

## ***JURIDICAL ANALYSIS OF FORCE MAJURE TERMINATION OF EMPLOYMENT RELATIONS IN THE JOB CREATION LAW***

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### **Abstract**

The state has the responsibility to protect and promote labour in Indonesia, which is a human right in accordance with the constitution. Article 27 Paragraph (2) of the 1945 Constitution states that every citizen has the right to work and a decent life. However, labour problems continue to increase, caused by the lack of employment, the large number of workers, the low quality of workers' education, and the lack of supervision of workers' rights, which reduces people's welfare. Laws in Indonesia, such as Law No. 13/2003 on Manpower and Law No. 11/2020 on Job Creation, aim to provide legal certainty and prevent arbitrary actions by employers. The regulation of labour relations is based on a work agreement that confirms the rights and obligations of all parties. Therefore, this study finds out the legal arrangements for Termination of Employment (PHK) before and after the existence of the Job Creation Law. In addition, this research also aims to analyse the legal protection of workers affected by layoffs, especially due to Force Majeure conditions after the existence of the Job Creation Law.

This research uses a normative approach with qualitative juridical analysis. The data used is primary data as well as supporting data to assess the legal aspects related to termination of employment in the context of labour law in Indonesia.

The new law, Job Creation, has caused controversy and dissent in the community. Previously, the layoff process required a determination from a dispute settlement institution, but with the Job Creation Law, companies can conduct layoffs with notice to workers. Legal protection for workers affected by layoffs, especially due to force majeure conditions, is important. Industrial Relations Court judges do not require a criminal court verdict for employers who conduct layoffs due to urgent offences. There are differences between Law Number 13 Year 2003 and Law Number 11 Year 2020 on Job Creation, especially in the mechanism of layoffs due to urgent violations, which are considered to violate the principle of presumption of innocence. Therefore, legal protection for workers needs to be adjusted to the principle of presumption of innocence.

**Keywords: Termination of Employment, Force Major, Labour Law, Job Creation Law**

### **INTRODUCTION**

The 1945 Constitution of the Republic of Indonesia states that the right to work is a right protected by the constitution as a human right (HAM) (Khafi, 2016). Despite this, labour problems in Indonesia continue to increase and remain unresolved due to a lack

of jobs, low quality of workers' education, and lack of supervision (Mogi, 2017). For this reason, regulations and laws in Indonesia, such as Law Number 13 of 2003 on Manpower (UUK) and Law Number 11 of 2020 on Job Creation (Job Creation Law), as well as Regional Regulations, and policy regulations (beleidsregel), aim to provide protection and legal certainty to labour (Chandra, 2015).

The COVID-19 pandemic has disrupted labour. Social restrictions, trade restrictions, and reduced community activities have resulted in a reduction of labour with termination of employment (PHK). A person may be laid off or fired from their job due to the labour reduction practices taking place. This condition caused unemployment to increase to 8.75 million people in February 2021.

The economic problem arising from the pandemic is that many micro and macro companies have suffered losses; the industrial sector has also suffered significant losses, which has forced companies to lay off workers to maintain financial stability. Therefore, the layoff policy is determined based on the company's losses and the reason for force majeure.

In the layoff policy, the company submits an application to the Industrial Relations Dispute Settlement Body (PPHI). After that, PPHI conducts negotiations; if there is no agreement between the worker and the company, PPHI has the authority to determine the layoff application. The company is obliged to provide severance pay, compensation for length of service, and compensation for workers' rights if the layoff policy is carried out by the company. (Triyono, 2014)

The Draft Law on Job Creation was passed on 5 October 2020 after several articles were revised. The Job Creation Law amends several other laws relating to the acceleration of investment inflows and has an impact on labour. Fair regulations must be made to ensure that labour has equal rights and is protected by law. (Achmadi Julio-Tempo.co.id, 2020)

From this analysis, it can be concluded that laws in Indonesia aim to provide protection to labour. However, its implementation has not always been in line with expectations. The role of law in labour agreements is very important to provide protection for workers. Therefore, fair regulations must be made to ensure that labour has equal rights and is protected by law. Based on this, the research objective is to analyse the legal arrangements for layoffs before and after the Job Creation Law as well as the protection of workers affected by layoffs.

