

# Juridical Analysis of the Determination of Severance Pay for Employees Who Submit Resignations Based on Law No. 13 of 2003 on Employment and Law No. 11 of 2020 On Job Creation

Febriyanti Irzansyah<sup>1</sup>, Bernat Panjaitan<sup>2</sup>, Nimrot Siahaan<sup>3</sup>, Risdalina Siregar<sup>4</sup>

<sup>1,2</sup> Faculty of Law, University of Labuhanbatu, Indonesia

febriyantinst7@gmail.com

## Abstract

*The purpose of this study is to find out about the determination of severance pay for employees who resign based on Law No. 13 of 2003 on Manpower and Law No. 11 of 2020 on Job Creation. The method used in this study is normative juridical research method. Normative juridical research is legal research conducted by examining library materials or secondary data. In addition to using library materials, researchers also use statutory provisions related to the issues discussed in this article. The results of this study show that the determination of severance pay for employees who resign based on Law No. 13 of 2003 on Manpower and Law No. 11 of 2020 on Job Creation is for employees who resign are not entitled to severance pay, but the employee is entitled to reimbursement and split money as stipulated in both laws.*

## Keywords

severance pay; resignation; law no. 13 of 2003; law no. 11 of 2020



## I. Introduction

Every country and nation in this world certainly have its own laws, namely laws made by their governments and their own people that must also be obeyed by the government and society without Discriminate between groups, races, and tribes. (Mardenis, 2016)

Article 1 paragraph 3 of the Constitution of the Republic of Indonesia of 1945 affirms that the state of Indonesia is a state of law. Based on this affirmation, it can be understood that all actions taken or decided by state and community equipment must be based on laws and regulations. which happened.

Labor law is one part of socio-economic law, this encourages the need for government intervention, the aim of which is to maintain balance and justice where there are strong parties. And the weak. Labor law is part of business because business requirements with the purpose and meaning of human life. With this goal, the labor law has a good impact on all interested parties, especially business actors (company owners) with their workers / workers. (Dr. Muhammad Sadi Is, S.H.I., M.H., 2020)

Mochtar Kusumaatmadja, explained that the function of the law is as a means of community renewal. In the framework of development, what is meant by the renewal is as a channeling of the direction of human activities in the direction expected by development. As is the case with other laws, labor law has a function as a means of community renewal that channels the direction of human activities in the appropriate direction with what is desired by the development of labor. Labor development as one of the efforts in realizing national development is directed to organize, foster, and supervise all activities related to labor so that There can be order to achieve justice. Arrangements, construction, and supervision carried out based on the prevailing legislation in the field of employment must

be adequate and in accordance with the pace of development. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020). Rapid development so that it can anticipate the demands of labor planning, industrial relations development and increased labor protection. (Dr. Muhammad Sadi Is, S.H.I., M.H., 2020)

The existence of arrangements on labor is expected to guarantee the basic rights owned by workers and ensure the equality of opportunities obtained by workers and treatment without discrimination for any reason in realizing the welfare of workers. In accordance with this, of course, the guarantee of basic rights of workers is considered based on the development of the progress of the business world. One of the most important labor rights is to get severance pay.

Severance pay is a payment in the form of money from employers to workers / workers as a result of layoffs whose amount is adjusted to the working period of the worker / worker concerned. (Husni, 2007)

In the labor law system severance pay, the award money for employment and the reimbursement of rights are the pr rightserogatif of the worker that he should get when a worker gets a termination. Severance pay, working period award money and entitlement replacement money are said to be the pr rightsof workers because in fact in Law No. 13 of 2003 on Manpower and the latest Job Creation Law No.11 of 2020, have set clearly and in detail about these matters. (Mamonto, 2017)

However, there are still many of the few employees who are not careful in understanding what rights they will get if they are affected by termination of employment. Speaking of job cuts, among the public this sounds negative because some of them think that employees have made mistakes so that employer's termination of employment by the employee, but the reality is not always the employer who makes the termination of the job, it can occur due to several reasons, one of them is an employee who resigns, therefore there will be a termination of employment between employers and workers.

Based on the background that has been outlined, the formulation of problems in this study is as follows:

1. How to determine severance pay for employees who resign based on Law No. 13 of 2003 on Manpower and Job Creation Law No. 11 of 2020?

As for the results of this research in accordance with the formulation of the problem that has been raised. Therefore, the purpose of the research is:

2. Untuk knows and analyzes juridically regarding the determination of severance pay for employees who resign based on Law No. 13 of 2003 on Manpower and Job Creation Law No. 11 years 2020.

## **II. Research Method**

The research method used in this study is a normative juridical research method. Normative juridical research is legal research conducted by examining library materials or secondary data. In addition to using library materials, researchers also use statutory provisions related to the issues discussed in this article.

