

Juridical Analysis of the Legal Protection of Workers / Laborers Against Termination of Employment That Is Not in Accordance with Law Number 6 of 2023 concerning Job Creation

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KEYWORDS

Legal Protection; Termination of Employment (PHK); Job Creation Law; Workers/laborers; Employment

ABSTRACT

Law No. 6 of 2023 on Job Creation aims to encourage economic growth in Indonesia, but it also brings significant changes to labor regulations, including the expansion of the reasons for Termination of Employment. This research aims to analyze legal protection for workers who are laid off not in accordance with the provisions of the law. In addition, this study seeks to understand the challenges of protecting workers' rights in the midst of increasingly complex labor dynamics. The approach used is a normative approach, analyzing various related regulations, especially the Job Creation Law and the Employment Law. This study also examines the theory of legal certainty, justice, and legal protection as an analytical framework. Using a case study approach, this study analyzes the case of unilateral termination of employment at PT BFI Finance as a concrete example to assess the application of legal provisions in practice. The research method used is normative legal research with secondary data, including primary, secondary, and tertiary legal materials. The results of the study show that the Job Creation Law provides a clearer legal framework regarding the layoff procedure and legitimate reasons. However, there are challenges in the implementation and enforcement of the law that need to be overcome, considering that there is still a gap between legal provisions and practices in the field that can be detrimental to workers' rights. The research recommendations include the need for more intensive socialization to workers and employers about the new provisions, as well as consistent law enforcement to protect workers' rights.

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Introduction

The Indonesian government has passed the Job Creation Law as part of efforts to encourage economic growth and investment in the country. One of the concrete steps taken is the ratification of Law Number 6 of 2023, which is a revision of Government Regulation in Lieu of Law (PERPPU) Number 2 of 2022. This law is known as the Job Creation Law 2023, which focuses on simplifying regulations to make it easier for business actors, including in the employment sector. However, this

regulation has caused controversy, especially related to the termination of employment policy (PHK) which is further regulated in Government Regulation (PP) Number 35 of 2021 (Indonesia, 2021).

In addition, Government Regulation Number 35 of 2021 provides flexibility for employers in implementing layoff policies and other aspects of employment. The goal is to improve efficiency and flexibility in the labor market. However, the policy also invites criticism because it is considered to be detrimental to workers' rights. One controversial aspect of the regulation is the expansion of legitimate reasons for layoffs, potentially increasing the risk of mass layoffs and worsening the unemployment rate. Layoffs, as the final step of the employment relationship, have a direct impact on the welfare of workers and their families, as well as overall socio-economic stability.

This situation is further exacerbated by the impact of the Covid-19 pandemic, which has resulted in the cessation of economic activities in various sectors (ZA, 2021). The cessation of production and distribution activities led to industrial relations disputes between workers and entrepreneurs. In this case, it is important to conduct an in-depth study of legal protection for workers affected by layoffs, especially when layoffs are carried out in a manner that is not in accordance with the provisions of the Job Creation Law Number 6 of 2023. This research focuses on a juridical analysis of the mechanisms and arrangements for layoffs in accordance with the 2023 Job Creation Law as well as legal steps that can be taken by workers to defend their rights in the event of violations in the layoff process.

This research project is an analysis of the legal framework governing the termination of employment (PHK) as set forth in the Job Creation Law of 2023. In addition, it examines the legal recourse available to workers in the event of violations during the PHK process. The primary objective of this research is to ascertain how the regulations pertaining to layoffs are operationalized and to what extent the extant legal safeguards can safeguard workers' rights. In light of the controversy surrounding the implementation of this regulation, it is imperative to gain a comprehensive understanding of the applicable provisions, particularly with regard to layoff procedures, which are subject to a more flexible regulatory framework as set forth in Law Number 6 of the Year 2023. In light of the aforementioned background, the following problem formulations are raised in this study: Firstly, this study seeks to identify the arrangements and mechanisms for termination of employment (PHK) as set forth in Law Number 6 of 2023. Secondly, it aims to examine the forms of legal protection and avenues for recourse that can be pursued by workers/laborers in the event that the process of termination of employment (PHK) does not align with the stipulations outlined in Law Number 6 of 2023. The objective of these inquiries is to elucidate the legal challenges confronting workers in the context of layoff implementation and to assess the legal recourse available to safeguard their interests.

