

VERDICT

Nomor: 55/PL/G/2006/PHI.PN.JKT.PST.

FOR THE JUSTICE MADE BASED OF THE ONE ONLY GOD

The Industrial Relation Court at the Central Jakarta District Court that examines and tries the first degree dispute of industrial relation has ruled the Verdict on the case between:

Ahmadun, whose address is at Jl. Batu Merah III RT.007 RW. 02 No. 23, Pasar Minggu, Jakarta Selatan, in this stance opted to reside in the office of his legal counsel, which is Drs. Yusmet, Amas Baih, H. Irianto, Agustinus Snell, Sri Lestari, who are all the board of DPD F SP Tourism of the DKI Jakarta who resides at Jl. Kerajinan Gajah Mada No. 2 Jakarta Barat, who will take collective or individual acts, henceforward is referred as **PLAINTIFF**;

VERSUS

Hotel Atlantic, represented by Roni Soesanto as the General Manager of Atlantic Hotel who resides at Jln. Salemba Raya 26, Jakarta Pusat, who in this stance is represented by the person who is given power of attorney, M. Sofyan, as the manager of personnel of the Atlantic Hotel, henceforward is referred as **DEFENDANT**;

The Industrial Court at the District Court;
Upon reading all of the documents on this case;
Upon hearing both parties;

REGARDING THE LAWSUIT

Considering that the purpose and objective of the Plaintiff's lawsuit is as referred above.

Considering that the Plaintiff with the lawsuit dated July 27, 2006 has been registered at the Registrar of the Industrial Relation Court at the District Court of the Central Jakarta with the lawsuit registration number is: 55/PL/G/2006 /PHI.PN.JKT.PST. has put forward the followings:

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Pursuant to the grounds covered above, the Plaintiff would ask the Industrial Relation Court that examines and hears this case to put the verdict against the Defendant as followed:

In the Provisions

1. Granting all of the provisions mentioned in ths lawsuit;
2. Ordering the Defendant to pay the wage and all of the rights of the Plaintiff that has not yet been paid since August 9, 2005 until the issuance of legally binding verdict;
3. Put a sanction against the Defendant to pay the 2005 Religious Holiday Allowance;

4. Put a sanction against the Defendant to pay immaterial compensation pay to the amount of Rp 85.872.000,- (eighty five million eight hundred seventy two thousand Rupiah);
5. Put a sanction against the Defendant to pay fine due to the delayed payment of wage for 11 months for Rp 475.200 (four hundred seventy five thousand two hundred Rupiah);
6. Put a sanction against the Defendant to pay the difference of Provincial Minimum Wage of 2006 since January 2006 to June 2006 for Rp 642.000,-
7. Stating that there will be forfeiture of legitimate and valuable collaterals;

In the Case

1. Grants all of the Plaintiff's claims;
2. Rules that the Defendant has conducted an act that is in violation to the Manpower Act;
3. Put a sanction against the Defendant to pay severance pay, appreciation pay, compensation of rights and medical cost for Rp. 50,000,000,- (fifty million rupiah);
4. Put the collaterals of legitimate and valuable as followed: building, TV, sound system, computer, air conditioner, generator set, refrigerator, chiller, freezer, furniture, a blue-white minibus van with Registration Number B 7862 DB registered under the name PT Atlantic Permata Hotel, a silver Toyota Kijang with registration number B 8681 ZG registered under the name PT Atlantic Permata Hotel;
5. Put a sanction against the Defendant to pay the case cost;
6. Determines that the verdict may be implemented even other legal effort is taken;;

Subsidiary

Should the Judge thinks otherwise, kindly make a just and fair decision (*ex aequo et bono*).

Considering that the Judges have tried to mediate between the disputed parties, but not successful, and then the case examination was followed by the reading of Plaintiff lawsuit on July 28, 2006, and on the lawsuit the Plaintiff has decided that he will stay with the lawsuit.

