

Legal Protection For Employees Affected by Layoffs or Layoffs Reviewed From The Perspective of The Job Creation Law

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Abstract—The focus of this study is to analyze legal certainty for the relevant community regarding legal protection if affected by layoffs (Termination of Employment). This study applies normative legal research methods with a legislative, conceptual, and analytical approach. The conclusion of the study explained that legal certainty for people affected by layoffs undertaken by companies in order to obtain their rights as employees in the company and nationally in Indonesia refers to the Job Creation Law and Government Regulation Number 35 of 2021. Referring to the point of view of human rights, obtaining information and education, including the rights of the community, one of them fulfills it through the fulfillment of employee rights in the work agreement with the company.

Keywords: job creation law; legal protection; termination of employment

Introduction

Termination of employment (PHK) is an important issue in the dynamics of employment life which is often in the spotlight. In Indonesia, layoffs are one of the conditions that put pressure on employees, especially when they are carried out unilaterally by the company without a fair agreement. This situation not only threatens the financial balance of workers, but also has a significant impact on their psychological and social conditions. From the perspective of labor law in Indonesia, the protection of labor rights in responding to unilateral layoffs is a very fundamental aspect and needs to be seriously considered. Therefore, this study focuses on analyzing the application of legal protection for workers who experience layoffs carried out by companies unilaterally.

Layoffs are an inevitable phenomenon in the dynamics of industrial relations. Layoffs often occur due to various factors, such as economic decline, company efficiency, technological changes, and organizational restructuring. However, layoffs are also a complex issue because they have a significant impact on workers' lives, both economically and socially. In the context of labor law, the protection of employees affected by layoffs is very important to ensure that their rights are protected.

A large number of workers experience termination of employment (PHK) without obtaining the rights that should be given in accordance with the provisions of Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation. Based on data from the Ministry of Manpower, a total of 29.4 million workers have been affected by the COVID-19 pandemic. This number includes various categories of workers, including those who have experienced layoffs, reduced working hours, salary cuts, and workers who are forced to be laid off without getting a salary due to the company's efficiency.

Legal protection for workers who experience unilateral termination of employment (PHK) also includes the right to compensation that must be provided by the company. Based on laws and regulations, laid-off workers have the right to receive a number of forms of compensation, including severance pay, award money during the working period, and compensation money. However, in the reality of its implementation, there are still many workers who do not receive proper compensation due to various factors, including the financial condition of the company that has experienced bankruptcy or the non-compliance of employers regarding applicable legal rules. Therefore, this study will examine how to implement the right to compensation in practice and find solutions to ensure that workers receive their rights as regulated in laws and regulations.

Indonesia is a country based on law, as mandated in Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia in 1945. This principle emphasizes that all systems and activities in the life of the nation and state must be based on applicable laws. In other words, the state has an obligation to enforce existing laws and ensure that all government policies and actions are in accordance with applicable legal provisions. Labor rights in Indonesia also receive constitutional protection, as stipulated in Article 27 Paragraph (2) jo. Article 28D Paragraph (2) of the 1945 Constitution. This provision affirms that every citizen has the right to obtain a job, receive fair treatment in employment relations, and obtain a decent livelihood. In addition, workers are also entitled to legal protection in accordance with applicable regulations in labor law to ensure welfare and justice in the world of work.

Law No. 13 of 2003 concerning Manpower (Statute Book of the Republic of Indonesia No. 39 of 2003), hereinafter abbreviated as Law 13/2003 stipulates related to termination of employment (PHK). However, this regulation has undergone changes through Law Number 11 of 2020 concerning Job Creation, especially in Chapter IV which discusses employment (Statute Book of the Republic of Indonesia Number 245 of 2020), which is hereinafter referred to as Law 11/2020. These changes are also strengthened by implementing regulations, namely Government Regulation Number 35 of 2021 which regulates Certain Time Work Agreements (PKWT), outsourcing systems, provisions regarding working hours and rest periods, and termination mechanisms (Statute Book of the Republic of Indonesia Number 45 of 2021), hereinafter referred to as PP 35/2021.

Legal protection consists of two main aspects, namely having guarantees related to human rights and the application of the principle of the rule of law. Legal protection should be obtained by workers, especially when there is a termination of employment (PHK), as guaranteed in Article 27 Paragraph (2) jo. Article 28D Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This provision affirms that every citizen has the right to obtain a job and get protection in accordance with applicable regulations. Basically, legal protection is a fundamental right for every worker that aims to prevent arbitrary actions from employers or those who provide jobs. The main principle in labor regulations is to ensure the welfare of workers by enforcing fair rules. In addition, the law also has an important role in ensuring fairness, certainty, and legal benefits for all parties involved in employment relations.

