

Termination of Employment with the Reason of Workers Refusing Transfers As a Result of the Covid-19 Pandemic in the Case at PT. New Hope East Java

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Abstract

Currently, many companies are laying off their workers because they refuse to transfer, especially because of the covid-19 pandemic. In the case at PT. New Hope East Java workers were terminated because they refused to transfer as a result of the covid-19 pandemic. Mutation is an order from the company to rotate work from one position to another equal position. Compensation given by the company to workers who were laid off because they refused to transfer as a result of the covid 19 pandemic in the case at PT. New Hope East Java has complied with Law No. 13 of 2003 concerning Manpower. Due to the inconsistency of the Transfer Order with the Manpower Act, it is null and void and invalid. Thus, the reason for Termination of Employment by PT. New Hope East Java is null and void and is not valid. Therefore, a worker or employee refusing a transfer cannot be used as a reason for Termination of Employment by the employer. The compensation received by workers is in accordance with the provisions of the Manpower Act which is subject to Article 164 paragraph 1 of the Manpower Law Number 13 of 2003. However, in the case at PT. New Hope East Java does not calculate the annual leave entitlement that has not been taken and has not yet fallen for workers. Thus, workers are entitled to compensation of Rp. 72,397,560 (seventy-two million three hundred ninety-seven five hundred and sixty rupiah).

Keywords

termination of employment; transfer; rights; covid-19



I. Introduction

Employment relationships occur because of a work agreement between employers and workers. The employment relationship consists of elements of work, orders, and wages. In work relationships, there are often conflicts between workers and employers which are usually caused by feelings of dissatisfaction and have an impact on the working relationship. Disputes between workers and employers are regulated in Law no. 13 of 2003 concerning Manpower Article 1 paragraph (22) which states "Disputes in industrial relations are differences of opinion which result in conflicts between entrepreneurs or a combination of entrepreneurs and workers/labor or trade unions/labor unions due to disputes regarding rights, disputes over interests, and disputes over termination of employment working relations and disputes between trade unions/labor unions in only one company.

Dispute on Termination of Employment is the termination of an employment relationship by one of the parties due to a dispute arising as a result of differences of opinion regarding the reasons for termination of employment between the entrepreneur and the worker or laborer. Prior to the termination of the employment relationship between the

entrepreneur and the worker or laborer, the entrepreneur often makes mutations first. Mutations are transfers of positions for workers or workers that occur within the company. Often workers or laborers refuse mutations for certain reasons. Workers or workers who refuse to transfer are considered disobedient to orders from the company.

Covid 19 pandemic caused all efforts not to be as maximal as expected (Sihombing and Nasib, 2020). The outbreak of this virus has an impact of a nation and Globally (Ningrum *et al*, 2020). The presence of Covid-19 as a pandemic certainly has an economic, social and psychological impact on society (Saleh and Mujahiddin, 2020).

During the current COVID-19 pandemic, many companies make work transfers for workers due to the instability of the company. This instability in the company occurred due to the negative impact of the COVID-19 pandemic. Where many companies have suffered losses due to several activities that have been hampered due to this pandemic. The reason for workers often refusing to transfer is because the new workplace assigned by the company is far from where they live and must be more careful with the spread of the COVID-19 virus in the new work environment. The company terminates the employment relationship for workers who refuse to be transferred because the workers are considered disobedient to company orders, and this non-compliance is the same as violating the work agreement that has been mutually agreed upon.

PT. New Hope East Java is a company engaged in the Animal Feed Industry (Feedmill Manufacture) and animal husbandry located in Sidoarjo and Mojokerto. PT, New Hope East Java transferred Wani Triana as a worker to Tuban from NUB Marketing staff to Quality Administration Staff due to the instability of the company due to the covid 19 pandemic. However, Wani Triana refused the transfer because of the mutation order given by PT. New Hope East Java is not in accordance with the Act. Wani Triana has expressed her objection to being transferred to Tuban because she has a baby, her wages are cut, and the time limit is not stated. But PT. New Hope East Java continues to issue a transfer order to Wani Triana. Because Wani Triana refused to transfer, PT. New Hope, East Java, terminated Wani Triana because she was deemed disobedient to the company.

