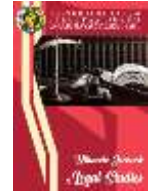




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Embassy of Foreign Country as Employer Subject to Severance Payment Obligations

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ABSTRACT

This research examines the employment agreements between foreign state representatives and local workers that are not related to diplomatic functions and therefore do not enjoy diplomatic immunity. While industrial relations disputes typically arise between workers and company management, there have been instances of labor disputes between workers and foreign state representatives. This creates a connection between Indonesia's legal system and the principle of diplomatic immunity in international law. Despite Indonesia's ratification of the Vienna Conventions of 1961 and 1963 through Law No. 1 of 1982, there is currently no specific national legislation governing privileges and immunities. As a result, labor disputes involving diplomatic immunity are dependent on court judgments. The focus of this research is on the severance payment obligations stipulated in labor laws and the responsibility of foreign embassies as employers in Indonesia to make severance payments. The research methodology employed is normative research with a legislative approach. Through qualitative data analysis, the following conclusions were drawn: First, the existence of pension programs does not automatically negate the right to severance pay that workers should receive upon reaching retirement age. Second, the Employment Law is inconsistent in regulating severance payments and pension guarantees as they were initially regulated separately.

Keyword: *Foreign Embassies; Obligations, Payment, Severance.*

ABSTRAK

Penelitian ini membahas perjanjian kerja antara perwakilan negara asing dan tenaga kerja lokal yang tidak terkait dengan fungsi diplomatik dan oleh karena itu tidak berlaku kekebalan diplomatik. Meskipun biasanya perselisihan hubungan industrial terjadi antara pekerja dan manajemen perusahaan, terdapat beberapa kasus perselisihan ketenagakerjaan antara pekerja dan perwakilan negara asing. Hal ini menciptakan pertautan antara sistem hukum Indonesia dan asas kekebalan diplomatik dalam hukum internasional. Meskipun Indonesia telah meratifikasi Konvensi Wina 1961 dan 1963 melalui Undang-Undang No. 1 Tahun 1982, belum ada peraturan perundang-undangan nasional yang secara khusus mengatur hak istimewa dan kekebalan. Oleh karena itu, perselisihan perburuhan yang terkait dengan kekebalan diplomatik bergantung pada putusan hakim pengadilan. Fokus penelitian ini adalah pada kewajiban pembayaran pesangon yang diatur dalam Undang-Undang Ketenagakerjaan; dan kewajiban pembayaran pesangon oleh Kedutaan Besar Negara Asing sebagai pemberi kerja di Indonesia. Metode penelitian yang digunakan adalah metode normatif dengan pendekatan perundang-undangan. Melalui analisis data kualitatif, kesimpulan penelitian ini adalah sebagai berikut: Pertama, kehadiran program jaminan pensiun tidak secara otomatis menghapuskan hak pesangon yang seharusnya diterima oleh buruh saat memasuki usia pensiun. Kedua, Undang-Undang Ketenagakerjaan tidak konsisten dalam pengaturan mengenai pesangon dan jaminan pensiun karena awalnya diatur dalam pengaturan yang berbeda.

Kata Kunci: *Kedutaan Asing; Kewajiban, Pembayaran, Pesangon.*



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1. Introduction

Indonesia, as a country of law, upholds the concept of state power based on fair and just laws. Indonesia excels in implementing the principles of the rule of law and respects human rights and human dignity. The country also practices the separation of powers, constitutional governance, and has administrative courts to resolve disputes between the people and the state. In this regard, there is no absolute freedom for the people, state officials, or state institutions in conducting their lives (Tanya, *et.al.*, 2010, p. 104).

A country that upholds and implements laws properly and correctly will regulate the actions of its citizens to become law-abiding and responsible members of society. The government also bears the responsibility of carrying out its duties and protecting the fundamental rights of its citizens. The right to decent work and livelihood for humanity has been enshrined as a human right in the 1945 Constitution, which serves as the constitutional foundation of Indonesia. The government is obligated to fulfill this mandate to the fullest extent possible to ensure that Indonesian citizens truly enjoy the fulfillment of their fundamental rights. The general objective of the Indonesian nation is to advance the common welfare based on Pancasila and create social justice for all people (Sutedi, 2001, p. 83).

Like other newly independent countries after World War II, Indonesia chose the path of industrialization and economic development to enhance the welfare of its people. The founding fathers of the nation realized that industrialization would create a workforce seeking prosperity through labor. Therefore, the state must be involved and accountable in protecting the rights of workers within the framework of the constitution (Valentino & Putra, 2017).

