

APPLICATION OF THE NON-RETROACTIVE PRINCIPLE BY JUDGES IN DISPUTES REGARDING TERMINATION OF EMPLOYMENT RELATIONS AFTER THE ELIGIBILITY OF THE JOB LAW AS A MANIFESTATION LEGAL CERTAINTY

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Abstract

This study examines the application of the principle of non-retroactivity by judges in Indonesian industrial relations courts, specifically in cases of termination of employment (PHK) arising after the enactment of the Job Creation Law (UU Cipta Kerja). The research analyzes how courts balance the application of the new law with the legal principles protecting workers' rights and ensuring legal certainty. By examining relevant court decisions and legal doctrines, the study finds that judges generally adhere to the principle of non-retroactivity, applying the labor laws in effect at the time the cause of action arose (the PHK event). This adherence upholds constitutional rights and prevents unfair application of the Job Creation Law to pre-existing disputes. However, challenges remain in ensuring consistent application and interpretation, highlighting the need for clear guidelines and ongoing judicial education to promote legal certainty and fairness in industrial relations disputes.

Keywords: *Non-Retroactivity, Job Creation Law, Industrial Relations Disputes, Termination of Employment, Legal Certainty, Indonesian Labor Law, Court Decisions, Workers' Rights.*

1. Introduction

Industrial Relations is a relationship that relates to and regulates the interests between workers/laborers and employers. This related relationship is realized in order to produce goods and/or services between workers and employers. In an industrial relationship, the division of rights and obligations between the two parties is also regulated, as has been legally regulated in the Law on Manpower or specifically regulated in an employment agreement, company regulations and joint employment agreement as long as it does not conflict with applicable laws and regulations.⁵

The implementation of the relationship between workers and employers is inseparable from the potential for conflict and/or problems. The potential for differences of opinion, even disputes between the two parties usually occurs because the rights and obligations of the parties are violated.⁶ Disputes between employers and workers are usually referred to as industrial relations disputes.⁷ Therefore, a settlement mechanism is needed that can resolve any disputes in employment relations. Legally, the state has been present in providing various alternatives for resolving industrial relations disputes in Indonesia, namely through the Industrial Relations Dispute Settlement Law (UU

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⁵ Anwar Budiman, "Implementation of the Principle of Balance in Legal Protection for the Implementation of Employment Agreements: Mechanism of Employment Agreements in Automotive Sector Companies in Indonesia." (Krisnadwipayana University, 2018)., p. 241.

⁶ Dahlia and Agatha Jumiati, "Resolution of Industrial Relations Disputes Based on Law Number 2 of 2004," Jurnal Wacana Hukum Vol. 9, no. 2 (2011)., p. 45.

⁷ Wirawan, "What is meant by the Industrial Relations Court," www.pikiranrakyat.com, 2022.

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PPHI). Industrial relations disputes themselves occur when one party in an employment relationship has a dispute or a difference of opinion occurs which results in a conflict between employers or a group of employers and workers or labor unions. These industrial relations disputes include disputes regarding rights, disputes over interests, disputes over termination of employment and disputes between labor unions in one company.⁸

Industrial relations disputes have problems after the enactment of Law Number 11 of 2020 concerning Job Creation (Job Creation Law). The problem that occurs is the existence of legal uncertainty in terms of the legal basis used in industrial relations dispute lawsuits after the implementation of the Job Creation Law. The problem of legal uncertainty occurs in practice in industrial relations courts, namely the problem of legal certainty regarding industrial relations dispute cases that occurred before the enactment of the Job Creation Law, but when the lawsuit was about to be registered, the Job Creation Law had been enacted. This condition raises the question of when the Job Creation Law can be submitted as a legal basis (*fundamentum petendi*) in an industrial relations lawsuit.

