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EXEMPTION FROM THE "NO WORK, NO PAY" PRINCIPLE: PAID SICK LEAVE AND PROCESS WAGES IN INDONESIA

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ABSTRACT

Under Law No. 13 of 2003 concerning Manpower (Labour Law), there are several rights of workers which provide the fundamental rights of workers and protect workers from unilateral termination of employment relations. In contrast, the unilateral termination of employment is an action that employers carry out to end the employment relationship process in one direction only. Thus, this action led to an industrial relations dispute resulting in "process wages," which means employers should pay the worker's wages during industrial relations dispute settlement. Similarly, under Labour Law and Government Regulation Number 36 of 2021 concerning Wages (GR 36/2021), workers have the rights to be paid when absent from work due to sickness. These two conditions are the exemption of the No Work No Pay principle stated in Article 93 (1) of Labour Law and Article 40 (1) of GR 36/2021. These legal principles applied to the court decision regarding the fulfillment of workers' rights in determining their wages and compensation. Through an in-depth analysis of legal texts, court decisions, scholarly literature, and statutory framework, as well as studies based on previous cases, this research examines the application and implication of paid sick leave and process wages given to workers as an exemption from the No Work, No Pay principle. The results of this study show legal basis, compliance, and wage reckoning based on court decisions regarding the sum of paid sick leave and process wages that applied in Indonesia.

Keywords: Paid Sick Leave, Process Wages, Workers' Rights

ABSTRAK

Dalam UU No. 13 Tahun 2003 tentang Ketenagakerjaan (UU Ketenagakerjaan), terdapat beberapa hak pekerja yang memberikan hak dasar pekerja dan melindungi pekerja dari pemutusan hubungan kerja secara sepihak. Sebaliknya, pemutusan hubungan kerja sepihak merupakan tindakan yang dilakukan pengusaha untuk mengakhiri proses hubungan kerja secara satu arah saja. Dengan demikian, tindakan ini berujung pada perselisihan hubungan industrial yang mengakibatkan “upah proses”, yang berarti pengusaha harus membayar upah pekerja selama penyelesaian perselisihan hubungan industrial. Demikian pula, berdasarkan Undang-Undang Ketenagakerjaan dan Peraturan Pemerintah Nomor 36 Tahun 2021 tentang Pengupahan (PP 36/2021), pekerja berhak mendapatkan upah ketika tidak masuk kerja karena sakit. Kedua syarat ini merupakan pengecualian dari prinsip No Work No Pay yang tertuang dalam Pasal 93 (1) UU Ketenagakerjaan dan Pasal 40 (1) PP 36/2021. Prinsip-prinsip hukum tersebut berlaku dalam putusan pengadilan tentang pemenuhan hak-hak pekerja dalam menentukan upah dan kompensasinya. Melalui analisis mendalam terhadap teks hukum, putusan pengadilan, literatur ilmiah, dan kerangka undang-undang, serta studi berdasarkan kasus-kasus sebelumnya, penelitian ini mengkaji penerapan dan implikasi cuti sakit berbayar dan upah proses yang diberikan kepada pekerja sebagai pengecualian dari prinsip Tidak Bekerja, Tidak Membayar. Hasil penelitian ini menunjukkan dasar hukum, kepatuhan, dan perhitungan upah berdasarkan keputusan pengadilan mengenai jumlah cuti sakit yang dibayar dan upah proses yang berlaku di Indonesia.

Kata kunci: Cuti Sakit Dibayar, Upah Proses, Hak Pekerja.

INTRODUCTION

Amidst national development, the role of economic growth is inseparable, which is one of the pillars of national development. Whereas in economic development, there are supporters running these economic activities. Those are entrepreneurs and workers/labourers who play a pivotal role in the workforce to drive economic growth and development. Moreover, with a diverse range of industries and a large pool of labour resources, workers/labourers play a central role in fueling productivity, innovation, economic progress, and sustained growth across various sectors. The provisions of Article 1 point 3 of Law Number 13 of 2003 concerning Manpower explained that “a worker/labourer is every person who works for a wage or other forms of remuneration”¹. In an employment relationship, workers are often seen as a tool to help employers achieve their goals. In essence, the employment relationship itself always contains inequality, where from an economic point of view, workers are certainly under employers². This subordination relationship often weakens

¹ Article 1 point 3 of Law Number 13 of 2003 concerning Manpower.

