



Dynamics of PHK Law: Examining the Complexity of Premature Termination of Employment Contracts

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Abstract

This research aims to provide an overview of legal protection for workers laid off during the work contract period and to find out the mechanism for handling employment termination during the work contract period. This research uses normative legal research with a literature study approach, as well as types and sources of legal materials using primary legal materials, secondary legal materials, and tertiary legal materials. Data analysis will be studied in a qualitative prescriptive manner. The results showed that legal protection for workers who are terminated during the employment contract period and the mechanism for handling termination of employment during the employment contract period has been accommodated, in the outline listed in Law No.13 of 2003 concerning employment, Law No. 6 of 2023 concerning the stipulation of government regulations instead of law number 2 of 2022 concerning employment copyright into law, Law No. 2 of 2004 concerning Industrial Relations Settlement and several other laws that have been listed in the preparation of this writing.

Keywords: *Protection; Layoffs; Work Contracts Law*

Introduction

In early 1977, development in Indonesia experienced a fairly heavy trial. It began with the collapse of the ruling government along with a global monetary crisis that almost affected the entire world and continued with a global monetary crisis that almost affected the entire world and continued with a crisis of confidence. This condition lasted until now and has not shown any significant improvement.¹The current economic crisis has hurt industrial life in Indonesia. Not a few small and large companies in Indonesia have suffered losses and to reduce company costs, Termination of Employment (PHK) has been carried out on workers in these companies. This method tends to be used by companies in Indonesia to survive.²

The problem of termination of employment is not a trivial matter, because it is closely related to the rights of a person in this case a worker or laborer. Almost throughout the history of world life,

¹Permatasari, R. A. P. (2018). *Perlindungan Hukum Bagi Pekerja Kontrak Yang Di Phk Saat Masa Kontrak Sedang Berlangsung*. Mimbar Keadilan.

²Khakim, A. (2014). *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, Cet. Ke-4 Edisi Revisi, Bandung: Citra Aditya Bakti

including history in Indonesia, the fate of workers has always been pathetic. Workers are used as a tool to attract foreign capital interests and foreign investment to gain one-sided profits, namely the rulers and entrepreneurs³.

The global economic crisis that occurred was marked by the decline in currency and changes in the exchange rate system causing a drastic decline in the performance of the world economy in 2008 and is expected to continue until 2012. This caused the volume of global trade in 2009 to decline sharply, impacting many large industries that are threatened with bankruptcy, a decrease in production capacity, a real impact that will be experienced by the national economy due to the global crisis, namely many large industries that are threatened with bankruptcy throughout 2010 to 2012. Waves of layoffs threaten the world, one of which is Indonesia. For example, in one of PT Eurogates, Karang Tengah Village, Gunung Puyuh District, Sukabumi City, West Java, a company engaged in the garment sector. Layoffs by the company's management were carried out on the grounds of minimal orders for goods, forcing the company to carry out labour efficiency.

In 2019-2020, the COVID-19 case hit Indonesia, which greatly affected the reduction in workers, as can be seen from the unemployment rate due to layoffs in August 2020, which increased by 7.07 per cent, an increase in unemployment of 2.67 million. This shows that the number of formal workers is shrinking during the pandemic. Most in the processing and construction sectors. This condition is inversely proportional to the agricultural sector. So it is not surprising that the unemployment rate in cities is much higher when compared to villages.⁴

A work agreement made for a certain period is usually called a contract work agreement or a non-permanent work agreement. The worker's status is a non-permanent worker or contract worker. Meanwhile, a work agreement made for an indefinite period is usually called a permanent work agreement and the work status is a permanent worker. A fixed-term work agreement can also be identified from Article 1603 e paragraph (1) of the Civil Code which states that the employment relationship ends by law, with the expiration of the time stipulated in the agreement, or in the provisions of the Law, or custom⁵.

With this contract system, employers hope to achieve a balance between productivity and wages. Workers or labourers who are laid off will have their rights protected by a work agreement made previously by the employer and the worker. Although the position of the job is so strategic, in reality, work rights or protection of work rights and their implications often receive less attention or adequate protection. Protection of workers' rights can be seen in a collective work agreement also known as a labour agreement because what is meant by labour is an agreement on labour conditions organized by a labour union (worker) that has been registered with the Department of Manpower with employers, associations of employers, which are legal entities, which in general.⁶

However, if the employer employs contract workers not following the requirements as stipulated in the laws and regulations, then the contract workers can receive compensation when the workers concerned are laid off, of course, it will also depend on the reason for the layoff. Because not all layoffs are accompanied by layoff compensation such as workers who resign or commit crimes.⁷

³Yogi, P. (2020). *Perlindungan Tenaga Kerja* (Doctoral dissertation, Sekolah Tinggi Ilmu Hukum IBLAM).

