment. If the sanctions given are not in accordance with collective working agreement, then this will set a future precedent in enforcing applicable regulations. In addition, there will be a discrepancy with collective work agreement that has been mutually agreed upon by the Company and trade union. The company describes in detail violations committed by workers, as well as the rights received by workers as a result of termination of employment. With the employees' awareness and good understanding of applicable regulations, employees are finally willing to accept the consequences due to violations of company rules.

The result of bipartite negotiations is in the form of an agreement between the Company and Workers, so that a collective agreement is issued. In the collective agreement, Employee sincerely and voluntarily accepts and agrees to terminate employment relationship from the Company, which is effective on February 24, 2020. Thus, starting from February 24, 2020 the letter of termination of employment or SKPHK from the Company is effective, meaning that it is calculated since February 24, 2020, Worker is no longer an employee at the Company.

In connection with foregoing, the Company provides a certain amount of money to Workers, in the form of severance pay, appreciation money, and compensation money. So that with the payment of money, the problem of termination of employment between the parties can be resolved, and each party will not file any claims in the future.

B.4 Bipartite Negotiation Arrangements in the Process of Termination of Employment Disputes

Article 161 Law Number 13 Year 2003 stipulates that employers can terminate the employment relationship if worker / laborer commits a violation in the provisions stipulated in the work agreement, company regulations or collective working agreement. Termination of employment can be done if the worker / laborer is given a warning letter for the first, second and third consecutive years. The warning letter is valid for 6 (six) months. Workers / laborers who experience termination of employment due to the aforementioned reasons will receive severance pay, period of service pay, and compensation money for 1 (one) time.

Efforts must be made to terminate employment relations so that it does not occur. However, if termination of employment is unavoidable, then employers and workers or labor unions are obliged to discuss the purpose of termination of employment. In the event that negotiation does not result in an agreement, entrepreneur can only terminate the work relationship after receiving a stipulation from industrial relations dispute settlement institution. This is stated in Article 151 of Law Number 13 Year 2003 concerning Manpower. Negotiations referred to in Article 151 are bipartite negotiations. Bipartite negotiations are the first step that must be taken by employers and workers and trade unions before engaging a third party to resolve disputes between two parties.

Generally, industrial relations disputes are brought to court by one of the parties. This indicates that initial mechanism for resolving industrial relations disputes, namely bipartite negotiation stage, failed to resolve the problem. The settlement of industrial relations disputes through bipartite negotiations is regulated in article 3 to article 7 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes and also in the Regulation of the Minister of Manpower and Transmigration Number PER.31 / MEN / XII / 2008 concerning Guidelines for the Settlement of Relationship Disputes Industrial Through Bipartite Negotiations. Industrial relations disputes through bipartite negotiations are carried out by deliberation so as to reach consensus.

In article 1 paragraph 2 PER.31 / MEN / XII / 2008 industrial relations disputes occur because of differences of opinion which may result in conflicts between employers or a combination of employers and workers / laborers or trade / labor unions due to disputes over rights, disputes over interests. , disputes over

termination of employment and disputes between trade unions / labor unions within one company. In its implementation, the parties are obliged to have good faith, be polite, not anarchic and obey the agreed negotiation rules.

If bipartite negotiations are carried out because of a termination dispute, the party who feels aggrieved must communicate the problem to other party. Both parties must identify the problem in detail based on the applicable regulations. In the event that termination of employment is unavoidable, employer is obliged to pay severance pay, period of service pay and compensation for rights which are rights that should be received by workers / laborers whose employment relationship has been terminated. The parties must know their respective positions so that disputes do not occur and bipartite negotiations can reach an agreement. This is intended so that neither party feels disadvantaged.

In Guidelines for the Settlement of Industrial Relations Disputes through Bipartite Negotiations Number PER.31 / MEN / XII / 2008, the stages of bipartite negotiations are divided into 3 (three) stages, namely pre-negotiation stage, negotiation stage and post-negotiation stage.

In pre-negotiation stage, what must be done is that the injured party will communicate dispute by providing written notification to the other party. In the event that aggrieved party is a worker / laborer who is not a member of a trade / labor union, it can provide power to accompany worker in the negotiation process. Furthermore, the entrepreneur or company management must sign dispute settlement directly.

In negotiation stage, both parties must prepare and agree on a written order and set a schedule for the implementation of negotiations. In negotiation process, two parties identified problems in order to reach a collective agreement. If one of the parties is not willing to continue negotiation, the parties or one of the parties can register dispute with agency responsible for manpower affairs in the district / city where the worker works even though it has not reached 30 (thirty) days.

After negotiation stage, if the parties reach an agreement, a collective agreement will be made which will be signed by negotiating parties and register it at Industrial Relations Court in the regional District Court, the parties enter into a collective agreement. If negotiations do not reach an agreement or fail, then one or both parties will register dispute with the agency responsible for manpower affairs in district / city where the worker works, by attaching evidence that settlement efforts through bipartite negotiation have been made. Article 7 paragraph 5 of Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement states, if one of the parties does not carry out a collective agreement, injured party may submit a request to Industrial Relations Court to obtain a decision for execution.

