



Legal Protection Against Unilateral Termination of Employment Relations of Private Employees

Mohamad Dwi Suprianto

Faculty of Law, Universitas Negeri Gorontalo, Indonesia.

Correspondence E-mail: dwisuprianto41@gmail.com

Abstract: This study aims to analyze the form of legal protection and the causes of unilateral termination of employment for private employees. This type of empirical research, or field research, uses a case approach and a statutory approach. The results of this study indicate that unilateral termination of employment (PHK) legal protection has been regulated in the provisions regarding how companies carry out layoffs regulated in Article 81 No. 37, which in essence provides a clear mechanism regarding the planning processes for implementing layoffs in a company. In paragraph (4), it is further emphasized that if the bipartite negotiation process does not reach an agreement, the dismissal will be carried out through the next stage, following the mechanism of industrial relations disputes. Then, legal protection is also included in Article 185 of the Job Creation Law, which states that "protection of workers' basic rights to consult with employers" and "protection of workers' safety and health".

Keywords: Layoffs; Private Employees; Job Creation.

@2024 Mohamad Dwi Suprianto

Under the license CC BY-SA 4.0

How to cite (Chicago Style):

Mohamad Dwi Suprianto. "Legal Protection Against Unilateral Termination of Employment Relations of Private Employees". *Estudiante Law Journal*, 6 (1), (Juni 2024): 467-482. <https://doi.org/10.33756/eslaj.v6i2.20585>

1. Introduction

Indonesia is the highest agreement of the founders of the country, even though it experienced a constitutional test when the 1945 Constitution was changed to the Constitution of the Republic of the United States of Indonesia in 1949, even so, recognition of the regions under the auspices of the State of Indonesia is still recognized. An absolute requirement for state sovereignty is the existence of a society that obeys the Constitution and its government. Because the essence of the constitution is the conception of the state, which is the basis and limitation of the constellation of the state administration system. Therefore, in legal politics, legal discovery and new law-making that follow the goals of the state are values that must be implemented to achieve legal supremacy and justice.

In determining the direction of thought brought by a country, it refers to the logic of the concept of forming a country which, according to JJ Rosseau, is based on a community agreement. In determining the direction of thought that a country brings, it refers to the logic of the concept of forming a state, which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*), which was outlined in a basic law in the form of the state constitution. Legal protection is needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and they can enjoy all the rights granted by law. The state is firmly obliged to try to fulfill the rights of every citizen.¹

Human rights are one of the rights that cannot be limited or revoked by other human beings. Human rights are also a gift from God. The meaning of "human rights" is also strengthened in Law Number 39 of 1999 concerning "human rights" in Article 1, Number 1, namely that "human rights" are a set of rights that are closely bound to the nature and existence of humans as creatures of God Almighty and are a gift from God that must be, supported, and protected by the state, law, government, and everyone else for the honor and protection of man himself.

Human rights are something that addresses all human problems in life and must get legal guarantees. Because human rights can only be called effective if they can be protected by law, While the law itself is a collection of rules regarding human behavior as a society, Every member of society has interests (HAM), and in fulfilling these interests, every human being will be connected; this relationship is regulated by law, and the existence of human rights (HAM) will have no meaning if it is not followed up by law, which regulates the relationship of these rights, meaning that it is the law that formalizes human rights into a set of rules to guard and protect so that they do not become conflicts in the lives of society and the state.²

¹ Sri Zulhartati, "Pengaruh Pemutusan Hubungan Kerja Terhadap Karyawan Perusahaan," *Jurnal Pendidikan Sosiologi Dan Humaniora* 1, no. 1 (2010), <https://jurnal.untan.ac.id/index.php/JPSH/article/view/382>.

² Nikodemus Maringan, "Tinjauan Yuridis Pelaksanaan Pemutusan Hubungan Kerja (PHK) Secara Sepihak Oleh Perusahaan Menurut Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan"

Labor is one of the steps of economic development and plays a significant role in all national activities, especially the national economy, in terms of increasing productivity and welfare. Abundant labor is a driver of economic life and an abundant resource. Therefore, there is a need for jobs that can accommodate all workers, but workers who have skills and expertise according to their abilities, so that the workforce needed can increase company productivity.

Skilled workers are much needed by companies, and to ensure the health and safety of workers, it is necessary to establish labor protection because there are many risks that workers can experience in carrying out their work. If at any time the workforce experiences illness due to work, work accidents, or old age, there has been appropriate compensation for what he has done.

