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Between Authority and Justice: Employer's Unilateral Termination in Indonesian Labor Law

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Abstrak: Penelitian ini bertujuan untuk mengetahui dan menganalisis akibat hukum pemutusan kerja secara sepihak yang tidak berdasarkan Undang-Undang Ketenagakerjaan Nomor 13 Tahun 2003 serta untuk mengetahui upaya hukum jika terjadi Pemutusan Hubungan Kerja sepihak oleh suatu perusahaan. Penelitian ini menggunakan pendekatan hukum normatif, adapun hasil penelitian yaitu Pertama: akibat hukum pemutusan hubungan kerja sepihak oleh pengusaha yang tidak berdasar pada Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan adalah batal demi hukum selain itu apabila PHK tidak terhindarkan pengusaha wajib membayar uang pesangon, uang penghargaan serta uang pengganti hak yang besarannya telah diatur dalam UU Ketenagakerjaan. Kedua: upaya hukum yang dapat ditempuh jika terjadi pemutusan hubungan kerja sepihak oleh suatu perusahaan adalah dengan menempuh jalur Non Litigasi diantaranya bipartit, mediasi, konsiliasi, arbitrase, sebagai syarat untuk menempuh jalur Litigasi melalui gugatan di Pengadilan Hubungan Industrial.

Kata Kunci: Ketenagakerjaan, Pemutusan Hubungan Kerja, Jalur Litigasi

Abstract: *This research aims to determine and analyze the legal consequences of unilateral termination of employment not based on Law Number 13 of 2003 Concerning Manpower and to determine the legal remedies in the event of unilateral termination of employment by a company. This research uses a normative legal approach. The results of the research are as follows: first, the legal consequences of unilateral termination of employment by employers not based on Law Number 13 of 2003 Concerning Manpower are null and void. Furthermore, if the termination is unavoidable, the employer is obliged to pay severance pay, reward money, and compensation for rights, the amounts of which are regulated in the Manpower Law. Second: Legal remedies that can be taken in the event of unilateral termination of employment by a company include non-litigation, including bipartite negotiations, mediation, conciliation, and arbitration, as a prerequisite for pursuing litigation through a lawsuit in the Industrial Relations Court.*

***Keywords**: Employment, Termination of Employment, Pursuing Litigation*

INTRODUCTION

Islam, as a religion that brings mercy to all creation, regulates all aspects of life, including law and employment. This principle affirms that nothing in this world is beyond the concern and regulation of Islam. In the context of labor, the Qur'an, Hadith, and the history of Islamic society

are rich with discussions on this matter, as reflected in Surah At-Taubah verse 105, which outlines the obligation for every worker to act.

"And say, 'Do [as you will], for Allah will see your deeds, and [so will] His Messenger and the believers. And you will be returned to the Knower of the unseen and the seen, and He will inform you of what you used to do.'" [1]

Qur'an 9:105 (Surah At-Tawbah) articulates a central ethical principle of accountability by commanding the Prophet to instruct believers to act, with the assurance that their deeds are observed by Allah, His Messenger, and the believing community. The verse underscores a dual dimension of moral responsibility: actions are subject not only to divine omniscience but also to communal awareness and evaluation. Furthermore, it highlights the eschatological reality that all individuals will ultimately return to Allah, described as the Knower of both the unseen and the seen, who will fully disclose the truth of their actions. This formulation reinforces the integration of inward sincerity and outward conduct, encouraging believers to maintain integrity, as all deeds—whether concealed or manifest—are encompassed within divine knowledge and will be subject to ultimate judgment.