To prevent disputes, Article 5 PER.31 / MEN / XII / 2008 states that employers can fulfill workers / laborers' rights on time and establish good communication with workers / laborers. The workers / laborers are also expected to be able to carry out their work responsibly and be able to establish communication with employers and trade / labor unions.

B.5 The Effectiveness of Bipartite Negotiations in the Settlement Process of Termination of Employment at PT. J Resources Bolaang Mongondow Viewed From Case Examples

Before bipartite negotiations were held, the party who felt aggrieved took initiative to communicate the problem in writing to other party. This has been done by the Company in providing warning letters and summons to employees, where the problems that occur are written in the letters. The losses in question are actions of Workers who do not come to work without information for several consecutive days. So that the workers do not carry out their responsibilities as *foreman*. The giving of this warning letter is a form of guidance so that termination of employment does not occur and workers can correct their mistakes.

When a warning letter is given, Worker continues to commit the same violation so that based on the collective work agreement the sanction given is in the form of termination of employment. Based on Article 151 of Law Number 13 Year 2003, if you want to terminate employment relationship, two parties must first negotiate it. The company has given a summons for bipartite negotiation to the workers. This means that the company wants to terminate its employment based on the prevailing laws and regulations. During bipartite negotiations, two parties drafted and agreed on a negotiation order and a negotiation schedule. Two parties also expressed their respective views regarding dispute. Disagreements between the Company and Employees occur because the Worker continues to express reasons to support his argument regarding the reasons for not coming to work for several consecutive days, where from the Company's point of view, whatever the reason, violations committed by the Worker still violate the contents of agreement work together.

With the employee's understanding of applicable regulations, a negotiation minutes can be made based on article 6 paragraph 2 of Law Number 2 of 2004, which contains the full names and addresses of the parties, date and place of negotiation, subject matter or reason for dispute., opinions of the parties, conclusions or results of negotiations, dates and signatures of the parties. From the results of bipartite negotiations, employees

can finally understand and comply with 2019-2020 Collective Labor Agreement of PT J. Resources Bolaang Mongondow and accept the consequences of termination of employment. So that a collective agreement was made based on Article 7 of Law Number 2 of 2004.

Judging from its implementation, disputes over termination of employment in the Company can be resolved through bipartite negotiations. This can happen because there is good communication and no party is harmed. In a collective agreement, the Company pays the rights of Workers, namely in the form of severance pay, reward and compensation money. Then the company registers collective agreement with the clerk of Industrial Relations Court at the District Court to obtain a collective agreement deed.

In addition, during the current Covid-19 pandemic, the number of bipartite negotiations in the Company continues to increase, this is due to the termination of employment for certain time workers who were terminated from work before the end of work contract period. The Covid-19 pandemic that has not ended has forced the company to terminate its workers. However, disputes can still be resolved through bipartite negotiations because of good two-way communication, and the Company provides rights that must be obtained by Workers if their employment relationship is terminated in accordance with prevailing laws and regulations.

Bipartite negotiations in the Company can run effectively because the Company implements labor regulations and arrangements for the settlement of industrial relations disputes. By maximizing bipartite negotiations, there are three benefits for each party, namely saving time, costs and energy. In addition, by maximizing bipartite negotiations, it can reduce the number of cases in industrial relations courts. The successful implementation of bipartite negotiations is supported by the Company's openness to workers and trade unions. The company places great importance on openness and honesty.

The success of bipartite negotiations was also a result of dispute prevention strategy adopted by the Company. The strategy is in the form of a training program, one of which is an *Industrial For non-Industrial* program, namely maximizing bipartite cooperation institution forum and independently forming a disciplinary committee. So that when a dispute occurs and then bipartite negotiations are carried out, both parties already know their respective rights and obligations.

It cannot be denied that the failures and obstacles in bipartite negotiation process occur because companies are dishonest and are not open to communicating with workers and trade unions. When a company does not wish to communicate with its workers, the way it wants to be taken to resolve disputes is through an industrial relations court. Considering that bipartite negotiations are the initial mechanism that must be carried out, sometimes bipartite negotiations are carried out as just a formality so that they do not run effectively. In addition, the failure of bipartite negotiations can be caused by intervention from third parties. Usually when workers or trade unions do not understand procedures for resolving industrial relations disputes, they are very easily influenced by third parties who are not directly related.

V. CONCLUSIONS

Law Number 13 of 2003 concerning Manpower requires employers / companies and workers / laborers to conduct bipartite negotiations in case of industrial relations disputes, particularly in the case of termination of employment. Termination of employment is the last step in which conditions are met. Strategy of PT. J Resources Bolaang Mongondow in termination of employment was running effectively, so that it could resolve problems without going through tripartite negotiations and an industrial relations court.