Labor protection for workers is very important, following the implementation of the mandate of the 1945 Constitution. In particular, Article 27 (2) regarding the rights of citizens to work and a decent living for humanity Employment is an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, carried out in the context of developing the whole Indonesian human being and the development of Indonesian society as a whole to increase the dignity, dignity, and self-esteem of the workforce and create a prosperous, just, and evenly distributed society, both materially and spiritually.

In the implementation of national development, Employment has a very important role and position as an actor and goal of development. Following the role and position of the workforce, Employment development is needed to improve the quality of the workforce and their participation in development. Employment development must be regulated in such a way as to fulfill fundamental rights and protections for workers and laborers and at the same time create conditions that are conducive to the development of the business world.³

Given how important the role of employment is for state-owned and private-owned institutions and enterprises to help workers obtain their rights, Law Number 13 of 2003 concerning Employment was formulated (hereinafter referred to as the Employment Law). The role of labor as business capital in carrying out development must also be supported by guarantees for the rights of every worker.

Every worker is allowed to get a job that matches his abilities and skills and is given a decent income so that he can guarantee the welfare of himself and his family, who are his dependents. In Article 86, paragraph 1, of the Employment Law, it is stated that every worker or laborer has the right to obtain protection for:

(PhD Thesis, Tadulako University, 2015), <https://www.neliti.com/publications/146819/tinjauan-yuridis-pelaksanaan-pemutusan-hubungan-kerja-phk-secara-sepihak-oleh-pe>.

³ Yayuk Sugiarti, "Keabsahan Pemutusan Hubungan Kerja Karena Force Majeur Di Masa Pandemi Covid-19," *Justitia Jurnal Hukum* 4, no. 2 (2020), <https://journal.um-surabaya.ac.id/Justitia/article/view/6187>.

1. Occupational safety and health
2. Morals and decency
3. Treatment follows human dignity and values as well as religious values.

To protect the safety of workers and realize optimal work productivity, workplace safety, and health efforts are carried out. The protection is carried out according to the applicable law. Labor protection arises because of an agreement between the employer and the worker, giving rise to what is called an employment relationship. In the labor field, policies implemented by the government following employment policies are to improve the welfare of workers and laborers with various efforts, including improving wages, social security, and working conditions, in this case, to improve the status and dignity of the workforce. The existence of labor protection is to provide safety protection for workers and laborers while working so that if, in the future, a work accident occurs, the worker or laborer does not need to worry because there are already regulations governing work safety and procedures for compensation for work accidents. Work accidents are accidents that occur in a working relationship, including accidents that occur on the way from home to work or vice versa and illnesses caused by the work environment. Occupational accidents are a risk that must be faced by workers in carrying out their work.⁴

According to the Employment Law, in Article 99 Paragraph (1) of Law Number 13 of 2003 concerning Employment, it is said that every worker or laborer and their family have the right to obtain workers' social security. Then, Article 15 Paragraph (1) of Law Number 24 of 2011 concerning the Social Security Administering Body (hereinafter referred to as the BPJS Law) states: "Employers are gradually obliged to register themselves and their workers as participants with the social security administering body following the program, followed by social security".⁵

Legal issues regarding employment are still very common in Indonesia, one of which is the termination of employment (or in Indonesia is PHK). When a layoff occurs, the rights that should be obtained by workers are not given by the company where they work. Termination of employment is the last resort after various methods have failed to bring the expected results. By looking at the current facts that finding a job is not easy, many companies are reducing the number of workers and laborers, with the possibility that these companies are unable to fulfill their obligations, such as paying wages following statutory provisions.

Based on Law Number 13 of 2003 concerning Employment, termination of employment for workers and laborers is regulated under quite strict conditions. However, it is different from Law Number 11 of 2020 concerning job creation, where employers or companies can make layoffs for various reasons that are not objective, so it makes it easier for employers to do layoffs (termination of employment).

⁴ Agung Prasetyo Wibowo Agung, "Perlindungan Hukum Terhadap Pekerja Dalam Pemutusan Hubungan Kerja (Phk) Dengan Alasan Efisiensi Akibat Pandemi Covid 19," *To-Ra* 7, no. 1 (2021): 19.

