

## LEGAL ANALYSIS OF UNILATERAL TERMINATION OF EMPLOYMENT WITHOUT DUE PROCESS (Case Study: Termination of a State-Owned Bank Employee at the Banjar Branch)

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### Abstrak

#### Keywords:

Employment Termination,  
Labor Law,  
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Worker Protection,  
Industrial Relations.

*This paper examines the legality of unilateral termination of employment without due process under Indonesian labor law, focusing on the case of thirty-one employees at a state-owned bank's Banjar Branch. The study aims to analyze the legal framework governing termination, evaluate mandatory dismissal procedures, and assess whether the employer's actions complied with applicable legislation. This research employs a normative legal method by examining constitutional provisions, statutes, government regulations, legal doctrines, and relevant literature. The findings indicate that Indonesian labor law requires termination to remain a last resort after preventive efforts, written notification, bipartite negotiations, and, when necessary, formal dispute resolution. Employers must also provide lawful reasons and fulfill workers' entitlements, including severance pay, service awards, and compensation. The analyzed case demonstrates that the employer failed to comply with these procedural and substantive requirements by dismissing employees unilaterally, neglecting negotiations, and freezing employees' bank accounts without a valid legal basis. Consequently, the termination constituted an unlawful act that violated workers' constitutional and statutory rights, exposing the employer to legal liability before the Industrial Relations Court. The study concludes that recent reforms introduced through the Job Creation Law simplify administrative procedures but do not diminish employers' obligations to respect due process and workers' rights. Effective enforcement, stronger regulatory compliance, and continuous government oversight are essential to ensure fair industrial relations, legal certainty, and balanced protection for both employers and employees in Indonesia. These findings provide practical guidance for employers, employees, policymakers, and courts in strengthening lawful employment termination practices and preventing disputes.*

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## INTRODUCTION

Definition of labor or workers are people who possess the skills to carry out activities that create goods, services, and products to meet both individual and public needs. Based on Law No. 13 of 2003 on Manpower, workers are defined as all individuals who are able to perform work to create goods and services, whether for personal needs or the needs of society.

In the implementation of national development, workers play a vital role and hold a crucial position as both agents and beneficiaries of development. The aim is to enhance the quality of their role in development and to improve the protection of workers and their families in accordance with the dignity and integrity of labor development (Husni, 2000).

However, in reality, in Indonesia itself legal issues regarding labor matters still occur very frequently. The fact that workers are entitled to certain rights but are not granted by the companies where they work remains a problem that continues to this day. One of the legal issues in the field of labor is Termination of Employment (PHK).

According to Law No. 13 of 2003 on Manpower, an employment relationship is defined as the relationship between an employer and an employee based on an employment agreement, which includes the elements of work, wages, and direction. Umar Kasim also pointed out that termination of employment is a sensitive issue; employers should exercise discretion when carrying out terminating employment relationships (PHK) because such terminations can reduce public welfare, cause people to lose their jobs, and even lead to unemployment.

## LITERATURE REVIEW

### Overview of Labor Protection Law

Labor protection law is a part of labor law that specifically aims to provide protection to workers—who are in a socially and economically weaker position compared to employers. This protection encompasses normative, economic, and social aspects, as well as workplace safety. Conceptually, labor protection law serves as a form of state intervention to foster fair, balanced, and humane industrial relations. The state no longer adopts a neutral stance but actively ensures the fulfillment of workers' fundamental rights.

### Overview of Termination of Employment (PHK)

Termination of Employment, or PHK, is the termination of the employment relationship between an employee and an employer, resulting in the termination of the rights and obligations of both parties. Normatively, the definition of termination of employment is regulated in Article 1, item 25 of Law No. 13 of 2003 on Manpower, which states that termination of employment is the termination of an employment relationship due to a specific reason that results in the termination of the rights and obligations between the worker and the employer. From the perspective of labor protection, termination of employment must be carried out with caution because it concerns the worker's right to livelihood.

### Principles and Guidelines for Termination of Employment

The implementation of layoffs is based on the principle of worker protection as reflected in Article 27, paragraph 2, and Article 28D, paragraph 2, of the 1945 Constitution, which guarantee the right to work and fair treatment. Furthermore, Article 151 of Law No. 13 of 2003, as amended by Law No. 6 of 2023, stipulates that employers, workers, and the government must make every effort to prevent layoffs. This provision

indicates that layoffs are a last resort in an employment relationship.