Interactions between nations and states have influenced economic, political, social, and cultural activities, involving governments, non-governmental organizations, the private sector, and individuals. Advancements in science and technology on a global scale, along with increased interactions and interdependence between countries, have strengthened international relations and cooperation in various fields. In this context, the protection of national interests and citizens has become increasingly important. One way to safeguard these interests is by establishing diplomatic missions in other countries.

Every sovereign nation has the right to open or close diplomatic mission abroad. Diplomatic relations between countries are based on considerations of economics, trade, investment, politics, regional solidarity, ideology, and the protection of citizens' interests in foreign countries. In carrying out diplomatic functions, states grant immunity and privileges to foreign representatives or missions based on the principle of reciprocity. This is necessary to ensure that foreign representatives or missions can fulfill their duties freely and securely (Webb, 2016, p. 745-767).

In the world of work, the termination of professional relationships between companies and employees is a common occurrence. The reasons for termination can vary, ranging from employee rule violations, the employee's inability to perform their duties, company bankruptcy, or force majeure circumstances. Therefore, when terminating employment, companies are obligated to provide various forms of compensation, one of which is severance pay (Manulang, 2001, p. 107).

According to the The Manpower Law No. 13 of 2003 (Manpower Law), company regulations are written regulations created by employers that contain terms of employment and company rules. The preparation of company regulations is the responsibility of the employer, taking into account the advice and considerations of the labor representatives. Company regulations must be possessed by companies that employ at least ten workers.

Company regulations must at least include the rights and obligations of employers and workers, employment conditions, company rules, and the duration of the regulations. The provisions within

company regulations must not contradict the applicable laws and regulations. The maximum duration of company regulations is two years and must be renewed after expiration. Violations of these provisions can result in criminal sanctions in the form of a minimum fine of five million rupiahs and a maximum fine of fifty million rupiahs. Company regulations must be approved by the minister or designated officials, while changes to company regulations before their expiration can only be made through an agreement between employers and labor representatives.

Article 114 of the Manpower Law obligates employers to notify and explain the contents of company regulations or any changes to workers and provide them with a copy of the regulations. Employers who fail to fulfill this obligation can be subject to criminal sanctions in the form of a minimum fine of five million rupiahs and a maximum fine of fifty million rupiahs. The Manpower Law allows for employers and workers to oversee the establishment of severance pay in companies that have implemented a pension program through employment agreements, company regulations, or collective labor agreements.

In general, the law applied within foreign embassies in Indonesia is the foreign law, including foreign labor law. As diplomatic entities representing their home countries, embassies will adhere to the laws of their home countries in treating their employees. This is what is referred to as the “*extraterritorial principle*” (Garnett, 2015). Therefore, the rights and obligations of employees within the embassy cannot be interpreted or enforced based on Indonesian law. This can result in differences or conflicts between the supremacy of foreign law and Indonesian law regarding industrial relations and workers’ rights. Although Indonesian embassies are not formally subject to Indonesian law, when Indonesian citizens work in foreign embassies, the Indonesian government feels an obligation to protect the rights and interests of its citizens working there. For case study of Decision of the Supreme Court of Indonesia No. 673K/Pdt.Sus/2012 *jo.* Decision of the Industrial Relations Court, Medan District Court No. 142/G/2011 between Indonesian Workers v. Consulate General of the United States in Medan and Embassy of the United States in Jakarta. The court’s decision, which ordered the defendants (Consulate General in Medan and U.S. Embassy in Jakarta) to pay the plaintiff (Indonesian workers) their normative rights amounting to Rp. 151,597,600, demonstrates how disputes can arise even within diplomatic missions. The Indonesian government may engage in diplomacy and negotiations with foreign embassies to ensure the protection of the rights of Indonesian workers. The concrete example of how the interplay between foreign and Indonesian law can lead to conflicts and legal action when it comes to industrial relations and workers rights within foreign diplomatic missions.

In some cases, the Indonesian government can utilize legal instruments and regulations that apply at the national and international levels to ensure the protection of workers’ rights in foreign embassies. This may involve bilateral cooperation, agreements on labor protection, or information exchange with foreign countries regarding the protection of workers’ rights. Although the supremacy of foreign law applies within foreign embassies, the Indonesian government continues to make efforts to protect its citizens and ensure the fulfillment of normative rights for Indonesian workers working in foreign embassies (Widodo, 2012).

In this context, the Indonesian government has stated that actions by foreign embassies that violate sovereignty are inappropriate and constitute harassment towards Indonesian citizens in the host country where the embassy is located. However, if Indonesia starts recognizing the need to regulate the execution of court decisions, victorious workers in such labor disputes may directly execute the judgment by deducting funds from the losing party’s account, suspending diplomatic activities of the losing party before implementing the judgment, and blocking access for vehicles of foreign diplomats. Based on the legal issues mentioned above, two research focuses are proposed: Firstly, the obligation of severance payment according to the Employment Law; Secondly, the obligation of severance payment by foreign embassies as employers in Indonesia.