Industrial relations disputes that often occur and are experienced by workers/laborers are disputes over termination of employment (PHK). If the PHK occurred before the enactment of the Job Creation Law while the dispute is registered with the Industrial Relations Court after the enactment of the Job Creation Law and its implementing regulations, it is not relevant to use the Job Creation Law to base a lawsuit even though the Job Creation Law has been passed at the time of registering the lawsuit. This is related to the basic principle of Legal Science, namely the Non-Retroactive principle (cannot be applied retroactively).⁹

When viewed in the Job Creation Law Chapter XV Closing Provisions Article 186, it has been stipulated that the Job Creation Law shall come into effect on the date of its enactment. As is known, the Job Creation Law has been in effect since November 2, 2020. Therefore, it is appropriate for disputes over layoffs that occurred before the Job Creation Law came into effect while disputes were only submitted to the Industrial Relations Court after the Job Creation Law came into effect, then the Judge in his decision must still be guided by Law Number 13 of 2003 concerning Employment (Employment Law).

The basis of the problem above, raises a problem that can be formulated as follows: how is the application of the Non-Retroactive Principle by Judges in cases of disputes over termination of employment after the enactment of the Job Creation Law as a manifestation of legal certainty. With this formulation, research is expected to be able to play a role in legal reform related to layoffs that occurred before the Job Creation Law while the dispute was only filed after the enactment of the Job Creation Law.

2. Research methodology

This research is a normative research which is conducted by reviewing library materials and/or other data which are secondary data.¹⁰ The research approach used in this study is normative juridical. This approach refers to legal norms contained in laws and court decisions as well as norms that exist in society.¹¹ The approaches used are the statute approach, namely an approach using legislation and regulations, and the conceptual approach, which refers to existing legal doctrines.¹²

The legal materials used for the purposes of this normative research include primary legal materials which include authoritative legal materials, namely Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation as replaced by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation into Law and the 1945 Constitution and secondary legal materials that provide explanations related to primary legal materials. The data obtained are then analyzed qualitatively to be further described through a series of descriptive descriptions.¹³

⁸ Adnan Hamid, "Arbitration as an Alternative Dispute Resolution on Industrial Relations," *Jurnal Legal Reasoning* 3, no. 2 (2021), p. 117

⁹ Ridha Alamsyah Yoisingadji, "Problems of Registering Industrial Relations Dispute Lawsuits After the Enactment of Law Number 11 of 2020 Concerning Job Creation" (Syarif Hidayatullah State Islamic University, Jakarta, 2022), p. 4.

¹⁰ Ari Hernawan, "Law and Power in Industrial Relations," *Law Forum - Faculty of Law, Gadjah Mada University*, 2012, 89, <https://doi.org/10.22146/jmh.16159>, p. 92.

¹¹ Jhonny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), p. 46.

¹² Peter Mahmud Marzuki, *Legal Research*, Revised Edition (Jakarta: Kencana Prenadamedia, 2005), p. 178.

¹³ Syahwal, "A Look at the Philosophical Concept in the Legal Construction of Strikes as an Effort to Fulfill Workers' Rights in Indonesia," *Jurnal Jentera* Vol. 4, no. 2 (2021), p. 577.

3. Discussion

3.1. The Principle of Non-Retroactivity in Indonesian Legal System

The use of the term retroactive in Indonesian legal system is less popular. The term that is closer and often used is retroactive. Romli argues that retroactive is extending in scope or effect to matters that have occurred in the past.¹⁴ The understanding of the non-retroactive principle can be obtained through argumentum a contrario or mafhum mukhalafah against the retroactive understanding, namely implementing legal provisions starting from the date of ratification or enactment and applicable in the future (prospective). Baqir Manan emphasized again that laws and regulations are effective when published in the State Gazette (LN).¹⁵ So if it has not been published in the LN then it cannot work or will not be effective. And its implementation is calculated from the date of enactment in the LN.

There are two rules relating to the principle of non-retroactivity or the prohibition on retroactively applying a legal regulation in Indonesia, namely in Article 28 I paragraph (1) of the 1945 Constitution and Article 1 paragraph (1) of the Criminal Code (KUHP).

Article 28 I paragraph (1) of the 1945 Constitution states: "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances."¹⁶ Article 1 paragraph (1) of the Criminal Code (KUHP) states: "No act can be punished except by virtue of criminal provisions in existing legislation, before the act is committed."