### III. Result and Discussion

#### 3.1 Determination of Severance Pay for Employees Who Submit Resignations (Resign) Based on Law No. 13 of 2003 concerning Employment and Job Creation Law No. 11 of 2020

Severance is compensation money that must be paid by the company / employer in case of termination of employment to its employees / workers. Severance can also be interpreted as a form of consequences / moral responsibility of the company, in ensuring the survival of its employees / workers for a certain grace period, after the occurrence of termination of employment.

In addition to severance pay, there are actually still compensation / other obligations that must be paid by the company when conducting employment relations for its employees / workers. That is, the working period award money and the reimbursement of rights that should be received by the relevant employees / workers. (H.Simanjuntak, 2007)

Tenure award money is money or compensation paid by the company to its employees who have worked for at least 3 years and are affected by termination of employment by the company. Please note that the UPMK is stated in the nonspecified time work agreement (PKWTT) and can only apply, when the company performs *apmutus hak kerja* (LAYOFF) to the employee concerned.

Reimbursement money is money given to employees / workers in lieu of employee / worker rights that have not been taken during the working period.

Split money is money given by the company to its employees as an award for the service of the employee during a certain working period with good achievements, and is a compensation due to the absence of severance pay and award money for working periods. Regarding the amount of this split money is regulated in employment agreements, company regulations, or joint employment agreements in each company where employees work.

Kentuan regarding the determination of severance pay given by employers to their employees in connection with the termination of employment has been regulated in The Labor Law No. 13 of 2003 article 156 paragraph (1) which reads "In the event of termination of employment, the employer is obliged to pay severance pay and or the award money for the working period and the reimbursement of rights that should be received".

Related to termination of employment there are several reasons that cause this to happen, one of which is termination of employment carried out by employees / workers who are purely on the will of the employee / worker itself without coercion by any party, namely by resigning.

Resignation is a voluntary notification by an employee to the company (employer) that the person in question intends to terminate the employment. This voluntary action is distinguished by other methods of termination of employment such as dismissal or redundancy.

Related to the rights that will be obtained if the worker / employee who resigns cannot be separated from the rights of workers / employees affected by termination of employment. In addition to resigning is a form of termination of employment at the will of workers / employees, also because it includes about the rights that should be obtained for workers / employees. those affected by termination of employment be it severance pay, award money for working period, or reimbursement money.

### **3.2 Determination of Severance Pay Based on Labor Law No. 13 of 2003**

Details about the amount of Severance Pay, Working Period Award Money and Reimbursement of Rights that have been stipulated in The Labor Law No.13 of 2003 are as follows:

#### **1) Severance Pay**

In accordance with The Labor Law No. 13 of 2003 article 156 paragraph (2), the provisions regarding the determination and calculation of severance pay are as follows:

- a. The working 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) years, 2 (two) months of wages;
- c. Working 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) years 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. Working period of 6 (six) years or more, but less than 7 (seven) years, 7 (seven) months of wages.
- h. Working period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months of wages;
- i. Working period of 8 (eight) years or more, 9 (Nine) months of wages;

#### **2) Working Time Award Money**

The following are the provisions of the working period award money in accordance with the Labor Law Article 156 Paragraph (3) as follows:

- a. Working period of 3 (three) years or more but less than 6 (six) years, 2 (two) months of wages;
- b. Working 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. Working period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months of wages;
- e. Working period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months of wages;
- f. Working period of 18 (eighteen) years or more but less than 21 (twenty-one) years, 7 (seven) months of wages;
- g. The working period is 21 (twenty-one) years or more but less than 24 (twenty-four) know, 8 (eight) months of wages;
- h. Working period of 24 (twenty-four) years or more, 10 (ten) months of wages.

#### **3) Reimbursement of Rights**

As for the reimbursement of rights that should be received by employees based on The Labor Law No.13 of 2003 article 156 paragraph (4) as follows:

- a. Annual leave that has not been taken and has not been lost.
- b. Cost or return fare for workers / workers and their families to the place where workers / workers are accepted to work;

- c. Housing reimbursement as well as treatment and care is set at 15% (fifteenths of a hundredth) of severance pay and/or service life award money for eligible;
- d. Other matters set out in employment agreements, company regulations or collective labor agreements. (H.Simanjuntak, 2007)

The wage component used as the basis for calculating severance pay, working period award money, and money in lieu of rights that should be received that is pending, consists of:

- a. Basic money
- b. All kinds of fixed benefits given to workers / workers and their families, including the purchase price and supply given to workers / workers for free , which if the supply must be paid by workers / workers with subsidies, then as a wage is considered the difference between the price of purchase and the price to be paid by the worker / labor. (Trijono, 2014)

Related to termination of employment on the wishes of workers or in other words resigning, it has been regulated in article 162 of law no.13 of 2003 where the provisions are as intended. Listed below:

- 1. Workers who resign of their own accord, obtain reimbursement in accordance with the provisions of article 156 paragraph (4). Reimbursement money here includes annual leave money that has not been taken, costs or costs of returning employees / workers, housing replacement costs and treatment and care 15% (fifteen per serratus) of severance pay and/or employment award money for eligible persons.
- 2. For workers who resign of their own accord, whose duties and functions do not represent the interests of the employer directly, other than receiving reimbursement money in accordance with the provisions Article 156 paragraph (4) is also given a separate amount of money and its implementation is regulated in employment agreements, company regulations or joint work agreements.