Indonesia's economy is currently experiencing rapid growth, marked by increasing competition among entrepreneurs in establishing businesses and companies. This development aims to promote the welfare of the Indonesian people, in line with the mandate of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees every citizen the right to employment and a decent standard of living in accordance with human dignity. [2]

Industrial relations in Indonesia refer to the dynamic interaction between employers and workers or laborers in the process of producing goods and/or services. This relationship is not merely economic in nature but also reflects social and legal dimensions, as it is fundamentally grounded in the values of Pancasila and the 1945 Constitution of the Republic of Indonesia, as stipulated in Article 1 point 16 of Law Number 13 of 2003 on Manpower. These foundational principles emphasize balance, justice, and mutual respect between the parties, aiming to create a fair and equitable working environment.

Within this framework, the government assumes a strategic and regulatory role in overseeing and guiding industrial relations to ensure that they function harmoniously, dynamically, and equitably. This role is manifested through the formulation of labor policies, supervision of their implementation, and the facilitation of dispute resolution mechanisms. The establishment of harmonious industrial relations is essential, as it serves as a key prerequisite for achieving business sustainability, enhancing worker productivity, and fostering national economic growth. Moreover, stable and fair industrial relations contribute significantly to social stability by minimizing conflicts between employers and workers, thereby supporting a conducive climate for investment and development.

Every individual works to fulfill their basic physical needs and is free to choose employment according to their profession in order to meet their economic needs. However, in a rapidly developing industrial era, many people choose to become company employees. Advances in science and technology, although bringing positive impacts, have also given rise to socio-economic issues such as protests due to labor injustices, unfulfilled workers' rights, inadequate wages, weak labor organizations, and the low level of employer compliance with regulations.

Employment relationships are established through employment agreements between workers and employers, in which workers agree to perform work in exchange for wages, and employers agree to provide employment and pay wages. Such agreements must be based on mutual consent, whether written or oral, containing a clear agreement between both parties.[3]

Workers are an integral part of the Indonesian people and are entitled to protection. The principle of legal protection for the people of Indonesia, which recognizes and upholds human dignity, is rooted in Pancasila and based on the rule of law[4].

Termination of Employment (PHK) due to the expiration of a work agreement generally does not cause problems, as both parties are prepared for it. However, termination resulting from disputes often leads to negative impacts, especially for workers who are economically more vulnerable. For workers, termination has significant psychological, economic, and financial consequences, including the loss of their primary source of income and difficulties in meeting daily needs as well as finding new employment in a sluggish labor market. Umar Kasim states that termination of employment is a sensitive issue requiring prudence on the part of employers, as it can negatively affect public welfare, result in job losses, and increase the potential for unemployment.

Termination of employment is often perceived as a serious threat by workers due to its wide-ranging impacts, creating a domino effect across various aspects of life. Therefore, the government, employers, workers, and labor unions must strive to prevent termination of employment in order to maintain social and economic stability. [5].

Termination of Employment (PHK) remains a longstanding and alarming issue for workers. The Ministry of Manpower recorded 11,626 cases of layoffs in 2022; however, actual figures in the field are estimated to be significantly higher. The Indonesian Employers Association (Apindo) reported that 87,236 workers across 163 textile companies were laid off throughout 2022. Meanwhile, data on Old-Age Security (JHT) claims from BPJS Ketenagakerjaan up to November 2022 showed 919,071 claims, indicating a large number of inactive workers due to layoffs, resignations, or retirement. [6] [7].

RESEARCH METHOD

This study employs a normative legal research method, which examines law from the perspectives of legal principles, norms or legal substance, and comparative law. The approach used is the statutory approach, conducted by analyzing all laws and regulations related to the legal issues under study, enabling the researcher to assess the consistency and conformity between one law and another.[8]

The legal materials utilized in this research consist of three categories. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, Law Number 13 of 2003 on Manpower, and Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes. Secondary legal materials comprise books, legal journals, expert opinions, and relevant legal theories. Meanwhile, tertiary legal materials include the Indonesian Dictionary (Kamus Besar Bahasa Indonesia) and legal dictionaries as supporting references.