Problem Formulation

1. Whether to refuse mutation in the case at PT. New Hope East Java can be used as a reason for Termination of Employment by Employers?
2. What is the compensation given by the company to workers who were laid off because they refused to transfer as a result of the covid 19 pandemic in the case at PT. New Hope East Java is in accordance with Law No. 13 of 2003 concerning Manpower?

II. Review of Literature

2.1 Definition of Mutation

The definition of mutation according to Nitisemito is an order from the company to rotate work from one position to another parallel position. Companies often transfer workers or employees and take advantage of mutations for employees regardless of conditions or not being responsible for their obligations to the rights of employees or workers because there are no permanent regulations governing transfers. One example, during the Covid 19 pandemic, many companies transferred employees on the grounds that a branch or part of the company was closed or deserted due to the impact of the Covid 19 pandemic.

2.2 Terms of Transfer

The company may not or is prohibited from transferring workers or employees unilaterally without the agreement or agreement with the employee or worker. In Article 32 paragraph 2 of Law Number 13 of 2003, conditions for the transfer of workers have been regulated which contain:

- a. The placement of workers is carried out based on the principles of being open, free, objective, fair and equal without discrimination.
- b. Manpower placement is directed at placing workers in the right positions in accordance with their expertise, skills, talents, interests, and abilities by taking into account dignity, human rights, and legal protection.
- c. Manpower placement is carried out by taking into account equal distribution of job opportunities and the provision of manpower in accordance with the needs of national and regional programs.

2.3 Legal Consequences of Refusing

Transfers Workers or employees who refuse transfers are tantamount to violating or disobeying the company. So it can be said that the employee or worker resigned. It is different with the transfer order given by the company that is not in accordance with the provisions of the Manpower Act, it is the company's fault. Thus, the transfer order which is not in accordance with the provisions of the Manpower Act is null and void and invalid. Even though it has been regulated in the work agreement regarding the transfer, if the transfer order does not provide clarity on the rights of the worker, then it is still declared null and void by law and invalid.

Workers who refuse transfers because the transfer orders are not in accordance with the provisions of the Manpower Act, there is no permanent regulation regarding this matter. If the transfer order is in accordance with the Manpower Act, but the worker still refuses, then it is the same as the worker not complying with company regulations and can be said to be absent. This has been regulated in Article 168 of the Manpower Law Number 13 of 2003 which contains:

- a. Workers/laborers who are absent for 5 (five) working days or more in a row without a written statement that is accompanied by valid evidence and has been summoned by the Employers 2 (two) times properly and in writing can be terminated because they are qualified to resign.
- b. A written statement with valid evidence as referred to in paragraph (1) must be submitted no later than the first day the worker/laborer enters work.
- c. Termination of employment as referred to in paragraph (1) the worker/labor concerned has the right to receive compensation for entitlements in accordance with the provisions of Article 156 paragraph (4) and is given a separation fee, the amount and implementation of which is regulated in a work agreement, company regulations, or collective work agreement.

III. Results and Discussion

3.1 Refuse Mutation in the Case at PT. New Hope East Java can be used as a Reason for Termination of Employment by Employers

A worker is someone who works in a company who receives a salary or wages to meet their daily needs. Companies also need workers so that the company runs well and smoothly. In the working relationship between employers and workers there is a work agreement that contains wages, rights and obligations. Companies often make mutations to workers. Mutation is a change of position or position in a worker or employee. Usually the company transfers employees for several reasons, such as promotions, sanctions, requests from workers, filling vacant positions in other branches and/or rotation of workers in the same position in different branches so that workers can be more enthusiastic about improving their performance. In Article 54 paragraph 1 Letters C and D of the Manpower Act No. 13 of 2003, it is stated that companies may not unilaterally transfer employees. In order to make a transfer, the company must pay attention to the conditions stipulated in Law Number 13 of 2003 concerning Manpower article 32 which states that:

- a. The placement of workers is carried out based on the principles of being open, free, objective, fair and equal without discrimination.
- b. Manpower placement is directed at placing workers in the right positions in accordance with their expertise, skills, talents, interests, and abilities by taking into account dignity, human rights, and legal protection.
- c. Manpower placement is carried out by taking into account the distribution of employment opportunities and the provision of manpower in accordance with the needs of national and regional programs.