Law Number 11 of 2020 concerning Job Creation (Job Creation Law) brings various changes in labor regulations in Indonesia, including rules related to layoffs. This law aims to create labor market flexibility while increasing investment and economic competitiveness. However, this policy has reaped various responses, both positive and negative. On the one hand, the Job Creation Law introduces new mechanisms such as the Job Loss Insurance Program (JKP), which aims to provide additional protection to workers

affected by layoffs. On the other hand, changes in the amount of severance pay, layoff procedures, and the arrangement of contract or outsourced workers raise concerns about weak worker protection.

Termination of Employment (PHK) is one of the conditions most avoided by employees. This is due to economic instability which has resulted in many companies experiencing bankruptcy, leading to layoffs that are carried out unilaterally by employers. Protection of workers' rights can be found in collective bargaining agreements, also known as labor agreements. This labor agreement is an agreement that regulates labor conditions and is prepared by a labor union or labor union that has been registered with the Ministry of Labor (now the Ministry of Manpower) with employers or associations of entrepreneurs with legal entities. According to Article 1 Paragraph (15) of Law Number 13 of 2003, an employment relationship is defined as a relationship between an employer and a worker or laborer which is based on an employment agreement and has the main elements, namely work, wages, and orders. Meanwhile, in Article 1 Paragraph (25) of the same law, layoffs are defined as the termination of employment relationships for a certain reason that causes the expiration of rights and obligations between workers or laborers and employers.

The government's efforts to create a harmonious employment climate are still faced with a number of challenges. One of the central issues that stands out is the Termination of Employment (PHK) caused by force majeure, especially due to the Covid-19 pandemic. Data from the Ministry of Manpower of the Republic of Indonesia as of May 1, 2020 shows that 1,032,960 formal sector workers were laid off and 375,165 people were laid off. In the informal sector, 314,833 people were affected. In total, 1,722,958 workers were affected by Covid-19 which is a force majeure. Difficult conditions due to the COVID-19 pandemic that have an impact on the business world, as seen in the LIPI Survey data, often trigger industrial relations disputes.

However, in reality, behind the difficult situation caused by the COVID-19 pandemic, not all companies carry out Termination of Employment (PHK) regulations correctly and according to procedures. On the contrary, there is a practice of unilateral layoffs that are carried out without a deliberation process with the labor union or worker representatives. This is not only against the law, but also worsens the condition of workers who have been affected by the pandemic. One example is the case involving PT. Ifa Trans Indonesia, which laid off three of its employees, namely Jhon Mongkau, Agustinus Addinggide, and the late Arilio Corneles in December 2019 under the pretext of the COVID-19 pandemic as a force majeure.

Methods

The research method used in this study is a normative legal research method that reviews copyright protection in digital content licensing agreements. The selection of the normative law research method in this study is considered appropriate because in the regulation of labor protection, there is still a blur of norms, especially regarding the rights of workers who have experienced termination of employment (PHK) which seems less specific in the context of the scope of use, whether it includes social use or only the use of severance pay. The type of normative law research method is suitable for applying to studies where the issues discussed focus on norm problems, both conflicted norms (*conflicten van normen*), vague or vague norms (*vague van normen*), and empty norms (*leemten van normen*). This study departs from the emergence of ambiguity of norms, therefore it is considered appropriate to apply a legislative approach, a conceptual approach, and an analytical approach as a solution to the legal uncertainty due to the ambiguity of norms in the Job Creation Law in Indonesia.

The legal materials studied in this study consist of primary legal materials and secondary legal materials. The primary legal material in this study consists of legal protection for employees affected by layoffs or termination of employment (PHK) in Indonesia has been regulated in various laws and regulations. One of the important regulations is Law Number 11 of 2020 concerning Job Creation (Job Creation Law), which amends a number of provisions in Law Number 13 of 2003 concerning Manpower. The following is an analysis of legal protection from the perspective of the Job Creation Law. On the other

hand, secondary law is a source of law that functions to provide explanations and interpretations of primary legal materials. In this study, secondary legal materials were obtained from various studies on the protection of workers' rights, both contained in literature and scientific journals that discuss the protection of workers' rights related to rights and social life. The technique of collecting legal materials is carried out through document study techniques with a library research approach. After being collected, the legal materials obtained from the study of documents are processed systematically in accordance with the subject matter of discussion that has been determined. Furthermore, the analysis was carried out by descriptive-analytical methods to obtain relevant answers to the problems being studied in this study.

