Employees' Legal Status Appointed as Directors Through RUPS

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Abstract
Supreme Court Circular No. 1/2022 stipulates that employees or laborers are appointed directors in the same company through a General Meeting of Shareholders (RUPS) where the employment relationship with the company ends upon appointment as a director. This research aims to ascertain how the severance compensation components and their calculation are entitled to be received by employees appointed as directors through RUPS. This study employs the IRAC writing model, a legal writing technique with the structure of Issue, Rule, Application, and Conclusion. The research findings reveal that Government Regulation No. 35/2021 does not include provisions regarding severance compensation due to the reason of being appointed as a director, leading to a legal vacuum. It creates two possibilities in practice. On the one hand, in cases where an employee resigns from their position to subsequently be appointed as a director, the calculation of compensation for the resignation is applied. On the other hand, companies can establish an internal policy governing severance and compensation calculation mechanisms for employees appointed as directors following best practices. The compensation calculation should consider that it is more than x0.5 because there is no loss or breach, but not exceeding x1.75. After all, the employee does not retire, and the termination of the employment relationship does not result in a complete separation, as the employee continues to work and receives income and benefits from the same company.

I. Introduction

The employment relationship can only occur when an employment agreement exists between the employer and the worker. In the employment agreement, when a worker enters into an agreement with the employer and binds oneself to that agreement to obtain wages,[1] the worker is aware that in order to claim their rights, they must provide something to the employer in the form of rendering their services, as the obligations that must be fulfilled cannot be neglected.[2] Thus, the employment relationship constitutes a civil relationship

[1] Bima Nuranda dkk. (2019). Status Hukum Pekerja Yang Diangkat Menjadi Anggota Direksi Pada Perseroan Terbatas Tanpa Adanya Pengakhiran Perjanjian Kerja, *Perspektif Hukum*, Vol. 1 No.1, hlm. 35

[2] G. Kartasapoetra. (1985). *Pokok-pokok Hukum Perburuhan*, Bandung: Amico, hlm. 73

based on the mutual agreement of both parties to fulfill obligations and obtain their respective rights. The rights and obligations of the parties are outlined in an employment agreement, whether in written or unwritten form.[3]

On December 15, 2022, Supreme Court Circular (SEMA) No. 1/2022 was issued, containing the outcomes of a plenary session in Section B. Formulation of Civil Law, point 2. Particular civil matters, subpoint b. Industrial relations disputes state that:

> "*Workers/laborers appointed as Directors within the same company through a General Meeting of Shareholders (RUPS) have legally terminated their employment relationship, effective from the date of appointment as Directors. These workers/laborers are entitled to receive termination compensation per the prevailing laws and regulations, with their length of service calculated from the commencement of their employment relationship, and their last wage being the wage before their appointment as directors of the company.*"

The formulation categorizes the appointment of workers as Directors as a form of Termination of Employment (TE). Consequently, this legal categorization leads to the consequence that when a worker is appointed as a Director, they are entitled to receive Termination of Employment compensation, as stipulated in the prevailing Labor Laws and Regulations.

Considering the perspective of the Supreme Court regarding workers appointed as Directors, where their employment relationship is deemed to have concluded, and they are entitled to TE compensation, the question arises: What are the components of TE compensation, and how is its entitlement calculated for workers appointed as Directors?

Government Regulation No. 35/2021 stipulates the components and amounts of Termination of Employment (TE) compensation linearly, according to the regulated reasons for TE. For instance, in cases of Termination of Employment due to violations of Company Regulations (PP) or Collective Labor Agreements (PKB), the compensation comprises 0.5x severance pay, 1x service appreciation payment, and compensation for lost rights. Furthermore, in cases where Termination of Employment occurs due to the worker reaching retirement age, the compensation is 1.75x severance pay, 1x service appreciation payment, and compensation for lost rights. On the other hand, if a worker resigns voluntarily, the compensation entails separation pay and compensation for lost rights. Government Regulation No. 35/2021 does not include provisions regarding TE arising from workers being appointed as Directors, resulting in a legal vacuum.