2. Method

The research method used is normative research with a legislative approach. Secondary data sources consist of legal materials, namely the Vienna Conventions of 1961 and 1963, which have been enacted through Law No. 1 of 1982. Law No. 13 of 2003 on Employment is referred to, not Law No. 11 of 2020 on Job Creation. This is because, during the trial, the Job Creation Law had not been enacted yet. The study and analysis focus on provisions related to immunity in diplomatic and consular affairs, particularly in relation to labor law. The conceptual approach is used to understand the concept of immunity in resolving labor disputes that intersect with diplomatic and consular law, ensuring that the regulations are not subject to multiple interpretations that could lead to injustice and legal uncertainty in their implementation.

3. Result and Discussion

3.1. *The Obligation to Pay Severance Benefits Based on the Manpower Law*

Severance pay is the money paid by the employer to the employee, in any name and form, in connection with the termination of employment or the occurrence of employment termination, including long service benefits and compensation for rights. All rights received by the employee related to the acquisition of severance pay are regulated in the Manpower Law, so employees do not need to worry about not receiving severance pay from the company in the event of employment termination. The purpose of providing severance pay is as a form of company's responsibility to its employees who no longer receive wages after experiencing Termination of Employment (PHK). Therefore, severance pay can be used by the employee to meet the needs of their family until they find new employment.

The provisions regarding the payment of severance pay by employers to their employees in connection with employment termination, long service benefits, and compensation for rights are regulated in Article 156 Paragraph (1) of Law No. 13 of 2003 concerning Manpower, which states: *"In the event of employment termination (PHK), the employer is obliged to pay severance pay and/or long service benefits and compensation for rights that should be received"*. Furthermore, all matters related to Employment Termination can be studied in Chapter XII of Law No. 13 of 2003 concerning Termination of Employment. It should also be noted that the term "employer" who has the obligation to provide severance pay to employees/workers in the event of employment termination as stated in Law No. 13 of 2003 concerning Manpower Article 150, includes anyone (private or state-owned, individuals or entities, legal entities or not) who has managers and employs others by paying wages or other forms of compensation.

To determine the amount of severance pay to be received, it is important to know the reason for the termination of employment. This is what will differentiate the calculation of severance pay due to employment termination due to retirement, resignation, or other reasons. The following types of payments must be made by the company after employment termination and are the rights of the employee to receive them. If there are any discrepancies, it is advisable to consult with the local Labor Office to obtain a definitive resolution. The details of the provisions and the amount of severance pay, long service benefits, and compensation for rights are as follows:

3.1.1. *Severance Pay*

The wage referred to here is the amount of basic salary plus fixed allowances. It is important to note that fixed allowances may vary from one company to another. Sometimes we may be confused about the terms fixed allowances and non-fixed allowances. Examples of fixed allowances include transportation allowance, healthcare allowance, and others. Essentially, fixed allowances will always be calculated and paid even if you are unable to attend the office/company. The amount of severance pay that you are required to provide to employees has also been determined by Article 156 Paragraph

(2) of the Manpower Law No. 13 of 2003, as follows: a) Employment period < 1 year = 1 month's salary; b) Employment period 1 year or more but less than 2 years = 2 months' salary; c) Employment period 2 years or more but less than 3 years = 3 months' salary; d) Employment period 3 years or more but less than 4 years = 4 months' salary; e) Employment period 5 years or more but less than 6 years = 5 months' salary; f) Employment period 6 years or more but less than 7 years = 6 months' salary; g) Employment period 7 years or more but less than 8 years = 7 months' salary; and h) Employment period 8 years or more = 9 months' salary.

3.1.2. Length of Service Allowance

Working is not just about monthly salary, but it also deserves recognition for what is accomplished. Therefore, we should be grateful to live in this beloved country because our work is also evaluated and appreciated. After working for a minimum of 3 (three) years in a company, if there is a termination of employment, we are entitled to receive recognition in the form of monetary compensation. All of this is also regulated by the Law. The following are the provisions for the length of service allowance for an individual's tenure in a company. These provisions are in accordance with Article 156 Paragraph (3) of the Employment Law. The calculation of the length of service allowance follows the following provisions: a) Length of service of 3 years or more but less than 6 years = 2 months' salary; b) Length of service of 6 years or more but less than 9 years = 3 months' salary; c) Length of service of 9 years or more but less than 12 years = 4 months' salary; d) Length of service of 12 years or more but less than 15 years = 5 months' salary; e) Length of service of 15 years or more but less than 18 years = 6 months' salary; f) Length of service of 18 years or more but less than 21 years = 7 months' salary; g) Length of service of 21 years or more but less than 24 years = 8 months' salary; and h) Length of service of 24 years or more = 10 months' salary.