PT. J Resources Bolaang Mongondow terminated workers who had been proven to have violated the collective labor agreement, which was supported by available evidence, even though the workers asked that the termination of employment did not occur. The strategy applied by PT. J Resources Bolaang Mongondow in bipartite negotiations, namely open communication with employees, led to the creation of a mutually understanding relationship with each other. Each party understands their position and understands the regulations related to termination of employment. The success of bipartite negotiations at PT. J Resources Bolaang Mongondow by itself has embodied the principles of industrial relations, namely the principle of benefit, the principle of joint effort, the principle of democracy, the principle of fairness and equity, the principle of life, the principle of legal awareness, and the principle of self-confidence. Thus it can be said that PT. J Resources Bolaang Mongondow creates harmonious industrial relations.

REFERENCES

- [1.] Afrita, Indra. Hukum Ketenagakerjaan dan Penyelesaian Sengketa Hubungan Industrial di Indonesia. Yogyakarta: Absolute Media. 2015.
- [2.] Amanda Lauza Putri, "Kenali Empat Jenis Perselisihan Hubungan Industrial dan Penyelesaiannya", https://smartlegal.id/galeri-hukum/lainnya/2019/04/09/kenali-empat-jenis-perselisihan-hubungan-industrial-dan-penyelesaiannya/ diakses pada 18 September 2020.
- [3.] Dahlia dan Agatha Jumiati, "Penyelesaian Perselisihan Hubungan Industrial Berdasarkan UU Nomor 2 Tahun 2004", Wacana Hukum, Vol IX, 2 Oktober 2011, hal 43-44.
- [4.] Gajimu.com, "Cara Penyelesaian Perselisihan Hubungan Industrial", https://gajimu.com/pekerjaan-yanglayak/serikat-pekerja/hubungan-industri al diakses pada 24 Mei 2020.
- [5.] Gilang Ramdani, "Manfaat Hubungan Industri yang Harmonis bagi Dunia Kerja dan Ekonomi Indonesia", https://www.liputan6.com/news/read/3447516/ manfaat-hubungan-industri-yang-harmonis-bagi-dunia-kerja-dan-ekonomi -indonesia diakses pada 17 September 2020.
- [6.] Haktivah, "Hubungan Kerja antara Pengusaha dan Pekerja Beserta Sifatnya", https://www.kompasiana.com/amran/54fd84dba33311483d50fe5c/hubungan-kerja-antara-pengusaha-dan-pekerja-beserta-sifatnya diakses pada 17 September 2020.
- [7.] Khakim, Abdul. Dasar-dasar Hukum Ketenagakerjaan Indonesia. Bandung: PT Citra Aditya Bakti. 2014
- [8.] Kitab Undang-Undang Hukum Perdata.
- [9.] Maringan, Nikodemus, "Tinjauan Yuridis Pelaksanaan Pemutusan Hubungan Kerja (PHK) secara Sepihak oleh Perusahaan Menurut Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan", Jurnal Ilmu Hukum Legal Opinion, Vol. 3, No. 3, 2015, hal 2.
- [10.] Marmisah, Luis. *Hubungan Industrial dan Kompensasi (Teori dan Praktek)*. Yogyakarta: Deepublish. 2019.
- [11.] Peraturan Menteri Tenaga Kerja dan Transmigrasi Nomor PER.31/MEN/XII/2008 Tentang Pedoman Penyelesaian Perselisihan Hubungan Industrial Melalui Perundingan Bipartit
- [12.] Rahmi Triani Uzier, "Tata Cara Penyelesaian Hubungan Industrial yang Wajib Anda Ketahui", https://bplawyers.co.id/2017/03/23/3-tata-cara-penyelesaia n-perselisihan-hubungan-industrial-yang-wajib-anda-ketahui/ diakses pada 26 September 2020.
- [13.] Rizky, Ahmad Sridadi. Pedoman Perjanjian Kerja Bersama. Malang: Empatdua Media. 2016.
- [14.] Sarmanu. Dasar Metodologi Penelitian Kuantitatif, Kualitatif dan statistika. Surabaya: Airlangga University Press. 2017.
- [15.] Tesishukum.com,"Pengertian Hukum Ketenagakerjaan Menurut Para Ahli", http://tesishukum.com/pengertian-hukum ketenagakerjaan-menurut-para-ahli/ diakses pada 23 Juli 2020.
- [16.] Taufan, Sonny dan Swisca Yolanda. Ketenagakerjaan Indonesia. Bandung: CV. Rasi Terbit. 2015.
- [17.] Undang-Undang Republik Indonesia No. 13 Tahun 2003 tentang Ketenagakerjaan
- [18.] Undang-Undang Republik Indonesia Nomor 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial.
- [19.] Zulkarnaen, Ahmad Hunaeni, "Masalah Rawan Dalam Hubungan Industrial dan Konsep Negara Kesejahteraan Indonesia", Jurnal Mimbar Justitia, Vol. II, No. 2, Juli-Desember 2016, hal. 810