⁵ Article 99 paragraph 1 of Law Number 13 of 2003 concerning Employment

Companies that carry out layoffs should hold deliberations or negotiations with workers or laborers so that layoffs do not occur unilaterally. In addition, in carrying out layoffs, companies must also pay attention to termination procedures so that the processes and steps taken comply with the law. Article 1 Number 1 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes states that Industrial Relations Disputes are differences of opinion that result in conflicts between employers or a combination of employers and workers or labor unions due to disputes regarding rights, disputes over interests, disputes over the termination of employment, and disputes between trade unions or labor unions within one company.⁶

Conflicts or disharmony between employers and workers that occur can result in layoffs for workers. Termination of employment (PHK) has always been a difficult matter for both employers and workers. Employers consider that layoffs are a natural part of company activities, but apart from that, employers must provide rights to workers who are laid off. For workers, the occurrence of layoffs has a very broad impact on their lives, not only for themselves but also for their families. Layoffs will cause a worker to lose his livelihood. Workers who have been laid off have the right to claim their rights following the provisions of the applicable laws and regulations, namely the right to receive severance pay, long service pay, and compensation pay, contained in Article 156 paragraph (1) of Law Number 13 of 2003 concerning Employment.⁷

For this reason, it is very necessary to have protection for workers to guarantee the basic rights of workers and laborers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers and laborers and their families by taking into account developments in developments the progress of the business world. Socio-economically, the position of workers is not free. In increasing its productivity, Rumah Mawar Sharron Resto in the province of Gorontalo has a large number of qualified workers in various fields, but there are still cases of unilateral termination of employment by several companies or restaurants for their employees.

Preliminary data obtained from the Case Tracing Information System (SIPP) of the Industrial Relations Court (PHI) at the Gorontalo District Court showed an increase in cases of unilateral termination of employment by CV MAWAR SHARRON RESTO, Gorontalo Province. At the Gorontalo District Court, it was recorded that five plaintiffs filed a unilateral lawsuit for the classification of disputes over the termination of employment. Through a court order, it is described as follows:⁸

NO	Years	Total Cases
----	-------	-------------

⁶ Article 1 point 1 Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement

⁷ Anang Dony Irawan, "Perlindungan Hukum Terhadap Pekerja Akibat Pemutusan Hubungan Kerja Dimasa Pandemi Covid-19," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 1 (2021): 99-108.

⁸ <https://sipp.pn-gorontalo.go.id/>

1	2020	2 Cases's
2	2021	4 Cases's
3	2022	6 Cases's
Total		12 Cases's

Data Source: Case Tracing Information System (SIPP) Industrial Relations Court (PHI) PN Gorontalo

From the data obtained above, it is clear that cases of unilateral termination of employment relations are still rife in 2022, even though there is already a law that regulates the rights of every worker or laborer as specified in Law Number 11 of 2020 concerning job creation . However, the fact is that the Act has not been implemented as it should. There are problems regarding Cases' unilateral termination of employment by CV Mawar Sharron in the province of Gorontalo.

The presence of RI Law Number 11 of 2020 concerning job creation is one of the government's efforts to provide legal certainty to employers and workers, such as in the case that employers provide rights to laid-off workers. Article 81, paragraphs (1) to (4), amendments to Article 151, No. 11 of 2020, the Law on Job Creation, has explained that :⁹

1. **Paragraph 1** , employers, workers, labor unions, and the government must strive to prevent termination of employment.
2. **Paragraph 2** , if the termination of employment cannot be avoided, the purpose and reasons for the termination of employment shall be notified by the employer to workers, laborers, and/or trade unions.
3. **Paragraph 3** , if the worker or laborer has been notified and refuses to terminate the employment relationship, the settlement of the termination of employment must be carried out through bipartite negotiations between the entrepreneur and the worker or laborer and/or trade union.
4. **In paragraph 4** , if the bipartite negotiations as referred to in paragraph (3) do not reach an agreement, the termination of the employment relationship is carried out through the next stage following the industrial relations dispute resolution mechanism .

In fact, it often happens that workers who are laid off do not receive/obtain their rights as workers who have worked and served the company as stipulated in Article 81 of the JOB CREATION Law.