### **Types of Termination of Employment**

In practice, the types of termination can be traced to various provisions in laws and regulations, such as termination due to the expiration of a fixed-term employment contract, as regulated in Article 61 of Law No. 13 of 2003<sup>4</sup>. In addition, termination for specific reasons such as efficiency, misconduct, or the company's financial condition is further regulated in Government Regulation No. 35 of 2021, particularly in the provisions regarding grounds for termination<sup>5</sup>.

### **Prohibition on Termination of Employment**

The prohibition on layoffs is explicitly stipulated in Article 153(1) of Law No. 13 of 2003, which prohibits employers from laying off workers for certain discriminatory reasons. These prohibitions include, among other things, workers who are ill, performing religious duties, getting married, pregnant, giving birth, or breastfeeding. Additionally, workers cannot be terminated because they have a family relationship with another worker, are members of a labor union<sup>8</sup>, or because they reported violations committed by the employer. This provision demonstrates that the law seeks to prevent the abuse of power by employers.

### **Termination Procedures**

Layoff Procedures Following the Implementation of Regulatory Changes Through Legislation The Cipta Kerja Law is regulated in Articles 151 and 152 of Law No. 13 of 2003, as amended, and further clarified in Government Regulation No. 35 of 2021 . It emphasizes the mechanism of prior notification by the employer to the employee. If the employee rejects the decision, bipartite negotiations must be conducted. If no agreement is reached, the dispute is resolved through mediation or conciliation. Should the dispute persist, it is resolved through the Industrial Relations Court. Thus, layoffs must still follow procedural steps and cannot be carried out unilaterally without the dispute resolution mechanisms as stipulated in Law No. 2 of 2004 .

### **Workers' Rights Following Termination of Employment**

Workers who are laid off are entitled to compensation as a form of legal protection. These rights are regulated in Article 156 of Law No. 13 of 2003, which covers severance pay, service award, and compensation for lost rights .

Compensation for unfulfilled entitlements covers various unmet worker entitlements, such as unused annual leave, transportation costs to return to their place of origin, and other entitlements stipulated in the employment agreement or company regulations. The amount of this compensation is further specified in Government Regulation No. 35 of 2021, which is tailored to the specific terms of the employment relationship and the grounds for termination<sup>12</sup> . This regulation demonstrates that the state seeks to provide economic security for workers who have lost their jobs so that they can continue to meet their basic living needs for a temporary period.

### **Employer Obligations in Termination of Employment**

When carrying out layoffs, employers have legal obligations that cannot be ignored. These obligations include providing valid and clear reasons, paying all employee entitlements, and following the procedures established by law as stipulated in Articles 151 and 156 of the Labor Law . In addition, employers are also required to make efforts to prevent layoffs and ensure that the implementation of layoffs does not violate established prohibitions. These obligations reflect employers' social responsibility in maintaining a balanced industrial relationship.

## **Comparison of the Situation Before and After the Job Creation Law**

Prior to the enactment of the Job Creation Law, the layoff mechanism required a prior ruling from an industrial relations dispute resolution body. This provided stronger protection for workers because employers could not carry out layoffs directly. Following the enactment of Law No. 6 of 2023, this mechanism was changed to a system requiring employers to provide advance notice to employees. This change aims to increase flexibility in the business world, but it has also drawn criticism for allegedly reducing protections for workers, particularly regarding controls on layoffs.

### **Legal Basis for Termination of Employment**

Regulations regarding layoffs in Indonesia are based on various interrelated laws and regulations. Constitutionally, the legal basis is found in the 1945 Constitution, specifically Article 27, paragraph 2, and Article 28D, paragraph 2, which guarantee the right to work and fair treatment<sup>14</sup>. More specifically, regulations on layoffs are set forth in Law No. 13 Law No. 2 of 2003 on Manpower, which has been amended by Law No. 6 of 2023 on Job Creation. In addition, there is Government Regulation No. 35 of 2021, which provides more detailed provisions regarding employment relationships and layoffs, as well as Law No. 2 of 2004, which governs the mechanism for resolving industrial relations disputes.

## **RESEARCH METHOD**

The research method used in this paper is normative legal research (legal research), which involves analyzing literature or secondary data related to legal issues concerning the legal analysis of unilateral termination of employment (PHK) without due process.

## **RESULT AND DISCUSSION**

### **Legal analysis of the provisions governing termination of employment (PHK) in Indonesia.**

Termination of employment under Indonesian labor law is not something that can be regarded as a simple administrative act; rather, it is a legal action that has a significant impact on workers' lives. This is because termination of employment is directly related to the constitutional rights of citizens as stipulated in Article 27, paragraph (2), and Article 28D, paragraph (2), of the 1945 Constitution of the Republic of Indonesia, which guarantee every citizen's right to have a job and a decent livelihood, as well as to receive fair treatment in employment relationships. Therefore, any termination of employment must be carried out in accordance with the principles of prudence, fairness, and legal protection for workers, who are in a socially and economically weaker position compared to employers.