3.1.3. Compensation for Rights

Compensation for Rights (UPH) refers to the monetary compensation provided to employees as a replacement for their entitlements upon termination of employment. This compensation is intended to compensate employees for any rights or benefits they would have received if their employment had not been terminated. The amount of UPH is typically determined based on the employee's length of service and other relevant factors as stipulated by the applicable labor laws and regulations. The purpose of UPH is to ensure that employees are fairly compensated for the loss of their rights and benefits due to the termination of their employment.

In addition to the two aforementioned components, upon termination of employment, former employees are also entitled to receive compensation for their rights as severance pay, which must be paid by the company. This is regulated in Law No. 13 of 2003 concerning Employment, Article 156 Paragraph (4). The compensation for rights that should be received by the former employee is as follows: a) Unused annual leave that has not been taken or has not expired; b) Worker's transportation costs (including family) to the place where they were employed (this money is usually provided when the employee is assigned to a distant and hard-to-reach area; the company usually provides transportation allowance); c) Replacement costs for housing, as well as medical treatment and care, which are determined to be 15% of the severance pay and/or length of service benefit (UPMK) for those who qualify; and d) Other matters stipulated in the employment agreement, company regulations, or collective bargaining agreement.

3.1.4. Regulation for Obtaining Severance Pay

Severance pay is a financial entitlement provided to employees upon termination of their employment. The rules governing the payment of severance pay are outlined in the Employment Law. The following are the provisions for obtaining severance pay:

- a. **Duration of Employment:** Employees are eligible to receive severance pay if they have completed a certain minimum period of employment. The specific duration may vary depending on the applicable laws and regulations.
- b. **Types of Termination:** Severance pay is generally provided in cases of termination due to reasons such as redundancy, organizational restructuring, or other lawful grounds for termination. It may not be applicable in cases of voluntary resignation or termination due to employee misconduct.
- c. **Calculation of Severance Pay:** The amount of severance pay is determined based on various factors, including the employee's length of service, last drawn salary, and any additional benefits or entitlements specified by the law or employment contract.
- d. **Legal Requirements:** The payment of severance pay must comply with the legal requirements outlined in the Employment Law or any relevant regulations. Employers are obligated to fulfill their responsibilities in providing the designated amount of severance pay to eligible employees.
- e. **Dispute Resolution:** If there are any disputes or disagreements regarding the payment of severance pay, employees have the right to seek resolution through appropriate legal channels or labor authorities. They may file a complaint or claim to ensure their entitlement is upheld.

It is important for both employers and employees to be familiar with the relevant laws and regulations pertaining to severance pay to ensure compliance and a fair resolution in case of employment termination. Regulations on Severance Pay are explained in Law Number 13 of 2003 concerning employment. The following are the regulations regarding severance pay:

- a. Article 150 specifies the obligation to provide severance pay to workers or employees in the event of Employment Termination (PHK). The term "company" mentioned here refers to any type of employer, including private companies, state-owned enterprises, individuals, legal entities, and non-legal entities. All these types of companies that have management or employ others by paying wages or other forms of compensation are obliged to provide severance pay.
- b. Article 156, paragraph 1 states that in the event of employment termination, the employer is required to pay the employee the appreciation money for the period of service and compensation for the rights that should rightfully be received by the worker or employee.
- c. In the Employment Law, Chapter XII also explains employment termination, which states that a company has the right to withhold severance pay if the worker or employee has engaged in misconduct or actions detrimental to the company. For example, if an employee is involved in corruption. If such a situation occurs within the company, the company has the right to withhold severance pay during the termination of employment.

It is essential for both employers and employees to be familiar with these regulations stated in the Employment Law to ensure compliance and a fair implementation of severance pay in cases of employment termination.

3.1.5. Requirements to Obtain Severance Pay

Severance pay is a financial compensation provided to employees upon the termination of their employment. The conditions for receiving severance pay vary depending on the applicable laws and regulations in each country. In general, the following are common requirements to obtain severance pay:

- a. **Employment Termination:** Severance pay is typically granted when there is a valid reason for the termination of employment, such as redundancy, layoff, or the closure of a company. Voluntary resignations or terminations due to misconduct may not qualify for

severance pay.

- b. **Length of Service:** In many jurisdictions, employees must have completed a minimum period of service with the employer to be eligible for severance pay. The specific length of service required can vary but is often measured in years.
- c. **Employment Contract:** Severance pay is usually provided to employees who have an employment contract with the company. Independent contractors or self-employed individuals may not be entitled to severance pay.
- d. **Compliance with Employment Laws:** Employees must comply with the relevant employment laws and regulations during their tenure. Violations of labor laws or misconduct may disqualify an employee from receiving severance pay.
- e. **Eligibility Criteria:** Some jurisdictions may have additional eligibility criteria for severance pay, such as minimum age requirements or restrictions based on the type of employment (e.g., full-time, part-time).