Based on the provisions contained in Article 28 I, it can be understood that the principle of non-retroactivity is one of the rights of citizens protected by the constitution, therefore if this provision is ignored, it means that a violation of the constitution has occurred. This principle also applies and is binding for all legal systems in the Republic of Indonesia, because all legal products in force in Indonesia must be subject to the provisions of the constitution, namely the 1945 Constitution.¹⁷

The phrase "...under any circumstances" stated in Article 28I paragraph (1) of the 1945 Constitution has a very clear meaning regarding the 1945 Constitution's rejection of the implementation of the retroactive principle and therefore does not need to be and cannot be interpreted otherwise. The prohibition on the implementation of the retroactive principle under any circumstances is an integral part of the recognition of "The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law" which also cannot be reduced under any circumstances. This means that under any emergency conditions there is no justification for implementing a legislative product to be applied retroactively.¹⁸

The non-retroactive principle does not only apply to material/substantive law, but also to formal/adjective law or law that regulates procedures. The application of formal law retroactively can result in very complicated chaos in the administration of justice. So in principle the non-retroactive principle binds all laws and regulations, or in other words all regulations must be prospective or apply going forward. The application of legal rules retroactively in laws and regulations other than criminal law also results in the loss of a person's rights and can even result in legal chaos and legal uncertainty.¹⁹

Indonesia has also implemented regulations governing the principle of non-retroactivity, namely during the Dutch East Indies. Article 3 of the Algemene Bepalingen van Wetgeving (AB) states that the translation is "The law is only binding for the future and does not have retroactive force".²⁰ Based on the provisions of this AB, Purnadi Purbacaraka and Soerjono Soekanto are of the opinion that the law may only be applied to events mentioned in the law and occurring after the law is declared valid.²¹ Regardless of whether the provisions of the AB are still in force

¹⁴ Romli Atmasasmita, *Behind the Hammer of the Constitutional Court: A Judicial Review of the Corruption Eradication Commission* (Jakarta: MTI, 2005), p. 24.

¹⁵ Baqir Manan, DPR, DPD and MPR in the New 1945 Constitution (Yogyakarta: FH-UII Press, 2005), pp. 32-33.

¹⁶ "The 1945 Constitution of the Republic of Indonesia" (2006), p. 67.

¹⁷ Ali Imron, *Legal Responsibility: Grounding the Principles of Islamic Law in Indonesia* (Yogyakarta: Pustaka Pelajar, 2015), p. 78.

¹⁸ Bachtar, "Implementation of the Retroactive Principle in the Optics of Constitutional Law," [wordpress.com](https://tiar73.wordpress.com/pemberlakuan-asas-retroaktif-dalam-optik-hukum-tata-negara/), 2025, <https://tiar73.wordpress.com/pemberlakuan-asas-retroaktif-dalam-optik-hukum-tata-negara/>, accessed April 19, 2025.

¹⁹ Arsil, "Regarding the Problem of the Non-Retroactive Principle, Paper at a Public Discussion Organized by LeIP with the Theme 'The Future of the KPK After the Judicial Review Decision of the KPK Law'" (Jakarta, 2005), p. 5.

²⁰ Purnadi Purbacaraka and Soerjono Soekanto, *Legislation and Jurisprudence* (Bandung: PT Citra Aditya Bakti, 1993), p. 7.

²¹ Purnadi Purbacaraka and Soerjono Soekanto, p. 8.

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or not in Indonesia, the regulation shows that in fact the non-retroactive principle does not only apply to material criminal law, but the principle applies to all statutory regulations including civil law (employment law).

The prohibition on the retroactive application of the law is based on the idea of protecting human rights (HAM).²² However, in the current era of reform, this retroactive problem has re-emerged in terms of human rights crimes, namely crimes against humanity and serious human rights violations.²³ The principle of legality is not merely interpreted as *nullum delictum sine lege*, but also as *nullum delictum sine ius* or not merely seen as the principle of formal legality, but also material legality, namely that which recognizes customary criminal law and living law or unwritten law as sources of law.²⁴

The principle of non-retroactivity relates to two things, namely (1) legislation, or the content of a legal regulation and (2) the application of norms of a legal regulation. A regulation can be considered to violate the principle of non-retroactivity if the rules therein state that the norms it regulates also apply to events that occurred before the regulation was enacted. This retroactive application is generally found in the article that regulates the closing provisions. Generally, the closing provisions expressly state that the regulation applies retroactively. However, it is not uncommon for retroactive application not to be stated explicitly, it can only be seen from the difference between the date of enactment and the date of ratification.²⁵