According to the requirements contained in Law Number 13 of 2003 concerning Manpower, the contents of the Transfer Order issued by PT. New Hope East Java does not comply with the provisions of the Manpower Act or is not justified. Because of the contents of the Transfer Certificate No.007/NH/I/2020, the Transfer Order No.008/H/IV/2020, the 2nd Mutation Order No.010/NHIV/2020. The 3rd Transfer Order No.011/NH/V/2020, does not provide eligibility and does not provide clarity on workers' rights as stated in the correct Warrant. PT. New Hope East Java terminated their employment because Wani Triana refused to transfer. Wani Triana was terminated by PT. New Hope for refusing to transfer is tantamount to violating company regulations or work agreements. If referring to Article 32, because the Transfer Order given by PT. New Hope East Java then, Termination of Employment by PT. New Hope East Java is not in accordance with the Manpower Act No. 13 of 2003.

In the case of PT. New Hope East Java, stated that the Mutation Warrant for Mutation Certificate No.007/NH/I/2020, Mutation Order No.008/H/IV/2020, 2nd Mutation Warrant No.010/NHIV/2020. 3rd Transfer Order No.011/NH/V/2020 given by PT. New Hope East Java did not explain or did not convey clearly and completely regarding:

1. Wages for workers with all forms of allowances
2. Position Wani Triana as a worker in the Finance and Accounting
3. Department Level Position of workers
4. Explanation of the work to be carried out
5. Certainty of planned or intended transfer deadlines While
6. the right of facilities received by Wani Triana as a transferred worker
7. Does not take into account the condition of Wani Triana who is breastfeeding

This is contrary to or not in accordance with several articles contained in the Manpower Act Number 13 of 2003 as follows:

- a) Article 31 of the Manpower Act Number 13 of 2003 which states: *Every worker has the same rights and opportunities to choose, get, or change jobs and earn a decent income at home or abroad.*
- b) Article 32 paragraphs 1 and 2 of the Manpower Law Number 13 of 2003 which states: *(1) The placement of workers is carried out based on the principles of being open, free, objective, fair, and equal without discrimination, (2) The placement of workers is directed to place workers work in the right position in accordance with the expertise, skills, talents, interests, and abilities with due regard to dignity, human rights, and legal protection.*
- c) Article 83 of the Manpower Law Number 13 Year 20003 which states: *Female workers/laborers whose children are still breastfeeding must be given appropriate opportunities to breastfeed their children if this is to be done during working hours.*
- d) Article 86 of the Manpower Law Number 13 of 2003 which states: *Every worker/labor has the right to obtain protection for occupational safety and health, morals and decency, treatment in accordance with human dignity and values and religious values.*
- e) Article 100 paragraph 1 of the Manpower Law Number 13 of 2003 which states: *To improve the welfare of workers/laborers and their families, employers are obliged to provide welfare facilities.*

If seen from the description of the articles above, the Transfer Order given by PT. New Hope East Java does not comply with the Manpower Act. It is appropriate that the Transfer Order is null and void or invalid. Because the Transfer Order is null and void and invalid, the Warning Letter 3 (SP 3) given by PT. New Hope East Java to Wani Triana is also null and void. So, the reason for Termination of Employment by PT. New Hope East Java which stated that PT. New Hope East Java terminated Wani Triana's employment for refusing the transfer to be inappropriate or irrelevant as the reason for the termination of employment between the two parties. Article 100 of the Industrial Relations Dispute Settlement Law states that *"In making a decision, the Panel of Judges considers the law, existing agreements, customs and justice.* According to the Panel of Judges, the right and legal reason is the termination of the working relationship between PT. New Hope East Java with Wani Triana is due to force *majeure*.

Therefore, it can be concluded that companies that transfer employees must pay attention to the terms of mutation contained in Article 32 of the Manpower Act Number 13 of 2003. The contents of the Transfer Order must comply with the provisions of the Manpower Act.