⁹ Article 81 paragraph (1) to (4) of the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation

2. Research Method

The research method used in this paper is empirical research, or field research, with a case approach and laws. Observation, interviewing, and documentation techniques are used as a form of effort to obtain clarity from something that is discussed. The steps taken in the data analysis activities of this research were to collect data and information from the results of the research. Both interviews with related agencies, the land acquisition implementing committee, and the community were then analyzed descriptively and qualitatively, namely using a method of data analysis by grouping and selecting data obtained from research according to quality and truth. Then the data is connected with theories, laws, and regulations obtained from document studies, so that answers to the problems in this study are obtained.¹⁰

3. Legal Protection of the Rights of Workers Who Have Experienced Layoffs Based on Law Number 11 of 2020 concerning Job Creation

In Indonesia, problems regarding employment are still rife in large companies. The existence of rights that must be respected as part of the implementation of the law is not given. The relationship between employers and workers has the principle of freedom, so layoffs cannot be carried out unilaterally and must go through the mechanisms regulated in the Job Creation Law. If there is a violation of the provisions of these regulations, then there must be legal protection and sanctions for the violators.

As with the number of cases collected through the results of interviews and the Gorontalo District Court case tracing information system, the rise in unilateral termination of employment of CV Mawar Sharoon employees is caused by the non-fulfillment of employee rights and protection as specified in Article 81 of the Job Creation Law. Layoffs are carried out unilaterally by the company without notification or discussion with workers. Even though, according to the Job Creation Law and the previous law, as stated in the previous discussion, the employer is legally obligated to notify the plan, the company must even find another way to prevent layoffs. However, CV Mawar Sharoon did not do this and arbitrarily laid off employees on the pretext that they would provide compensation above the applicable regulations. In these cases, CV Mawar Sharoon has carried out its obligations by fulfilling the rights of workers by preparing a compensation package that is larger than it should be. However, a more important aspect to be discussed is the way CV Mawar Sharon carried out unilateral layoffs, which violated the provisions of labor values and positive law in Indonesia, in this case, the Job Creation Law.¹¹

¹⁰ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

¹¹ *Pemutusan Hubungan Kerja Karyawan, "Perlindungan Hukum Terhadap Karyawan Yang Mengalami Pemutusan Hubungan Kerja Setelah Putusan Pengadilan Berkekuatan Hukum Tetap," Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 10, no. 2 (2018): 53.

CV Mawar Sharoon's reasons for laying off work were following the Job Creation Law article 81 Number 42 Supplementary article 154 A paragraph (1) letter b, namely "the company carries out efficiency followed by closing the company or not following the closing of the company because the company has suffered losses." However, unilateral layoffs are not permitted by this law.¹²

Provisions regarding how companies carry out layoffs are also regulated in Article 81 No. 37 amendments to Article 151 of the Employment Law, paragraphs (1) to (4) of the Job Creation Law, where in essence there is a clear mechanism regarding the planning processes for implementing layoffs in a company. In paragraph (4), it is further emphasized that if the bipartite negotiation process does not reach an agreement, the dismissal will be carried out through the next stage, following the mechanism of industrial relations disputes.¹³

From this paragraph, it can be concluded that there is no unilateral termination of employment, whether there is an agreement or no agreement is reached. CV Mawar Sharoon employees can fight for their rights as workers to accept or reject the layoff plan. However, if the unilateral termination of employment has been completed, workers can make efforts to maintain their jobs as a preventive measure for legal protection. The protection carried out for workers aims to fulfill basic rights without discrimination. The law protects human rights from something that could lead to the non-fulfillment of these rights. Legal protection for employment itself has been guaranteed by the 1945 Constitution of the Republic of Indonesia in Article 27 paragraph 2, which guarantees the rights of citizens to decent work for humanity. Therefore, workers' rights are directly guaranteed by the highest positive law in the spirit of struggle and independence.¹⁴ From the explanation above, the authors conclude that there are two forms of legal protection:

1. Preventive legal protection is government protection designed to prevent violations before they occur. The community is allowed to convey their differences and opinions before the government's decision is final. Preventive legal protection makes sense for state action based on freedom of action because it requires states to make careful, discretionary decisions.

2. Repressive legal protection is protection in the form of sanctions such as fines, imprisonment, and other penalties to resolve disputes.