Officially, the rules regarding termination of employment in Indonesia are set forth in Law No. 13 of 2003 on Manpower, which has been amended by Law No. 6 of 2023 on Job Creation, and further elaborated in Government Regulation No. 35 of 2021. Article 151(1) of the Manpower Law states that employers, workers, and the government are required to make every effort to prevent employment termination. This provision stipulates that termination of employment may only be carried out as a last resort, considered only after all efforts to maintain the employment relationship have failed. Therefore, legally, termination of employment must not be carried out arbitrarily without a provable reason and without considering the potential impact on the employee. The changes stipulated in the Job Creation Law do indeed shift the mechanism for terminating employment from a system requiring authorization to one that only requires

notification from the employer to the employee. However, these changes do not automatically nullify the legal obligations applicable to employers. Employers must still provide clear reasons, follow procedures in accordance with applicable laws and regulations, and fulfill all employee rights arising from the termination of employment.

From the perspective of labor law doctrine, these changes are intended to simplify administrative procedures rather than reduce the protections afforded to workers. Therefore, if an employer terminates an employment relationship without meeting the specified requirements, such action may be considered an unlawful termination under the law.

### **Analysis of the termination of employment procedures (PHK) as regulated by applicable law.**

Under Indonesian labor law, the procedure for termination of employment is a critical aspect, as it determines whether a termination is valid or not. Pursuant to Article 151 of the Labor Law in conjunction with Law No. 6 of 2023 and Government Regulation No. 35 of 2021, employers are required to follow certain steps before terminating an employment relationship. The first step is to provide the employee with written notice stating the reason for termination, the effective date, and the employee's rights that will be honored. This step serves as a form of legal protection that provides employees with a sense of security and clarity, ensuring they are not arbitrarily subjected to negative consequences.

If the employee does not agree with the decision to terminate employment, joint negotiations between the employer and the employee or the labor union are required to reach an agreement acceptable to both parties. Bipartite negotiations are the first step in resolving industrial relations disputes, based on the principle of deliberation.<sup>20</sup> If no agreement is reached during negotiations, the resolution process continues through the mechanisms set forth in Law No. 2 of 2004, namely mediation, conciliation, or arbitration. If these processes also fail, the final resolution is carried out in the Industrial Relations Court. In addition to these procedural obligations, employers are also required to fulfill the rights of workers arising from termination of employment, such as severance pay, service awards, and compensation for rights in accordance with the provisions of Article 156 of the Law Labor. <sup>21</sup> The fulfillment of these rights aims to provide economic protection for workers so that they can continue to support themselves after losing their jobs. Therefore, the procedure for termination of employment encompasses not only formal aspects but also substantive aspects related to fairness for workers.

### **Legal Analysis of the Case of Unlawful Termination of Employment (PHK) of a Bank Employee at the Banjar Branch of a State-Owned Enterprise (BUMN).**

In the context of the termination of employment of 31 employees at the Banjar branch of a state-owned bank, it can be concluded that the actions taken by the employer constitute a violation of applicable labor laws and regulations. Based on the available facts, the employees were terminated unilaterally without following the prescribed procedures, and this was accompanied by the freezing of the employees' bank accounts. This indicates that the employer not only disregarded procedural requirements but also potentially violated the workers' fundamental rights.

From a legal perspective, the failure to provide adequate notice and the absence of discussions between the two parties indicate a significant procedural error. In fact, these procedures are mandatory requirements that must be met for the termination of employment to be considered legally valid. Therefore, the termination of employment

in this case can be categorized as an unlawful termination because it does not comply with the provisions set forth in the applicable laws and regulations.

Furthermore, the blocking of employee accounts has no legal basis in the context of the employment relationship and may potentially violate workers' rights to wages and their right to private property. From a civil law perspective, such actions may be considered unlawful because they cause harm to another party without valid grounds.<sup>23</sup> Furthermore, if an employer fails to fulfill its obligation to pay workers' entitlements as stipulated in Article 156 of the Labor Law, this further reinforces the fact that the termination of employment was not only carried out in violation of proper procedures but also constituted a clear breach of legal obligations.