In the case at PT. New Hope East Java Termination of Employment by PT. New Hope East Java which stated that due to the closure of the NUB Marketing Department at PT. New Hope East Java due to the impact of the Covid 19 pandemic, the Termination of Work carried out by PT. East Java's New Hope against Wani Triana was decided to end due to force *majeure*. This is in accordance with the Law on Settlement of Industrial Relations Disputes Article 164 paragraph 1 which states that *"Entrepreneurs may terminate employment of workers/laborers because the company is closed due to the company experiencing continuous losses for 2 (two) years, or circumstances force (force majeure), provided that the worker/ laborer is entitled to severance pay of 1 (one) time as stipulated in Article 156 paragraph (2), the service period award is 1 (one) time as stipulated in Article 156 paragraph (3) and compensation for entitlements in accordance with the provisions Article 156 paragraph (4)"*.

From the explanations and statements above, the authors find the truth that the reason for the termination of employment by PT. New Hope East Java because the workers refused the transfer could not be used as an excuse because of the Transfer Order issued by PT. New Hope East Java contradicts the Manpower Act Number 13 of 2003 Article 32 can be declared null and void and invalid. If the Transfer Order is in accordance with the mutation requirements stipulated in Article 32, Wani Triana will not refuse the mutation order. One of the things that burdened Wani Triana for the mutation was her breastfeeding condition. It is the same PT. New Hope East Java did not pay attention to the condition of the workers. In Article 8 letter a of the Regulation of the Minister of Manpower of the Republic of Indonesia Number: Kep 150/MEN/2000 which states " *After 3 (three) times in a row the worker still refuses to obey proper orders/assignments as stated in the work agreement or company regulations / collective agreement* in Law No. 13 of 2003 written a Collective Labor Agreement". In Article 8 letter a of the Regulation of the Minister of Manpower of the Republic of Indonesia and the PKB (Joint Work Agreement) there is a statement "refuses to obey proper orders/assignments", then the decision that underlies Wani Triana is emphatic on the word "proper orders", therefore from Therefore, Wani Triana refused by law to reject the transfer order made by PT. New Hope East Java because it is against the Manpower Law Number 13 of 2003.

3.2 The Compensation given by the Company to Workers who were laid off because they refused to Transfer as a result of the Covid 19 Pandemic in the case at PT. New Hope East Java is in accordance with Law No. 13 of 2003 concerning Employment

Termination of employment usually occurs in the working relationship between workers and employers. Termination of Employment occurs because of a dispute between workers and employers. One of them is a worker who refuses to transfer. During the current covid 19 pandemic, many companies are mutating workers because branches or other parts of the company are closed or not running smoothly due to the impact of the current covid 19 pandemic. Many workers also refuse to be transferred during the current COVID-19 pandemic for various reasons, one of which is the spread of the COVID-19 virus, which makes workers afraid to be transferred to a new work environment. The company also often terminates the employment of employees who refuse to transfer. If you see the case above, the company provides a Transfer Order that is not in accordance with the Act, then the worker refuses for the sake of law and the Transfer Order is null and void. Therefore, termination of employment by the company cannot be used as an excuse. Workers who are terminated by employers receive compensation rights.

Compensation rights are rights given by the company as compensation for losses resulting from Termination of Employment carried out by the entrepreneur. In Article 156 of the Manpower Law Number 13 of 2003 it has been explained about the severance pay received by workers. Article 156 states that:

- a. In the event of termination of employment, the entrepreneur is required to pay severance pay and/or service award money and compensation for entitlements that should have been received.
- b. The calculation of severance pay as referred to in paragraph (1) shall be at least as follows:
 1. working period of less than 1 (one) year, 1 (one) month of wages;
 2. working period of 1 (one) year or more but less than 2 (two) years, 2 (two) months of wages;