The technique for collecting legal materials is carried out through library research**.** All collected legal materials are then analyzed qualitatively to examine and align them with the issues under study, in order to produce conclusions that are relevant, accurate, and consistent with the legal problems being addressed.[9]

DISCUSSION

1. Analysis of the Legal Consequences of Unilateral Termination of Employment Under Law Number 13 of 2003 on Manpower

An employment relationship, which begins with an employment agreement, is expected to end in accordance with the terms of that agreement. However, in certain cases, the relationship may terminate improperly, which is referred to as Termination of Employment (PHK). Such termination may occur due to mutual agreement, specific legal grounds, or unilaterally.

Termination of employment, particularly when carried out unilaterally without due regard to the agreed rights and obligations, can have significant psychological, economic, and financial impacts on workers. These include the loss of their primary source of income, the costs associated with seeking new employment, and the burden of meeting personal and family living needs. [10].

Labor conflicts frequently arise when employers terminate workers on grounds that are perceived as unfair or detrimental to the workers' interests. In principle, termination of employment that is carried out in accordance with mutual agreements and the applicable legal framework should be able to prevent prolonged disputes and maintain industrial

harmony. Such procedures are designed to ensure that both parties—employers and workers—fulfill their respective rights and obligations in a balanced manner. However, in practice, many employers fail to uphold these responsibilities, often neglecting procedural requirements and substantive fairness. As a result, decisions to terminate employment are frequently made unilaterally and, in some cases, arbitrarily, without adequate consideration of the legal protections afforded to workers. This situation not only undermines the principles of justice and legal certainty but also exacerbates tensions within industrial relations.

In light of this phenomenon, a comprehensive and in-depth analysis of the impacts of unilateral termination of employment becomes highly important. Such analysis is necessary to understand the extent to which unilateral termination affects workers' welfare, including their economic stability, psychological well-being, and social security. Moreover, this examination is crucial in identifying the gaps between normative legal provisions and their practical implementation. By doing so, it contributes to the development of more effective legal protections and policy measures aimed at fostering a fair, balanced, and sustainable working environment. Ultimately, the goal is to create industrial relations that are not only legally compliant but also socially just and conducive to long-term economic development.

In the literature review, four types of termination of employment have been identified: termination by operation of law, termination initiated by the worker/laborer, termination based on a decision of the Industrial Relations Court, and unilateral termination by the employer. This study specifically focuses on unilateral termination carried out by employers.[3]

1) **Analisis Analysis of Employers' Rights and Obligations in Carrying Out Termination of Employment (PHK) Under Law Number 13 of 2003 on Manpower**

   Employers have the right to carry out termination of employment after efforts to guide and develop the worker have been undertaken and termination can no longer be avoided. The next step is to conduct negotiations. If the negotiations fail, the employer must obtain a determination from the Industrial Relations Dispute Settlement Institution (PPHI).

   An application for a determination of termination of employment must be submitted in writing to the PPHI, accompanied by the underlying reasons. The grounds that may serve as the basis for an employer's application for termination include:

   a) The Worker/Laborer Has Committed Serious Misconduct: Serious misconduct is regulated under Article 158 paragraph (1) of Law Number 13 of 2003, which includes acts such as fraud, theft, embezzlement, providing false information, intoxication, abuse of narcotics, immoral acts, gambling, assault, incitement to commit unlawful

acts, destruction of company property, endangering co-workers or the employer, disclosure of company secrets, and other acts punishable by imprisonment of five years or more.

The proof of such misconduct requires evidence, such as being caught in the act, a confession, or an incident report supported by at least two witnesses. Workers who are dismissed due to serious misconduct are entitled to compensation in the form of payment of their rights, and if they do not represent the interests of the employer, they may also be entitled to separation pay. However, the provisions of Articles 158 and 159 of Law Number 13 of 2003 have been declared to be in conflict with with the 1945 Constitution of the Republic of Indonesia by the Constitutional Court.

