

# Factors That Affect Legal Protection of Workers Who Experience Termination of Employment (PHK) Post The Enforcement of Law Number 11 Of 2020 Concerning Job Creation

\*Note: Sub-titles are not captured in Xplore and should not be used

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**Abstract—** Termination of Employment (PHK) is still a problem that will not end as long as there are workers and employers. Field Data shows that employment termination disputes (PHK) always dominate industrial relations disputes that occur in Indonesia, meaning that the issue of layoffs is a vital problem that always arises because it concerns the continuity of life of workers and the obligations of employers. After the enactment of Law Number 11 of 2020 concerning Job Creation, it resulted in several changes in the substantive regulations of Employment Law. Likewise with layoffs, through Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which was promulgated into Law in March 2023, compensation and the reasons that accompany it are also regulated in this Law. This research method uses a literature study that examines various regulations related to the compensation that workers who are laid off should receive. Apart from that, various factors are explained that cause the rights of workers who experience layoffs to not be fulfilled. Law Number 2 of 2022 concerning Job Creation in principle regulates the rights and obligations of the parties in the event of layoffs. Apart from that, there are various reasons and conditions that are permitted and prohibited for workers and entrepreneurs when ending their employment relationship. The consequences of the regulation of layoffs in this Law create an obligation for the parties to comply and implement according to the provisions of the Law. Although in practice there are still parties who ignore or even forget their obligations for various reasons. Therefore, it is necessary to examine the factors that cause these rights to not be fulfilled so that they can affect the protection that workers should receive in the event of layoffs.

**Keywords:** Factors influencing legal protection, workers experiencing layoffs, job creation law

(Abstract)

**Keywords:** Legal Protection, Children, Violence.

## I. INTRODUCTION

Labor is the target and objective of Indonesia's national development. As a crucial factor, the workforce must be protected because the success of the business world, which is correlated with the sustainability of national development, is largely determined by guaranteeing protection for the workforce, namely workers. Likewise with companies, as one of the components driving economic activity, companies must also be strong and stable in operating their business. Thus, national development must not ignore labor and company issues. Because both are components that synergize with each other in creating a conducive climate for foreign investment.

Workers whose financial and normative rights are guaranteed will feel at home and safe at work so that their creativity and productivity will definitely increase. This condition will boost company profits which will also have an impact on the welfare of workers. Maintaining harmonious relations between workers and employers will minimize the emergence of conflict. Conflicts between workers and employers are caused by differences in interests and understanding of labor laws and regulations. "Clashes that are not quickly settled can lead to cases of mechanical relations debate due to disharmony between the individual parties, clashes of intrigue between laborers in exchange unions and company administration occur due to contrasts in discernments and the fulfillment of clashing needs"<sup>1</sup>. In a free translation, it is interpreted that a conflict that is not immediately resolved can lead to debate because of disharmony between each party. Conflicts between workers and employers can also be caused by differences in policies and the fulfillment of conflicting needs.

Termination of employment (PHK) can also be a cause of conflict between workers and employers. The issue of layoffs will always arise as long as there are still workers and employers. This means that it is very impossible to eliminate layoffs because layoffs are very likely to occur between parties who are in a work relationship. For example, layoffs are caused by workers passing away, entering

<sup>1</sup> Masitah Pohan & Rahmayanti. (2022). Legal Protection Of Workers In Fostering Industrial Relations. Randwick International of Social Science Journal, 3(1).162-167.



retirement or due to the end of the work period as stipulated in the work agreement. Apart from that, entrepreneurs are permitted to end their employment relationship as long as it is in accordance with the provisions of the law, for example if events occur that result in changes in the company's structural organization and its impact will affect the employment relationship, namely because the company experiences consolidation or bankruptcy (bankruptcy).

In Indonesia, layoff disputes are a type of dispute that is resolved using special mechanisms and institutions as stated in the labor law. The mechanism offered is guided by Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. Meanwhile, the authorized institution is the Industrial Relations Court, which has also been confirmed in the substance of Law Number 13 of 2003 concerning Manpower.

Husni stated that the issue of termination of employment for workers was the beginning of misery because from that moment on, suffering would befall the workers themselves and their families with loss of income. However, in practice, layoffs still occur everywhere. Meanwhile, employers will have a legal obligation to pay a certain amount of compensation based on the provisions of the law. Of course, this is an additional burden for the company because the compensation may not be small or even burdensome for the employers.