The conditions for employees who resign are:

- a. Submit a resignation application in writing no later than 30 (thirty) days before the start date of resignation;
- b. Not bound in the bond of service, and
- c. Continue to carry out its obligations until the start date of resignation. (Husni, 2007)

So, for employees / workers who resign of their own accord are not entitled to severance pay or award money for the working period but only get reimbursement money and separate money only.

### **3.3 Determination of Severance Pay Based on Job Creation Law No. 11 of 2020**

Details regarding the determination of severance pay, working period award money, and reimbursement money, are also contained in the latest Job Creation Law or Omnibus Law on Job Creation. Related to this, it has been stipulated in government regulation Number 35 of 2021. This government regulation is made to implement the provisions of article 81 and article 185 letter b of the Job Creation Law No.11 of 2020.

In Government Regulation No. 35 of 2021 precisely in article 40 paragraph (1) explains that "In the event of termination of employment, employers are obliged to pay severance and /or the award money for the working period, and the reimbursement of rights that should have been received"

For calculations regarding the determination of severance pay, working period award money, and reimbursement of rights have been regulated in article 40 paragraph (2) as follows:

- 1. Severance Pay

Severance pay as intended in paragraph (1) is given with the following conditions:

- a. The working 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) years, 2 (two) months of wages;
- c. Working 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) years 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. Working period of 6 (six) years or more, but less than 7 (seven) years, 7 (seven) months of wages.
- h. Working period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months of wages;
- i. Working period of 8 (eight) years or more, 9 (Nine) months of wages

## 2. Working Time Award Money

The working period award money as intended in article 40 paragraph (1) is given with the following provisions:

- a. Working period of 3 (three) years or more but less than 6 (six) years, 2 (two) months of wages;
- b. Working 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. Working period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months of wages;
- e. Working period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months of wages;
- f. Working period of 18 (eighteen) years or more but less than 21 (twenty-one) years, 7 (seven) months of wages;
- g. The working period is 21 (twenty-one) years or more but less than 24 (twenty-four) know, 8 (eight) months of wages;
- h. Working period of 24 (twenty-four) years or more, 10 (ten) months of wages.

## 3. Reimbursement of Rights

Reimbursement of rights that should be received as intended in paragraph (1) includes:

- a. Annual leave that has not been taken and has not been lost;
- b. Cost or return fare for workers / workers and their families to the place where workers / workers are accepted to work;
- c. Other matters set out in the employment agreement, company regulations, or collective labor agreement.

The same thing with Undang-Law On Manpower No.13 of 2003, which based on the Job Creation Law PP No.35 of 2021 precisely in article 36 letter i explains that workers / Workers who resign of their own accord must qualify as follows:

1. Submit a resignation application in writing no later than 30 (thirty) days before the start date of resignation;
2. Not bound in a service bond;
3. Continue to carry out its obligations until the date of commencement of resignation;

Therefore, based on the Job Creation Law, PP No. 35 of 2021 in article 50 explains that if workers / workers who resign of their own accord are not entitled to severance pay and award money for the working period and if it meets the conditions as intended in article 36 letter i, workers / workers are entitled to:

- a. Reimbursement of rights in accordance with the provisions of article 40 paragraph (4) which includes annual leave money that has not been taken, costs or costs of returning home for employees / workers, and other things that stipulated in an employment agreement, company regulation, or joint employment agreement.
- b. Split money whose amount is regulated in employment agreements, company regulations, or joint employment agreements

#### **IV. Conclusion**

From the analysis of the two Laws, namely the Labor Law No.13 of 2003 and the Job Creation Law No.11 of 2020, stipulates that if the employee resigns of his own accord without any coercion from any party in accordance with the applicable provisions, the employee is not entitled to severance pay and award money for the working period, but only entitled to reimbursement of rights and separate money only. The provisions regarding the determination of what rights will be obtained by employees who resign from both Laws are the same, but there is a difference regarding the reimbursement of rights to be obtained, namely where in The Labor Law No.13 of 2003 in article 156 paragraph (4) which states that the reimbursement money will be obtained by employees who resign, which includes annual leave money that has not been taken, which includes annual leave money that has not been taken, the cost or cost of returning to the worker/laborer and his family to the place where the worker/worker is accepted to work, housing replacement money and treatment and treatment stipulated at 15% and other matters stipulated in the employment agreement. Meanwhile, in the Job Creation Law No.11 of 2020 PP No.35 of 2021 states that separate money for employees who resign includes annual leave money that has not been taken, costs or return costs for employees / workers, and other things stipulated in the employment agreement, company regulations, or joint employment agreements. In this case, in the Job Creation Law No. 11 of 2020 PP No. 35 of 2021 removes the provisions regarding housing reimbursement money and treatment and treatment which had previously been stipulated in The Labor Law No.13 of 2003.

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