Considering that on the lawsuit made by the Plaintiff, the Defendant has given out their answers as followed:

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Considering that before the court the Plaintiff has presented legalized evidences and have been cross referenced with the original and they matched and they should be marked:

Evidence P-1 to P-12

1. Evidence P-1 :
2. Evidence P-2 :
3. Evidence P- :
 12

Considering that the Defendant has already presented letter of evidence with sufficient legal stamp, and after matching it to the original copy and signed as followed:

(Evidence T-1 to Evidence T-7)

- 1 Evidence T-1 :
- 2 Evidence T-2 :
- 3 Evidence T-3 :
- 4 Evidence T-7 :

Considering that aside from presenting documents as evidence, the plaintiff also presented witness which is Who gave the following testimony:

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.....

Considering that the Plaintiff and Defendant at the same time have presented written conclusion on September 8, 2006

Considering that in order to make all in a swift manner, all things happen in the court will be recorded in the Dossier of Hearing, which are all included in this Verdict.

Considering that finally the parties did not present anything else, and ask for the Decision

ON THE LEGAL BASIS

Considering that the aim and purpose of the plaintiff are as elaborated above.

Considering that this case is a devolution from the Committee for Labour Dispute Settlement at the Province of DKI Jakarta to the Industrial Relation Court at the Central Jakarta First Stance Court

Considering that on the first hearing the Plaintiff has used his right to pose new claim according to the claim format available at the Industrial Relation Court. Therefore in examining and deciding this case, the Judge will use the new claim presented by the Plaintiff.

Considering that in this lawsuit the Judge thinks that there are two disputes arisen by the Plaintiff, which are on the dispute of termination of employment and dispute of rights, in this case the dispute over the freedom of association. According to the Law Number 2 of 2004, article 86, it is stated that in the dispute of rights and/or dispute of interest followed by termination of employment, hence the industrial relation court must decide first the dispute of rights and/or dispute of interests. However, based on the primary lawsuit and petition made by the plaintiff, the Judge considers that Plaintiff only put a lawsuit against the dispute of rights, which causes termination of employment of the plaintiff but did not file separate petition on the dispute of rights, therefore the Judge in analysing this case will only consider the right.

IN the Provisions

Considering that the Plaintiff has proposed application for decision of provisions as stated in the Plaintiff's claim;

Considering that since the claims made in the provisions are closely related to the primary claims, then the application of provisions made by the Plaintiff shall be rejected.

In the Lawsuit:

Considering that in the claim, the Plaintiff has already claimed that the dispute between plaintiff and defendant is the dispute over termination of employment;

Considering that the Plaintiff claims that he has worked for the Defendant as permanent employee since February 2004, with monthly salary of RP. 720.000,- (seven hundred twenty thousand rupiah)

Considering that the Plaintiff has been working diligently with full responsibility that he had never received any notification/warning from the company;

Considering that at the end of July 2005, there has been a strong intention from the employees of Hotel Atlantic to establish *PUK F SP Par SPSI* at Hotel Atlantic;

Considering that on August 9, 2005, the Personnel Division at PT Atlantic Permata Hotel issued prohibition to enter the hotel area. However in the content on August 11, 2005, the Plaintiff was expected to come to the Personnel Division at Atlantic Hotel..

Considering that on that August 11 2005 meeting the Defendant stated that the Company would no longer employ the Plaintiff without any clear explanation. The Defendant then offered severance money for Rp. 5.000.000,- (five million Rupiah) but the Plaintiff rejected the offer.

Considering that the DPD of SP Par SPSI DKI Jakarta has sent a lawsuit against the Defendant on August 15, 2005 to withdraw the prohibition to enter the hotel for the Plaintiff. Moreover, the Local Office of the Ministry of Manpower and Transmigration of Central Jakarta has also advised in its letter dated December 19, 2005 no. 2748/-1.835.1, as attached in the document of transfer that advised the Defendant to employ the Plaintiff. But up until now the Defendant still does not allow the Plaintiff to enter and be employed again.

Considering that on October 17, 2005 the Management represented by Isye Falyanah stated their rejection on the establishment of PUK F SP Par SPSI and asked the board or members to resign from their position at the union and apologized to the department head, and to those who did not apologize and composed a letter of resignation from their position and membership of the PUK F SP Par SPSI will be prevented to go anywhere or terminated from their employment without any severance.