In Indonesia, the total number of industrial distribution cases from January to July in 2023 is 4,437 cases<sup>2</sup>. These types of industrial relations disputes were respectively dominated by employment termination (PHK) disputes with 2908 cases, rights disputes with 1236 cases, interest disputes with 186 cases and disputes between workers unions totaling 17 cases. Meanwhile, starting from January-December 2023, 64,855 workers will be laid off. The most laid-off workers were in West Java Province, namely around 29.63% of the total number<sup>3</sup>. These empirical facts show that layoffs are a problem that often occurs and dominates industrial relations, so it really needs special attention from the government.

The high number of cases of industrial relations disputes, especially layoffs, can be a negative image of a country in the eyes of other countries and even the international world. This situation will affect the desire of foreign investors to invest their capital in a country due to widespread employment conflicts which are very likely to affect economic stability and threaten the sustainability of the business world. The events above will certainly have an impact on increasing economic growth and movement because labor, companies and investment are important components in a nation's economy. Layoffs are not only a problem for workers but also for companies and even the economic world.

Thus, the issue of layoffs cannot be left alone. Various factors that cause ignorance, reluctance and even unwillingness on the part of the parties can affect the

protection of workers who are victims of layoffs. Based on the various reasons above, this article will examine and explain the reasons why it is difficult for parties to carry out their rights and obligations in the event of layoffs.

## II. METHODOLOGY

The type of research used in this research uses descriptive normative juridical, namely by carrying out analysis of problems and research through the development of legal principles that adhere to norms or positive legal rules that apply. The nature of this research is descriptive analysis, namely research that has the character of exposure which gradually develops a complete (descriptive) picture of the state of law that occurs at the place where it occurs and at the time it occurs, or the legal events that occur in society<sup>4</sup>.

## III. RESEARCH RESULT

For workers, work is a source of income to continue the lives of themselves and their families. Work is vital because through work the worker receives compensation for their work to be used to finance their living needs. Therefore, the event of termination of employment relations also directly cuts off the worker source of income, thereby threatening the sustainability of their life as well.

It is understood that the relationship between workers and employers is based on work agreements and agreements between the two. Therefore, the rights and obligations of each party should ideally be stated in the work agreement and it is assumed that each party understands and is able to comply with the contents of the work agreement. Workers are very dependent on the work agreement so that the position of the worker is under the power of the work agreement which has been determined previously unilaterally by the employer.

If this gap is not addressed, it is very likely that workers will have their rights increasingly neglected based on the reasons above, so the presence of the government is very necessary in regulating and supervising work relations between workers and entrepreneurs. Apart from that, the form of work agreement is a standard agreement, different from general agreements. Because the work agreement is a standard agreement, since the work agreement was made it has actually created an imbalance of position between the worker and employers<sup>5</sup>.

Apart from that, the form of work agreement is a standard agreement, different from general agreements. Because the work agreement is a standard agreement, since the work agreement was made it has actually created an imbalance of position between the worker and the employers. In the implementation of labor relations, both employers and workers each have the value of freedom in exercising their rights and in carrying out their obligations. Emphasis on the value of freedom will lead to anarchy and violate the rights of other parties. On the other hand, an emphasis on the value of order will give rise to an authoritarian attitude and can

<sup>2</sup><https://satudata.kemnaker.go.id/data/kumpulan-data/1310>, diakses pada 20 November 2023, pukul 10.00 wib.

<sup>3</sup><https://satudata.kemnaker.go.id/data/kumpulan-data/1659> Diakses 19 Februari 2024, pukul 10.00 wib

<sup>4</sup>Burhan Bungin, (2013). Analisis Data Penelitian Kualitatif, Pemahaman Filosofis dan Metodologis ke Arah

Penguasaan Model Aplikasi, Jakarta: Raja Grafindo Persada. hlm.83.

<sup>5</sup>R.J. Marbun., (2023). Implementasi Hukum Ketenagakerjaan Indonesia dalam Perspektif Negara Kesejahteraan, Jawa Tengah, Eureka Media Aksara, hlm. 17.

hinder the creation of justice. Therefore, labor law must be directed towards achieving harmony between the values of freedom and the values of order.<sup>6</sup> Apart from that, protection for workers is a very important factor in creating balance in employment relations, so that equitable social justice can be realized in the field of employment in accordance with the foundations of Pancasila and the 1945 Constitution<sup>7</sup>.