3. working period of 2 (two) years or more but less than 3 (three) years, 3 (three) months of wages;
 4. working period of 3 (three) years or more but less than 4 (four) years, 4 (four) months of wages;
 5. working period of 4 (four) years or more but less than 5 (five) years, 5 (five) months of wages;
 6. working period of 5 (five) years or more, but less than 6 (six) years, 6 (six) months of wages;
 7. working period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months of wages.
 8. working period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months of wages;
 9. working period of 8 (eight) years or more, 9 (nine) months of wages.
- c. The calculation of the service award as referred to in paragraph (1) shall be determined as follows:
1. 3 (three) years of service or more but less than 6 (six) years, 2 (two) months of wages;
 2. working period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months of wages;
 3. working period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months wages;
 4. working period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months of wages;
 5. working period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months of wages;
 6. working period of 18 (eighteen) years or more but less than 21 (twenty one) years, 7 (seven) months of wages;
 7. working period of 21 (twenty one) years or more but less than 24 (twenty four) years, 8 (eight) months wages;
 8. working period of 24 (twenty four) years or more, 10 (ten) months wages.
- d. The compensation for entitlements that should be received as referred to in paragraph (1) includes:
1. annual leave that has not been taken and has not yet expired;
 2. costs or fees for returning the worker/laborer and his/her family to the place where the worker/laborer is accepted to work;
 3. housing replacement as well as treatment and care are set at 15% (fifteen percent) of the severance pay and/or service award for those who meet the requirements;
 4. other matters stipulated in the work agreement, company regulations or collective labor agreement.
- e. Changes in the calculation of the severance pay, the calculation of the reward for the service period, and the compensation for entitlements as referred to in paragraph (2), paragraph (3), and paragraph (4) shall be stipulated by a Government Regulation.

Workers who are laid off by the company receive rights such as severance pay, work award period and compensation for entitlements. Severance pay is a right or wages in the form of money given by employers to workers due to termination of employment. In

addition, workers also receive Work Period Award Money which is a right or wage given to workers as a form of appreciation according to the length of their service period. They also receive compensation for entitlements, which are workers' rights during work that have not been taken in the form of money given by the company to workers.

The compensation rights received by Wani Triana as a worker have been described above, based on the Manpower Law Number 13 of 2003 Article 164 paragraph 1, namely Wani Triana as a worker/labor is entitled to severance pay of 1 (one) time as stipulated in Article 156 paragraph (2) service fee of 1 (one) time as stipulated in Article 156 paragraph (3) and compensation for entitlements in accordance with the provisions of Article 156 paragraph (4). The following is the calculation according to the author:

Severance pay

$$\begin{aligned} & (1 \times \text{provisions of Article 156 paragraph 2}) \\ & 9 \times 4,692,000 \qquad \qquad \qquad = 42,228,000 \end{aligned}$$

Term of Service Rewards

$$\begin{aligned} & (1 \times \text{provisions of Article 156 paragraph 3}) \\ & 4 \times 4,692,000 \qquad \qquad \qquad = 18,768,000 \text{ Entitlements} \end{aligned}$$

- Compensation
(provided in article 156 paragraph 4)

$$\begin{aligned} & * \text{Annual leave that} \\ & \text{has not been taken and has not yet fallen} \\ & 12/25 \times 4,692,000 \qquad \qquad \qquad = 2,252,160 \end{aligned}$$

Replacement housing, treatment, and care 15% x (severance pay and severance pay)

$$15\% \times (42,228,000 + 18,768,000) \qquad \qquad \qquad = 9,149,400 +$$

Total 11,401,560

TOTAL

$$42,228,000 + 18,768,000 + 11,401,560 \qquad \qquad \qquad = 72,397,560$$

IV. Conclusion

The Transfer Order issued by PT. New Hope East Java did not meet the requirements contained in the provisions of Article 32 of the Manpower Act Number 13 of 2003, because the Transfer Order does not clearly and in detail explain the rights of Wani Triana as a worker. Due to the incompatibility of the Transfer Order with the Manpower Act, it is null and void by law and invalid. Thus, the reason for termination of Work Relations conducted by PT. New Hope East Java indirectly can be said to be null and void and invalid. Therefore, a worker or employee refusing a transfer cannot be used as a reason for Termination of Employment by the employer.

The compensation received by workers in the case at PT. New Hope East Java has actually complied with the provisions of the Manpower Act which is subject to Article 164 paragraph 1 of the Manpower Act Number 13 of 2003. However, in the case at PT. New Hope East Java does not calculate the annual leave entitlement that has not been taken and has not yet fallen for workers. Thus, workers are entitled to compensation of Rp. 72,397,560 (seventy-two million three hundred ninety-seven five hundred and sixty rupiah).

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