Considering that in their reply the Defendant claimed that only two people involved in the establishment of the PUK SP PAR Hotel Atlantic while the others did not participate in the Trade Union of the Hotel Atlantic.

Considering that according to the Defendant, the company has not yet acknowledged the PUK SP PAR Hotel Atlantic because it has not granted permission for the establishment of the Trade Union of the Hotel Atlantic. Nevertheless Mr. Agus Supriyanto and Mr. Ahmadun (the Plaintiffs) have already submitted their appeal to the Local Office of the Ministry of Manpower and Transmigration to register the Trade Union of the Atlantic Hotel.

Considering that the management of Atlantic Hotel has never issued or given any permissions for the establishment of Trade Union of Tourism Workers (SP PAR) of SPSI Hotel Atlantic, thus no evidence that the Document of Registration from the Local Office of the Manpower and Transmigration dated September 23, 2005 sent to the Hotel Atlantic.

Considering that the Personnel Division at the Hotel Atlantic stated that in regards to the letter issued on August 9, 2005, on the meeting with Agus SUPriyanto and Ahmadun on August 11, 2005 at 3 PM he has said that there is a reduction of employment at the premise. Each Department head has been informed to send in the names of employees to be laid off and will give each person severance pay for Rp. 5,000,000,- (five million Rupiah). Agus Supriyanto and the Plaintiff have asked to be given the opportunity to think about the offer and the fact that the company has never stated that,"You both are laid off because you established a trade union at Atlantic Hotel."

Considering that according to the Defendant, the Plaintiff has never shown up at Hotel Atlantic since August 12, 2005. The Personnel Department has asked each Department but no answer on the person and his absence on August 2005 was not known.

Considering that in regards to the letter of DPD SP Par DKI Jakarta dated August 15, 2005, the Defendant has stated that the Plaintiff never showed up for reaching a consensus.

Considering that the Defendant has stated that the Advise No. 7710/-1.835.3 dated December 20, 2005 has defect because it was made on behalf of PT Indoplant Perkasa, not on behalf of Atlantic Hotel Board of Directors and the worker's name was not the Plaintiff's name, but Nurhasanah.

Considering that the Defendant in the reply has warned the Plaintiff for using the address and telephone number of Atlantic Hotel without any permission from the company as stipulated by the law.

Considering that the Defendant furthermore asserted that the Plaintiff and Augus Suprianto are not active without any permission from each Department Head.

Considering that the Defendant in their reply has postulated that they have not yet acknowledged the PUK SP PAR Hotel Atlantic because they have not given the permission for the establishment of the Atlantic Hotel Trade Union and questioned the registration of that trade union.

Considering that the arguments stated by the Defendant are closely related to the claim made by the Plaintiff, which stated about the Defendant's rejection on the establishment of the PUK S SP Par SPSI where the arguments along with the P-7 evidence have been presented in the Advise of the Local Office of the Ministry of Manpower and Transmigration of the Central Jakarta.

Considering that according to the establishment of the trade union by workers in their working premise, i.e Hotel Atlantic (the Defendant), the Judge thinks that establishing trade union, becoming members of trade union, composing working program and conducting all activities including becoming the board of trade union are all the rights of trade union. More specifically on the establishment of trade union, the Judge thinks that establishing and becoming the member of trade union are the basic and autonomous rights of a worker, and he/she shall not ask any permission from any party including the employer. The employer, or even the government shall not hamper or limit let alone intervene this right, and even for the legitimation of a trade union according to the law is when it has been '*listed*' in the institution responsible for the manpower not just '*registered*' or *earning license* from government. Therefore the Defendant's act that required a union to have a permission from employer to be established could be considered as an act that hampers the workers in enjoying their basic rights, that clearly guaranteed and protected by the law.

Considering that in the Indonesian or International law, it is a basic right for workers as well as employers to enjoy their rights to associate and implement associations' or unions' activities.

