

DOI: <https://doi.org/10.63332/joph.v5i7.3045>

Normative Analysis of Legal Protection Against Unilateral Termination of Employment Based on The Law

Arya Hidayat Adisena¹, Achmad Busro², Ery Agus Priyono³

Abstract

Termination of employment (PHK) is a crucial action in the world of work that can have an impact on workers' rights and employment relationships. This research aims to analyze the legal protection of unilateral termination of employment based on the law. The law used in this research refers to the Labor Law or Law No. 13 of 2003. By using the normative analysis method, the results of this research are that layoffs can only be carried out if there are clear reasons and through a fair process, including discussions between the two parties. If the termination is carried out without the consent of the worker, the company is obliged to re-employ the worker or provide compensation for severance pay, long service pay, and compensation. This legal protection is implemented to maintain the basic rights of workers and prevent unilateral actions that can be detrimental.

Keywords: *Employment Relationship, Termination of Employment, Labor Law.*

Introduction

Work is an important thing in the current era of human life because with a job, a person will get a salary and a career path. These two things are things that can help fulfill the needs of life so that the desired goals can be achieved. However, in the current era, work is needed not only to fulfill the needs of life but also to increase social status within the community to be able to fulfill the lifestyle and have a big impact on life. In this case, a person needs to improve performance and develop themselves to have the potential desired by the company, and the company will continue to maintain workers who have high performance. However, the higher the performance of a worker, the more the company must increase the legal protection of labor by human rights. Technological developments accompanying this era demand that the protection of labor is quite crucial and needs to be considered because there are risks and responsibilities faced by workers.

Protection of workers is a form of appreciation for workers who have given their time, ideas, and energy to the company. Labor protection is formed based on Pancasila and the 1945 Constitution, which can be said that labor development is one form of national development. (Suwantari & Astariyani, 2018).

In Indonesia, labor law is regulated in Law No. 13/2003 on labor. Generally, labor problems occur due to poor relations between companies and workers. This will result in several impacts that lead to social, welfare, and economic elements. However, there are labor problems that are considered to require special attention, namely Termination of Employment (PHK) (Suwantari & Astariyani, 2018). PHK, according to Indonesian Law No. 13 of 2003 concerning manpower,

¹ Faculty of Law, Universitas Diponegoro, Semarang, Indonesia, Email: adisenarya.h1@gmail.com, (Corresponding Author)

² Faculty of Law, Universitas Diponegoro, Semarang, Indonesia, Email: profachmadbusro@gmail.com

³ Faculty of Law, Universitas Diponegoro, Semarang, Indonesia, Email: eap.mdih@gmail.com



“Termination of employment is the termination of employment relations due to a certain matter which results in the end of rights and obligations between workers/laborers and employers.”

It is known that since the pandemic hit Indonesia, workers who have been laid off have experienced a surge.

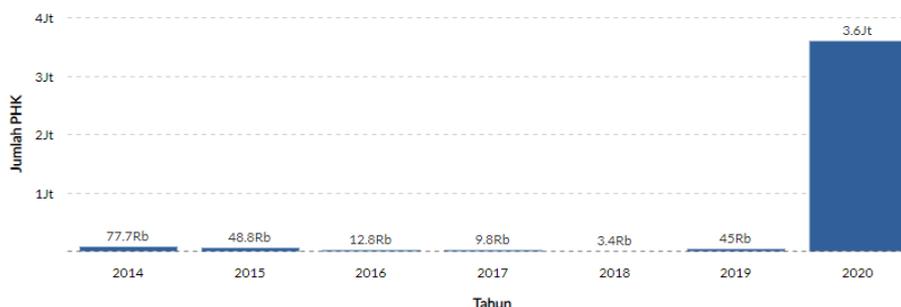


Figure 1. Indonesia's layoff rate 2014 – 2020 (lokadata, 2020)