## **LITERATURE REVIEW**

### **Labour**

In the Indonesian Dictionary (2011), labour is a person who works or has the ability to do something, such as the production of goods and services. According to Indonesian Law No 13/2003, labour is a person who can produce goods and services to meet individual and community needs. The population of a country can be divided into labour and non-labour, with the former having a sufficient working age of 15-65 years. According to Sumarsono, labour is people who are willing to work, while Subri says that labour is people involved in the production of goods or services aged 15-64 years. According to Simanjuntak, labour is a person who works or is looking for work and performs additional tasks such as attending school and taking care of the household. In labour theory, the excess supply of workers is considered as capital to accumulate

income. Keynes also stated that the classical view of the labour market was inaccurate, while workers formed unions to defend the interests of workers from wage declines.(Manululang, 1998).

### **Labour Rights**

The basic rights of workers must be protected under Law No. 13 Year 2003. These include the right to wages, protection of working hours, holiday allowances, labour social security, termination compensation, and leave rights. The right to wages is regulated in Articles 88-98 of Law No. 13 of 2003 and Minister of Labour Decree No. 49/MEN/IV/2004. Protection of working hours including normal working hours of 40 hours a week and overtime hours is regulated in Articles 77-85 of Law Number 13 Year 2003. Hari Raya allowance is an obligation for employers to provide to their employees (Adisu & Jehani, 2006). Based on Minister of Manpower Regulation No. 6/2016 on Holiday Allowance, employers are obliged to provide religious holiday allowance to workers/labourers who have worked for 1 (one) month continuously or more. Labour social security is stipulated in Law No. 40/2004, covering insurance programmes for work accidents, death, old age, health care, and pensions. Compensation for termination of employment is regulated under Law No. 13/2003, including severance pay, long service awards, compensation, and separation pay. Leave entitlement is an annual break that employers must provide to workers after working for 12 consecutive months based on Article 79 of Law No. 13 Year 2003.

### **Termination of Labour Relations (PHK)**

Termination of employment (PHK) stands for termination of employment which refers to the termination of employment between workers or labourers and their employers (Syaufi, 2009). This termination of employment usually occurs due to the expiration of a certain time that has been agreed upon or agreed upon beforehand. Termination of employment can have psychological, economic and financial impacts on workers or labourers (Wijayanti, 2009). Theoretically, there are four categories of termination of employment, namely termination by law, termination by the court, termination by the worker/labourer, and termination by the employer. It is important to understand the conditions that must be met for each category of termination and the legal protection provided to workers or labourers. In the event of a dispute between employers and workers or labourers regarding the cancellation of layoffs, the dispute resolution process can be conducted through negotiation, conciliation, arbitration, or mediation before filing a lawsuit to the industrial relations court. The laws and procedures regulated by Law No. 13/2003 play an important role in ensuring justice for workers or labourers in cases of dismissal.

### **Theoretical Overview**

The legal theories used in this research are legal protection theory, labour agreement theory, legal certainty theory. Pancasila is the foundation for the formulation of the principles of legal protection in Indonesia, which includes the principle of recognition and protection of human dignity. Legal protection has the aim of providing protection to the community, which must be realised in the form of legal certainty through applicable laws and regulations. Two types of legal protection are preventive, which aims to

prevent violations before they occur, and repressive, which is in the form of sanctions if violations have occurred. (Hadjon, 1987)

The principle of employment agreements is regulated in many laws, and has an impact on industrial relations aimed at the employment relationship between workers and employers through employment agreements. There are two types of work agreements: fixed-term work agreements and indefinite-term work agreements. The elements of a labour agreement include work, elements under orders, a certain wage, and a period of time. (Khakim, 2017)

Legal certainty in Indonesian law is realised by the nature of the law which only makes general rules to ensure the law. Legal certainty is also related to the principles of justice, expediency, certainty, and positive legal instruments. The concept of legal certainty in law refers to H.L.A. Hart and Lon L. Fuller, who define the important aspects of ensuring legal certainty in practice. The practice of law involves a proportionate compromise between legal certainty, expediency, and justice. Agrarian law emphasises the importance of legal certainty in land rights for all Indonesians through its implementing regulations set out in other laws and regulations. (Ali, 2002)

## **RESEARCH METHOD**

This research is a normative juridical research that uses literature materials such as books, laws, documents, and other media that can be used as data or theoretical materials. The nature of the research is descriptive which aims to explain the fulfilment of workers' rights against unilateral layoffs, especially because the company is in a force majeure condition. In this research, a statutory approach is used to study the impact of the Job Creation law on the protection of workers affected by layoffs in conditions of company force majeure. This approach also aims to study the regulation of labour rights during layoffs in the Job Creation law after the amendment of law number 13 of 2013 concerning manpower. The research data consists of primary, secondary, and tertiary legal materials. Data collection techniques are conducted through desk research and juridical review of research findings. Data analysis is conducted using a juridical review study approach. The research will be conducted in Indonesia during the end of 2023 and throughout 2024. The results of this research are expected to provide answers and conclusions about legal efforts to protect workers' rights against unilateral layoffs during the pandemic.