It's important to note that the specific requirements for severance pay can vary significantly depending on the country, local labor laws, and individual employment contracts. Employees should consult the applicable laws or seek legal advice to understand their rights and entitlements regarding severance pay.

As previously explained, severance pay is a sum of money provided by a company to an employee based on the termination of employment or the occurrence of employment termination. In Indonesia, there are certain requirements that must be met to obtain severance pay. Here are some of them:

- a. **Employee Enters Retirement Age:** Employees cannot work for a lifetime. There will be a period when employees reach retirement age. Employees who reach retirement age, whether regular retirement or early retirement, are entitled to receive a retirement benefit. The amount of the benefit varies depending on the circumstances. For example, if an employee retires due to illness, the amount of the benefit may be lower because other benefits may replace it. However, if an employee retires after reaching the normal retirement age, the amount of the benefit will be higher as there are no work-related benefits for that employee.
- b. **Employee Subjected to Termination of Employment (PHK):** Termination of Employment can occur for various reasons, such as poor company conditions or employee misconduct. If there is a termination of employment, the company is required to provide severance pay to the employees affected by the termination. Failure to provide severance pay to employees subject to termination of employment can make them feel unappreciated for their performance and loyalty to the company.

Moreover, all matters related to severance pay have been adjusted according to the employment laws in Indonesia. If there are any unlawful actions or unpleasant incidents, such as the absence of severance pay for eligible employees, employees can report them to the labor authorities. **Differences Between Severance Pay, Service Recognition Pay, and Compensation for Rights:**

Among the three types of payments that companies are obligated to provide to employees who experience Termination of Employment (PHK), namely severance pay, service recognition pay, and compensation for rights, what are the differences? Under what circumstances can these payments be provided? Here are some explanations:

Severance pay, service recognition pay, and compensation for rights are provided to workers or employees who experience termination of employment due to the following reasons: a) Workers or employees violate the employment agreement or company regulations; b) Workers or employees submit a termination of employment request due to employer misconduct; c) Marriage between workers within the same company (if there are regulations in the company); d) Mass termination of

employment due to the company's decline in profit or financial loss; e) Mass termination of employment due to company efficiency measures; f) Merger, consolidation, or change of company status, and the workers or employees refuse to continue the employment relationship; g) Merger, consolidation, or change of company status, and the business owner refuses to continue the employment relationship; h) Company bankruptcy; i) Worker's death; and j) Worker's prolonged illness due to a work-related accident (after 12 months).

Based on the explanations above, it is evident that workers or employees only receive compensation for rights and service recognition pay if there is a termination of employment due to certain reasons, such as: 1) Worker detained and unable to perform work for a period of 6 months; 2) Worker detained and found guilty. Furthermore, workers who only receive compensation for rights and separation pay are those who experience termination of employment due to the following reasons: 1) Worker absences for more than 5 consecutive days and have been duly notified twice; 2) Worker voluntarily resigns without any pressure.

It should be noted that Service Recognition Pay (UPMK) is not mandatory for companies to provide to employees who voluntarily resign. This is stated in Article 162, paragraphs 1 and 2 of the employment law. Here are the details: 1) UPMK will not be given to workers or employees who voluntarily resign. However, employees or workers are entitled to receive compensation for their rights according to the provisions of Article 156, paragraph 4; and 2) UPMK is not given to workers or employees who voluntarily resign. It applies to those whose roles and responsibilities do not directly represent the interests of the employer. However, employees or workers will be provided with separation pay, the amount and implementation of which are regulated in the employment agreement, company regulations, and collective labor agreement.

Rights of Resigning Employees: In general, severance pay, service recognition pay, and compensation for rights are provided by companies to employees who experience employment termination. But what if an employee voluntarily resigns? If an employee resigns, they are only entitled to Compensation for Rights (UPH). However, there is an exception for employees whose roles and responsibilities do not directly represent the interests of the employer. In addition to being entitled to compensation for rights, they are also entitled to receive separation pay, the amount and provision of which are determined in the employment agreement based on mutual agreement.

Example Calculation of Severance Pay: Let's consider an example of Chika, who was terminated by the company after working for 3 years and 6 months with a basic salary plus allowances amounting to Rp. 7,500,000,-. The calculation for the severance pay Chika is entitled to receive is as follows:

- a. Severance pay: $4 \times 2 = 8 \times 7,500,000 = 60,000,000$
- b. Service recognition pay: 2 times the wage = $2 \times 7,500,000 = 15,000,000$
- c. Severance pay + Service recognition pay = 75,000,000
- d. Medical and housing allowance, which is 15% of the total severance pay and service recognition pay. Medical and housing allowance = $(60,000,000 + 15,000,000) \times 15\% = 75,000,000 \times 15\% = 11,250,000$.