² Payaman Simanjuntak, *Peranan Serikat Pekerja dan Paradigma Baru Hubungan Industrial di Indonesia*, Himpunan Pembina Sumber Daya Manusia Indonesia, Jakarta, 2000, p. 62.

workers' positions, with a tendency for employers to exploit, and this relationship ends up being unilateral³. In Indonesia, the significance of justice and welfare for workers is evident through the inclusion of provisions for workers' fundamental rights in its constitution, namely The 1945 Constitution of the Republic of Indonesia, wherein one of its provisions concerning workers stipulated in Article 28D paragraph (2) which stated that: "Everyone has the right to work and receive just and proper compensation and treatment in an employment relationship"⁴.

In order to guarantee workers' rights, an employment relationship requires a work agreement. Hence, the work agreement between the employer and the worker should contain the terms of work, rights, and obligations of the parties⁵. With that, the employer cannot avoid fulfilling the worker's rights because the work agreement is binding on the parties and applies as a law for the parties in it (principle of *pacta sunt servanda*)⁶. The work agreement indeed contains the worker's rights based on the provisions of the Labour Law, where the Labour Law itself serves as a minimum limit in determining workers' rights. At least the employer must provide the worker's rights in accordance with the provisions of the Labour Law. However, employers can provide workers with more rights beyond those stated in the Labour Law by setting them out in the Work Agreement and/or Enterprise rules and regulations or Collective Work Agreements as long as they do not violate applicable legal provisions.

The minimum rights of workers as outlined in Law No. 13 of 2003 concerning Manpower that was last amended by Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law (Labour Law) are: i. The right to equal opportunity and treatment (Article 5 and Article 6 of the Labour Law)⁷; ii. The right to receive job training (Article 11 and Article 12 paragraph 3 of the Labour Law)⁸; iii. The right to obtain work competency recognition/certificate (Article 18 and Article 23 of the Labour Law)⁹; iv. The right to choose, get or change jobs and earn a decent income inside or outside the country (Article 31 of the Labour Law)¹⁰; v. The right of certainty in the implementation of work agreements (Article 61 paragraphs (2), (3),

³Ari Hernawan, *Ketidakadilan Dalam Norma dan Praktik Mogok Kerja di Indonesia*, Udayana University Press, Denpasar, 2013, p. 1-2.

⁴ Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia

⁵ Article 1 number 14 of Law Number 13 of 2003 concerning Manpower.

⁶ Article 1338 paragraph (1) of the Indonesia Civil Code

⁷ Article 5 and Article 6 of Law Number 13 of 2003 concerning Manpower.

⁸ Article 11 and Article 12 paragraph (3) of Law Number 13 of 2003 concerning Manpower.

⁹ Article 18 and Article 23 of Law Number 13 of 2003 concerning Manpower.

¹⁰ Article 31 of Law Number 13 of 2003 concerning Manpower.

(4), (5) of the Labour Law)¹¹; vi. The right of compensation for workers who are on a work agreement for a specified period of time (PKWT) (Article 61A of the Labour Law)¹²; vii. The transferred rights of workers in the event of a change of outsourcing company and as long as the object of work remains. (Article 66 paragraph (3) of the Labour Law)¹³; viii. The right of protection for workers with disabilities [according to the type and degree of disability] (Article 67 of the Labour Law)¹⁴; ix. The right of overtime pays (Article 78 paragraph (2) of the Labour Law)¹⁵; x. The right to rest and have a paid leave in accordance with applicable regulations (Article 79 of the Labour Law)¹⁶; xi. The right to perform religious duties required by religion and still receive full wages (Article 80 of the Labour Law)¹⁷; xii. The right not to have to work when feeling sick on the first and second day of menstruation (Article 81 of the Labour Law)¹⁸; xiii. The right to rest before and after giving birth, and when a worker experiences a miscarriage and still gets full wages (Article 82 of the Labour Law)¹⁹; xiv. The right to breastfeed the child if it must be done during working time (Article 83 of the Labour Law)²⁰; xv. The right to use the right to rest (Article 84 of the Labour Law)²¹; xvi. The right not to be obliged to work on statutory holidays (Article 85 of the Labour Law)²²; xvii. The right to obtain protection for occupational safety and health, morals and decency, and treatment according to human dignity and values and religious values (Article 86 of the Labour Law)²³; xviii. The right to fair wages that enable workers to live a decent life. (Article 88 of the Labour Law)²⁴; xix. The right to receive equal wages in the same duties (Article 88A of the Labour Law)²⁵; xx. The right to get a minimum wage based on the minimum wage stipulated in laws and regulations (Article 88B, Article 88C, Article 88D, Article 88E of the Labour Law)²⁶; xxi. The right to get wages paid even if the