Based on the graph above, it is known that from 2014 to 2018, the number of layoffs has decreased to 74,800 workers from 77,700. However, starting from 2019, when the pandemic began to enter Indonesia, the number of layoff cases has increased quite rapidly, namely, as many as 45,000 workers have been laid off. The peak in 2020, as many as 3,600,000 workers experienced layoffs due to the pandemic. Although the pandemic is no longer affecting Indonesia, companies are still recovering from the pandemic. In 2024 now, the number of layoffs has begun to decline when compared to the pandemic year, namely 2019 - 2020. The Ministry of Manpower revealed that there were 46,240 layoffs from January to the end of August, so it is estimated that by the end of 2024, the wave of layoffs is expected to reach 70,000 workers. Therefore, to guarantee the welfare rights of workers, the government regulates the Law of the Republic of Indonesia No. 13 of 2003 concerning employment to ensure the rights and obligations of employers and employees are well established. Termination of employment is a very crucial thing and must be done by both parties so that this layoff does not harm and provides justice for both workers and companies. Based on the Manpower Law, there is protection given to workers as a guarantee of workers' basic rights to guarantee equal opportunities and treatment without discrimination. When the company conducts layoffs, the company is obliged to pay severance pay, or long service award money and compensation money that should be received by workers.

Often, cases are found in the form of unilateral termination of employment, which is carried out by the company without any discussion from the workers. These unilateral layoffs are often carried out for reasons of efficiency, performance decline, and restructuring. However, this reason is also often used as an excuse to avoid obligations after layoffs to workers. The legal protection that can be given to this unilateral layoff is an effective dispute resolution mechanism. In Indonesia itself, the settlement of labor disputes is carried out through several channels, such as mediation, bipartite, arbitration, and conciliation. In addition, workers have the right to sue the Industrial Relations Court or PHI. Unfortunately, this procedure requires a lot of time and considerable costs, so this is quite burdensome for workers who have lost their jobs. Research conducted by (Hananto & Lie, 2024) Which states that “The law stipulates that laid-off workers

are entitled to receive severance pay, long service pay, and compensation. However, in practice, many workers do not receive the appropriate compensation due to various reasons, such as company bankruptcy or employers' non-compliance with legal provisions.”

Based on the above background, the author is interested in taking research related to the title, “Normative Analysis of Legal Protection Against Unilateral Termination of Employment Based on Law No. 13 of 2003.” This research aims to find out how legal protection can be given to workers who experience unilateral termination of employment.

Method

This research was conducted using normative legal research conducted by researching legal norms, principles, and principles from library materials. The library materials in question are related laws and regulations, relevant journals, foreign books, both domestic and foreign, and the Internet. In this research, what is studied is how legal protection is a value system and law is a social norm. In this research, data collection is carried out by looking for primary legal materials in the form of official records, legislation, and several decisions. The secondary materials used are unofficial documents such as law journals, law books, and several relevant internet articles.

Findings and Discussions

Regulation of Workers' Rights after Termination of Employment Under the Labor Law

The regulation of layoffs is contained in Chapter XII Articles 150 to 172 of the Manpower Law, Besides that, it is also specifically explained in the Decree of the Minister of Manpower No. Kep-15A, Men, 1994 Article 1 Paragraph (4) states that: “Termination of employment is a termination of employment carried out by an employer to an employee based on the permission of the Regional Committee or Central Committee.” The employment relationship is a relationship that exists because of a work agreement between the worker and the company and is mutually agreed upon. An employment agreement is an agreement in which the rights and obligations of the parties are regulated. In addition, the employment agreement also regulates the course of the work system that workers will undergo. The relationship between termination of employment and the rights attached to workers is a close relationship because of the employment relationship. Therefore, termination of employment will certainly hamper the course of rights and obligations. After the termination of employment, there are workers' rights that must be fulfilled by the company, which can be seen in the Decree of the Minister of Manpower, such as:

Severance pay means money paid by the company to workers as a result of layoffs. Severance pay is discussed in Article 156, paragraph 2, which provides severance pay by looking at the length of service of the worker. The longer the working period, the greater the severance pay received.