Results And Discussion

Legal Protection for Employees Affected by Layoffs or Layoffs Reviewed from the Perspective of the Job Creation Law

Provisions regarding termination of employment (PHK) are generally regulated in Chapter XII Articles 150 to 172 of Law Number 13 of 2003 concerning Manpower. In Article 1 Number 25 of the law, layoffs are defined as the termination of an employment relationship caused by a certain reason, resulting in the expiration of rights and obligations between workers or laborers and employers. Furthermore, the definition of layoffs is also explained specifically in the Decree of the Minister of Manpower Number Kep-15A/Men/1994 Article 1 Paragraph (4), which states that layoffs are termination of employment carried out by employers against workers on the basis of permission from the Regional Committee or Central Committee. In addition, layoffs are generally interpreted as the act of termination of employment chosen by the employer against the worker or laborer due to certain reasons that end in the termination of employment.

Legal guarantees for workers' rights in Indonesia are an important issue in realizing justice and welfare for the workforce. In Law Number 13 of 2003 concerning Manpower, various workers' rights have been regulated in detail, including the right to compensation, the right to receive notice before termination, the right to fair treatment, and the right to receive assistance in finding a new job. However, the implementation of this legal protection still faces various challenges and obstacles. One of the problems that often occurs is the difficulty of workers obtaining proper compensation after experiencing unilateral termination of employment (PHK) by the company.

The government guarantees protection for workers as well as the rights inherent to them. Basically, the employment relationship is formed based on an agreement between the worker and the employer. Therefore, unilateral termination of employment (PHK) should not be allowed. In simple terms, unilateral layoffs can be interpreted as unilateral termination of employment relations by the company without the consent of the worker. This practice generally has a significant negative impact, not only on the economic stability of workers, but also on the welfare of their families.

In article 81 number 16 of the Job Creation Law which contains a new Article 61 of Law No. 13 of 2003 (or better known as the Manpower Law), it is determined that a employment agreement can be terminated if:

The worker dies

The term of the employment contract has expired

Completion of a certain job

The existence of a court decision or determination of an industrial relations dispute settlement institution that has permanent legal force

The existence of certain circumstances or events listed in the employment agreement, company

regulations, or collective bargaining agreement that may cause the termination of the employment relationship.

Provisions regarding termination of employment (PHK) must be implemented in accordance with the regulations contained in the Manpower Law and its amendments in the Job Creation Law. Companies are not allowed to lay off unilaterally, but must go through a negotiation process with workers first. If the negotiations do not reach an agreement, the company can only carry out layoffs after obtaining an official decision from the industrial relations settlement institution.

Companies that unilaterally terminate employment (PHK) without following the applicable laws and regulations are required to rehire affected workers. This provision is regulated in Article 81 number 43 of the Job Creation Law, which adds Article 153 in the Manpower Law. The article states that layoffs carried out for reasons contrary to laws and regulations are considered null and void, so the company is obliged to rehire the worker concerned. In addition, as a form of legal protection for workers who experience unilateral layoffs, the law also guarantees the provision of compensation in the form of severance pay, service award money, and compensation money. The amount of compensation has been regulated in detail in the Job Creation Law.

Workers in a situation of unilateral termination of employment (PHK) by the company include various aspects that must be considered because one of the fundamental rights that must be fulfilled is the right to compensation. Based on the provisions of the Manpower Law in Indonesia, workers who are laid off are entitled to receive severance pay, service award money, and reimbursement money. However, in its implementation, many workers face obstacles in obtaining the compensation to which they are entitled. These obstacles can be caused by factors such as the company's financial inability to pay workers' rights or the company's non-compliance with applicable labor regulations. Therefore, it is necessary to strengthen legal protection for workers related to the right to compensation in the case of unilateral layoffs. This measure aims to ensure that workers receive fair compensation in accordance with their tenure and contributions to the company.

Right to compensation, workers are also entitled to clear notice and be delivered in the right time before the termination of employment (PHK) is carried out. This notice aims to give workers the opportunity to prepare, such as looking for new job opportunities or better managing their financial condition. However, in practice, not a few companies fail to provide adequate notice, and some even immediately carry out layoffs without prior notice. This situation can create uncertainty and add to the psychological burden for affected workers. Therefore, legal protections related to the right to notice before layoffs need to be strengthened to ensure that companies meet their obligations in providing sufficient information to workers before making decisions for termination of employment.