¹¹ Article 61 paragraphs (2), (3), (4), (5) of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

¹² Article 61A paragraphs (2), (3), (4), (5) of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

¹³ Article 66 paragraphs (3) of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

¹⁴ Article 67 of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

¹⁵ Article 78 paragraph (2) of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

¹⁶ Article 79 of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

¹⁷ Article 80 of Law Number 13 of 2003 concerning Manpower.

¹⁸ Article 81 of Law Number 13 of 2003 concerning Manpower.

¹⁹ Article 82 of Law Number 13 of 2003 concerning Manpower.

²⁰ Article 83 of Law Number 13 of 2003 concerning Manpower.

²¹ Article 84 of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

²² Article 85 of Law Number 13 of 2003 concerning Manpower.

²³ Article 86 of Law Number 13 of 2003 concerning Manpower.

²⁴ Article 88 of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

²⁵ Article 88A of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

²⁶ Article 88B, Article 88C, Article 88D, Article 88E of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

worker/labourer does not perform work for the following reasons stated in Article 93 paragraph (2) of the Labour Law²⁷; xxii. The right to get prioritized over the payment of workers' rights if the company is declared bankrupt (Article 95 of the Labour Law)²⁸; xxiii. The right to obtain labor social security for workers and their families (Article 99 of the Labour Law)²⁹; xxiv. The right to form and become a member of a trade/labor union (Article 104 of the Labour Law)³⁰; xxv. The right to strike (Article 137 of the Labour Law)³¹; xxvi. The right to get protection from unilateral termination of employment in accordance with the provisions in Article 153 of the Labor Law³²; xxvii. The right to obtain severance pay and/or gratuity pay, and compensation pay that should have been received at the time of termination of employment relations (Article 156 of the Labour Law)³³; xxviii. The right to process wages even if workers get suspended by the employers in the process of Termination of Employment Relations (Article 157A of the Labour Law)³⁴.

Given the controversy surrounding workers' rights in Indonesia, an analysis of paid sick leave and process wages can impart important information on the performance of the current application of workers' rights. Likewise, these rights stand out as crucial elements that shape the relationship between employers and workers, particularly in the exemption of No Work No Pay principles based on positive law. This paper aims to provide a comprehensive analysis of the implications of these provisions and examine their legal and practical significance within the Indonesian labour law framework.

RESEARCH METHOD

This research uses the normative-empirical method, which involves an approach that combines normative analysis with empirical investigation to address complex legal issues. This study based on integrated normative principles, ethical considerations, and legal doctrines with empirical data and legal events observations. Based on problems formulated, this research based on comprehensive approach that incorporates various sources to ensure accuracy and depth of analysis, such as legal texts, for instance, statutes and regulations that serve as foundational references, providing a framework for understanding legal principles and doctrines. As well as court decisions

²⁷ Article 93 paragraph (2) of Law Number 13 of 2003 concerning Manpower

²⁸ Article 95 of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

²⁹ Article 99 of Law Number 13 of 2003 concerning Manpower.

³⁰ Article 104 of Law Number 13 of 2003 concerning Manpower.

³¹ Article 137 of Law Number 13 of 2003 concerning Manpower.