2. Research Method

This study employs the IRAC writing model, a legal writing technique utilizing the "Issue, Rule, Application, Conclusion" structure.[4] IRAC is recognized

[3] Bima Nuranda dkk, *Op.cit.*

[4] Bench-Capon, T. (2020). Explaining Legal Decisions Using IRAC. In *CEUR Workshop Proceedings,* Vol. 2669, hlm. 74-83).

as one of the techniques or models of legal writing.[5] The IRAC writing technique serves as a framework for crafting legal analysis presented in a coherent, organized manner, maintaining continuity among the subject matters discussed, ultimately yielding a well-structured conclusion.[6]

3. Results and Discussion

1. The Enactment of SEMA 1/2022 and Its Legal Implications on Industrial Relations Practices

Before delving further into the legal status of workers appointed as directors through a General Meeting of Shareholders (RUPS), it is essential to clarify the extent to which Supreme Court Circular (SEMA) No. 1/2022 functions as an internal policy of the Supreme Court and its legal repercussions on industrial relations practices. Does the SEMA hold binding authority over industrial relations practices? Despite being in the form of a policy, the SEMA fundamentally constitutes an internal decision and does not fall within the category of statutory regulations.[7] The SEMA is positioned beneath statutory regulations and holds binding force only within the judicial environment. [8]

Circular letters fall under the category of state regulations, yet they are not statutory regulations. State regulations encompass written rules issued by official institutions (both organizations and specific officials) and can be classified into three groups:[9]

1. Legislative regulations, such as the 1945 Constitution of the Republic of Indonesia, laws, government regulations, presidential regulations, ministerial regulations, regional regulations (Perda), and others;
2. Policy regulations, such as instructions, circular letters, announcements, and others;
3. Decree regulations, such as letters of decision and others.

A SEMA is a directive issued by the leadership of the Supreme Court to all levels of the judiciary, containing guidance for the administration of justice, primarily with an administrative nature. Therefore, SEMA only applies to the Supreme Court's hierarchy and the subordinate judicial institutions. SEMA provides instructions to justices within the framework of

[5] Arifin, R., Alkadri, R., Sari, D. P., Resthiningsih, L., & Holish, A. M. (2019). Improving Law Student Ability on Legal Writing Through Critical and Logical Thinking by IRAC Method. *Indonesian Journal of Advocacy and Legal Services*, Vol. 1, Issue (1), hlm. 107-128.

[6] Bittner, M. (1990). The IRAC Method of Case Study Analysis: A Legal Model for the Social Studies. *The Social Studies*, Vol. 81, Issue (5), hlm. 227-230.

[7] Hotman P. Sibuea, (2010), *Asas Negara Hukum, Peraturan Kebijakan*, Jakarta: Erlangga, hlm. 101

[8] Hanum, C. (2020). Analisis Yuridis Kedudukan Surat Edaran Dalam Sistem Hukum Indonesia. *Humani (Hukum Dan Masyarakat Madani)*, Vol. 10, Issue (2), hlm. 138-153.

[9] Philipus M. Hadjon, (2002), *Pengantar Hukum Administrasi Indonesia*, Gadjah Mada University Press, Yogyakarta, hlm. 152- 153.

the Supreme Court to execute their roles in supervision and guidance, as stipulated in Article 32 paragraph (4) of Law No. 14 of 1985, as last amended by Law No. 3 of 2009, concerning the Supreme Court. These instructions serve as explanations or interpretations of legal provisions to ensure that judicial practices do not result in disparities that undermine the delivery of justice, consequently affecting legal certainty, which is one of the fundamental principles of law.[10]

Nevertheless, even though a SEMA falls outside the hierarchy of statutory regulations, its existence is recognized and holds legally binding force through Article 8 of Law No. 12 of 2011, as amended by Law No. 15 of 2019 and Law No. 13 of 2022, as well as Article 79 of Law No. 14 of 1985, as last amended by Law No. 3 of 2009 concerning the Supreme Court. These provisions grant authority to the Supreme Court to resolve matters not detailed explicitly in the legislation. Consequently, when there is a deficiency or legal void during judicial proceedings, the Supreme Court can issue regulations as supplementary measures to address such deficiencies or legal vacuum.

In this context, SEMA No. 1/2022, Section B. Formulation of Civil Law, point 2. Specific Civil Matters, subpoint b. Industrial relations disputes are established to clarify the fundamental employment relationship, where the position of workers appointed as directors through a General Meeting of Shareholders (RUPS) undergoes a legal shift from their original status as Employees to Employers. This transition carries significant legal implications.

It is understood that SEMA No. 1/2022, as mentioned above, does not establish new legal norms in the same way as statutory regulations do; instead, it serves as normative instructions for case handling from the Special Civil Chamber of the Supreme Court to the Industrial Relations Courts.

The legal implication is that SEMA No. 1/2022 serves as a guideline for Judges and Ad Hoc Judges of the Industrial Relations Courts when deciding matters related to disputes arising in industrial relations practices, particularly in cases involving workers appointed as directors through a General Meeting of Shareholders (RUPS) within the same company. Consequently, it becomes imperative for companies to integrate the provisions of SEMA No. 1/2022 into their internal policies, such as the Policy on Director Appointments and Termination of Employment Policy.