In addition, workers have the right to fair treatment and be free from discrimination in the termination process (PHK). Discrimination in layoffs can occur if the company makes decisions based on reasons that are not related to the performance or competence of the worker, such as religion, or ethnic background. The right to fair treatment also includes the implementation of transparent and objective layoff procedures, so that decisions taken are based on clear considerations and do not harm workers unilaterally. In this context, legal protection of workers' rights to justice and non-discriminatory treatment is crucial. The protection aims to prevent abuse of authority by the company and ensure that the layoff process is carried out with objective, professional, and in accordance with applicable regulations.

How is the legal protection for employees whose company is experiencing Force Majeure

The protection of workers and workers is a crucial aspect in the concept of the state of law, especially in relation to human rights. The Indonesian Constitution recognizes and guarantees the rights of workers, as stated in Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirms that

every citizen has the right to obtain a decent job and life in accordance with the principles of humanity.

The legal protection of workers specified in Law Number 13 of 2003 focuses on ensuring the establishment of a harmonious working relationship between workers or laborers and companies, without pressure or dominance from stronger parties to weaker parties. In this case, employers who have a stronger position socially and economically are obliged to carry out labor protection provisions in accordance with applicable laws and regulations, in order to create balance and justice in the world of work.

Although there are guarantees of protection for workers and labor, there are still various problems in its implementation. Issues related to labor and labor are not new, especially in developing countries such as Indonesia. One of the problems that often occurs is the termination of employment (PHK) carried out by the company. In theory, both workers and employers have the right to terminate the employment relationship. However, in practice, the majority of termination of employment is carried out by employers. For workers, losing their job is not just the end of the employment relationship, but also means the loss of a source of income, which can be the beginning of various difficulties and sufferings in their lives.

Force majeure can be defined as a situation that occurs beyond the control of the party to which the agreement is bound, which causes the inability to fulfill the achievement, and which cannot impose a risk on the party. The consequence of the existence of force majeure is the exemption of responsibility for the affected party where the party is not obliged to pay compensation or other sanctions for its inability to fulfill its achievements.

In Article 1244 of the Civil Code and Article 1245 of the Civil Code, the principles of force majeure are determined which explain:

"The debtor shall be punished for reimbursing costs, losses, and interest if he cannot prove that the non-execution of the covenant or the improper timing of the execution of the covenant was caused by an unforeseen matter, for which he could not be accounted for, even though there was no bad faith on him."

Article 1245 of the Civil Code stipulates that "There is no reimbursement for costs, losses, and interest, if due to compelling circumstances or due to coincidence, the debtor is prevented from giving or doing something that is obligatory, or doing something prohibited by him."

The legal principles related to force majeure in the Manpower Law are still not regulated in detail, especially in explaining conditions that can be categorized as compelling circumstances. Current regulations still lack an in-depth explanation of force majeure in the context of employment relations. In general, force majeure is often interpreted as an event that occurs outside of human control, or known as an act of God. These circumstances can include various natural disasters such as floods and earthquakes, as well as other situations such as riots, armed conflicts, or declarations of war, which can have an impact on the sustainability of the employment relationship between workers and employers.

The legal provisions regarding compelling circumstances in the Manpower Law are regulated in Article 164 paragraph (1), which discusses termination of employment (PHK). In the article, it is explained that employers have the right to lay off workers if the company suffers continuous losses for two years or faces force majeure. In this situation, the employee is still entitled to receive compensation in the form of severance pay for one time of the provisions in Article 156 paragraph (2), a one-time service award money for the provisions of Article 156 paragraph (3), and compensation money as stipulated in Article 156 paragraph (4). However, layoffs that are carried out unilaterally and without a valid reason should not be justified. Before making a layoff decision, the company must first ensure that there is no other alternative that can avoid the termination of employment.

An example of a force majeure case is the COVID-19 pandemic. Through Presidential Decree Number 12 of 2020, the Indonesian government has officially designated it as a non-natural disaster. This provides a legal basis for the affected party to claim force majeure and release itself from certain contractual obligations.