Then, legal protection is also included in the Job Creation Law in Article 185, which states that:

1. Protection of the basic rights of workers to consult with employers
2. Protection of worker safety and health
3. Special protection for women, children, and disabled workers and

¹² Job Creation Law article 81 Number 42 Supplement to article 154 A paragraph (1) letter b

¹³ Article 81 No. 37 amendments to article 151 of the Employment Law paragraphs (1) to (4) of the Job Creation Law

¹⁴ The 1945 Constitution of the Republic of Indonesia in article 27 paragraph 2

4. Protection of workers' wages, welfare, and social security

These four provisions become the legal basis for workers to fight for their rights in a company so that layoffs or employment cases in Indonesia can end. Companies should fulfill the normative rights of workers before the needs of creditors.¹⁵

The definition of labor law by Professor Imam Soepomo "Labor law is a series of written and oral regulations concerning events in which a person receives wages and works for another person." The main purpose of labor law is employment, and this implementation is carried out to protect workers from the unrestricted power of employers.

In terms of Employment, two ways can be taken, namely through the settlement of industrial relations disputes outside the court and through the courts. Settlement out of court can be exemplified, among others:¹⁶

1. Bipartite: the result of these negotiations is a joint agreement that is also signed by both parties.
2. Mediation, which is carried out by the mediator with the obligation to research the subject matter and the mediation session no later than 7 days.
3. Conciliation, which is carried out after the parties submit a written request to the conciliator.
4. Arbitration, which is carried out no later than 30 working days from the signing of the agreement for the appointment of arbitrators

There is also the settlement of industrial relations disputes through a court that has the authority to examine and decide at the first level regarding disputes over the termination of employment (PHK).

According to researchers, for companies that carry out layoffs unilaterally, this certainly violates the rules set by law. Therefore, it is necessary to impose sanctions on companies that violate this as part of fair law enforcement. The imposition of sanctions in every piece of legislation in the field of employment aims to provide a sense of justice for every worker in a company. In cases of unilateral layoffs, the government should have imposed administrative sanctions on the company. Administrative sanctions are sanctions that are applied to administrative violations or provisions in laws that are administrative in nature. Administrative sanctions have a reparatory nature, which means restoring the situation to normal. ¹⁷In Article 61 PP Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time

¹⁵ S. H. Rohendra Fathammubina, "Perlindungan Hukum Terhadap Pemutusan Hubungan Kerja Sepihak Bagi Pekerja," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 3, no. 1 (2018): 108–30.

¹⁶Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes

¹⁷ Philipus M. Hadjon, *Introduction to Administrative Law*, Yogyakarta, Gadjah Mada University Press, (1990), p. 3

and Rest Time, and Termination of Employment, administrative sanctions can be in the form of:

1. Written warning;
2. Cancellation of business activities;
3. Temporary suspension of part or all of the means of production; and
4. Freezing of business activities.

However, in this PP, administrative sanctions only apply to a few articles, as well as in the Job Creation Law, which does not explicitly specify sanctions on companies that carry out unilateral layoffs. This has resulted in many companies arbitrarily laying off their employees. Therefore, the government needs to establish rules regarding sanctions that can be imposed on companies that carry out unilateral layoffs, considering the large number of workers who suffer as a result of this.¹⁸

3.1 Causes of Workers Experiencing Layoffs Based on the Job Creation Law

The penologist has a strategic role in criminal law because the penologist determines the success or failure of giving sanctions to the perpetrators of crimes, the appropriate sanctions for the perpetrators of crimes, and the implementation of the punishment.¹⁹

The criminal function, which at the beginning of its journey was "retaliation," turned into a tool to protect individuals from disturbances by other individuals in society as well as protection for society itself from disturbances by crime and criminals. In fact, in subsequent developments, it is more directed to the function of (criminal) punishment, especially imprisonment as a vehicle for coaching 10 convicts before they return to society. The position of penology in legal science is:

1. The penology of its position in the science of law is referred to as normative science or dogmatic law (law in the book), that is, law is studied as a rule of law in statutory regulations, books of laws, jurisprudence, and international conventions.
2. Empirical legal science, namely law in reality in society (law in action) legal reality science (legal sociology, legal anthropology, legal psychology, criminology, penology, victimology).

Penology is defined as a science that studies the challenges of punishment. Punishment arises because of a crime, and society will respond to the crime (as a reaction) by bringing up norms and regulations, including legal norms. According to the author, judging from the theory of defendant BJJ's case penology, the criminal sanctions imposed were a form of punishment as a reaction to the actions that had been committed. Meanwhile, if it is related to the theory of penology, the criminal

¹⁸ Zaeni Asyhadie, "Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja," 2007, <http://library.stik-ptik.ac.id/detail?id=6844&lokasi=lokal>.