Thus, in general principle, "retroactive laws are generally unjust and inconsistent with statutory regulations or with basic principles of law." Usually, the retroactive rule-making by the legislature indicates that, in the absence of clear and explicit legal language, the law should apply to events that occurred after the law was passed.²⁶ All laws containing material on the application of the retroactive principle under the constitution should have normative harmony with constitutional norms. Every law made in order to provide legal regulation for the community must not conflict with the constitution as the highest legal norm of the state.

This is because the basic norm as the highest norm is formed directly by society and becomes the highest basis for the validity of the entire legal order, forming a unified legal order as emphasized by Hans Kelsen with his *Stufen theory*.²⁷ In the legal hierarchy system, statutory norms must not conflict with constitutional norms, so that if there are statutory norms that conflict with the constitution, then the law is flawed from its birth (*in abtuo*).²⁸

3.2. Legal Certainty for Registration of Dispute Cases on Termination of Employment Post the Enactment of the Job Creation Law

For justice seekers, filing a lawsuit is the first step to obtain justice for a legal event that has befallen them. The legal event can be in the form of defending rights, resisting, fighting for rights, etc. In essence, Civil Law has regulated provisions that for parties who feel that their civil rights have been violated, they can file a lawsuit in court. Therefore, filing a lawsuit is the first step to obtaining justice.

The efforts of justice seekers to regain their rights are hampered by the legal uncertainty that occurs due to the judge's interpretation and paradigm in deciding a case that is wrong. The issue of legal certainty occurs when a legal regulation in the form of a Law in the field of employment has been changed, or changes to the Employment Law which have been partially changed in the Job Creation Law. In terms of registering industrial relations dispute lawsuits (PHK) after the implementation of the Job Creation Law.

The problem of legal uncertainty regarding industrial relations dispute cases that occurred before the enactment of the Job Creation Law, but when the lawsuit was about to be filed, the Job Creation Law had been enacted. This condition raises the question of when the Job Creation Law can be submitted as a legal basis (*fundamentum petendi*) in a PHI lawsuit. This legal certainty is interpreted as a rejection, a misperception about when the Job Creation Law applies, and a retroactive issue (the law applies retroactively).

²² Jimly Asshiddiqie, *The Constitution and Indonesian Constitutionalism* (Jakarta: Secretariat General and Registrar's Office of the Constitutional Court, 2006), p. 159.

²³ Barda Nawawi, *Selected Chapters on Criminal Law* (Bandung: Citra Aditya Bakti, 2003), pp. 1-2.

²⁴ Nawawi, p. 10.

²⁵ Ali Imron, "Implementation of the Retroactive Principle in Marriage Annulment Cases in the Marriage Law," *QISTIE Scientific Journal of Law* 9, no. 1 (2016), p. 38.

²⁶ Bachtiar, "The Implementation of the Retroactive Principle in the Optics of Constitutional Law," accessed April 19, 2025.

²⁷ Hans Kelsen, *General Theory of Law and State*, ed. Raisul Muttaqien (Bandung: Nuansa and Nusa Media, 2006), p. 179.

²⁸ Maria Farida Indrati S., *Legal Science 1* (Jakarta: Kanisius, 2007), pp. 46-47.

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According to Kelsen, law is a system of norms. Norms are statements that emphasize the aspect of "should" or *das sollen*, by including some rules about what must be done.²⁹ Norms are products and actions of deliberative humans. Laws containing general rules serve as guidelines for individuals to behave in society, both in their relationships with other individuals and in their relationships with society. These rules serve as limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty.

In this case, if it is associated with Hans Kelsen's theory regarding certain laws, then the formation of legislation in the form of the Job Creation Law which in its implementation causes confusion in society, unrest and is contrary to legal norms, then this is a form of uncertain legal rules. In this case too, this uncertainty arises because of the role of judicial institutions that do not carry out their duties and maintain legal norms as they should, such as judges who miss consideration of the principle of non-retroactivity.