³² Article 153 of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

³³ Article 156 of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

³⁴ Article 157A of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

that offer invaluable insights into the interpretation and application of the law. Together with scholarly literature, including legal journals and academic publications, that contributes scholarly analysis and theoretical perspectives to the research. Moreover, a thorough examination of the statutory framework helps contextualize legal provisions and identify legislative intent. Additionally, studies based on previous cases provide empirical evidence and comparative analysis, shedding light on the practical implications and potential outcomes of legal issues. By employing a multidimensional approach encompassing these various sources, legal researchers can ensure a robust and comprehensive analysis of the law.

RESULT AND DISCUSSION

A. No Work, No Pay Principle

In the history of the No Work, No Pay principle, a clear example of its implementation can be found in the case of *Miles v. Wakefield Metropolitan District Council* in 1987, where the House of Lords ruled that the "no work, no pay" principle applied when worker refused to perform their contractual duties in full, where this no work no pay principle entitled an employer to withhold the workers' wages for the period in which worker did not perform his contractual duties in full or when worker was performing most of their duties but the employer did not accept the benefit of it³⁵. Essentially, there are numerous cases that applied the No Work, No Pay principle, such as the case of *Henthorn v Central Electricity Generating Board* in 1980, *Cresswell v Board of Inland Revenue* in 1984, *Boston Deep Sea Fishing and Ice Co v Ansel!* Case in 1888, and *Cuckson v Stones* case in 1858.

Furthermore, this principle led to "no obligation" for the employer to pay the worker's wage when the worker can not perform or not fully perform their work based on the work agreement. Thus, the practice where workers who did not work that day caused them to cannot claim their wages for that day but were not essentially dismissed, and the employment relationship continued, became widely known³⁶.

In Indonesia, the No Work, No Pay principle was stipulated in Article 1602b of the Indonesia Civil Code, which stated: "No wage shall be due in respect of a period during which the laborer has

³⁵ Hazel McLean, "Contract of Employment – Negative Covenants and No Work, No Pay", *The Cambridge Law Journal*, Cambridge University Press, United Kingdom, p. 29.

³⁶ Philip Sales, "Contract and Restitution In The Employment Relationship: No Work, No Pay", *Oxford Journal of Legal Studies* Vol. 8, No. 2, p. 303

not performed the agreed labour or duties”³⁷. Subsequently, this legal basis was adopted in Labour Law as a legal practice, but the Labour Law added some exceptions to the No Work, No Pay principle, one of which is paid sick leave. As seen in the provision contained in Article 93 paragraph (1) of the Labour Law, that stated: “No wages will be paid if workers/labourers do not perform work”. In the explanatory notes of paragraph (1), Article 93 of the Labour Law stipulated that the No Work, No Pay principle applied to every worker unless the worker cannot perform their job, not because of their mistakes.

However, Article 93 paragraph (2) gives some justifications for the exemption of the No Work, No Pay principle, which are: sick leave, menstrual period, getting married, marrying off their children, having their children baptized, parental leave, or suffering from a miscarriage, bereavement leave, fulfilling their obligations to the State, practicing religious obligations required by their religion, the entrepreneur does not employ or require the worker to do the job because of the entrepreneur’s fault, exercising their right to take a rest, performing their trade union duties with the permission from the entrepreneur, undergoing a study or an education program required by their enterprise³⁸.

This legal basis impacts the No Work No Pay policy and gives the workers a right to get paid despite being absent or unable to perform their duties based on the work agreement. The No Work, No Pay principle is indeed understandable due to the rights and obligations that bind the parties in a work agreement. Employers have rights as well which come from workers’ obligations. However, if the workers did not fulfill their obligations, that would cost the employers. The main focus of this principle is to balance the rights and obligations of employers and workers. Yet, several conditions are inevitable, such as when workers are sick and cannot perform their duties. As an act of humanity, we do not want to exacerbate an already difficult situation, and there is understanding for the worker who did not mean to set aside their duty. The exemption of the No Work, No Pay policy also contemplates the protection of workers considering workers’ positions prone to exploitation.