¹⁹Sahat Maruli T. Situmeang, Penology Course Dictation, Faculty of Law, Indonesian Computer University, Bandung 2019, p. 13

sanctions imposed on the BJJ defendant are related to the theories of retribution (retaliation) and rehabilitation. The prison sentence imposed on the defendant is a form of the theory of retribution, where the act of narcotics abuse committed by the defendant is rewarded with a prison sentence, so the sanctions here aim to satisfy the demands of justice. The theory of rehabilitation emphasizes that the purpose of punishment as a tool to transform the perpetrator into a law-abiding and productive member of society is fulfilled in the judge's decision by imposing prison sentences and rehabilitation on the accused.²⁰

3.2 Causes of Workers Experiencing Layoffs Based on the Job Creation Law

Termination of employment is defined as the termination of the employment relationship, which results in the rights and obligations relationship between the employee and the company also ending. There are also various types of layoffs: layoffs carried out by employers, layoffs carried out by workers, and layoffs that are null and void and have various underlying factors.

In practice, layoffs must be fulfilled by both parties (workers and employers) so that they can be approved without harming a sense of justice. In 2020, the Government of Indonesia, under the leadership of President Joko Widodo, made a major regulation entitled the Omnibus Law, which regulates aspects of employment along with legal protection. An "omnibus law" is a concept for the formation of legislation that can replace several existing norms in several laws into one big unit.

Furthermore, according to Audrey O'Brien and Marc Bosc, the Omnibus Law is a draft law that aims to change, revoke, or apply several provisions contained in several laws. This regulation is Law Number 11 of 2020 concerning job creation, commonly known as the Job Creation Law. The Job Creation Law was made to realize a new scheme as an effort for economic development in Indonesia, even though it received a lot of criticism, drew opposition from the public, and caused political instability that year. This law regulates various business sectors with provisions for their workers.

Provisions regarding layoffs are also regulated in the Job Creation Law, with factors or reasons that can result in termination of employment, as referred to in Article 81 No. 42, additions to Article 154 are:

1. Termination of employment can occur for the following reasons:²¹
 - a. The company merges, consolidates, takes over, or separates the company, and the worker or laborer is not willing to continue the employment relationship or the employer is not willing to accept the worker or laborer.
 - b. The company performs efficiently, followed by closing the company, or not followed by closing the company because the company suffered a loss.
 - c. The company closed because it suffered continuous losses for two years.

²⁰ Sri Hidayani and Riswan Munthe, "Aspek Hukum Terhadap Pemutusan Hubungan Kerja Yang Dilakukan Oleh Pengusaha," *Jurnal Mercatoria* 11, no. 2 (2018): 127-40.

²¹ Law Number 11 of 2020 Concerning Job Creation.

- d. Company closed due to force majeure.
- e. The company is in a state of postponement of debt payment obligations
- f. Bankrupt company
- g. There is an application for termination of employment relations submitted by the worker or laborer with the reason that the entrepreneur has committed the following actions :
 - 1) Abusing, abusing, or threatening workers or laborers
 - 2) Persuading and/or ordering workers or laborers to commit acts that are contrary to statutory regulations
 - 3) Does not pay wages at the specified time for 3 (three) consecutive months or more, even though the employer pays wages at the time after that.
 - 4) Does not carry out the obligations that have been promised to workers.
 - 5) Order workers or laborers to carry out work other than what was agreed upon.
 - 6) Provide work that endangers the life, safety, health, and morals of workers or labor while the work is not stated in the work agreement.
- h. There is a decision of the industrial relations dispute settlement institution stating that the entrepreneur has not committed the act as referred to in letter g regarding the application submitted by the worker or laborer and has decided to terminate the employment relationship.
- i. Workers and laborers resign of their own free will and must meet the following requirements:
 - 1) apply for resignation in writing no later than 30 (thirty) days before the start date of resignation.
 - 2) not bound by official ties
 - 3) continue to carry out its obligations until the starting date of resignation
- j. The worker or laborer is absent for 5 (five) working days or more consecutively without a written statement accompanied by valid evidence and has been summoned by the employer 2 (two) times properly and in writing
- k. The worker or laborer commits a violation of the provisions stipulated in the work agreement, company regulations, or collective bargaining agreement and has previously been given the first, second, and third consecutive warning letters, each valid for a maximum of six (six) months unless otherwise specified in the work agreement, company regulations, or collective bargaining agreements
- l. The worker or laborer is unable to work for six (six) months as a result of being detained by the authorities for allegedly committing a crime
- m. Workers or laborers experience prolonged illness or disability as a result of a work accident and are unable to carry out their work after exceeding the 12-month limit
- n. Workers or laborers entering retirement age

