

NATIONAL COMMISSION ON HUMAN RIGHTS
REPUBLIC OF INDONESIA
(KOMNAS HAM RI)

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Number : 1475/R-PMT/X/2017 Jakarta, 23 October 2017
Attachment : -
Status : Normal
Regarding : Recommendation on PT Freeport Indonesia's Termination of Employment

To :

President of the Republic of Indonesia

Jl. Istana Merdeka, No 17-18, Jakarta

Komnas HAM RI received a direct complaint from Mr. Asher Gobay a representative of employees of PT Freeport Indonesia regarding the Termination of Employment by the management of PT Freeport Indonesia. In essence, the complainant expressed that the management of PT Freeport Indonesia has made unfair dismissals to about 4,100 from the privatized and contractor workers, especially the strikers. The termination of employment affects the economic and social life of Mimika workers and communities.

We need to inform that *Komnas HAM RI* has followed up the complaint by conducting field monitoring on July 18-19 for more information and investigation. The *Komnas HAM RI* team consisted of 5 (five) persons, namely Natalius Pigai, the Commissioner of Sub-Commission of Monitoring and Investigation Support, Imelda Saragih, the head of Monitoring and Investigation Support section, Ana Munasiroh, Dewi Armyasih and Arief Setya Budi, Staff of Monitoring and Investigation. In this field monitoring, *Komnas HAM RI* conducted a meeting with various parties including employees of PT Freeport, Local Manpower Office of Mimika District, and management of PT Freeport Indonesia.

In the meeting between *Komnas HAM* and Complainant conducted on July 18, 2017, the following information was obtained:

- PT Freeport Indonesia reduced its workforce for efficiency reasons, as a consequence of them not have acquired export license and extension of the Special Mining Business Permit (IUPK)
- The company, without prior information given to workers, implemented a *furlough* with announcing names of workers to be returned to the place of recruitment. The said policy was considered as a full right of the company and not a matter of industrial relations so that the SPSI union was never invited to negotiate about this. The company informed no definite timelines and no guarantee for workers to be reinstated. The furloughed workers are even offered a separation package called voluntary package and the company constantly pushed the furloughed workres to take the package offer. The company was not transparent in determining who would be furloughed as well as its criteria. Many young and productive workers were affected by the program.

- Based on the policy, SPSI Union through its letter numbered 006 / KPP-SPKEP SPSI / MMK / VII / 2017 dated July 2, 2017 regarding their position, where Papua Workers Community (KPPS SPKEP SPSI) demanded:

a. Immediately reinstate workers, of PT Freeport Indonesia, workers of the privatized, Contractor and Subcontractor who were on strike from 11 April 2017 to-date legally in accordance with Act No. 13 of 2003 on Manpower, without any sanction;

b. Do not justify and stop any kind of involvement of other parties in industrial relations matter, of those who are not party of interest in industrial relations both internally (Tongoi Papua, GSPF, SBSI and SPSI counter) and externally (P2MA PTP community leaders, public figure, religious leaders, youth leaders, civil servants and Police / Army)

c. The management of the company shall be open to taking measures for the ongoing strike settlement process with the SPKEP Union of PT Freeport Indonesia Branch Level of SPKEP SPSI of Mimika District and not to do anything contrary to the provisions of the Act by making unilateral decisions that harm workers.

d. Immediately determine the employment status of the workers at PT Freeport Indonesia, Privatized, Contractors and Subcontractors workers affected by the furlough efficiency program or its impact or any other efficiency program.

In addition to meeting with employees of PT Freeport Indonesia, Komnas HAM RI also requested information from PT Freeport Indonesia on July 19, 2017. In the meeting, the company provided the following information:

- The company said that the termination of employment (lay off) stems from the protracted uncertainty of investment and the extension of the Contract of Work from the Government, which was being negotiated with the Government of Indonesia, so that management of PT. FI began to do a cost efficiency. Moreover, as of 12 January 2017, PT Freeport Indonesia was given export restrictions and on January 18, 2017 PT Freeport Indonesia suspended copper concentrate shipments to PT Smelting, Gresik, then on February 10, 2017 PT Freeport Indonesia also halted production of copper concentrate . The consequences of export restrictions and cessation of production activities have an impact on the workforce reduction. February 10, 2017, PT Freeport Indonesia met with the Indonesian Ministry of Manpower to inform the process of reduction of production.
- From February 20, 2017, the company invited all parties to provide feedback on efficiency measures and employment reduction plans to adjust to the company's circumstances. PT Freeport Indonesia can only operate 40% of its normal capacity. This reduction in production means lower revenues and this has forced the company to revisit, among other things, the continuity of its investment plans on Grasberg underground and that all have a direct impact on the existence of the company in general.
- The company took strategic measures to reduce operational costs as part of its efficiency program, to avoid termination of employment in accordance with Article 150 paragraph (1) of Act 13 of 2003 on Manpower. One measure was a Furlough Program.