Long service pay. This money must be given by the company to workers as a reward for the length of time workers devote to the company. The regulation of UPMK is regulated in Article 156, paragraph 3, which has the same provisions as severance pay. The longer the worker's tenure, the greater the amount of tenure award money.

Compensation. Compensation is a wage given to workers by the company to compensate for the losses suffered by workers due to layoffs. This compensation arrangement is regulated in Article 156 paragraph 4 of the UUK which states that the compensation money obtained is in the form

of annual leave that has not been taken, costs used by workers and families to the place where the worker is accepted to work, change of residence and treatment of workers with the condition that the service period meets and is determined as much as 15% severance pay, and other compensation by the agreement that has been made.

Legal Rules for Termination of Employment

Companies can lay off workers only if they have reasons that are by applicable laws and are not imposed unilaterally. Some of the reasons permitted by law are:

1. Only if the worker resigns his/her own free will;
2. If the worker reaches retirement age;
3. If the employee dies;
4. If the worker makes a fatal mistake;
5. If the company has consecutive losses;
6. If the worker does not perform his/her duties; and
7. If the worker is caught doing something that is allowed by law.

However, companies are not allowed to lay off for several reasons stipulated in Article 153, paragraph (1), namely:

1. Workers are unable to enter work due to illness according to a doctor's certificate for a period not exceeding 12 consecutive months;
2. The worker is unable to perform his/her work due to fulfillment of state obligations;
3. The worker performs worship by religious orders;
4. The worker is married;
5. The worker is pregnant, gives birth, dies, or breastfeeds a baby;
6. The worker has a blood relationship with other workers in one company;
7. The worker is a member of a labor union;
8. The worker files a complaint against the company with the authorities;
9. Differences in religion, politics, color, class, ethnicity, gender, physical condition, or marital status.
10. Workers in a state of permanent disability.

Legal Impact of Unilateral Termination Based on Law No. 13 Year 2003

The rules when companies want to lay off workers must be carried out based on Law No. 13 of 2003 concerning labor. The law has explained that companies are prohibited from conducting unilateral layoffs, but it is necessary to conduct prior discussions with both parties. The employment relationship between companies and workers has the principle of "freedom", in which the state does not allow the practice of slavery. Therefore, companies need to discuss layoffs with workers in advance. If the results of the discussion do not lead to the agreement of both parties, then the company can only terminate the employment relationship with the worker

if there is a determination of an industrial relations settlement institution as stipulated in Article 151 paragraph (3) of the UUK which reads: "If the negotiations as referred to in paragraph (2) do not result in an agreement, the employer may only terminate the employment relationship with the worker/laborer after obtaining a determination from the industrial relations dispute settlement institution." If the company imposes layoffs without the agreement of both parties, then the company is obliged to re-employ the worker. This is stated in Article 155 paragraph 1 which reads: "Termination of employment without stipulation as referred to in Article 151 paragraph (3) is null and void." and Article 170 of the Manpower Law which reads: "Termination of employment that is carried out without complying with the provisions of Article 151 paragraph (3) and Article 168, except Article 158 paragraph (1), Article 160 paragraph (3), Article 162, and Article 169 is null and void and the employer is obliged to employ the worker/laborer concerned and pay all wages and rights that should be received."

Workers who have been laid off without a clear reason still have obligations and rights. Workers who are laid off can negotiate severance pay or request to be rehired. In addition, workers are also protected by legal protections related to layoffs. However, if the company cannot avoid laying off workers, the company is obliged to make a notification letter and give it legally to workers within a maximum of 14 days before layoffs.