Uncertainty can also be realized due to problematic decisions of judges in judicial institutions. Such as problems regarding the wrong application of the law. Thus, the norms that have been made fail to realize the supremacy of law. That laws and regulations are made to regulate everything that is needed by legal life, and to dispel all confusion that exists regarding the implementation/interpretation and issues of the law itself. The application of the law must be in accordance with a decision, the judge is obliged to construct all aspects of the law without exception in order to create a decision that has legal certainty.

3.3. Application of the Non-Retroactive Principle by Judges in Industrial Relations Disputes as a Manifestation of Legal Certainty

Industrial relations disputes, especially disputes over termination of employment, which occurred before the Job Creation Law came into effect, while the lawsuits were only filed after the Job Creation Law came into effect, have implications for problems in realizing legal certainty for judges in deciding a case. This is reflected in the 2 (two) industrial relations court decisions below.

First, in the Decision of the Industrial Relations Court at the Central Jakarta District Court Number 76/Pdt.Sus-PHI/2022/PN.Jkt.Pst dated August 10, 2022, where in the legal considerations on page 29 of this decision it states that the Plaintiffs have been laid off since June 30, 2020 based on the Internal Memo, the witness explained that since July 2020 the Plaintiffs were not allowed to come to work and their attendance was blocked by the Defendant, but the Plaintiffs still came to the company by doing manual attendance. Meanwhile, the lawsuit for the dismissal dispute was filed with the industrial relations court on February 24, 2022. Second, in the Decision of the Industrial Relations Court at the Pangkalpinang District Court Number 14/Pdt.Sus-PHI/2024/PN Pgp dated August 16, 2024, where in the legal considerations on page 21 of this decision it states that the Plaintiffs have not worked since June 30, 2020, while the lawsuit for the dismissal dispute was filed with the industrial relations court on June 11, 2024.

In both decisions above, the lawsuit for termination of employment was only filed with the industrial relations court after the Job Creation Law came into effect, even though the legal event of the industrial relations dispute occurred in 2020 before the Job Creation Law was enacted on November 2, 2020. Therefore, the judge is of the opinion that the settlement of the *a quo* termination of employment dispute must still refer to the provisions of the laws and regulations in force at that time, in *casu* Law Number 13 of 2003 concerning Manpower in conjunction with Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes and Work Agreements and/or Company Regulations in force.

The court decision above shows the application of the universally applicable non-retroactive principle guaranteed by the provisions of Article 28I of the 1945 Constitution which in essence regulates the prohibition of retroactive laws except regarding Human Rights. This is in accordance with the Legal Doctrine of Purnadi Purbacaraka and Soerjono Soekanto which in essence explains the meaning of the Non-Retroactive principle is that the Law may only be used for events mentioned in the law and occurred after the law was declared valid.³⁰

In addition, we must look closely at the validity period of the Job Creation Law itself and link it to the period of the Industrial Relations Dispute incident that occurred in Case Number 76/Pdt.Sus-PHI/2022/PN.Jkt.Pst at the Central Jakarta District Court and Case Number 14/Pdt.Sus-PHI/2024/PN Pgp at the Pangkal Pinang District Court.

²⁹ Jimly Asshiddiqie and M. Ali Safa'at, "Hans Kelsen's Theory of Law," Constitutional Court of the Republic of Indonesia, no. Jakarta (2016): 15.

³⁰ Purnadi Purbacaraka and Soerjono Soekanto, *Legislation and Jurisprudence.*, pp. 7-11.

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Based on Article 73 Paragraph (2) of Law Number 12 of 2011 concerning the Formation of Legislation, it is stated that the Draft Law that has been approved by the DPR and the President is legally a Law and must be promulgated.

According to Maria Farida Indarti Soeprapto, in her book, Legal Science: Basics and Formation, she explains that a law that has been ratified can only be legally binding if it is promulgated in a state gazette.³¹

The ratification of a law does not necessarily indicate that the law has come into force and is binding. Basically, when a law comes into force is related to when the law was enacted, which we can see in the Closing Provisions section contained in the law in question.³²

Marida Farida said that in relation to the problem of invitation and binding power, three variations can be found:

- a. Applicable on the date of promulgation: If a regulation states that it is applicable on the date of promulgation, then in this case the regulation has binding force on the same date as the date of its promulgation.
- b. Valid for some time after being enacted: If a regulation is declared to be valid for some time after being enacted, then in this case the regulation has force on the date of enactment, but its binding force is after the specified date.
- c. Applicable on the date of promulgation and retroactive to a certain date: If a regulation is declared to be applicable on the date of promulgation and retroactive to a certain date, this means that the regulation has the power to apply from the date of promulgation, but in certain cases it has binding power that is retroactive to the date previously determined.