Furlough is a Point of Leave without no obligation for one to work, so as to reduce operational costs.

- On February 26, 2017, the company started the furlough program. In this program, employees were returned to the point of leave and released from their obligations. Employees involved in the furlough program continue to receive basic wages and other benefits in accordance with the laws and regulations of the Minister of Manpower No. SE-05 / M / BW / 1998 of 1998
- In addition, the company also offered employees who participate in the furlough program, to choose voluntary employment termination program (*PPHKS*). This program is entirely voluntary and based on the wishes of the workers themselves. This program gives freedom for the furloughed workers to participate to submit voluntary resignation in exchange for receiving additional benefits. The Company emphasizes that *PPHKS* program is not a mass layoff.
- The company has suspended additional furlough programs since April 23, 2017, 2 (two) days before the official copper concentrate export permit was obtained and 1 (one) week before the official strike began. When the efficiency program (including furlough) was running, the company continued to communicate with trade unions and other stakeholders to get input on this efficiency program. Based on company data the number of employees affected by the program were 311 workers.
- At least 26 meetings have been held with various elements to get feedback on the measures management can take to avoid reduction of the workforce. The meeting was attended by Tongoi Papua, the All Indonesian Workers Union (SBSI) and the All Indonesian Workers Union (SPSI), however, unfortunately SPSI could not always attend (10 meetings inviting SPSI, SPSI only attended 4 meetings). On April 3, 2017, SPSI representatives even sent a letter refusing to attend further invitations.
- The furlough program never posed a threat because the employees involved in the program had received clear information and still enjoyed their rights as employees. The company said that the company was revising the production and expansion plans which results will be reflected in the new organizational structure. The structure will determine the amount of labor required, so it will be able to provide certainty to the participants of the furlough program.
- The company has attempted in various ways to recall employees who still had the chance to return to work following the absence for more than five consecutive days, including by sending two recall letter. The number of employees who responded the recall continued to grow so the company encouraged SKEP SPSI PTFI Union to get the employees to come to respond to the company's recall. The company has also made worker announcements through print, electronic media, leaflets, banners and via churches as well as community leaders to invite workers to return to work.

Provided letter No. 1050 / SP-PMT / VII / 2017, dated July 27, 2017, regarding the request for a meeting related to the settlement of PT Freeport Indonesia's furlough measure, Komnas HAM also called on the Ministry of Manpower on 2 August 2017 at the office of Komnas HAM. The meeting between Komnas HAM and the Ministry of Manpower of the

Republic of Indonesia, resulted in the following, among others:

1. On April 12, 2017, the Ministry of Manpower of the Republic of Indonesia held a meeting with the head of Manpower Office of Mimika District, PT FI Management, PT FI union leadership, employees and related parties. During the meeting, head of Manpower office of Mimika District requested that the furlough program be temporarily suspended, yet further discussion is still needed. Therefore, the Ministry of Manpower of the Republic of Indonesia and the Ministry of Energy and Mineral Resources will establish a team on this matter involving PT Freeport Indonesia and its contractors. In the near future, the Ministry will send a letter to ask the company to put forward the path of dialogue.
2. On April 20, 2017, the Manpower Office of Mimika District received a letter from the union notifying a strike action to take place from the 1st to 30 May 2017. The Joint Team between the ministry of manpower and the ESDM ministry and the deputy regent of Mimika, Mimika Police Chief, SPSI and related parties took to the field and called on employees to return to work and asked the company to let employees return to work. In the discussion, the company will said it would impose sanction in the form of guidance for employees who were absent for approximately 23 days. According to the collective bargaining agreement, there are points which provide that employees who (are absent) for 5 consecutive days and do not provide notification, then the company may provide sanctions, and this agreement had been introduced to all employees.
3. In addition to the dismissals, there is also other issue. Mr. Sudiro (SPSI work unit leadership)'s legal case is in process relating to membership contributions embezzlement filed by Mr. Virgo (former chairman of SPSI Branch Office). On April 1, 2017, a total of 1,000 workers took to the field to attend the trial at the District Court of Mimika District. But the workers did not return to work on the grounds of fear of furlough policy.
4. The local government has made every effort to solve this problem. Vice Regent of Mimika through print media appealed so to prioritize dialogue and keep condition to be conducive and if an agreement is not likely be reached, to immediately report to the government so that it will be able to facilitate for its settlement. The company has done various ways to call workers to return to work such as through banners, church announcements, office letters etc., but not responded by the workers;

In addition to inviting the Ministry of Manpower of Indonesia, through letter numbered 1051 / SP-PMT / VII / 2017, dated July 27, 2017, regarding the request for a meeting related to the settlement of PT Freeport Indonesia's furlough action, Komnas HAM RI also held a meeting with the EMR ministry on 2 August 2017 at the Office of Komnas HAM RI. The results of the meeting among others are:

1. The EMR Ministry has no main duties and functions related to labor, the authority of the EMR ministry only for recording number of recruits, competence and employment of local, national and international workers.
2. Related to the issue of PT Freeport Indonesia, the EMR Ministry only knows that the root cause of the demo is Mr. Sudiro who was reported by the PTFI management to the police and is in the process of trial. Officially, the EMR ministry has received the updates on PTFI and SPSI management in May 2017.