⁴Sedjun H. Manulang. 2019. *Pokok-Pokok Ketenagakerjaan Indonesia*. Jakarta: Rineka Cipta

⁵Lalu Husni. 2012. *Pengantar Hukum ketenagakerjaan Indonesia*. Jakarta: Raja Grafindo Persada

⁶Suratman. 2019. *Hukum Ketenagakerjaan Indonesia*. Jakarta: Indeks

⁷Libertus Jehani. 2019. *Hak-hak Karyawan Kontrak*. Jakarta: Forum Sahabat

Research Methods

This study uses library research. The normative (doctrinal) legal research type examines law as “*law in books*”. The nature of normative legal research is rational theoretical using a reasoning model with deductive logic (drawing conclusions from general to specific).⁸ Normative legal research tends to portray law as a prescriptive discipline (according to applicable legal provisions or rules).⁹ The type of research that contains normative is based on research on secondary materials and tertiary legal materials.¹⁰

Analysis and Discussion

1. Legal Protection for Workers Who Are Laid Off During the Employment Contract Period

Termination of employment by the employer is a type of Termination of Employment (PHK) that often occurs, either due to the fault of the worker or labourer, or the condition of the company concerned. Employment can be terminated in several circumstances, including the death of the employee, expiration of the contract, completion of certain work, court decisions, or certain events listed in the Employment Agreement, company regulations, or collective work agreements.¹¹

1.1 Termination of employment must be done properly so as not to affect a person's survival. Special protection is given to long-term workers or external work contracts.

Statement that Law Number 13 of 2003 concerning Manpower, Law Number 6 of 2023 concerning the Establishment of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation into Law, Government Regulation of the Republic of Indonesia Number 78 of 2015 concerning Wages and Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administration. Where several of these laws or regulations have provided sufficient protection for workers/labourers upon the termination of employment, which contain the rights and obligations of workers/labourers and also companies that enter into agreements in employment.¹²

a. Rights of Contract Workers

1. Wages:

- a) Based on the annually revised UMR/UMP
- b) Companies are required to prepare wage structures and scales
- c) The government sets wage policies for a decent living
- d) Policies include minimum wages, wage structures and scales, overtime pay, and others.
- e) Calculation of daily wages based on a 5 or 6 day work week system

⁸Juliardi, B., Runtuuwu, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., ... & Samara, M. R. (2023). Metode penelitian hukum. CV. Gita Lentera.

⁹Syarif, M., Ramadhani, R., Graha, M. A. W., Yanuarita, T., Muhtar, M. H., Asmah, N., ... & Jannah, M. (2024). METODE PENELITIAN PENELITIAN HUKUM HUKUM.

¹⁰Jumardin, J., Fadlan, F., & Muhlis, M. Y. (2023). Hak Asasi Manusia Dalam Bingkai Hukum. *Vifada Assumption Journal of Law*, 1(2), 9-16.

¹¹Munali, D. S., Rahmawati, N., Kurniawati, N. A., & Rahmadini, A. (2023). Politik Hukum Pembentukan Undang-Undang Cipta Kerja: Menyoal Proses Legislasi Dalam Pembentukannya. *Amsir Law Journal*, 5(1), 1-12.

¹²Dewi, M. N. K., & Basir, A. (2023). Indonesia's Omnibus Law and Protection of Labor Rights. *Amsir Law Journal*, 5(1), 66-73.

- f) The right to wages arises when the employment relationship begins and ends when it is terminated.
- g) Workers have the right to equal pay for work of equal value
- h) Employers are required to pay wages according to agreements and regulations.
- i) Late payment of wages is subject to a fine

2. THR (Holiday Allowance):

- a) Mandatory payment to permanent and contract workers
- b) Permanent workers with a working period of 1 year receive 1 salary
- c) Workers with a work period of 3 months - 1 year receive proportional THR

3. BPJS (Social Security Administration):

- a) Contract workers are entitled to health benefits
- b) Protecting the form of monetary compensation
- c) Covers work accidents, illness, pregnancy, childbirth and death

2. Normative Rights of Workers/Labourers Who Are Returned Before Their Work Period Ends

Termination of Employment (PHK) is the end of the employment relationship between workers and companies. According to Law No. 6 of 2023, an employment agreement can end for several reasons, including the death of the worker, the end of the contract, or a court decision.