In this case, the Job Creation Law regulates the validity period in the Closing Provisions which essentially states, "This Law shall come into force on the date of its promulgation. In order for everyone to know, it is ordered that this Law be promulgated by placing it in the State Gazette of the Republic of Indonesia.

The Job Creation Law does not regulate retroactive provisions to a certain date. Thus, the Job Creation Law should apply to future events, not to all events that have occurred, either before or after the enactment of the Job Creation Law. The Job Creation Law itself was enacted on November 2, 2020, so it also applies on November 2, 2020.

The interpretation of the Job Creation Law in effect at the time of its enactment, namely November 2, should not be understood to mean that starting November 2, 2020, all Special Civil Lawsuits at the Industrial Relations Court must include the Job Creation Law. If this happens, then cases that occurred before the Job Creation Law came into effect will lose their sense of Justice, Certainty and Benefit over the law itself. Moreover, in terms of legal certainty, the public will lose a place to file lawsuits, even though the Industrial Relations Court is the only institution authorized to try PHI cases.

A Judge's Decision is a statement by a Judge as a state official who is authorized to do so with the aim of ending and resolving a case. The Judge and his/her Decision are like two sides of a coin that cannot be separated from each other. The quality and professionalism of the Judge in deciding a case are reflected in his/her decision. It is no wonder that many people call the decision the "Judge's Crown". A good decision is a decision that is rational, argumentative, systematic and does not conflict with common sense, which is arranged coherently (structured and systematic) with good and correct language containing clear, precise and correct legal arguments. The decision must not only be understood by the judge who made it, but also easily understood by the person in the case and easily understood by the wider community.³³

Legally The basic concept of industrial relations court decisions can be found in the provisions of Article 100 of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, which in full reads "In making a decision, the Panel of Judges shall consider the law, existing agreements, customs and justice".

The above provisions contain meaning and at the same time emphasize that ideally a judge's decision or court decision must fulfill 2 (two) aspects at once, namely the aspect of legal certainty (civil law) and the aspect of justice (common law). Therefore, the Judge must be able to bring together legal certainty and justice at once in each

³¹ Maria Farida Indrati Soeprapto, Legal Science, Process and Techniques of its Formation (Yogyakarta: Kanisius, 2007)., p. 34.

³² Yoisanadji, "Problems with Registering Industrial Relations Dispute Lawsuits After the Enactment of Law Number 11 of 2020 Concerning Job Creation.", p. 55.

³³ Junaedi, "PHI Decision Making Method," in PHI Judge Training (Jakarta: Supreme Court Education and Training Center, 2024)., p. 2.

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of his decisions, so that in legal certainty there is justice and in justice there is legal certainty.³⁴ Legal Certainty (legal dogmatic/legal justice), lies in and refers to the application of articles in applicable laws and regulations (positive law) which form the legal basis consistently and consequently without having to look at other aspects outside the law such as politics, economics, philosophy, sociology, morals and justice.³⁵

The understanding of legal certainty according to Peter Mahmud Marzuki is as a general rule to make society (individuals) know what can be done and what cannot be done. This is an effort to create legal security and provide a sense of certainty about a law. Legal certainty is also interpreted as an effort to prevent the State (Government) from government arbitrariness because of the existence of general legal rules and society becomes aware of what is imposed by the State and what cannot be imposed by the State.³⁶

According to Radbruch, certainty is a legal rule that ensures that the law functions as a regulation.³⁷ Legal certainty can be achieved if in certain situations:³⁸

1. There are clear, consistent and easily accessible legal regulations.
2. The governing bodies (government) implement these legal regulations consistently and also submit to and obey them.
3. Citizens in principle adapt their behavior to these regulations.
4. Independent and impartial judges (courts) apply these legal rules consistently when they resolve legal disputes.
5. Court decisions are concretely implemented.