The exemption of the No Work, No Pay principle is accentuated in provisions of paragraph (1) Article 186 of the Labour Law, which state: “Whosoever violates what is stipulated under paragraph (2) and paragraph (3) of Article 35, paragraph (2) of Article 93, shall be subjected to a criminal sanction in jail for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a fine of a minimum of Rp10,000,000 (ten million rupiah) and a maximum of Rp400,000,000 (four hundred

³⁷ Article 1602b of the Indonesia Civil Code

³⁸ Article 93 paragraph (2) of Law Number 13 of 2003 concerning Manpower

million rupiah)³⁹. This legal provision presents a severe sanction for violating paragraph (2) Article 93 of the Labour Law that declared justifications of exemption for the no work, no pay principle. On the other hand, this provision requires employers to be obligated to pay the worker who is absent or unable to perform their duty based on reasons enunciated in Article 93 paragraph (2) of the Labour Law.

B. Paid Sick Leave

Paid sick leave is a practice and scheme that allows workers to receive compensation for missed workdays due to illness. Thus, it ensures workers do not lose income while taking time off to recover. Besides, there are two components in paid sick leave definition, which are: temporary absence from their job or duties due to illness and remuneration in the form of sick leave benefits intended to supplant wages during the period of absence caused by sickness⁴⁰.

The significance of paid sick leave in enhancing productivity and emphasizing the long-term sustainability of a company can be seen in cases where it costs a lot more to work while sick since the expenses for healthcare costs increased due to treating a significantly higher number of people whilst showing more severe signs of ill health. Not giving paid sick leave also cause loss for the employer due to productivity decreasing as workers could not perform in good condition⁴¹. Moreover, based on research done in 2009, when the H1N1 pandemic occurred, a significant amount of workers who did not have access to paid sick leave chose to come to work despite being ill, which drives H1N1 spread into the workplace causing infections of some 7 million co-workers in the USA⁴². Following that, paid sick leave became more accessible for workers and became a legal basis, also a prevailing practice implemented in the workforce.

Based on global research conducted by Dr. Jody Heymann, paid sick leave is provided by 145 countries⁴³, with about 20 percent of the countries setting the minimum replacement rate at 100 percent of wages. In 14% of countries, employees receive a replacement of 75-100% of their wages during sickness absence. And more than 50% of countries offer replacement rates to workers ranging from 50% to 75% of wages. The remaining countries provide alternative forms of compensation, such

³⁹ Article 186 paragraph (1) of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

⁴⁰ Dr Xenia Scheil-Adlung and Lydia Sandner, "Paid sick leave: Incidence, patterns and expenditure in times of crises", ESS Extension of Social Security, Paper No. 27, International Labour Office, Geneva, 2010, p. 4.

⁴¹ *Ibid.*, p. 1.

⁴² Institute for Women's Policy Research, "Lack of paid sick days allowed H1N1 to spread to the Workplace", Washington, 2009.

⁴³ Heyman, J., Earle, A., Hayes, J., "The Work, Family and Equity Index – How does the United States measure up", The Global Working Families Project, Institute for Health and Social Policy, 2007, p. 38

as lump sum or other replacements⁴⁴. The duration of paid sick leave ranges from over a month (up to two years) to less than a week. In more than 102 countries, a period of paid sick leave covered from one month and more, and in 33 countries, there was a regulation of paid sick leave in a period of 11 to 30 days, as well as up to 10 days of paid sick leave allowed in 3 countries, with the remaining countries set less than seven days or an unspecified number of days for paid sick leave.

In Indonesia, paid sick leave is stipulated in Article 93 paragraph (2) point a of Labour Law and in Article 40 paragraph (3) point a of the Government Regulation Number 36 of 2021 concerning Wages (GR 36/2021). This legal basis implies legal protection for workers' wages despite absence due to sickness. Indonesia's Labour Law states that the period of paid sick leave for workers is up to 12 months, with the amount of wages paid due to sick leave ranging from 100% to 25%.