In everyday life, termination of employment relations between workers and employers is usually known as layoffs or termination of employment relations, which can occur because it has been previously agreed or agreed upon and can also occur due to disputes between workers and employers, the death of workers or for other reasons<sup>8</sup>.

Layoffs not only make workers miserable but also create obligations for employers to fulfill the rights of affected workers. For employers, this event will increase company expenses which can be burdensome, making it sometimes difficult to implement in the field. On the one hand, there are workers who are affected by layoffs but demand their rights beyond the provisions regulated by law. This condition often arises when layoffs occur. Therefore, layoffs for any reason have been regulated normatively in the Law to guarantee the rights and obligations of affected workers and employers.

When layoffs occur, the compensation received by workers refers to the provisions regulated in Law Number 13 of 2003 concerning Employment. The compensation components include severance pay, long service pay and compensation for rights. Even though the Job Creation Law has been implemented, the basic principles regarding compensation remain the same. However, through technical regulations or new government regulations, formulations regarding reasons for layoffs from employers can influence differences in the components of rights received by workers after the end of the employment relationship. There are still differences in views regarding the components received by workers after layoffs for various reasons from both parties<sup>9</sup>.

Legal protection for the rights of workers affected by layoffs is regulated in Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming Law is regulated in Chapter IV Articles 150 to Article 160. Furthermore, the components that are obligations of employers towards workers who experience layoffs are emphasized in Article 156 Paragraph (1) of Law Number 6 of 2023, namely severance pay and/or service pay (service pay) and compensation for rights.

Talking about the factors that influence legal protection for workers who experience layoffs, it is closely related to the theory of legal effectiveness. This theory examines why legal regulations can and cannot be implemented. Therefore, the discussion regarding these

factors includes the failure and success of implementing legal rules in society. The success or failure of a legal regulation is determined by legal substance, legal structure and legal culture.

### 1) Legal Substance

Providing legal protection for workers as a weak group is one of the objectives of implementing labor law regulations. The legal instruments created by the government principally provide balance to the gap in the position of workers and employers in employment relations. Especially if layoffs occur, a legal instrument has been created including a settlement mechanism which is believed to provide a fast, precise, fair and cheap process. The substance and procedures for layoffs refer to Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes. However, in practice, the procedural process in resolving layoff disputes still uses Civil Procedure Law, while on the one hand UUPPHI is the *lex specialis*.

The implementation of resolving layoffs using civil procedural legal instruments does not appear to have optimally realized the expected judicial process. Research shows that workers often do not understand how to follow the process because they encounter procedural problems. Apart from that, the implementation of executions which are guided by civil regulations is considered not to provide certainty for workers. This condition certainly makes the process longer and takes quite a lot of time, as a result, workers take longer to obtain their rights. M. Yahya Harahap stated that there are 2 (two) important roles of the judiciary in a rule of law and democratic society, namely<sup>10</sup>

1. The judiciary acts as a pressure valve for all violations of law, order, society and violations of public order.
2. The judiciary is the last place to seek truth and justice (to enforce the truth and enforce justice).

As is the case with the Industrial Relations Court (PHI), it is an authorized institution in resolving layoff disputes through litigation as well as being the final avenue for workers to obtain justice. Therefore, workers have high hopes for this institution in order to protect the rights they should receive if a layoff dispute arises.

### 2) Legal Structure

Laws are only ideals without humans implementing them. Therefore, the law will function when it is implemented and enforced by a legal structure. Legal structure refers to law enforcement officials who implement the law in accordance with applicable regulations. In carrying out the supervisory function and enforcing labor regulations, the government is given full duties and obligations as a result of the unequal positions of workers and employers.

The application of civil procedural law in resolving industrial relations disputes is not yet fully appropriate when

<sup>6</sup> Aloysius Uwiyono, dkk., (2014). *Asas-Asas Hukum Perburuhan*, Depok: Raja Grafindo Persada, hlm. 13

<sup>7</sup> Siti Nurhayati, dkk., (2022)., *Jaminan Terhadap Pemenuhan Hak Tenaga Kerja, Kaitannya dengan Legalisasi Sistem Pekerja Kontrak (Outsourcing) Analisis Yuridis terhadap Undang-Undang Ketenagakerjaan*, Bekasi: Dewangga Energi Internasional, hlm. 62.

<sup>8</sup> Zainal Asikin, dkk., *Dasar-Dasar Hukum Perburuhan*, (Jakarta: PT Raja Grafindo Persada, 2008), hlm. 173.