Based on the results of the analysis conducted, it can be concluded that the termination of employment of employees at the Banjar Branch of the state-owned bank lacks a valid legal basis, as it was carried out arbitrarily without following applicable procedures and failed to uphold the rights that should have been granted to the workers. The legal consequences of such actions are that the employee has the right to file a lawsuit with the Industrial Relations Court to seek the restoration of their rights, whether in the form of reinstatement or compensation in accordance with applicable laws. In addition, the employer may also be held legally liable for actions that cause harm to the employee, both under labor law and civil law.

Through objective analysis, this case demonstrates that although labor regulations following the enactment of the Job Creation Law provide room for flexibility, such flexibility does not mean that employers have complete freedom to terminate employment contracts without limitation. On the contrary, this flexibility must be balanced with the principle of worker protection and the proper enforcement of the law to foster fair and balanced labor relations.

## CONCLUSION

Based on the legal analysis outlined above, it can be concluded that termination of employment under Indonesia's labor law system is a legal action that cannot be carried out unilaterally without a valid basis. Termination is closely related to the constitutional rights of workers as guaranteed in the 1945 Constitution of the Republic of Indonesia; therefore, its implementation must take into account the principles of justice, legal certainty, and protection of workers.

The provisions regarding layoffs in Law No. 13 of 2003, as amended by Law No. 6 of 2023 and Government Regulation No. 35 of 2021, emphasize that layoffs must be avoided as much as possible and may only be carried out as a last resort. Although there has been a shift in the mechanism from a permit system to a notification system, this does not eliminate the employer's obligation to provide clear reasons, follow valid procedures, and fulfill workers' rights.

The legal procedure for termination of employment includes written notice, bipartite negotiations in the event of a refusal, and dispute resolution through the mechanisms set forth in Law No. 2 of 2004, up to the Industrial Relations Court. Furthermore, fulfilling workers' rights—such as severance pay, service awards, and compensation for lost entitlements—is an absolute obligation that cannot be ignored.

In the case of the layoffs of employees at the Banjar branch of a state-owned bank, the employer's actions were found to violate applicable legal provisions, both procedurally and substantively. The layoffs were carried out unilaterally without notice

and without going through a negotiation process, and were accompanied by the freezing of bank accounts—an action that has no legal basis in the employment relationship. Therefore, these layoffs can be categorized as unlawful, and the workers have the right to seek redress through available legal mechanisms.

## **BIBLIOGRAPHY**

- Asri Wijayanti, “Labor Law Following the Job Creation Act,” *Jurnal Hukum*, 2022.  
Government Regulation No. 35 of 2021.
- Rohendra Fathammubina, “Legal Protection Against Unilateral Termination,” *De Jure Journal*, 2020.
- Rohendra Fathammubina, S.H., M.H., & Rani Apriani, S.E., S.H., M.H.,  
LEGAL PROTECTION AGAINST UNILATERAL TERMINATION  
FOR WORKERS, *De’Jure Legal Scientific Journal* , Volume 3, Issue 1, (2018).
- Sri Hidayani & Riswan Munthe, *Legal Aspects of Termination of Employment by Employers*, *Mercatoria Journal*, Volume 11, Issue 2, (2018).
- Sri Hidayani, “Layoff Procedures from the Perspective of Worker Protection,” *Mercatoria Journal*, 2021.
- Srinorindra Rahayu Budiiswanti, Fence M. Wantu, Avelia Rahma Y. Mantali, “Protection Against Termination of Employment for Female Workers,” *Journal of Law, Politics, and Humanities*, Volume 1, No. 4, (2024).
- Subekti, *Contract Law*, Intermasa, 2019.
- 1945 Constitution of the Republic of Indonesia, Article 27(2) and Article 28D(2).
- 1945 Constitution of the Republic of Indonesia, Article 27, paragraph (2), and Article 28D, paragraph (2).
- 1945 Constitution of the Republic of Indonesia.  
Law No. 13 of 2003.  
Law No. 13 of 2003 as amended by Law No. 6 of 2023, Article 151.  
Law No. 13 of 2003 as amended by Law No. 6 of 2023, Article 151.  
Law No. 13 of 2003 as amended by Law No. 6 of 2023.  
Law No. 13 of 2003 as amended by Law No. 6 of 2023,  
Article 151, paragraph (1).  
Law No. 13 of 2003 on Manpower, Article 1, item 25.  
Law No. 13 of 2003, Article 153(1).  
Law No. 13 of 2003, Article 156.  
Law No. 13 of 2003, Article 156.  
Law No. 13 of 2003, Law No. 6 of 2023, Government Regulation No. 35 of 2021, and  
Law No. 2 of 2004.  
Law No. 2 of 2004 on the Settlement of Industrial Relations Disputes  
. Law No. 2 of 2004.