Considering that this basic right is stated in the ILO Convention Number 87 of 1948 on Freedom of Association and Protection of the Right to Organize that has been ratified by the Government of Indonesia through Presidential Decree Number 83 of 1998 on the Ratification of Convention (Number 87) Concerning Freedom Of Association And Protection Of The Right To Organize. The Article 2 of that convention states, "*Workers and employers without distinctions whatsoever, shall have the right to establish, and subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*" And also in Article 3, "*(1) workers' and employers' associations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programs. (2) the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*"

Considering that aside ILO Convention Number 87 of 1948, the protection of freedom of association in international law is also provisioned in ILO Convention number 98 of 1949

on the Right to Organize and Collective Bargaining. This convention has been ratified through the Law Number 18 of 1956 on the Ratification of ILO Convention number 98 on the implementation of the right to organize and to have collective bargaining. IN Article 1 of that convention it is stated,"(1) workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. (2) such protection shall apply more particularly in respect of acts calculated to—(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership of because of participation in union activities outside working hours or, with the consent of the employer, within working hours."

Considering that in the national law of the protection of this right to organize is also guaranteed and even protected in the Law Number 21/2000 on Trade Union/Labor Union. In Article 5 Paragraph (1) of the law, it is stated that "Every worker shall obtain the right to establish and become member of trade/labor union".

Considering that based on the abovementioned considerations, the Judge thinks that the Defendant's act to reject the establishment of PUK S SP Par SPSI at the Defendant's hotel due to lack of license from the Defendant, including to prohibit workers/labours to become members or ask the workers to relinquish their membership or administration of trade union is a prohibited act by the law because aside from violating their rights to organize as stipulated from the Law Number 21 of 2000, it is also because their right to organize universally is considered as the core labour standard as categorized by the international Labour Organization.

Considering that in regards to the existence of PUK S SP Par SPSI at the Defendant's hotel, the Judges think that the registration of trade union to the Local office of the Ministry of Manpower and Transmigration at Central Jakarta, aside from being the basic right of workers to organize, it is a mandatory legal act advised by the law in order to obtain legal status of that trade union.

Considering that since the Local office of the Ministry of Manpower and Transmigration at Central Jakarta has issued proof of registration of the trade union at Atlantic Hotel of 379/I/F/IX/2005 dated September 23, 2005, as attached in the Plaintiff's power of attorney letter, then the Judges think that the existence of PUK S SP Par SPSI at the defendant's hotel is a legal union and therefore the union along with its board of directors and members shall maintain the rights to conduct their union activities according the law in Indonesia.

Considering that in regards to the Defendant's objections on the absence of permission to use the address and telephone numbers of the Defendant's hotel by the Plaintiff, the board of Judges think that these objections have no grounds considering that the address and telephone numbers subjected are the trade union's. Legally these objections are illegal to be addressed to the Plaintiff as a person, instead they should have been addressed as an institution or organization. Moreover, it is acceptable that trade union at the company's level

use their address considering that the address is the address of their workplace. And it has become a common practice in Indonesia that the trade union at company level uses the company's address, and they are entitled to get the facilities of the company for the trade union.

Considering in regards to the dispute over employment termination between Defendant and Plaintiff, the board of Judges think that based on the evidences either from Defendant or Plaintiff, they are not able to locate any employment termination letter from the Defendant as postulated by the Defendant. However based on the evidences posed by the Defendant and Plaintiff (Evidence P-5 and T-3) the board of Judges considers that the letter composed by the Defendant addressed to the Plaintiff is an official letter that prohibits the Plaintiff to enter the premise effectively since August 9, 2005 for other purpose of meeting with the personnel division on August 11, 2005.

Considering that since the prohibition to enter the premise issued by the Defendant, the Defendant has no longer paid wages to the Plaintiff. Therefore the Board of Judges think that the entry prohibition along with discontinuation of wages paid by Defendant are considered to be another form of employment termination against the plaintiff.

Considering that the Defendant in their defense that one of the grounds for their prohibition of work is because the company is still reducing the number of employees as stated in the meeting of August 11, 2005. However, the board of Judges think that the defenses are not acceptable because aside from the absence of detail grounds for employment reductions, the Defendant did not also pose any evidences to support their defense.