Legally, layoffs due to force majeure such as the COVID-19 pandemic are regulated in the Labor Law Umbrella, especially Article 164 paragraphs (1) and (2) of Law Number 13 of 2003 concerning Manpower, Article 36 letter b, d Government Regulation Number 35 of 2021 concerning Fixed-Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, and Article 154A paragraph (1) letters b and d of Law Number 6 of 2023 concerning the Stipulation of Substitute Government Regulations Law Number 2 of 2022 concerning Job Creation becomes a law, the core content of the above Article is:

Termination of Employment (PHK) can occur if the company closes due to force majeure. Related to this reason, the Constitutional Court (MK) through its decision Number 19/PUU IX/2011 which tested the constitutionality of Article 164 paragraph (3) of the Manpower Law, stated that the provisions in the article are contrary to the 1945 Constitution, unless the phrase "closed company" is interpreted as "the company closes permanently or the company closes for an indefinite period of time." Therefore, the phrase "closed company" has no binding legal force if it is not understood as a permanent closure or lasting longer than a temporary one.

The Company performs efficiency followed by the Closure of the Company or is not followed by the Closure of the Company due to the Company's losses.

Such as the layoffs carried out by PT. IFA TRANS INDONESIA (Defendant) against 3 of its workers, JHON MONGKAU, AGUSTINUS ADDINGGIDE and the deceased. ARILIO CORNELES (Plaintiff). Which in December 2019 without any problems suddenly the Defendant dismissed the Plaintiffs unilaterally without doing Bipartite first, with the postulation that the Company was quiet due to COVID-19 and without paying severance pay, service period award money, housing and medical reimbursement and compensation (workers' rights) to the Plaintiff.

Based on the case of unilateral layoffs carried out by PT. IFA TRANS INDONESIA against Jhon Mongkau, Agustinus Addinggide, and the late Arilio Corneles, here is a legal analysis based on violations of the Protection of workers' rights:

Supposedly, based on Article 37 paragraph (1) of Government Regulation Number 35 of 2021 (PP No. 35/2021), employers are required to legally notify workers and/or labor unions of any unavoidable Termination of Employment (PHK) plans.

Article 39 paragraph (2) of Government Regulation (PP) Number 35 of 2021 expressly stipulates that in the event of a difference of opinion regarding Termination of Employment (PHK), employers are obliged to resolve the dispute through bipartite negotiations with workers and/or trade unions.

Article 156 paragraph (1): "In the event of Termination of Employment, the Employer is obliged to pay severance pay and/or service period award money and replacement money

156 paragraph (2): Severance pay as referred to in paragraph (1)

The legal arrangement in question is Articles 1244 and 1245 of the Civil Code (Civil Code) which are associated with Article 164 paragraph (1) of the Manpower Law. In this case, the Civil Code does not provide special legal protection to workers related to force majeure events.

Thus, legal protection for workers in Indonesia who experience termination of employment has been regulated in Law No. 13 of 2003 concerning Manpower, especially in Article 164 paragraph (1), which gives workers the right to receive compensation, severance pay, and pension as a form of legal protection.

Conclusion

Provisions regarding the protection of the rights of workers or workers who have experienced termination of employment (PHK) have been clearly regulated in the Manpower Law, especially in Articles

150 to 172. Based on Article 154 paragraph (1), employers have an obligation to provide severance pay, service award money (service money), and compensation money that should be received by workers or laborers who are laid off. Thus, the protection of workers' rights in the Manpower Law includes the fulfillment of the right to financial compensation that must be provided by employers in the form of three main components, namely severance pay, award money during the working period, and reimbursement of other rights that are the rights of workers or laborers.

Protection for employees affected by layoffs in the Job Creation Law covers various aspects, ranging from more flexible layoff procedures, compensation, to the Job Loss Insurance (JKP) program. Despite the protections provided to workers, there are still challenges in its implementation, which requires strict supervision from the government and awareness from companies to continue to carry out their obligations fairly. With effective implementation, the Job Creation Law is expected to create a more balanced and sustainable industrial relationship in Indonesia.

That the concept of workers' rights and obligations in employment agreements, as stipulated in Law Number 13 of 2003 concerning Manpower and Law Number 6 of 2023 concerning Job Creation, is the core of industrial relations. Workers' rights include living wages, K3, social security, leave, fair treatment, and compensation for layoffs, while workers' obligations include the performance of duties, compliance with rules, maintaining confidentiality, and Lex Privatum Vol.14 N0 5 Jan 2025 Faculty of Law UNSRAT notification upon resignation. Employment agreements, both PKWT and PKWTT, are legal instruments to balance these rights and obligations. The Labor Law functions as a social engineering tool to create justice, benefits, and legal certainty, protect workers' rights, provide certainty for employers, and ensure harmonious and productive labor relations. This regulation is the legal basis and an important part of the government's efforts to realize social welfare according to the concept of a welfare state.

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