Layoffs should not be carried out arbitrarily because they affect the survival of workers. Protection of normative rights of workers, especially contract or outsourcing workers, is regulated in Law No. 13 of 2003 Article 6, which guarantees equal treatment without discrimination.

Employment agreements are divided into fixed-term and non-fixed-term. Contract workers are included in fixed-term employment agreements. Despite the differences, contract workers have the same basic rights, including protection of welfare, safety, and health.¹³

If workers' rights are not fulfilled, they can file a lawsuit with the local Manpower Office. The intermediary can provide recommendations to re-establish a non-discriminatory employment relationship or provide normative rights like permanent workers. Based on Law No. 6 of 2023 Article 156, workers who are laid off are also entitled to receive severance pay.

3. Legal Protection in Obtaining Social Security Administration Body (BPJS)

Employment development in Indonesia aims to improve the dignity, status, and capabilities of human resources. The employment relationship between workers and employers must be based on Pancasila and the 1945 Constitution, with mutual respect for rights and obligations. Worker protection through social security includes workers and their families. The Social Security Administering Body (BPJS) was established based on Law No. 24 of 2011, consisting of:

¹³ Nurhaedah, N., Wulandari, A. S. R., & Marif, M. (2023). The Impact of the Job Creation Law on the Concept of Limited Liability Companies in Indonesia. *Amsir Law Journal*, 5(1), 55-65.

- a) BPJS Kesehatan: Organizes national health insurance based on the principles of social insurance and equity;
- b) BPJS Employment: Provides social security protection to formal and informal workers, including programs:
 - 1) Work Accident Insurance (JKK): Provides health services and compensation for work accidents or work-related illnesses;
 - 2) Old Age Security (JHT): Provides cash upon retirement, permanent total disability, or death;
 - 3) Pension Guarantee (JP): Maintaining a decent life when losing income due to pension; and
 - 4) Death Benefit (JKM): Provides compensation to heirs when the participant dies not as a result of a work accident.

These programs aim to provide comprehensive protection for workers and their families, ensuring financial security in various life situations.

3. Mechanism for Handling Termination of Employment During the Employment Contract Period

Settlement of Industrial Relations Disputes through Litigation:

- a. Termination of Employment (PHK) by the employer must have permission, without permission it is considered null and void by law.
- b. Workers can file a lawsuit with the Industrial Relations Court (PHI) within 1 year of notification of termination of employment.
- c. Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI) regulates the settlement process, both litigation and non-litigation.
- d. Types of disputes include rights, interests, layoffs, and between trade unions.
- e. A lawsuit to the PHI requires good formulation and often requires the assistance of a lawyer.
- f. Completion stages:
 - 1) Industrial Relations Court (PHI)
 - 2) Supreme Court (MA)
- g. The PHI is a special court with a panel of judges consisting of a District Court judge and two ad-hoc judges (one from a workers' organization, and one from an employers' organization).
- h. PHI's authority:
 - 1. The first level for rights disputes and layoffs
 - 2. The first and last level for disputes of interest and between trade unions

This process provides a formal legal pathway to resolve industrial relations disputes, taking into account the rights of workers and employers.

4. Settlement of Industrial Relations Disputes Through Litigation

- a. Termination by the employer must have permission; without permission, it is considered void.
- b. Workers can sue the PHI within 1 year of notification of termination of employment.
- c. PPHI Law No. 2/2004 regulates litigation and non-litigation settlement processes.

- d. Types of disputes: rights, interests, layoffs, and between trade unions.
- e. A lawsuit to the PHI requires good formulation, often requiring the assistance of a lawyer.
- f. Stages: PHI, then Supreme Court.
- g. PHI is a special court with a panel of judges from the District Court and two ad-hoc judges.
- h. PHI's authority: first level for rights and termination of employment; first and last level for interests and disputes between unions.

This process provides a formal legal pathway to resolve disputes, taking into account the rights of workers and employers.

Conclusion

Legal protection for workers laid off during the contract period is very important in employment. This includes workers' rights such as minimum wages, occupational health and safety, holiday allowances, and normative aspects of the employment contract. Termination of employment by employers often occurs due to the worker's fault or the company's conditions. Workers who do not accept the layoff can file a lawsuit with the industrial relations court. Dispute resolution can be through mediation, conciliation, or the industrial relations court up to the Supreme Court. The requirements for filing a lawsuit with the PHI include filing in the worker's domicile jurisdiction, attaching a mediation/conciliation settlement report, and listing the main issues along with related documents.

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