o. The worker or laborer dies

Based on the factors in the provisions of the article, companies can lay off workers with clear mechanisms and procedures, not unilaterally. The company must notify the employee of the layoff plan, and if there is a refusal, the two parties must carry out bipartite negotiations. Bipartite negotiations mean that negotiations are carried out by workers and employers to resolve industrial relations disputes. If the negotiations also do not reach an agreement, then the dismissal is carried out through the next stage, following the industrial relations dispute resolution mechanism that has been regulated.

Based on the explanation in the article above, the author assesses that before the company intends to terminate employment, several things need to be considered:

1. Prepare complete supporting data.
Prepare complete supporting data. providing evidence reasons or causes for a worker's termination For example, what forms of violations were committed by workers, and what were the circumstances of the company that needed to be terminated.
2. Notification to the workforce concerned
Entrepreneurs are required to notify the concerned employee after submitting supporting documents. This employment relationship is a two-party system, so workers may not be terminated suddenly without notification. Alternatively, if the union exists, the employer must notify the union of the plan before dismissal.
3. Deliberation
In the case of dismissal, the first procedure is deliberation between the parties, namely the worker or laborer and the employer. Deliberation aims to reach a consensus, which is known as two-way. During the talks, the two companies talked about finding the best solution for the company.
4. Mediation with the Employment office
If you find that you are unable to resolve the issue in a friendly manner, you may need assistance from your local human resources office to find a way to resolve the issue through mediation or reconciliation.
5. Conduct legal mediation
If no assistance from the Human Resources Department is found, the appeal can proceed to court. If the result is still dismissal, it will be carried out by submitting a written application to the Labor Court stating the reasons for the dismissal.
6. Preparation of compensation money

In the event of termination of employment, the company is obliged to pay worker/laborer accident compensation, in this case, severity pay, and compensation for long-term services.

Provisions of Law Number 11 of 2020 concerning Job Creation Article 81 No. 37 amendments to Article 151 as follows:

- 1) Employers, workers, trade unions, and the government must make every effort to prevent termination of employment.
- 2) If dismissal is unavoidable, the employer must inform workers/workers and/or the trade union about the intent and reasons for the dismissal.
- 3) If the worker/worker is notified and refuses to terminate the employment relationship, then the termination of employment must be resolved through bilateral negotiations between the worker and the worker/worker and/or trade union/labor union.
- 4) If the bilateral negotiations as referred to in paragraph (3) are not reached, then the termination of employment at a later stage is following the labor dispute resolution mechanism.²²

Based on the comprehensive explanation provided, the analysis reveals a meticulous and legally structured approach to employment termination that prioritizes due process, mutual understanding, and employee rights. The process begins with thorough preparation, requiring employers to compile complete supporting documentation that explicitly details the reasons for potential termination, whether related to worker violations or compelling company circumstances. The framework emphasizes a multi-layered resolution mechanism that starts with direct notification to the employee or relevant labor union, followed by mandatory deliberation aimed at reaching a consensual solution. If bilateral negotiations fail, the process escalates to mediation involving local employment offices, and ultimately, if unresolved, can proceed to legal mediation through the Labor Court. Critically, the approach mandates that employers must make every possible effort to prevent termination and, when unavoidable, must provide fair compensation, including accident compensation, severance pay, and long-term service compensation. This structured approach reflects a balanced system that seeks to protect both employer and employee interests, ensuring transparency, fairness, and legal compliance in the complex process of employment termination.

4. Conclusion

Legal protection regarding Termination of Employment (PHK) unilaterally has been regulated in the Provisions regarding how companies carry out Termination of Employment regulated in Article 81 No. 37 amendments to article 151 of the Employment Law paragraphs (1) to (4) of the Job Creation Law, where in essence there is a clear mechanism for the processes from planning to implementing layoffs in a

²² Sugiarti, "Keabsahan Pemutusan Hubungan Kerja Karena Force Majeur Di Masa Pandemi Covid-19."

company. Termination of employment can be said to be valid according to the law if it has received a decision from the Industrial Relations Court or the competent court. The mechanism for layoffs for workers must be following the job creation law, namely through a process of Bipartite, Mediation, Conciliation, and finally one of the parties submits a lawsuit through a trial at the Industrial Relations Court which uses a special civil procedural legal process if it does not reach an agreement in the Bipartite process, Mediation, and Conciliation.