## **RESULT AND DISCUSSION**

### **Comparison of Legal Arrangements for Termination of Employment (PHK) Before and After the Job Creation Law**

#### **1. Comparison between Law Number 13 Year 2003 on Labour and Law Number 11 Year 2020 on Job Creation**

Previously, the process of termination of employment (PHK) could only be carried out after being determined by the industrial relations dispute settlement body according to Law No. 13 Year 2003. However, Law No. 11/2020 regulates different rules regarding termination of employment, where employers can now carry out the termination procedure directly without a determination from the industrial relations dispute settlement body. There is a significant difference here, as well as the

permissibility of layoffs in some situations stipulated in Article 154A paragraph (1) of Law No. 11/2020.

In addition, there is a process for resolving industrial relations disputes according to Law No. 2 Year 2004, which is through mediation, conciliation, and arbitration. In cases of employment termination, the judge's consideration is important in determining the decision, taking into account the principles of legality, retroactivity, and *lex posterior derogat legi priori*.

Although it occurred before the enactment of the new law, judges must also consider the principle of *lex posterior derogat legi priori*, which means that the new law negates the validity of the old law. This means that judges must consider the new rules when deciding layoff cases that occurred before the enactment of Law No. 11/2020.

Companies or employers are an important part of the country's economy, with industrial relations occurring between employers and workers. Article 151 paragraphs (1), (2), and (3) of Law No. 13 Year 2003 provide explanations in the event of layoffs. All of this shows that the layoff process has undergone significant changes after the enactment of the Job Creation Law, and judges must consider all legal aspects in determining layoff decisions.

## **2. Comparison between Law Number 13 Year 2003 on Manpower and Law Number 11 Year 2020 on Job Creation in Dispute over Employment Termination**

A labour dispute is a conflict between an employer or a group of employers and workers/labourers or trade unions/labour unions. There are four types of labour disputes, namely rights disputes, interest disputes, employment termination disputes, and disputes between trade unions/labour unions within one company. This dispute can be seen from a comparison of two laws, namely Law Number 13 Year 2003 and Law Number 11 Year 2020 on Job Creation (Labour Cluster). The differences between the two laws, including regarding termination of employment, the prohibition of terminating the employment of workers/labourers in one company who have blood ties and/or marital ties, the reasons for layoffs, as well as provisions regarding the procedures for conducting layoffs and further regulations in government regulations.

## **3. Settlement of Employment Termination Disputes According to Law Number 11 of 2020 on Job Creation**

The labour copyright law describes the procedures to be followed in cases of termination of employment. Articles 151 to 154A explain the reasons for termination of employment and the procedures for termination of employment. Government regulation 35 of 2021 also addresses termination of employment in various situations, including during the probationary period. If there is a difference of opinion regarding termination of employment, the settlement of employment relations must be carried out through bipartite negotiations between employers and workers/labourers. If the bipartite negotiations do not reach an agreement, the settlement of employment termination shall proceed through the settlement of industrial relations disputes. Furthermore, settlement of industrial relations disputes can be conducted through bipartite settlement mechanisms, mediation, conciliation, and industrial relations courts. Every industrial relations dispute must first be

resolved through bipartite negotiations in a deliberative manner to reach consensus. Mediation and conciliation are also forms of alternative dispute resolution mechanisms. In addition, Article 1-4 and Article 24 paragraph (2) of the PPHI Law oblige parties who reject the recommendation to file a lawsuit at the Industrial Relations Court (PHI). The stages of the trial at the PHI and the District Court are not different, but there are differences in authority, time limit for deciding cases, case fees, and the position of parties who can act as legal counsel. PHI is required to decide cases no later than 50 working days from the first hearing. Workers' and employers' organisations can act as legal counsel for their members.

### **Legal Protection of Workers Affected by Termination of Employment (PHK) Especially Due to Force Majeure Conditions After the Job Creation Law**

#### **1. Legal Protection of Workers Affected by Termination of Employment (PHK)**

The consequence of the creation of an employment relationship is the emergence of legal consequences in the form of rights and obligations for employers and workers/labourers. In labour relations, the rights and obligations of the parties are reciprocal. Rights and obligations are regulated in work regulations, company regulations, and collective labour agreements. One form of right regulated in Article 52 paragraphs (2) and (3) of GR 35/2021 is the authority of employers to terminate workers/labourers if they commit violations regulated in autonomous rules. Article 52 of GR 35/2021 distinguishes the legal consequences between ordinary violations and urgent violations. Employers can terminate the employment of workers/labourers for urgent violations through the dismissal mechanism stipulated in the work agreement, company regulations, or PKB.