Considering that based on the defenses of both parties and evidence present before the court, the board of Judges think that the plaintiff has been prohibited to work by the Defendant without any reasonable grounds. However based on the written evidences (P-7), and testimonies of witnesses the board of Judges obtain indicators that this prohibition is closely related to the establishment of the tourism trade union (SP Par) SPSI of Atlantic Hotel, considering also the status of plaintiff as the Chairman of the trade union. Due to these evidences, the board of Judges are convinced that the management of Atlantic Hotel (Defendant) reject the establishment of the PUK SP Par SPSI at the Defendant's hotel and also assured that the Defendant has asked their workers to resign or relinquish his membership and position at the Board of SP Par SPSI of the Hotel.

Considering that according to the Law Number 21/2000 article 28 stated that, "Anyone shall be prohibited to hamper or coerce labour/workers to establish or not to establish, become a board or not to become a board, and/or to implement or not to implement union's activities by:

- a. Terminate their employment, temporarily terminate, demote or rotate him/her to other position;
- b. Not paying or reducing their wages;
- c. Intimidating them in any way;
- d. Campaigning for refusing the establishment of trade/labour union;

Moreover the Law Number 13/2003 article 153 paragraph 1 (g) states that "Entrepreneurs are prohibited to terminate the employment of the labourers/workers for the reasons of them

establishing, becoming the members and/or board of trade union, labours/workers do their union activities on non-working hours, or within their working hours upon approval/agreement with employers, or based on the provisions provided in the employment agreement, company's regulation or mutual agreement."

Considering that the termination of employment due to the reasons of workers establishing, being a member or conducting union's activity is considered as serious violation against workers' rights. Therefore the termination of employment conducted by the Defendant against Plaintiff is illegal by the law therefore the request shall be rejected and the workers shall be able to return to work when he wants to.

Considering that the Plaintiff in this lawsuit has not yet requested to be employed aside from severance pay due to the termination of employment then the board of Judges will only consider the rights of plaintiff due to the termination of employment as prescribed in the plaintiff petition.

Considering that the plaintiff in his petition requested for severance pay, employment appreciation reward, reimbursement for medical rights and cost for the amount of Rp. 50,000,000,- (fifty million Rupiah) with the formula based on the essences prescribed in the plaintiff's lawsuit, the board of Judges think that the rights and amount of formula to determine the severance right of workers along with the rights emerging due to the termination of employment shall be based on the applicable legislations, employment agreement, company's rules, mutual working agreement or based on the agreement between the workers and employers on the termination of employment. Rights and formula could not be determined by one party alone that is the Defendant without any grounds.

Considering that on this particular case, the board of Judges could not find any indication on the grounds for the formula postulated by the Defendant aside from the offer of Rp.5,000,000,- refused by the Plaintiff as postulated by the Defendant. Therefore the grounds and formula used by the board of Judges in determining the rights of plaintiff are the Law Number 13/2003 on Manpower.

Considering that the termination of employment conducted by Defendant against the plaintiff was not based on the mistakes conducted by the Plaintiff, then the formula of the Manpower Act Number 13/2003 that is applicable for the plaintiff is the formula for workers who are terminated on their employment not because of the workers' error, which is severance pay 2 (twice) of the article 156 paragraph 2, the employment appreciation reward for 1 (one) time of the article 156 paragraph 3, and reimbursement of the right to housing, medicine, and in-patient treatment for 15% of the severance pay and service cost.

Considering that the Plaintiff in his petition postulates that his salary was Rp. 720,000,- /month. Then with his starting being employed from February 1994 to the termination period on August 2005, the employment period will be 13 years and 6 months. Therefore the rights should be received are:

a. severance pay

$$2 \times 9 \text{ months of salary} \times 720.000 = \text{Rp } 12.960.000,-$$

b. Employment period reward

1 x 4 months of salary x 720.000 = Rp 2.880.000,-

c. reimbursement for housing, medical and treatment

15% x (12.960.000 + 2.880.000) = Rp 2.376.000,-

therefore the total amount is (12.960.000 + 2.880.000 + 2.376.000) = **Rp 18.216.000,-**
(Eighteen Million Two Hundred and Sixteen Thousand Rupiah)

Considering that the Plaintiff's petition ask the Judge to put confiscation against the collaterals of building, electronic asset (TV, Sound System), computer set, air conditioner, gen set, refrigerator, chiller, freezer, furniture, and one blue-white minivan with the plate B 7862 DB under the name PT. Atlantic Permatawarna, one silver Kijang Toyota with the plate B.8681 ZG on behalf of PT Atlantic Permata Hotel, the board of Judges think that the Defendant shall not postulate the Plaintiff or try to remove the aforementioned properties. Moreover the classification and identification of the aforementioned properties are not clear. Pursuant to these considerations, hence the plaintiff's petition in regards to collateral confiscation shall be rejected.