The judge's decision that reflects legal certainty certainly in the process of resolving cases in court has a role to find the right law. Judges in making decisions do not only refer to the law, because it is possible that the law does not regulate clearly, so that judges are required to be able to explore legal values such as customary law and unwritten law that live in society.³⁹

In this case, the judge is required to explore and formulate it in a decision. The judge's decision is part of the law enforcement process which has one of the goals, namely legal truth or the realization of legal certainty. The legal certainty stated in the judge's decision is a product of law enforcement based on legally relevant trial facts from the results of the case resolution process in the trial.⁴⁰

The application of the law must be in accordance with the case that occurs, so that judges are required to always be able to interpret the meaning of laws and other regulations that are used as the basis for decisions. The application of the law must be in accordance with the case that occurs, so that judges can construct the case being tried in a complete, wise and objective manner. A judge's decision that contains elements of legal certainty will contribute to the development of science in the field of law. This is because a judge's decision that has permanent legal force is no longer the opinion of the judge himself but rather the opinion of the court institution which will be a reference for the community.

Therefore, judges in providing legal considerations must apply the principle of non-retroactivity in realizing legal certainty in accordance with the mandate of the constitution (UUD 1945) Article 28I Paragraph (1) which regulates that the right not to be prosecuted on the basis of retroactive law is classified as a right that cannot be reduced under any circumstances (non-derogable right). Non-derogable rights are fundamental human rights inherent in a person since birth. Recognition of the existence of basic human rights provides moral and legal guarantees to every human being to enjoy freedom from all forms of obstruction, oppression, deprivation, persecution or any other treatment that causes a person to be unable to live properly as a human being who is glorified by God.⁴¹

4. Conclusion

The principle of non-retroactivity in the constitution is translated as the right not to be sued on the basis of retroactive law as guaranteed by Article 28I paragraph 1 of the 1945 Constitution of the Republic of Indonesia. Based on the provisions contained in Article 28 I, it can be understood that the principle of non-retroactivity is one of the

³⁴ Junaedi., p. 3.

³⁵ Junaedi., p. 3.

³⁶ Peter Mahmud Marzuki, Introduction to Legal Science (Jakarta: Kencana Prenadamedia, 2008)., p. 158.

³⁷ Theo Huijbers, Philosophy of Law in the Course of History (Yogyakarta: Kanisius, 1982)., p. 163.

³⁸ Jan Michiel Otto, Legal Certainty in Developing Countries (Jakarta: National Law Commission, nd)., p. 5.

³⁹ Busyro Muqaddas, "Criticizing the Principles of Civil Law," Ius Quia Lustum Law Journal Vol. 1, no. 1 (2019)., p. 21.

⁴⁰ Margono, Principles of Justice, Benefit and Legal Certainty in Judges' Decisions (Jakarta: Sinar Grafika, 2012)., p. 51.

⁴¹ Lutfi Salsabila and Febby Annisa Sigma, "Human Rights Study in the Breakthrough of the Non-Retroactive Principle on Perpetrators of Terrorism Crimes in Indonesia," Lex Scientia Law Review 1, no. 1 (2017)., pp. 57-58.

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rights of citizens protected by the constitution, therefore if this provision is ignored, it means that a violation of the constitution has occurred. This principle also applies and is binding on all legal systems in the Republic of Indonesia, because all legal products in force in Indonesia must be subject to the provisions of the constitution, namely the 1945 Constitution.

The application of the non-retroactive principle by judges in cases of termination of employment is not only seen from the date of filing the lawsuit to the industrial relations court, but the judge must first explore when the dispute occurred or the judge must see the last date the plaintiff worked or was laid off. Because the judge's decision that reflects legal certainty in the process of resolving cases in court has a role in finding the right law.

The application of the law must be in accordance with the case that occurs, so that judges are required to always be able to interpret the meaning of laws and other regulations that are used as the basis for decisions. So that judges can construct cases that are tried in a complete, wise and objective manner. Judges' decisions that contain elements of legal certainty will contribute to the development of science in the field of law.

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