Article 93 paragraph (3) of Labour Law and Article 41 of GR 36/2021 described that the payable wages for the first four months are 100 (one hundred) percent of workers' wages. Thus, for the second four months (four months until eight months of sick leave), workers shall be entitled to receive 75 (seventy-five) percent of their wages. And for the next four months, which is eight months to twelve months of sick leave, workers shall be entitled to receive 50 (fifty) percent of their wages. Afterward, for the subsequent months, workers shall be entitled to receive 25 (twenty-five) percent of their wages prior to the termination of employment by the entrepreneur.

In Court's Decision Number 33/Pdt.Sus-PHI/2017/PN.Ptk, which is a case between Taufiq (Plaintiff) v Patas Kencana Borneo LLC (defendant), where Taufiq was a worker at Patas Kencana Borneo LLC for two and half years. In this case, Taufiq had a stroke in October 2015, which caused him could not perform his duties as a diesel fuel tanker driver. But, while taking his sick leave, Taufiq's wages were not get paid by the employer which is Patas Kencana Borneo LLC (defendant), nor a medical or health care allowance from the defendant. Thus, Taufiq demands his right by filing a request to industrial relation dispute settlement institutes/agencies, which is the Department of Social, Labour, and Transmigrations. Following that, the defendant did not do what the Department of Social, Labour, and Transmigrations requested. Hence, Taufiq requested a settlement of this dispute to the Industrial Relations Court. In this case, the courts issued a verdict for the defendant to pay the plaintiff's wages while on sick leave. Which covered 14 months of plaintiff wages ranging from 100% to 25% of the wages. The Court's decision described the paid sick leave from worker's wages that the defendant should pay are:

⁴⁴ Heymann, J. et all, "Social Security Programmes Throughout the World (SSPTW)", Social Security Administration, Washington, 2007.

1. 100% of the plaintiff's wages for the first 4 (four) months of sick leave (from October 2015 to January 2016) calculated as $4 \times \text{Rp.1,761,700,-}$ (plaintiff's wage) $\times 100\% = \text{Rp.7,046,800.}$
2. For the second 4 months of sick leave, which is from February 2016 to May 2016, the amount of the plaintiff's wages that should be paid are $4 \times \text{Rp.1.761700,-} \times 75\% = \text{Rp.5,285,100.00.}$
3. On the third 4 months of sick leave, the plaintiff's rights were 50% of wages from June 2016 to September 2016, which means $4 \times \text{Rp.1,761,700,-} \times 50\% = \text{Rp.3,523,400.}$
4. And for the next following months, from October 2016 to November 2016, the plaintiff's rights of paid sick leave covered 25% amount of his wages, which totaled $2 \times \text{Rp.1.761.700,-} \times 25\% = \text{Rp.880.850,00.}$

Therefore, the defendant is required to pay the plaintiff a total amount of Rp.16,736,150.-

The second case that implemented paid sick leave was the Court's Decision Number 47/Pdt.Sus-PHI/2018/PN Sby, in that case, the plaintiff was a worker named Choiril, and the plaintiff was the employer named Bambang Santoso. Choiril (plaintiff) had an accident on December 20th, 2017, that caused him a leg fracture, which led the plaintiff to be unable to fulfill his duties. From December 20th, 2017, to March 2018, which was 3 months, the plaintiff was getting treatment from medical facilities as seen on the medical certificate given to the defendant. The plaintiff's medical certificate indicates the fulfillment of the provisions on the explanatory notes of Article 93 paragraph (2) point a, of the Labour Law that stipulated worker who is sick was proven by a medical certificate or the statement from the physician treating the worker. Due to this condition, the judges issued a verdict that ordered the defendant to pay the plaintiff's wages while the plaintiff had sick leave from January 2018 until March 2018. The defendant was ordered to pay 100% of the plaintiff's wages for 3 months, which amounted to $3 \times \text{Rp.3.583.312,-} \times 100\% = \text{Rp.10.749.936,-.}$

Based on the legal basis of paid sick leave in Indonesia and its application as seen in the practice applied in the Court's Decision, which created a Jurisprudence for the application of paid sick leave principle, it is shown that Indonesia acknowledges the paid sick leave principle and has applied the exemption of the No Work, No Pay principle. Thus, Indonesia's legal protection for workers' rights has given a whole new perspective on how a developing country protects workers and how its legal basis applied to the cases related to workers' well-being, as seen from the exemption of the No Work, No Pay principle.