Total amount received = Severance pay + Service recognition pay + Medical and housing allowance

$$= \text{Rp. } 60,000,000,- + \text{Rp. } 15,000,000,- + \text{Rp. } 11,250,000,-$$

$$= \text{Rp. } 86,250,000,-$$

Due to the sensitivity and potential risks involved in severance pay matters for companies, it is essential for companies to have accurate calculations and avoid mistakes that could lead to conflicts

between employees and the company.

3.2. The Obligation of Severance Payment by Foreign Embassies as Employers in Indonesia

In the context of legal regulations, it is important to note that the applicable law within foreign embassies in Indonesia is the foreign law, including foreign labor law. The Embassy will adhere to the legal conception of its home country in treating its employees, which means that the normative rights and obligations of employees within an embassy cannot be interpreted or applied based on Indonesian law. In such situations, a clash occurs between two competing legal supremacies: the law of the foreign state according to the nationality of the diplomat or the law of Indonesia where the embassy is located, as well as the law of the employer or the law of the foreign worker.

Article 31 paragraph (1) of the Vienna Convention on Diplomatic Relations of 1961 also provides that foreign diplomats are exempted from enjoying immunity from the civil, criminal, and administrative jurisdiction of the Receiving State, provided that the exceptions clause in Article 31 paragraph (1) is fulfilled. The provisions of Article 31 of the Vienna Convention of 1961 state that: 1) A diplomatic agent is immune from the criminal jurisdiction of the Receiving State. They are also immune from civil and administrative jurisdiction, except in cases: a) involving immovable property situated in the territory of the Receiving State, which they hold for the purposes of the mission; b) relating to succession in which the diplomatic agent is involved as an executor, administrator, heir, or legatee as a private person and not on behalf of the Sending State; c) relating to any professional or commercial activity carried out by the diplomatic agent in the Receiving State outside their official functions. 2) A diplomatic agent is not obliged to give evidence as a witness. 3) No measures of execution may be taken against a diplomatic agent, except in cases falling under subparagraphs (a), (b), and (c) of paragraph 1 of this Article, and provided that such measures can be taken without infringing on their inviolability or the inviolability of their residence. 4) The immunity of a diplomatic agent from the jurisdiction of the Receiving State does not exempt them from the jurisdiction of the Sending State.

If the law of the foreign country applies, it is possible that severance pay may not be recognized in the industrial relationship. However, from the perspective of Indonesian labor law, the employee is entitled to severance pay, which illustrates the complexity of legal conflicts. The supremacy of law related to sovereignty becomes an important consideration. In this case, if applied in principle, the Indonesian Embassy is not subject to Indonesian law. However, in the context of an Indonesian citizen working at an embassy, Indonesia feels obligated to protect its citizens working at foreign embassies.

An interesting legal issue to be examined is in the field of labor law, particularly the settlement of industrial relationship disputes. For example, the United States Embassy in Indonesia, which employs local staff at the embassy, if an industrial relationship dispute arises, Indonesian labor law would apply. In contrast, the Brazilian Embassy in Indonesia, which employs foreign workers from Brazil, if an industrial relationship dispute arises, Brazilian labor law would apply to the settlement of the dispute. However, an interesting situation arises when a Brazilian citizen is employed at the Brazilian Embassy in Indonesia, then gets fired by the Ambassador, and the resolution is conducted using Indonesian labor law and the law of industrial relationship disputes. Despite the applicable law being the labor law of the sending country, Brazil, the Indonesian court proceeds with the case and even obtains a legally binding decision (*inkracht*) at the level of the Supreme Court of Indonesia.

With the legally binding decisions of the Supreme Court of Indonesia, foreign workers employed at foreign embassies in Indonesia are subject to Indonesian labor law and the law of industrial relationship disputes for dispute resolution. Despite being foreign workers, their workplace is within the jurisdiction of the Republic of Indonesia. The mentioned decisions include: a) Supreme Court Decision No. 376K/Pdt.Sus-PHI/2013, dated October 29, 2013, between the Embassy of Brazil and the Brazilian foreign worker; b) Supreme Court Decision No. 673K/Pdt.Sus/2012, dated April 2, 2013, between Indonesian workers and the U.S. Consulate General in Medan and the U.S. Embassy

in Jakarta; and c) Supreme Court Decision No. 696K/Pdt.Sus-PHI/2016, dated September 15, 2016, between the Embassy of Suriname and the Indonesian foreign worker. The decisions can be seen in the following table:

Table 1. Decisions of the Supreme Court of Indonesia Regarding the Settlement of Industrial Relations Disputes Between Foreign Workers and Foreign Embassies in Indonesia.