b) The Worker/Laborer Is Detained by Authorities on Suspicion of Committing a Criminal Offense: Employers may carry out termination of employment if the worker/laborer is detained and unable to perform their duties for a period of six months. During this time, the employer is obliged to provide assistance to the worker's dependent family members. If the worker is declared not guilty before the six-month period ends, they must be reinstated to their position. However, if the worker is found guilty, termination may be carried out without a determination from the Industrial Relations Court (PHI), and the worker is entitled to long-service pay and compensation for rights [5].

c) The Worker/Laborer Commits a Violation**:** Violations of the employment agreement, company regulations, or collective labor agreement may constitute grounds for termination of employment. The employer is required to issue a first, second, and third warning letter (Surat Peringatan/SP), each valid for six months. If the violations persist up to the third warning, termination of employment may be carried out. If the worker acknowledges the violation, they are entitled to severance pay, long-service pay, and compensation for rights.

d) Changes in Company Status, Merger, Consolidation, or Change of Ownership: If the worker/laborer is unwilling to continue the employment relationship due to such changes, they have the right to terminate the employment relationship and are entitled to severance pay, long-service pay, and compensation for rights.

e) Company Closure: A company that has suffered continuous losses for two years or is facing force majeure circumstances may carry out termination of employment. Such losses must be proven by audited financial statements. Workers who do not accept this termination are entitled to severance pay, long-service pay, and compensation for rights.

f) Company Efficiency Measures: Termination of employment due to efficiency measures or organizational restructuring entitles workers to severance pay, long-service pay, and compensation for rights.
g) Company Bankruptcy: A company's bankruptcy may serve as grounds for termination of employment, with workers being entitled to severance pay, long-service pay, and compensation for rights.
h) The Worker/Laborer Is Absent Without Leave: Employers may carry out termination of employment if a worker is absent for five consecutive working days after being properly and formally summoned twice in writing, and the worker fails to provide a valid explanation. If the worker returns on the first day and provides a legitimate explanation, termination of employment cannot be carried out. [4].

Article 151 of Law Number 13 of 2003 requires that negotiations be conducted prior to termination of employment, except in certain cases such as during the probationary period, voluntary resignation, retirement, or the death of the worker.

2) Analysis of the Legal Consequences of Unilateral Termination of Employment (PHK) by Employers Under Law Number 13 of 2003 on Manpower

An employment relationship can end for various reasons, resulting in termination of employment (PHK). Under Law Number 13 of 2003, employers may carry out termination for reasons such as serious misconduct, detention by authorities, disciplinary violations, changes in company status, company closure due to losses, the death of a worker, reaching retirement age, absenteeism, or if a worker files a report against the employer for unproven wrongdoing. This law provides clear guidelines regarding the rights and obligations related to termination, so that if the prescribed procedures are followed, the termination is considered legally valid.

Article 153 paragraph (1) of Law Number 13 of 2003 prohibits termination of employment (PHK) for certain reasons, including illness lasting more than 12 months, performing national obligations, engaging in religious worship, marriage, pregnancy, childbirth, miscarriage or breastfeeding, having a familial or marital relationship with another worker (unless otherwise regulated), being a member or officer of a labor union, reporting the employer for criminal offenses, differences in beliefs, religion, ethnicity, etc., as well as permanent disability or illness resulting from a work-related accident whose recovery is uncertain. Termination carried out for any of these reasons is null and void by law, and the employer is obliged to reinstate the affected worker.

If termination of employment (PHK) is unavoidable and carried out in accordance with the prescribed procedures, the employer is obligated to pay severance pay, long-service pay, and compensation for rights. The calculation of this compensation is detailed in

Articles 156 paragraphs (2), (3), and (4) of Law Number 13 of 2003, taking into account the worker's length of service. Law Number 13 of 2003 regulates the rights and obligations related to termination, including the prohibition of unilateral termination that does not comply with the regulations. Violations of this prohibition constitute an unlawful act and render the termination null and void by law. The employer's obligation to pay compensation reflects a legal effort to achieve fairness and justice for both employers and workers.