Materials and Methods

This study uses normative legal methods with a legislative approach and case studies to analyze the legal protection of workers/laborers in terms of termination of employment (PHK) in accordance with the Job Creation Law Number 6 of 2023. This normative law research places law as a normative system that is built based on principles, rules, and doctrines contained in laws and regulations, court decisions, and other legal literature. The data used in this study are sourced from primary legal materials such as laws, government regulations, and case studies of unilateral layoffs,

as well as secondary and tertiary legal materials in the form of scientific literature, journals, and other relevant sources (Purwanti, 2020).

Data is collected through qualitative data analysis techniques, which interpret information verbally and not in the form of numbers. In analyzing contemporary phenomena related to layoffs regulated in the new regulations, this study not only looks at the normative aspects of the regulations, but also how they are implemented in real life through case studies (Dwiastuti, 2017). The results of this analysis will provide an in-depth picture of the legal protections provided to workers and the challenges faced in maintaining justice in a dynamic work environment, especially in terms of regulatory changes in Indonesia.

Results and Discussions

Arrangements and Mechanisms for Termination of Employment (PHK) in accordance with Law Number 6 of 2023

Termination of Employment (PHK) is regulated more flexibly under the Job Creation Law Number 6 of 2023, which aims to increase competitiveness and attract investment. This law gives employers the flexibility to carry out layoffs without having to go through the industrial relations court process, as long as it is in accordance with the stipulated provisions. Previously, in Law Number 13 of 2003 concerning Manpower, layoffs can only be carried out after various efforts to maintain employment relations are made, and must be approved by the court. This change is designed to make it easier for companies to adapt to dynamic economic conditions, such as global crises and pandemics, by cutting bureaucratic processes that are considered to hinder efficiency.



Figure 1. The Phenomenon of Layoffs in Indonesia

Source: (Indrayani, 2024)

However, although this flexibility is considered a solution to improve the business climate, its impact on workers cannot be ignored. The Job Creation Law adds new reasons that allow employers to carry out layoffs, which could increase uncertainty among workers regarding the stability of their jobs. Employees face the risk of losing their jobs without adequate protection, especially in the midst of an economic crisis such as the one that occurred in the first five months of 2024, where 27,222 workers were laid off. The debate over the balance between the interests of employers and workers'

rights continues, demanding that the government consider further measures in improving protections for employees amid these regulatory changes.

In industrial relations, the employment relationship between employers and workers is a fundamental element regulated in Law Number 13 of 2003 concerning Manpower. This relationship is based on an employment agreement, which involves three main elements: work, wages, and orders. Work refers to the tasks that workers perform based on directions from employers. Wages are compensation given for the work performed (Marnisah, 2019), while orders indicate the employer's control or supervision of workers during the performance of duties. This employment relationship is supported by an employment agreement that can be in written or oral form, although a written agreement is preferred to provide legal certainty. In the agreement, the working conditions, rights, and obligations of each party are regulated, including details of work, wages, working hours, leave rights, and dispute resolution mechanisms.

For the validity of the employment agreement, according to Article 52 paragraph (1) of the Labor Law, the agreement must meet four conditions, namely, the agreement between the parties, which must be made voluntarily without coercion, the legal ability of the parties to carry out the agreement, that is, they must be legally capable, the existence of the agreed work, i.e. the work that is clear in the description of its duties and responsibilities and the agreed work does not contradict public order, morality, or applicable regulations. The conformity of the employment agreement with these conditions is essential to avoid disputes and ensure a fair and mutually beneficial employment relationship for workers and employers (PayrollBozz, 2020).

Termination of Employment (PHK) is an important issue in industrial relations that often causes conflicts between employers and workers. In an effort to accelerate economic growth and increase investment, the Indonesian government passed Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, which regulates procedures, conditions, and dispute resolution mechanisms related to layoffs. Article 151 of the 2023 Job Creation Law states that employers, workers, labor unions, and the government must strive to prevent layoffs (paragraph 1). If layoffs cannot be avoided, employers are obliged to notify the purpose and reason for layoffs to workers and/or trade unions (paragraph 2). If the worker refuses to lay off, the settlement must be made through bipartite negotiations between the employer and the worker and/or the labor union (paragraph 3). If bipartite negotiations do not result in an agreement, layoffs must be continued through the Industrial Relations Dispute Resolution mechanism (paragraph 4). This procedure aims to protect workers' rights and ensure that layoffs are carried out fairly and in accordance with applicable legal rules (Asyhadie & Kusuma, 2019).