No.	Decision	Plaintiff	Defendant	court decision	status of a court decision or judgment
1.	Decision of the Supreme Court of Indonesia No. 376K/Pdt.Sus-PHI/2013 <i>jo.</i> Decision of the Industrial Relations Court, Jakarta District Court No. 196/PHI.G/2012	Foreign Worker (Brazil)	Embassy of the Brazil	1) Declares the employment relationship between the Plaintiff and the Defendant terminated and ended as of the pronouncement of the verdict; 2) Sentences the Defendant to pay severance compensation and wages during the dispute resolution process to the Plaintiff, totaling Rp. 485,263,703,-.	Legally binding
2.	Decision of the Supreme Court of Indonesia No. 673K/Pdt.Sus/2012 <i>jo.</i> Decision of the Industrial Relations Court, Medan District Court No. 142/G/2011	Indonesian Workers	1) Consulate General of the United States in Medan 2) Embassy of the United States in Jakarta	The Defendant is sentenced to pay the normative rights of the Plaintiff in the amount of Rp. 151,597,600,-.	Legally binding
3.	Decision of the Supreme Court of Indonesia No. 696K/Pdt.Sus-PHI/2016 <i>jo.</i> Decision of the Industrial Relations Court, Jakarta District Court No.	Indonesian Workers	Embassy of Suriname	1) Declaring the termination of employment of the Plaintiffs from the Defendant effective from 11/02/2015. 2) Ordering the Defendant to pay	Legally binding

244/Pdt.Sus-PHI/2015

each Plaintiff
severance pay,
service appreciation
money,
compensation for
rights, termination
process wages, and
the shortfall in April
2014 wages, with the
following details:

a) Plaintiff I, Maria
Itania Setiawan, in
the amount of Rp.
174,900,000,-

b) Plaintiff II,
Angreni Ekasari, in
the amount of Rp.
216,670,000,-

Source: Supreme Court of the Republic of Indonesia's rulings on the settlement of industrial relations disputes between foreign workers and Foreign Embassies in Indonesia.

Based on the final legally binding court rulings (*inkracht van gewijsde*), it is evident that there are three other cases in which the plaintiffs are migrant workers (TKI) against Foreign Embassies in Indonesia or International Organizations. All of these cases were won by the workers, both foreign and local staff/employees. What is interesting here is how these legally binding rulings can be enforced, considering that Foreign Embassies in Indonesia are extraterritorial areas of the Sending State.

The legal system in Indonesia adopts mixed law (three legal systems): civil law, customary law, and Islamic law (de Cruz, 2010; Aditya, 2019). Since the enactment of Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement, two models of dispute settlement have been introduced: out-of-court dispute settlement through negotiation (*bipartite*), mediation, conciliation, and arbitration; and court dispute settlement through the Industrial Relations Court (PHI) at the District Court.

Generally, courts in Indonesia have limited jurisdiction over foreign entities, including foreign embassies. However, in certain cases, Indonesian courts may decide to adjudicate disputes involving foreign embassies based on principles of international law and applicable rules.

Indonesian courts can have jurisdiction in several situations, such as: 1) If the foreign embassy voluntarily submits to the jurisdiction of Indonesian courts and agrees to participate in the legal process; 2) If the dispute involving the foreign embassy relates to commercial activities or employment relationships with individuals or entities in Indonesia; and 3) If there is a special agreement or treaty between the sending state and the Indonesian government that allows Indonesian courts to have jurisdiction over disputes involving foreign embassies.

However, it should be noted that although Indonesian courts may have jurisdiction to adjudicate disputes involving foreign embassies, the implementation and enforcement of court judgments against foreign embassies can be complex. This is because foreign embassies are considered extraterritorial territory of the sending state and may be protected by the principle of diplomatic immunity.

In practice, the resolution of disputes involving foreign embassies is often conducted through negotiation and diplomacy between the Indonesian government and the sending state. The aim is to

achieve mutually beneficial settlements while considering the principles of diplomatic immunity and the bilateral relations between the countries. This situation demonstrates the complexity of international law and intergovernmental relations in the resolution of disputes involving foreign embassies in Indonesia.