<sup>9</sup>R. J. Marbun, & Rahmayanti, R. (2024). Penerapan Hukum Ketenagakerjaan Terhadap Pekerja/Buruh Yang Mengalami Pemutusan Hubungan Kerja (PHK). *Jurnal Darma Agung*, 32(1), 420-430.

<sup>10</sup> M. Yahya Harahap, *Hukum Acara Perdata*, cetakan kedua, (Jakarta: Sinar Grafika Offset, , 2005), halaman 853

applied in employment dispute cases. Workers and employers are sociologically unequal. So activeness is required from industrial relations court judges who are competent and impartial. Research shows that there are various and inconsistent patterns of consideration by Industrial Relations Court Judges in deciding cases, for example, judges in assessing a fact do not include relevant regulations in their considerations so that judges tend to ignore the interests of workers<sup>11</sup>.

Other facts confirm that most of the violations that occurred due to layoffs were not in accordance with Law Number 13 of 2003 concerning Employment as the basic rule. As the basis for Law Number 13 of 2003 concerning Employment, in reality many employment agreements are contradictory<sup>12</sup>. This implies that the issue of employment agreements is also a source of dispute. Work agreements are referred to as standard agreements because they are made unilaterally by employers, but the government is obliged to supervise every work agreement issued by employers, which is handed over to labor inspection employees. Therefore, the government should pay attention to the existence of supervisory employees. For example, through empowerment, including quality and quantity development. Labor inspectors are obliged to supervise registered companies in their work area based on the law for the sake of upholding normative labor regulations.

This supervision includes the company's activity in implementing Mandatory Labor Reporting (WLK), so that all current matters relating to labor and work relations in a company can be monitored by the relevant Manpower Service. Supervision is also carried out on a number of employment agreements issued by the company, meaning that even though employment agreements are standard, they must not conflict with the main employment regulations. If this supervision is actually carried out, no worker/laborer should have their rights eliminated because of the existence of a work agreement that is lower than the Employment Law.

Employers are also required to report the number of workers and the amount of wages so that the Manpower Department can detect if there are workers whose income is below the minimum wage provisions. In practice, it is quite difficult for supervisory employees to carry out their obligations due to the large number of companies they have to supervise. Sometimes routine supervisory activities at companies become mere administration, not to mention if there are unscrupulous supervisory employees who are not neutral and are more on the side of the entrepreneur. These conditions can provide space for naughty employers to smooth over rules that are not in accordance with normative labor provisions to be included in employment agreements. Difficulty in implementing compensation payments because the work agreement does not comply with applicable regulatory provisions can occur due to negligence in supervision or intentional elements on the part of the

employers. The presence of the government as a facilitator and supervisor for the upholding of labor laws should be able to guarantee fair implementation and real protection in employment relations, especially for workers as a weak group.

### 3) Legal Culture

Soerjono Soekanto stated that a legal action is considered effective if the action or other behavior leads to the desired goal, meaning if the other party complies with the law. Laws can be effective if the role played by law enforcement officials is closer to what is expected by law and conversely, it will be ineffective if the role played by law enforcers is far from what is expected by law.

Several research results show that employers do not voluntarily carry out layoff dispute decisions regarding the obligation to pay a certain amount of compensation to workers victims of layoffs. In the case of unilateral layoffs, for example, the provisions regarding the provision of compensation money in the form of housing replacement as well as treatment and care often give rise to multiple interpretations.

By using the logic that workers who resign are not entitled to severance pay or gratuity pay, workers do not receive replacement housing as well as treatment and care because the basis for calculating and replacing treatment and care housing uses severance pay or gratuity pay which is not given to workers who resign<sup>13</sup>.

Apart from that, employers tend not to believe in court decisions, so they are the parties who file the most appeals to the Supreme Court. This indicates non-compliance by the parties in implementing the rules of law. This is not easy to measure, but compliance with the law begins with legal awareness which then gives birth to a legal culture, so this condition shows that there is still a lack of legal culture among industrial relations actors.

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<sup>12</sup> Yani Nur Fatimah. (2015). *Penyelesaian Perselisihan Hubungan Industrial di Pengadilan Hubungan Industrial dalam Pemenuhan Hak Pekerja/Buruh Yang di Putus Hubungan Kerja*.

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<sup>13</sup> Taufik Yulianto, *Perlindungan Hukum Terhadap Hak Pekerja/Buruh Yang Mengundurkan Diri Atas Kemauan Sendiri*, *Jurnal Law Reform*, Vol 6 No. 2, Oktober 2011.

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