2. Legal Status of Workers Appointed as Directors Through AGM under SEMA 1/2022

[10] Hanum, C. (2020). *Op.Cit.*, hlm. 138-153.

First and foremost, it should be conveyed that the term "Board of Directors" is often equated with "Director." However, several companies utilize the terms "director" or "*direktur*" for various positions or roles that are not appointed through a General Meeting of Shareholders (RUPS) but instead based on employment agreements. Consequently, their status remains that of employees, which differs from those of "Directors," who are regarded as Employers. In this regard, a fundamental distinction arises between the statutory notion of the "Board of Directors" stipulated in both legislation and SEMA No. 1/2022 and the role of "Director" as practiced by certain companies.

The existence of varying practices within each company concerning positions falling under the "Board of Directors" category underscores the need to define the term clearly.

As stipulated in Law No. 40 of 2007 concerning Limited Liability Companies, the term "Board of Directors" refers to the company's organ vested with authority and full responsibility for managing the company in the company's interest, in line with the company's objectives and goals, and representing the company both within and outside of the court following the articles of association. The appointment and termination of the Board of Directors occur through decisions made in the General Meeting of Shareholders (RUPS).

Regarding the appointment of the Board of Directors, the requirement for an individual to be appointed as a Director is that they must be a capable person and capable of performing legal actions, except within 5 (five) years from their appointment, they have:[11]

1. Declared bankrupt.
2. Become a member of the Board of Directors or Board of Commissioners who have been found guilty, resulting in a Company being declared bankrupt or
3. Been convicted of criminal acts detrimental to the state finances and/or the financial sector.

The termination of the Board of Directors by the General Meeting of Shareholders (RUPS) is connected with the understanding of Termination of Employment (TE) as stipulated in Article 1 number 25 of Law No. 13 of 2003 concerning Manpower, which defines TE as the cessation of an employment relationship due to unavoidable circumstances leading to the conclusion of rights and obligations between employees/laborers and employers.[12]

[11] Rivaldy David Woror, dkk, (2023), Akibat Hukum Pengangkatan Direksi Tanpa Rups Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, *Lex Privatum* Vol.XI No. 2, hlm. 4

[12] M. Yahya Harahap. (2007). "Separate Entity, Limited Liability dan Piercing the Corporate Veil", Jakarta: *Jurnal Hukum Bisnis*, Vol. 26, No. 3, hlm. 44

The term "Board of Directors" within this Legal Opinion refers to a position that is a part of the Company's organ as defined in the Limited Liability Company Law and SEMA No. 1/2022. On this basis, the definition of the "Board of Directors" is confined to positions where the employment relationship is characterized by fiduciary duty and partnership rather than labor/employment, as indicated by the Board of Directors' body being appointed and accountable to the General Meeting of Shareholders (RUPS). Conversely, in cases where a position uses the term "Director" but the employment relationship is still governed by an Employment Agreement or a Collective Labor Agreement (not appointed through RUPS), it cannot be categorized as a "Board of Directors" as intended within this Legal Opinion, because its status remains that of an Employee rather than an Employer.

A fundamental legal distinction exists between the provisions applicable to an employee as a Worker and a director as an Employer. An employee holds a worker's status because their employment relationship is founded upon an Employment Agreement or a Collective Labor Agreement; hence, they are legally subject to the Manpower Law and its implementing regulations (labor law). In contrast, a director holds the status of an Employer who operates within a corporate legal relationship based on decisions made in a General Meeting of Shareholders (RUPS) and the Company's Articles of Association; consequently, they are legally subject to the Limited Liability Company Law and its implementing regulations (corporate law).

The legal relationship between an employee and company management is characterized by a superior-subordinate relationship (*dientsverhouding*) or a sub-ordination relationship. Conversely, the legal relationship between members of the Board of Directors and the Company/RUPS/Owners is rooted in trust, marked by the delegation of authority to manage the company comprehensively and responsibly, guided by the principle of fiduciary duty. This framework establishes a partnership-based employment relationship.

Hence, the legal status of an employee appointed as a director within the same company through a General Meeting of Shareholders (RUPS) can be regarded as follows:

a. A fundamental shift in definition/status and legal relationship exists for an employee elevated to the position of a director through a General Meeting of Shareholders (RUPS), transitioning from the status of a Worker to that of an Employer. Conceptually, the notion of the employment relationship within the Manpower Law and Government Regulation No. 35/2021 encompasses the connection between Employers and Workers/Laborers based on Employment Agreements, encompassing elements of work, wages, and directives. Thus, the intent of SEMA No. 1/2022, Section B. Formulation of Civil Law, point 2.