The legal basis for Indonesian courts to adjudicate disputes involving foreign embassies is based on several factors and legal sources, including: 1) Constitution: The 1945 Constitution of the Republic of Indonesia serves as the country's fundamental law and provides the basis for legal regulation in Indonesia. The Constitution establishes the foundation for the judiciary and court jurisdiction in Indonesia. 2) Laws: Indonesian laws, such as Law Number 48 of 2009 on Judicial Power, may govern the jurisdiction of courts regarding foreign embassies. 3) International Law: Principles of international law, including diplomatic law and the laws of foreign states, can serve as the legal basis for Indonesian courts to adjudicate disputes involving foreign embassies. These principles encompass international conventions, bilateral agreements, and generally recognized practices in international relations. 4) Bilateral Agreements or Special Agreements: There are cases where Indonesia and the sending state of the foreign embassy may have bilateral agreements or special agreements that regulate court jurisdiction in the settlement of disputes involving foreign embassies. Such agreements can provide the legal basis for Indonesian courts to have jurisdiction over such disputes. It should be noted that the legal basis applicable to courts adjudicating disputes involving foreign embassies may vary depending on the specific case and circumstances involved. Therefore, in each specific case, the parties involved should refer to relevant laws and regulations to understand the applicable legal basis.

Given the characteristic of industrial relations that prioritize the principle of partnership, the settlement of industrial relations disputes should prioritize deliberation and consensus. The most ideal institutional model for settling industrial relations disputes (*ius constituendum*) and aligning with the characteristics of industrial relations is the out-of-court dispute settlement or alternative dispute resolution model.

The reinforcement of the dispute settlement model is the out-of-court dispute settlement as the primary and fair option for both parties, namely workers and employers, who are given the freedom to choose a mediator or conciliator. In other words, the freedom to choose the institutional model for industrial relations dispute settlement eliminates the weaknesses of the out-of-court dispute settlement model, and facilitates the establishment of an independent, autonomous, and reputable arbitration system.

As for the legal issues related to the settlement of industrial relations disputes between foreign workers employed at Foreign Embassies in Indonesia, the following points should be considered: a) Embassies are representatives of the Sending State; b) Ambassadors always bring their Attachés whose employment contracts are signed within the jurisdiction of the sending state; c) The location of the Embassy falls under the jurisdiction of the Sending State; d) The law applicable in the Sending State is the law of the Sending State; e) Indonesian legal provisions do not apply within the Embassy's premises; f) Each Embassy is an extraterritorial area of the Sending State; g) Foreign workers employed at the Embassy represent the Sending State, meaning they are workers operating within the territory of the Sending State.

Legal certainty is required for the implementation of court rulings won by these foreign workers. However, the execution of these legally binding court rulings cannot be carried out because, according to the extraterritorial theory, Foreign Embassies are within the legal jurisdiction of the sending country and not the territory of the Republic of Indonesia. Therefore, there is a legal uncertainty regarding the enforcement of these court rulings. Hence, the extraterritorial jurisdiction theory is used to analyze and examine this legal uncertainty in order to achieve legal certainty in the settlement of industrial relations disputes between foreign workers and Foreign Embassies operating in Indonesia. This legal certainty starts from the implementation of employment agreements, the settlement of industrial relations disputes, and the execution of the results of the industrial relations

dispute settlement (enforcement of court rulings).

To elaborate further, consider the scenario where foreign workers, as plaintiffs, file lawsuits against the embassies in their home countries. In this context, these workers initiate legal proceedings against the foreign embassies in their sending countries, seeking justice for labor disputes that originated in Indonesia. This illustrates the complex nature of enforcing court rulings across international borders.

The extraterritorial jurisdiction theory is employed to analyze and address this legal uncertainty, aiming to establish legal certainty in resolving industrial relations disputes between foreign workers and Foreign Embassies operating in Indonesia. This quest for legal certainty begins with the implementation of employment agreements, proceeds through the resolution of industrial relations disputes, and culminates in the execution of the outcomes of industrial relations dispute settlements, including the enforcement of court rulings.

4. Conclusion

The obligation to pay severance pay in Indonesia is regulated by the Manpower Law No. 13 of 2003. According to the law, companies or employers in Indonesia are required to provide severance pay to employees who experience Termination of Employment for specific reasons. In this context, Foreign Embassies have the obligation to comply with the prevailing labor regulations in Indonesia, including the obligation to pay severance pay to employees who experience Termination of Employment. Although Foreign Embassies have diplomatic status that grants them certain immunities, in the context of labor relations in Indonesia, Foreign Embassies are still expected to comply with labor laws and provide equivalent protection for employees' rights.

The obligation to pay severance pay by Foreign Embassies will be determined based on the provisions in the Manpower Law No. 13 of 2003 and other labor regulations in Indonesia. Foreign Embassies should ideally pay severance pay to employees who are terminated based on their length of service, in accordance with the prescribed amounts in the law. However, due to the unique status of Foreign Embassies and the related international law, the implementation of the obligation to pay severance pay by Foreign Embassies may involve processes and mechanisms that are adjusted to international law provisions and existing bilateral agreements between the embassy and the Indonesian government.

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