C. Process Wages

According to Article 1 point 1 of Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement (Law 2/2004), it is specified that “an industrial relations dispute is a difference of opinion resulting in a dispute between employers or an association of employers with workers or trade unions due to a disagreement on rights, conflicting interests, a dispute over termination of employment, or a dispute among trade unions within one company”⁴⁵. Within the process of the termination of employment relations, employers should give the worker its rights, such as severance pay, the sum of money paid as a reward for service rendered during the worker’s term of employment, the compensation payments that the dismissed worker ought to have, and process wages. Hence, the workers’ rights must be paid in accordance with the regulation, which in this case is from the Labour Law and Circular Letter of the Supreme Court No. 3 of 2015. Consequently, if the employers do not comply, this action is equivalent to violating the existing rules⁴⁶.

The provision of process wages was written explicitly in the Circular Letter of the Supreme Court No. 3 of 2015, which in this legal basis, stipulated that: “After the Constitutional Court Decision Number 37/PUU-IX/2011, dated September 19th, 2011, regarding process wages, the content of the decision is to order employers to pay process wages for 6 months. Excesses time in the Industrial Relation Dispute Settlement’s process as referred to in Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement is no longer the Parties’ responsibility”⁴⁷. This legal basis implies that there is a period of 6 months of process wages given to the worker during the settlement of the dispute process until its settlement is legally binding, as written in Circular Letter of the Supreme Court No. 3 of 2015. There was a plausible reason for the duration of process wages that covered 6 months of the worker’s rights, that is because the process of industrial relation dispute settlement can take time from 110 days, which the bipartite meetings settled within 30 (thirty) working days⁴⁸. And for the mediation process,⁴⁹ or conciliation process⁵⁰ takes about 30 (thirty) working days. Thus, in case the settlement of the industrial relations dispute was resolved through the Industrial Relations Court in the local District Court, this takes time for about 50 working days from the date of the first court

⁴⁵ Article 1 point 1 of Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement.

⁴⁶ Kevin Kosim & Gunardi, Workers’ Rights to Wages in the Process of Being Dismissed Unilaterally by the Company (A Case Study of the Jurisdiction of the Supreme Court Number 516 K/Pdt-Sus-PHI/2019), *Advances in Social Science, Education, and Humanities Research*, Vol. 655, Atlantis Press, p. 869

⁴⁷ Legal Formulation of the Special Civil Chamber in Circular Letter of the Supreme Court No. 3 of 2015 on the Implementation of the Formulation of the Plenary Meeting of the Supreme Court Chamber in 2015 as Guidelines for the Implementation of Tasks for Courts

⁴⁸ Article 3 paragraph (2) and paragraph (3) of Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement.

⁴⁹ Article 15 of Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement.

⁵⁰ Article 25 of Law No. 2 of 2004 concerning Industrial Relation Dispute Settlement.

session. The total duration of the dispute settlement takes up to 110 days which equals 4 months, and for the process wages that covered up to 6 months of workers' rights, this indicates protections for workers' welfare. Hence, the issuance of Circular Letter of the Supreme Court No. 3 of 2015 acts as a guide for judges to implement this legal basis regarding process wages on their duties for the court.

In addition, Labour Law stipulated the provisions regarding the process wages as well. Thus, based on Article 157A of the Labour Law regarding the process wages, stated that⁵¹:

Paragraph (1): During the settlement of Industrial Relations Disputes, Employers and Workers must continue to carry out their obligations.

Paragraph (2): Employers may take suspension action against workers who are in the process of Termination of Employment Relations while still paying wages and other rights that are usually received by workers.

Paragraph (3): Implementation of the obligations as referred to in paragraph (1) shall be carried out until the completion of the Industrial Relations Dispute settlement process according to its level.