Specific Civil Matters, subpoint b. Industrial relations disputes are as follows: "*Workers/laborers appointed as directors in the same company through a General Meeting of Shareholders (RUPS) legally terminate their employment relationships from the moment they are appointed as directors....*" Consequently, the hierarchical superior-subordinate (dientsverhouding) relationship between a worker and an employer is legally deemed to end, as when a worker is appointed as a director, they assume the role of an Employer in the organizational context, wielding full authority and responsibility to manage the company and represent it both within and outside the court. The phrase "full authority and responsibility," as defined in Law No. 40/2007, demonstrates the independence of the director's position. This aspect also characterizes the director as an Employer within the scope of the Manpower Law and Government Regulation No. 35/2021, where the definition of an Employer, outlined in subpoint b, includes: "*An Employer is: b. an individual, partnership, or legal entity that operates a Company as an independent entity.*" "Operates as an independent entity" can be interpreted as "having full authority and responsibility." Hence, when an employee is appointed as a director through a General Meeting of Shareholders (RUPS) within the same company, their rights, duties, responsibilities, and tasks are no longer governed by Employment Agreements, Collective Labor Agreements (PKB), or Company Regulations (PP), but rather determined through decisions made in a General Meeting of Shareholders (RUPS) and the Company's Articles of Association, under the provisions of the Limited Liability Company Law.

b. There exists a shift in the authority to undertake legal actions. An employee, previously classified as a Worker and operating within a relationship of power and subordination between superiors and subordinates within the company, adheres to the principles of vicarious liability and the employment principle when performing legal actions based on work directives. In contrast, within the scope of the entrusted/entrustment relationship between Directors and the Company, authority is delegated with direct responsibility, grounded in liability based on fault and the ultra vires doctrine, as stipulated in Article 97 paragraph (3) of Law No. 40/2007 concerning Limited Liability Companies. Upon transitioning from an employee to a director with the status of an Employer, they possess full authority and responsibility to manage the company, following the business judgment rule, as long as decisions are made in good faith, taking into account the company's interests (fiduciary duty), relying on sufficient knowledge/data (informed basis), refraining from careless actions (duty of care), and free from personal interests (loyalty).

c. A legal consequence arises in the Termination of Employment, which grants the concerned individual the right to receive compensation calculated from the inception of the employment relationship until the last wage earned before being appointed as a director. The necessity for Termination of Employment, as formulated in SEMA No. 1/2022, serves to elucidate the status and legal position of Workers elevated to the position of a director, thereby preventing confusion in the execution of their rights and duties. Prior to the issuance of SEMA No. 1/2022, the Industrial Relations Court under the Supreme Court had upheld the norm that Workers appointed as directors have terminated their employment relationships, entitling them to compensation. It is evident in Supreme Court Decision No. 1051 K/Pdt.Sus-PHI/2019.

3. Legal Status of Workers Appointed as Directors Through RUPS under SEMA 1/2022

Concerning SEMA No. 1/2022, three implications are presented in point B, item 2, sub-item b, of the Formulation of the Special Civil Chamber of the Industrial Relations Court. Firstly, for workers who are appointed as directors, their employment relationship legally terminates as of their appointment through RUPS. Secondly, following the termination of the employment relationship, the worker is entitled to receive compensation under the provisions of the law. Thirdly, the length of service is computed from the commencement of the employment relationship until the last wage received before being appointed as a director.

SEMA No. 1/2022 does not further regulate the components and calculations of compensation for the Termination of Employment (PHK) for workers appointed as directors. Furthermore, in Labour Law No. 13/2003, Omnibus Law No. 6/2023, and Government Regulation No. 35/2021, there is no provision concerning the reasons and calculation of compensation for Termination of Employment resulting from a worker becoming a director.

Moreover, among all the reasons for termination as stipulated in Government Regulation No. 35/2021, no basis can be used to process a Termination of Employment triggered by the worker's appointment as a director. Except in cases where the worker voluntarily resigns from their position to subsequently be appointed as a director, in such cases, the calculation of compensation for resignation is applied.

In our opinion, it is essential to consider that using the reason for resignation to accommodate workers appointed as directors by applying the calculation of Government Regulation No. 35/2021, where the compensation given is limited to severance pay and replacement pay, does not include benefits and service awards. However, workers appointed as directors generally have good performance or achievements. Therefore, in our view, based on principles of fairness, it is advisable still to provide severance pay and service awards for such cases, especially considering that the resignation

scheme is not self-initiated (voluntary) but instead encourages one to become a director.