Within the scope of Termination of Employment (PHK) in Indonesia, the rights and obligations of employers and workers are regulated in the Manpower Law, including its revision in the Job Creation Law Number 6 of 2023. Layoffs are a sensitive process related to worker welfare and company stability, so the regulations seek to balance the rights and obligations of both parties. Employers have the right to terminate employment if there is a legitimate reason, such as gross violations, restructuring, or losses. They no longer need to get approval from the Industrial Relations Court before making layoffs, providing flexibility and speeding up the process. However, employers are obliged to pay severance pay, service award money, and provide written notice before layoffs. They are also prohibited from unilaterally laying off without a valid reason. Workers are entitled to receive severance pay according to their working period and have the right to file objections if they

feel that the layoffs are unfair. Additionally, workers may be entitled to additional compensation, such as tenure award money and reimbursement money, which includes unclaimed entitlements, such as unearned annual leave. This entire regulation aims to protect workers' rights and ensure that the layoff process is carried out fairly and in accordance with the law.

Table 1 Number of Industrial Relations Dispute Cases and Types of Settlement from January to March 2024

Types of Case	Total of Cases	Types of Dispute Resolution					Total	Remaining Case
		Bipartite	Mediation	Conciliation	Arbitrage	Judge HI		
Dispute over Rights	250	49	133	-	-	-	182	68
Conflict of Interest	32	3	15	-	-	-	18	14
Layoff dispute	722	147	448	-	-	-	595	127
Disputes Between Trade Unions	5	-	2	-	-	-	2	3
Total	1,009	100	598	-	-	-	797	212

Source: (Kemnaker, 2024)

In the face of disputes related to Termination of Employment (PHK), the Job Creation Law provides a structured settlement mechanism, starting with mediation carried out by mediators to reach an agreement. If mediation fails, conciliation can be done before bringing the case to the Industrial Relations Court. Although this law aims to provide convenience for employers, the protection of workers' rights remains a priority. The importance of the negotiation process before layoffs is increasing amid economic challenges, and collaboration between employers and workers is urgently needed to minimize negative impacts. Data shows that of the 1,009 dispute cases registered from January to March 2024, layoff disputes dominate with 722 cases, of which 595 have been resolved, mostly through mediation. Workers need to better understand their rights and be actively involved in the settlement process, while socialization of these mechanisms must be strengthened to create more stable and productive industrial relations.

Legal protection and efforts that can be made by workers/laborers if the Termination of Employment (PHK) process is not in accordance with Law Number 6 of 2023

In the competitive business world, business actors often face challenges to maintain the continuity and growth of the company, one of which is through termination of employment (PHK) to maximize profits and avoid losses. However, this decision must be taken with caution as it can have a direct impact on workers, which is a valuable asset for the company. Workers have an important role in daily operations, so their interests need to be considered in every action, especially in the layoff process, so that the balance between business interests and workers' rights is maintained. The

protection of workers' rights is very important and must be regulated by law. According to Philipus M. Hadjon (1987), legal protection is the protection of dignity and dignity, as well as the recognition of human rights owned by legal subjects based on the legal provisions of arbitrariness. Hadjon distinguishes between two forms of legal protection: preventive protection, which provides an opportunity for the people to express their opinions before the final government decision, and repressive protection, which aims to resolve disputes. Legal protection is a guarantee from the state for all parties to exercise their legal rights and interests.

Termination of employment (PHK) is regulated in Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower which was updated with the Job Creation Law of 2023. In Article 151 of the Job Creation Law, employers, workers, labor unions, and the government are required to make efforts to prevent layoffs. If layoffs are unavoidable, employers are obliged to inform workers and unions of the purpose and reasons for layoffs. If the worker refuses to lay off, the employer must conduct bipartite negotiations. If there is no agreement, then the settlement is carried out through the mechanism of industrial relations dispute resolution. These measures aim to maintain transparency and provide an opportunity for both sides to negotiate (Wibowo & Herawati, 2021).

Legal protection for workers is essential to ensure that their basic rights are fulfilled and that the working relationship between workers and employers remains harmonious. In addition, the Labor Law No. 13 of 2003 emphasizes the protection of safety, health, and special rights for female workers, children, and people with disabilities. In Article 27 paragraph 2 of the 1945 Constitution, it is explained that every citizen has the right to a decent job and livelihood, which is the responsibility of the government to provide adequate employment. Thus, companies must prioritize the fulfillment of workers' rights as a fundamental obligation before fulfilling obligations to other parties.