2. Legal Analysis in the Event of Unilateral Termination of Employment by a Company

Industrial development often generates sharp inequalities in the labor sector, such as exploitation, unilateral termination of employment, and low wages. Workers play a central role in economic activity, and their rights must be protected to ensure equality with employers. Termination of employment, which may occur either due to the expiration of the agreed employment period or as a result of conflicts and disputes, significantly harms workers by depriving them of their livelihood. To mitigate the negative impacts of such disputes for all parties involved, comprehensive legal regulations are necessary to govern the process and ensure fairness, protection, and legal certainty in labor relations.[10]

The government enacted Law Number 2 of 2004 on the Settlement of Industrial Relations Disputes as a legal effort to address labor issues, particularly disputes in industrial relations. This law explicitly regulates four types of disputes: disputes over rights, disputes of interest, termination of employment disputes, and disputes between labor unions within a single company. The primary focus of this study is the legal efforts to resolve industrial relations disputes in cases of termination of employment (PHK).[11]

According to Article 1 point 4 of the Law on the Settlement of Industrial Relations Disputes (UU PPHI), termination of employment (PHK) is a dispute that arises from a disagreement regarding the end of an employment relationship, whether initiated by the employer or the worker/laborer. Although the wording of this article is neutral, its protective orientation is more focused on workers. Termination often occurs due to unilateral actions that are unacceptable to the other party, whether initiated by the employer (due to worker violations) or by the worker (due to the employer failing to fulfill obligations or acting arbitrarily).

Resolution of industrial relations disputes must first be pursued through deliberation and consensus**.** If this fails, the procedures set out in Law Number 2 of 2004 must be followed. Legal remedies available include bipartite negotiations, mediation, conciliation, arbitration, or submission to the Industrial Relations Court, depending on the nature and complexity of the dispute.[12]

1) Bipartite
   Bipartite Negotiation is an internal company discussion conducted without involving a third party and serves as the first step in resolving industrial relations disputes. The outcomes are formalized in a Mutual Agreement (Perjanjian Bersama), which is binding on both parties and must be registered with the Industrial Relations Court**.**
   If an employer intends to carry out termination of employment (PHK), Article 151 paragraph (2) of the Manpower Law requires that a bipartite negotiation be conducted. Should the employer proceed with termination without first engaging in a bipartite process, the worker has the right to immediately register the dispute with the local Manpower Office (Disnaker) for further legal action.[13]
2) Mediation
   Mediation is a method of resolving disputes over rights, interests, termination of employment (PHK), and conflicts between labor unions through deliberation facilitated by a government agency, typically the Manpower Office. If both parties reach an agreement during mediation, a Mutual Agreement is drafted and registered with the Industrial Relations Court (PHI)**.**
   If no agreement is reached, the mediator issues a written recommendation. Should the parties accept the recommendation, it is submitted to the PHI for formal registration. If the recommendation is rejected, the party that refuses it may file a formal claim with the PHI to seek legal resolution.
3) Consilitiation
   Conciliation is similar to mediation, but the conciliator is not a government official. The legal product of conciliation is a recommendation. The conciliator conducts an investigation and hearings within seven days from the receipt of the application. If an agreement is reached, a Mutual Agreement is drafted and registered with the Industrial Relations Court (PHI)**.**
4) Arbitration
   Industrial Relations Arbitration (labor-specific arbitration) has authority limited to disputes of interest and conflicts between labor unions. In practice, termination of employment (PHK) cases often dominate. If a settlement is reached, a deed of settlement (akta perdamaian) is drafted and registered with the District Court (Pengadilan Negeri)**.**
   If the settlement fails, the arbitration proceedings continue. Disputes processed through arbitration cannot be re-litigated or resolved again through mediation, conciliation, or the Industrial Relations Court (PHI)**.**
5) Industrial Relations Court (PHI)
   The Industrial Relations Court (PHI) is a specialized court within the general judiciary system, established in every District Court (Pengadilan Negeri) located in the provincial capital. The trial procedures at PHI are similar to those in a District Court, but there are

differences in terms of jurisdiction, time limits for case resolution, fees, and the status of legal representation.