Conclusion

After analyzing the literature that has been obtained, it is concluded that termination of employment (PHK) is a sensitive action, and clear regulations are needed so that it will not cause injustice to workers. In Indonesia, labor law is regulated in Law No. 13 of 2003 concerning labor, known as the Labor Law. This Labor Law protects workers by stipulating the company's obligation to pay severance pay, long service pay, and compensation if the company conducts layoffs. This legal protection is an important thing to provide to workers to maintain working relationships that continue to run by justice and human rights. In addition, dispute resolution procedures such as mediation and bipartite are paths that can be taken in the event of unilateral layoffs. Unilateral layoffs that are carried out without a clear basis or are not carried out based on discussions between the two parties are considered against the law. The law states that it is important to have a discussion between the two parties if layoffs are to take place. If the company conducts layoffs without prior discussion, the company is obliged to reinstate the worker, or the company is obliged to pay the rights that must be given to the worker.

References

- ASya, V. R., Riani, A., & Lavidya, V. (2023). Juridical Review Of Cases Of Unilateral Termination Of Employment Based On Labor Law. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*.
- Fikriana, A., & Khairani. (2023). Tinjauan Pemutusan Hubungan Kerja Sepihak Menurut Hukum Ketenagakerjaan dan Perlindungannya. *Jurnal Ilmu Sosial, Politik, dan Hukum*.
- Hananto, M. R., & Lie, G. (2024). Perlindungan Hukum Terhadap Hak Pekerja Pada Pemutusan Hubungan Kerja Sepihak Oleh Perusahaan (Studi Putusan Nomor 361/PDT.SUS PHI/2023/PN.JKT.PST). *Unes Law Review*.
- Harahap, A. M. (2020). *Pengantar Hukum Ketenagakerjaan*. Malang: CV. Literasi Nusantara Abadi.
- Ishak, T. R. (2020). Analisis Perlindungan Hukum Terhadap Pemutusan Hubungan Kerja Sepihak Oleh Pengusaha Terhadap Pekerja Wanita Sakit: Contoh Kasus Putusan Nomor 74/Pdt.Sus-Phi/2019/Pn.Bdg Jo. Putusan Nomor 1016 K/Pdt.Susphi/2019). *Jurnal Hukum Adigama*.
- Kesuma, M. E. (2020). Analisis Pemutusan Hubungan Kerja Secara Sepihak. *Kearsipan Digital*

- Lingsiani, I. G., & Kurniawan, I. G. (2024). Legal Consequences for Companies that Carry Out Unilateral Termination of Employment. *Journal La Sociale*.
- lokadata. (2020). Angka PHK Indonesia 2014 - 2020 . Retrieved From Lokadata:
<https://Lokadata.Beritagar.Id/Chart/Preview/Angka-Phk-Di-Indonesia-2014-2020-1602730054>
- Siregar, R. Z. (2020). Tinjauan Yuridis Pembagian Hak Normatif Akibat Pemutusan Hubungan Kerja (Phk) Secara Sepihak Terhadap Pekerja Berdasarkan Ketentuan Undang-Undang No.13 Tahun 2003 Tentang Ketenagakerjaan (Studi Putusan No.103/Pdt.Sus-PHI/2019/Pnmdn). *Kearsipan Digital Universitas Medan Area*.
- Suhartini, E., Yumarni, A., Maryam, S., & Mulyadi. (2020). *Hukum Ketenagakerjaan dan Kebijakan Upah*. Depok: Rajawali Pers.
- Suwantari, I. G., & Astariyani, N. L. (2018). Perlindungan HUKUM Terhadap Para Pekerja Yang Mengalami Pemutusan Hubungan Kerja Karena Dampak Digitalisasi. *Jurnal Universitas Udayana*.
- Tumeleng, E. K. (2017). Perlindungan Hukum Terhadap Pekerja Atas Tindakan Pemutusan Hubungan Kerja (Phk) Yang Dilakukan Secara Sepihak Di Pt. Bangun Wenang Beverages Company (Bwbc). *Kearsipan Digital Universitas Atma Jaya Yogyakarta*.