In several cases regarding granting the process wages for workers, the Judges had considered implementing process wages as the workers' rights, such as in the Court's Decision Number 42/Pdt.Sus-PHI/2021/PN.Jap, where the defendant was a worker and the plaintiff was the employer, this Court's Decision stated that: "In considering, that in relation to process wages, the Panel of Judges refers to Circular Letter of the Supreme Court No. 3 of 2015 which provides that the process wages for 6 months must be paid by the plaintiff (employer) to the defendant, with wages of $\text{Rp}12,317,900.00 \times 6 = \text{Rp}73,907.400.00$, which must be paid by the plaintiff to the defendant for 6 consecutive months starting from the time the lawsuit was registered at the Industrial Relations Court at the Jayapura District Court, towards lawsuit point 7, the Plaintiff's lawsuit has legal grounds and can be granted". In this case, the Judges ordered the plaintiff (employer) to pay process wages that covered 6 months of the defendant's wages from the settlement process that starting from the date this lawsuit was registered at the Industrial Relations Court at the Jayapura District Court, namely the amount of $6 \times \text{Rp}. 12,317,900 = \text{Rp}.73,907,400,-$.

Similar to the case mentioned before, in Court's Decision Number 45/Pdt.Sus-PHI/2020/PN.Tpg, also stated that the workers had the right to be given the process wages: In the judge's consideration, Plaintiff's petition number 6 was granted, while the Panel of Judges stated that Defendant was obliged

⁵¹ Article 157A of Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of Law No. 2 of 2022 on Job Creation into Law.

to pay Plaintiff's wages from the time of termination until this Court's decision is announced.

Nonetheless, it does not rule out the possibility of applying the No Work, No Pay principle aside from providing the process wages. As seen in a study conducted by Syahwal, where this research highlighted the Court's Decision Number 234/Pdt.Sus-PHI/2020/PN Jkt Pst juncto Decision Number 1395 K/Pdt.Sus-PHI/2021, which showed a Court Decision's disparity in applying the exemption of the No Work, No Pay principle regarding granting a process wage. In the first-level decision, the Court ordered the employer to pay the process wages as it was the worker's right because the worker wanted to do his duties but was prohibited by the employer. However, in the cassation's decision, the worker's right to process wages was abolished because the worker no longer carried out their obligations to do the work agreed upon⁵².

The practices of granting process wages to the workers as their rights in the process of industrial relations dispute settlement give them more fairness, considering the workers will have savings after the termination of employment. Implementing the No Work, No Pay principle in providing the workers the process wages play an essential role in workers' welfare. Although, in some cases, the implementation of granting process wages as an exemption of the No Work, No Pay principle did not occur, even though Indonesia's laws have regulated process wages. Hence, this will be a task for the government to regulate the implementation of the No Work, No Pay principle according to the positive laws.

CONCLUSION

Based on the analysis of the application and implication of the exemption of the No Work, No Pay principle in Indonesia, whereas in the case regarding paid sick leave practice as the justification of the exemption of the No Work, No Pay principle, this justification ensures that workers are entitled to receive their wages even when they are unable to work due to illness. There is a plausible factor to support paid sick leave as the exemption of the No Work, No Pay principle since the previous study showed that paid sick leave helps the sustainability of the company, as seen in the case of H1N1 spread through fellow workers due to paid sick leave not provided. By examining several cases in Indonesia, the result showed that the application of paid sick leave policy was relatively compliant in implementing its legal basis through the industrial relation dispute settlement institutes/agencies.

⁵² Syahwal, Paradigm of Application of The No Work No Pay Principle in Determining Process Wages, *Jurnal Penelitian Hukum De Jure*, Volume 23, Number 2, June 2023, p. 186.

Similarly, in the application of process wages, the worker gets the right to wages throughout the process of the termination of employment relations. Hence, the process wages must be paid in accordance with the regulation, which is from the Labour Law and Circular Letter of the Supreme Court No. 3 of 2015. Wherein these legal bases stated that process wages only cover 6 months of the worker's wages. Thus, the practice of the exemption of the No Work, No Pay principle has underlined the government's commitment to balancing the needs of employers and workers while promoting fairness and social protection in the workplace. Thus, by providing the workers' right to paid sick leave and process wages as the exemption of the No Work, No Pay principle, the law acknowledges the fundamental principles of human dignity and the value of labour.

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