In resolving termination of employment (PHK) cases through the litigation route at PHI, it is a prerequisite that evidence must have first gone through non-litigation procedures such as bipartite negotiations, mediation, conciliation, or arbitration. This ensures that all attempts at amicable resolution have been exhausted before judicial intervention.

Overall, workers/laborers can pursue either non-litigation avenues (bipartite negotiations, mediation, conciliation, or arbitration) or the litigation route through the Industrial Relations Court (PHI) to resolve unilateral termination of employment (PHK) by a company. The litigation route requires proof that all non-litigation avenues have been exhausted as a prerequisite for the court proceedings.

CONCLUSION

Based on the results of the research and the discussion presented, the author concludes the following points:

1) Legal Consequences of Unilateral Termination of Employment (PHK) Under Law Number 13 of 2003: Any termination carried out arbitrarily by an employer is considered null and void by law**.** However, if the termination is conducted in accordance with statutory provisions, the employer is obligated to pay severance pay, long-service pay, and compensation for rights. The amounts and calculation of these compensations are detailed in Law Number 13 of 2003 on Manpower**.**
2) Mechanism for Resolving Unilateral Termination of Employment (PHK) Under Law Number 2 of 2004: Unilateral termination by a company is classified as an Industrial Relations Dispute. Its resolution mechanism is regulated under Law Number 2 of 2004 on the Settlement of Industrial Relations Disputes. Workers/laborers can pursue non-litigation legal remedies, including bipartite negotiations, mediation, conciliation, and arbitration. If these efforts fail to produce a resolution, workers/laborers may proceed to the litigation route through the Industrial Relations Court (PHI)**.**

REFERENCE

[1] N. U. Online, “Islam Rahmatan Lil ’Alamin.”

[2] *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*. Indonesia, 1945.

[3] D. J. P. Perundang-undangan, “Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan.”

[4] R. Fathammubina and R. Apriani, "Perlindungan Hukum Terhadap Pemutusan Hubungan Kerja Sepihak Bagi Pekerja," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, vol. 3, no. 1, p. 110, 2018.

[5] P. M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, 2003.

[6] U. Kasim, "Hubungan kerja dan Pemutusan Hubungan Kerja," *Informasi Hukum*, vol. 2, p. 26, 2004.

[7] K. Ketenagakerjaan, "Menaker Harap Pelaku Industri Tekstil dan Produk Tekstil Dapat Mempertahankan Pekerja di Tengah Tantangan Global," 2022.

[8] A. R. Kamalina, "Kemenaker Catat 11.626 Pekerja Kena PHK. Kadin: Jumlahnya Lebih Banyak!," *Bisnis.com*, 2022.

[9] Hukumonline.com, "Penelitian Hukum Normatif."

[10] P. M. Marzuki, *Penelitian Hukum*. Jakarta: Prenada Media, 2010.

[11] M. Ayunda, "Dampak bagi pekerja atas tindakan Pemutusan Hubungan Kerja (PHK) secara sepihak oleh perusahaan," *Jurnal Cendikia ISNU-SU*, p. 1, 2024.

[12] E. Pujiastuti, *Pengantar Hukum Ketenagakerjaan*. Semarang: Semarang University Press, 2008.

[13] I. B. Santoso and E. Tahir, *Penyelesaian Perselisihan Hubungan Industrial dalam Teori dan Praktik*. Depok: PT RajaGrafindo Persada, 2024.

[14] L. Husni, *Penyelesaian Perselisihan Hubungan Industrial Melalui Pengadilan dan di Luar Pengadilan*. Jakarta: PT RajaGrafindo Persada, 2007.

[15] Mashudi, *Penyelesaian Sengketa Hubungan Industrial*. Surabaya: CV. Jakad Publishing, 2019.