Considering that the petition of plaintiff that asked the Defendant to pay cost of case, the board of Judges think that the amount of lawsuit shall not exceed 150 millions Rupiah, then the Defendant shall not pay the cost of case, as stipulated by the Law Number 2/2004 article 58. Therefore the plaintiff's lawsuit on the cost of case shall be rejected.

Considering that pursuant to the plaintiff's lawsuit tthat requested for the implementation of the verdict regardless any other legal efforts, the board of Judges think that the Plaintiff does not postulate the urgency of tthe lawsuit h hence the decision shall be implemented regardless any other legal efforts. Therefore the plaintiff's request shall be rejected.

Considering that the Defendant is no longer paying for the plaintiff's wage since his prohibition to work on August 2005, then the Defendant's act is clearly in violation of the law Number 13 of 2003 article 155 paragraph (2), which states "AS long as the verdict made by the court has not yet been established, either employer or workers shall implement any obligation on this matter. But since the demand as deliberated in the provision where the provisional rule is rejected by the Board, then for the sake of law and justice, the Board thinks that it is reasonable and legal that the Defendant is punished to pay the plaintiff's wage for Rp. 720,000,- since the day the Defendant stopped paying his wage that is August 2005 until this case obtains legally binding power.

Considering that other right that was not given to the plaintiff, which was the Holiday Allowance in 2005, these demands were also included in the provisional demands rejected by the Board. However since that the right of Plaintiff, then by the law and justice the Board of Judges think that is is reasonable and legal that the Defendant pays the 2005 Holiday Allowance for one month wage of Rp. 720,000,- to the plaintiff.

Considering that the Board of Judges realize that during the proceeding of this hearing, cost has been incurred as the result of it, therefore the Board of Judges will determine the cost of hearing.

Considering that pursuant to those considerations then it will be reasonable for the plaintiff to have his demands fulfilled.

Considering that in regards to the Law Number 2/2004, on the Industrial Relation Dispute Settlement, and other pertaining regulations..

STIPULATE

IN the provision:

To reject the provisional requests;

In the case:

1. **grant some of the plaintiff's petitions**
2. states that the Defendant has violated the Law Number 13/2003 on Manpower;
3. Punish the Defendant to pay severance pay, employment reward and reimbursement of the housing allowance, medication and treatment for in total of **Rp 18.216.000,-** (*eighteen million two hundred and sixteen thousand rupiah*);
4. Punish the defendant to pay the plaintiff's wage since August 2005 for Rp. 720,000,- /month until this case obtains its legally binding power.
5. Punish the Defendant to pay holiday allowance of 2005 to the Plaintiff of the amount of one month wage for Rp. 720,000.
6. Rejecting plaintiff's petition other than the aforementioned ones and others..
7. Determine the cost of case.

Therefore in the consensus meeting of the Judges of Industrial Relation Court at the Central Jakarta First Stance Court on Wednesday, September 27th of two thousand six, by us the signatories Heru Pramono, S.H., M.Hum. as the Chairman of the Board, H. Anton Sumartono, S.H., MBA., MKn., Saut Christianus Manalu, S.H., as members judges, and announced in public hearing on Thursday, September 28, two thousand six assisted by Hj.Baik Mustikawati,S.H., Replacing administrator of Industrial Relation Court at the Central Jakarta First Stance Court attended by the legal counsels and the Defendant's legal counsellor.

**Ad Hoc Judges
Judges**

Chairperson of the Board of

1. H. Anton Sumartono, S.H., MBA., MKn.

Heru Pramono, S.H., M.Hum.

2. Saut Christianus Manalu, S.H.

Panitera Pengganti

Hj.Baik Mustikawati, S.H.