3. The demonstration was conducted on April 11, 2017, but the SPSI only notified PTFI management on May 1, 2017. The company has informed both orally and in writing 3 (three) times that strike action was an action that should not be done and ask the employee to return to work. But the letter was ignored by the workers.
4. The Director General of PBHI has facilitated the wishes of the workers, but there is no agreement between the two parties. To that end, PT Freeport Indonesia's management gradually undertook Termination of Employment. The Ministry of Energy and Mineral Resources noted that there were approximately 3,000 people discharged, and PTFI provided all the workers with their entitled rights according to the labor law and CBA.
5. In addition to the demo argument, the termination measure was done due to PTFI's obligation to building a Smelter, which resulted in PTFI not being allowed to export. Reduced workforce by PTFI is according to applicable rules and CBA standards.
6. On the occasion, the ERM Ministry has requested PTFI to:
 - a. provide regular written reports on the actions taken by PTFI.
 - b. coordinate with the Indonesian Ministry of Manpower and the Local Manpower Office to find solutions over the dismissals or early retirement offer;

After calling the Ministry of Manpower of the Republic of Indonesia and the Ministry of Energy and Mineral Resources, Komnas HAM RI on 4 August 2017 summoned the management of PT Freeport Indonesia, but the meeting could not take place because PT Freeport Vice Manager could not attend. For that reason, Komnas HAM made a second summon. But until now, the meeting still has not happened.

The analysis of data, facts, information and findings in the field, statement of complainant, information from related parties, relevant documents on the complaint was made. In this case monitored by the Komnas HAM RI, it is concluded that in the case of the dismissals there is an alleged human rights violation involved, especially the right to gain prosperity. Article 164 (3) of Law Number 13, 2003 regarding Employment reads:

"The employer may terminate the employment of an employee for closure of the company but not due to a loss for 2 (two) consecutive years or due to force majeure but because the company exercises an efficiency, provided that the workers are entitled to severance pay 2 (two) times as in the provisions Article 56 paragraph (2), service pay 1 (one) time of those provided in Article 156 paragraph (3) and compensation pay in accordance with the provisions of Article 156 paragraph (4) ".

Under the regulation, the company must provide 2x Severance pays, 1 time Service pay and compensation pay due to mass layoffs by the company that is making efficiency. Therefore, Komnas HAM RI recommends PT Freeport Indonesia to reinstate all workers (both PT Freeport Indonesia employees, Privatized and contractors / subcontractors) affected by furlough and pay all losses incurred by the policy.

Komnas HAM RI needs to convey the importance of follow-up response on the recommendation for the fulfillment of the right to welfare related to the right to life as well as the right to survive for the citizens guaranteed in Article 36 paragraph (1) and Article 9 paragraph (1) Act No. 39 of 1999 on Human Rights which makes it clear that everyone has the right to own, either individually or jointly with others for the sake of the development of himself, his family, the nation, and society in a manner that is not unlawful and that everyone has the right to live, to survive and to improve his standard of living.

Furthermore, it is expected that cooperation and communication will be improved and intensified for the sake of respect, protection, promotion, enforcement and fulfillment of human rights.

So that for you to be informed, thank you for your attention and cooperation.

Indonesian National Commission on Human Rights
Sub Commission for Monitoring and Investigation.

Natalius Pigai
Komisioner

copies to:

1. Chair of Komnas HAM RI, in Jakarta
2. Minister of Manpower RI, Jl. Gatot Subroto Kav. 51, Kec. Setia Budi, Jakarta
3. Minister of Energy and Mineral Resources RI Jl. Medan Merdeka Selatan, No. 18, Jakarta
4. Commission IX of Parliament Jl. Jenderal Gatot Subroto, Jakarta
5. Governor of Papua Jl. Soa Siu Dok 2, Jayapura, Papua
6. Timika Regent Jl. Timika Kuala Kencana Mimika, Utikini Baru, Kuala Kencana, Mimika, Papua
7. ILO Jakarta, Menara Thamrin, Jl. M.H. Thamrin No. 3 Kp. Bali, Menteng, Kota Jakarta Pusat
8. Freeport-McMoran (FCX) phoenix, Arizona, Amerika Serikat
9. President PT Freeport Indonesia Jl. HR Rasuna Said Kav. X-7 No.6, Plaza 89, Lt. 5, Kuningan, Kota Jakarta Selatan
10. IndustriALL Global Union, 54 bis, Route des acacias, Case Postale 1516, 1227, Geneva, Swiss
11. Mr. Aser Gobay, FSPKEP SPSI Kab. Mimika, Jl. Kartini No. 09 Timika
12. Archive