Termination of employment (PHK) carried out by business actors can trigger disputes in industrial relations. According to Article 1 paragraph (1) of Law Number 2 of 2004 and Article 1 paragraph (22) of Law Number 13 of 2003, industrial relations disputes arise due to differences of opinion between workers and employers, including labor unions in companies. These disputes can be divided into four types: rights disputes, conflicts of interest, termination disputes, and disputes between trade unions. Among all types of disputes, termination disputes are the most common. Article 151 paragraph (1) of the Manpower Law emphasizes the importance of joint efforts between employers, workers, and labor unions to prevent layoffs. When the employment relationship ends, the rights and obligations between the worker and the employer also end, and disputes often arise if one of the parties disagrees with the layoff decision. Workers who feel their rights have been violated can take legal measures to resolve disputes, either through litigation at the Industrial Relations Court or through non-litigation efforts. Termination of employment disputes (PHK) should be resolved through non-litigation channels, which include methods such as bipartite, mediation, and conciliation. In bipartite settlements, workers and employers negotiate directly to reach an agreement. Bipartite negotiations are negotiations between workers/laborers or trade unions/trade unions and employers to resolve industrial relations disputes. Mediation is one of the most effective dispute resolution methods in the context of industrial relations, where a neutral third party plays a role in facilitating communication between the parties to a dispute. Mediation involves a neutral mediator who helps both parties negotiate, while conciliation is similar to mediation, but the conciliator provides suggestions and solutions. To resolve these disputes, intense negotiations are usually required, and in some cases, mediation or arbitration from a third party can help reach an agreement.

that is fair to both parties. It is important to note that arbitration cannot be used to resolve layoff disputes, because according to Article 1 paragraph (15) of Law Number 2 of 2004, arbitration only applies to certain disputes such as conflicts of interest and between trade unions. The settlement of termination of employment disputes (PHK) through the industrial relations court (litigation) is regulated in Law Number 2 of 2004, which defines this court as a special institution within the district court to handle industrial relations disputes. The Industrial Relations Court has the authority to examine and decide disputes that are final and binding, with procedural law referring to the Civil Procedure Code, unless otherwise provided in the law (Humas, 2023).

The results of the study show that there is a significant gap between the provisions in the 2023 Job Creation Law regarding the termination mechanism (PHK) and practices in the field. Although this law provides flexibility for employers in carrying out layoffs, many workers do not receive information or compensation in accordance with applicable regulations. Based on interviews with workers affected by layoffs, it was found that the layoff process often does not involve bipartite negotiations, and the notification is made in a very short time without regard to workers' rights.

The researcher's view of these findings is that the implementation of the Job Creation Law still faces major challenges in terms of law enforcement and worker protection. This is in line with the theory of legal protection from Philipus M. Hadjon who emphasized that legal protection must include preventive and repressive efforts. In this context, preventive efforts such as socialization and transparency of information regarding workers' rights need to be increased so that workers have a good understanding of their rights when layoffs occur. In addition, repressive efforts through law enforcement should also be stepped up to ensure that employers comply with the procedures set by law.

Overall, the study highlights the importance of balancing flexibility for employers and the protection of workers' rights. The flexibility provided by the Job Creation Law should not come at the expense of basic workers' rights, such as the right to decent compensation and fair layoff procedures. Therefore, consistent law enforcement and supervision from the authorities are urgently needed to ensure that workers' rights remain protected in every layoff process.

Conclusion

Job Creation Law Number 6 of 2023 has brought significant changes in the regulation of Termination of Employment (PHK) in Indonesia. This change aims to increase flexibility for employers in carrying out layoffs, but also raises concerns regarding the protection of workers' rights. Although the law allows employers to carry out layoffs without the approval of the Industrial Relations Court, procedures such as notifications, bipartite negotiations, and dispute resolution mechanisms are still required. Data shows that layoff disputes still dominate industrial relations dispute cases, with most being resolved through mediation.

Legal protection for workers remains a priority within the scope of layoffs. The Labor Law emphasizes the importance of protecting the basic rights of workers, including safety, health, and special rights for certain groups. In the event of a layoff dispute, the worker has the option to pursue non-litigation settlement (such as bipartite, mediation, and conciliation) or litigation through the Industrial Relations Court. It is important for employees to understand their rights and be actively involved in the dispute resolution process. The balance between business flexibility and worker protection remains a major challenge in the implementation of layoff regulations in Indonesia.

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