Confusion arises when autonomous rules do not regulate the mechanism for termination of urgent violations, making it seem as if employers cannot terminate on the grounds of urgent violations. The legal basis is that the mediator will not declare termination for urgent violations if it is not regulated in the work agreement, company regulation, or CLA, even though the actions of workers/labourers can be equated with examples of urgent violations in the Explanation of Article 52 paragraph (2) of PP35/2021. The PHI judge has the authority to interpret the violation committed by the worker/labourer, thus examining the company's basic reasons for termination. Article 52 paragraphs (2) and (3) of GR 35/2021 regulates the dismissal mechanism and the mechanism for rejecting dismissal decisions, so that workers/labourers are legally protected against the arbitrary behaviour of employers.

In the labour sector, the truth of the reason for layoffs is an important matter that needs to be revealed in layoff disputes. The classification of labour misconduct as urgent and non-urgent has an impact on the rights obtained after termination. Therefore, the form of legal protection needs to be analysed and associated with the presumption of innocence. According to Philipus M. Hadjon (1987), legal protection for workers/labourers must be based on the principle of human rights protection and the principle of the rule of law.

#### **2. Legal Protection of Workers Affected by Termination of Employment (PHK) due to Force Majeure conditions**

Article 52 paragraphs (2) and (3) of PP 35/2021 gives employers the authority to terminate workers for violations deemed urgent without an evidentiary process that provides an opportunity for workers/labourers to respond. Although the application of the due process of law principle guarantees that the application of the law is not enforced arbitrarily, the application of the presumption of innocence is not. The application of the presumption of innocence in PHK disputes, PHI judges do not examine and assess the criminal acts committed by workers/labourers but only assess the violations in the context of industrial relations dispute. Thus, due to the absence of prior notification to the worker/labourer, the concept of presumption of innocence is ignored. Article 52 paragraphs (2) and (3) of GR 35/2021 and its explanation do not fulfil the basis of good legal enforceability because they are contrary to Article 27 paragraph (1) of the 1945 Constitution. The authority to carry out layoffs should pay attention to the presumption of innocence, which is part of the human rights and constitutional rights of workers/labourers. Article 52 paragraphs (2) and (3) of GR 35/2021 should be reformulated and take into account the principle of presumption of innocence by amending it. This should be stated in the form of a law considering that the follow-up to the Constitutional Court's decision should be a material content regulated by law, so that non-compliance with the Constitutional Court's decision is considered a defiance of the constitution.

## **CONCLUSION**

The results of this study show that there are differences in the legal arrangements for termination of employment (PHK) before and after the existence of the Job Creation Law. The Job Creation Law regulates different rules regarding layoffs, allowing companies to lay off workers through notification and without consideration from the industrial relations dispute resolution body. Labour disputes are differences of opinion between employers or a combination of employers and workers or trade unions/labour unions, which can involve several types of disputes, including termination disputes. Legal protection for workers affected by layoffs, especially due to force majeure conditions after the existence of the Job Creation Law. The consequence of labour relations is the emergence of rights and obligations for employers and workers.

There is confusion when the autonomous rules do not regulate the mechanism of layoffs, thus allowing PHI judges to interpret or construct the law in order to determine whether layoffs on the grounds of urgent violations can be considered valid under the law. Article 52 paragraph (2) of GR 35/2021 distinguishes the legal consequences between ordinary violations and urgent violations. Legal protection for workers/labourers must be based on the principle of protecting human rights and the principle of the rule of law. The truth of the reason for dismissal is an important matter that needs to be revealed in a dismissal dispute. The classification of a labour error as urgent and non-urgent will have an impact on the rights obtained after termination. In Article 52 paragraph (3) of PP 35/2021, employers have the right to terminate workers for urgent offences without notice.

However, this mechanism does not reflect the principle of presumption of innocence and due process of law. This mechanism reduces the right of workers/labourers to respond and does not provide certainty that the response will be considered for the

layoff decision. Laws related to layoffs need to be updated and regulated in the form of laws in line with the final and binding Constitutional Court decision.

## SUGGESTION

A comparison of the settlement of dismissal disputes before and after the Job Creation Law shows that the additional rules in the Law make it easier to dismiss, so companies need to consider the consequences for employees and companies. Good co-operation between companies and employees is the key to company growth. In the settlement of layoff cases, it is important for the panel of judges to remain fair despite the many reasons submitted by both parties. The experience and knowledge of judges can provide protection to workers affected by layoffs. This can have a positive impact and help find the best solution for both parties.

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