The absence of regulation within Government Regulation No. 35/2021 regarding the Termination of Employment for workers appointed as directors allows companies to establish mechanisms and calculations within their internal policies under their respective best practices.

Regarding the compensation and multiplication factors, whether using x0.5, x1, x1.75, or x2, we believe the following aspects can be taken into consideration:

a. The reasons for Termination of Employment (PHK) stipulated in Government Regulation No. 35/2021 can be categorized into two groups: Firstly, when the company incurs losses or due to violations, the multiplying factor is x0.5; Secondly, when the termination is not due to losses or violations, the multiplication factor falls within the range of x1, x1.75, or x2.
b. Prior to the formulation of SEMA No. 1/2022, the Supreme Court had ruled on a case concerning the compensation for Termination of Employment (PHK) for employees who were appointed as directors, with a calculation of 2 times Severance Pay, one time Long Service Award, and Compensation for Rights (Decision No. 1051 K/Pdt.Sus-PHI/2019).[13] Furthermore, in 2022, in handling similar cases, the Supreme Court ruled with a different calculation: one-time Severance Pay, one-time Long Service Award, and Compensation for Rights (Decision No. 948K/Pdt.Sus-PHI/2022). [14]
c. Companies can establish mechanisms for Termination of Employment (PHK) of employees appointed as directors along with their compensation through internal policies. In cases such as in Decision No. 948K/Pdt.Sus-PHI/2022, the Supreme Court first considered whether PT. BPR Kencana Graha had an internal policy regarding the status and rights of employees appointed as directors. Since the company did not have such regulations, the Supreme Court then determined the calculation of compensation based on principles of fairness.

The above considerations can be utilized to determine the appropriate multiplier factor for calculating severance pay for employees who become directors. In our opinion, the factor x1, as established in the Supreme Court

[13] Perhitungan kompensasi PHK pada Putusan No.1051 K/Pdt.Sus-PHI/2019 ini didasari dengan perhitungan UU Ketenagakerjaan 2003
[14] Perhitungan kompensasi PHK pada Putusan No.948K/Pdt.Sus-PHI/2022 ini sudah berlaku perhitungan UU Cipta Kerja dan PP No. 35/2021

Decision No. 948K/Pdt.Sus-PHI/2022 can be applied as the severance pay calculation for employees appointed as directors. This choice is based on the reasoning that it is calculated above x0.5 due to the absence of loss or violation, yet not exceeding x1.75 as the employee has not retired and the termination of employment does not result in separation since the employee is still actively working and receiving income and benefits from the same company.

4. Conclusion

The status of an employee appointed as a director through a General Meeting of Shareholders (RUPS) will shift their status/definition from an Employee to an Entrepreneur, thus altering the nature of their rights and obligations. Consequently, these rights and obligations are no longer regulated by Collective Labor Agreements, Individual Employment Agreements, or Company Regulations but instead established through RUPS Decisions and the Company's Articles of Association. This shift has implications for transforming the previous hierarchical/subordinate employment relationship between superiors and subordinates into a relationship of entrusted trust/faith by RUPS/Owners to the Board of Directors, responsible for running the company with fiduciary duty. The change in status leads to a legal consequence in the Termination of Employment, entitling the concerned party to receive compensation calculated from the commencement of employment until the last wage received before being appointed as a director. The necessity for Termination of Employment, as formulated in SEMA No.1/2022, clarifies the legal status and position of Employees appointed as Directors to prevent confusion in the execution of their rights and obligations.

The legal vacuum regarding the components and compensation calculation for employees appointed as directors under PP No. 35/2021 presents two practical possibilities. On the one hand, in cases where Employees resign from their positions to subsequently be appointed as Directors, the calculation of compensation for resignation is applicable. On the other hand, companies can establish internal policies outlining the mechanisms for Termination of Employment and calculating compensation for employees appointed as directors following best practices. Companies should consider the principles of reasonableness and proportionality when determining the components for calculating compensation for these Employees.

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Regulations

Constitution of the Republic of Indonesia of 1945
Law Number 13 of 2003 Concerning Manpower
Law Number 40 of 2007 Concerning Limited Liability Companies
Government Regulation (PP) No. 35/2021 Concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment
Supreme Court Circular (SEMA) No.1/2022 Concerning the Implementation of the Formulation of the Results of the Plenary Session of the Supreme Court Chamber in 2022 as a Guideline for the Implementation of Duties for the Judiciary
Supreme Court Decision No. 1051 K/Pdt.Sus-PHI/2019
Decision No. 948K/Pdt.Sus-PHI/2022