References

- Agung, Agung Prasetyo Wibowo. "Perlindungan Hukum Terhadap Pekerja Dalam Pemutusan Hubungan Kerja (Phk) Dengan Alasan Efisiensi Akibat Pandemi Covid 19." *To-Ra* 7, no. 1 (2021): 135–53.
- Ali, Zainuddin. *Metode Penelitian Hukum*. Sinar Grafika, 2021.
- Asyhadie, Zaeni. "Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja," 2007. <http://library.stik-ptik.ac.id/detail?id=6844&lokasi=lokal>.
- Hidayani, Sri, and Riswan Munthe. "Aspek Hukum Terhadap Pemutusan Hubungan Kerja Yang Dilakukan Oleh Pengusaha." *Jurnal Mercatoria* 11, no. 2 (2018): 127–40.
- Irawan, Anang Dony. "Perlindungan Hukum Terhadap Pekerja Akibat Pemutusan Hubungan Kerja Dimasa Pandemi Covid-19." *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 1 (2021): 99–108.
- Karyawan, Pemutusan Hubungan Kerja. "Perlindungan Hukum Terhadap Karyawan Yang Mengalami Pemutusan Hubungan Kerja Setelah Putusan Pengadilan Berkekuatan Hukum Tetap." *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 10, no. 2 (2018): 53.
- Maringan, Nikodemus. "Tinjauan Yuridis Pelaksanaan Pemutusan Hubungan Kerja (PHK) Secara Sepihak Oleh Perusahaan Menurut Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan." PhD Thesis, Tadulako University, 2015. <https://www.neliti.com/publications/146819/tinjauan-yuridis-pelaksanaan-pemutusan-hubungan-kerja-phk-secara-sepihak-oleh-pe>.
- Mangesti, Yovita Arie, et al. "Term Limitation of Indonesian Parliamentarians Seen from Constitutionalism." *Revista de Investigações Constitucionais* 11.2 (2024): e263.
- Rohendra Fathammubina, S. H. "Perlindungan Hukum Terhadap Pemutusan Hubungan Kerja Sepihak Bagi Pekerja." *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 3, no. 1 (2018): 108–30.

- Pantouw, Indah Amanah Poetri Soedasno Oei, and Ahmad Ahmad. "Perlindungan Hukum Terhadap Masyarakat Akibat Penambangan Emas Di Sungai Tulabolo Yang Tercemar Merkuri." *Borneo Law Review* 6.2 (2022): 187-204.
- Putri, Viorizza Suciani, Ahmad Ahmad, and Mohamad Hidayat Muhtar. "Antara Otoritas dan Otonomi: Pertautan Hak Asasi Manusia dalam Praktik Eksekusi Putusan PTUN: Perlindungan HAM dalam Eksekusi Upaya Paksa Terhadap Putusan Peradilan Tata Usaha Negara." *Jurnal Konstitusi* 21.3 (2024): 392-412.
- Yassine, Chami, et al. "Admissibility of lawsuits based on interest under Algerian civil and administrative procedures." *Jambura Law Review* 6.2 (2024): 286-303.
- Sugiarti, Yayuk. "Keabsahan Pemutusan Hubungan Kerja Karena Force Majeur Di Masa Pandemi Covid-19." *Justitia Jurnal Hukum* 4, no. 2 (2020). <https://journal.um-surabaya.ac.id/Justitia/article/view/6187>.
- Taufiqurrohman, AH Asari, et al. "The role of Islamic law, constitution, and culture in democracy in the UAE and Indonesia." *AHKAM: Jurnal Ilmu Syariah* 24.1 (2024): 83-100.
- Zulhartati, Sri. "Pengaruh Pemutusan Hubungan Kerja Terhadap Karyawan Perusahaan." *Jurnal Pendidikan Sosiologi Dan Humaniora* 1, no. 1 (2010). <https://jurnal.untan.ac.id/index.php/JPSH/article/view/382>.