

JURIDICAL REVIEW OF CASES OF UNILATERAL TERMINATION OF EMPLOYMENT BASED ON LABOR LAW

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ABSTRACT

This study examines cases of unilateral Termination of Employment (PHK) by employers. From this study, the objective was to find out the causes of Termination of Employment (PHK) by employers against workers in a normative juridical manner based on the Labor Law. The method used in this research is a normative juridical research method which is research based on legal aspects of legislation and through applicable laws. Termination of Employment (PHK) is the last resort taken by employers due to worsening working relations between workers and employers. Termination of Employment (PHK) is regulated in articles 158-169 of Law Number 13 of 2003 concerning Manpower. In this case, Termination of Employment (PHK) carried out by employers must comply with the provisions of the applicable law. If, indeed, it cannot comply with the regulations, it must be discussed in order to reach a consensus agreement between the employer and the worker, so that no party is harmed.

Keywords: Causes, Termination of Employment, Labor Law

INTRODUCTION

Quoted from kompas.com (2023), the country Indonesia occupies the fourth position as the country with the most population according to World Population Review data, namely more than 276,639,440 people. With a population that is increasing every year, the Indonesian government must be able to anticipate the welfare of its population. One example is by preparing jobs for people of working age. From the results of the National Labor Force Survey (Sakernas), the number of people in the workforce in 2022 will be 143.72 million, an increase of 3.57 million compared to last year. The labor force participation rate (TPAK) also increased by 0.83 percent (Badan Pusat Statistik, 2022). Increasing labor force participation every year should make it easier for companies to recruit workers instead of laying off employees.

Quoted from the official website cnnindonesia.com (2022), stated that the number of workers in Indonesia who experienced termination of employment in 2022 was 79,316, according to the Indonesian Employers' Association (APINDO). There are various reasons stated by the company when deciding on termination of employment for employees. Both internal and external reasons. Cases of unilateral termination of employment are often found in Indonesia due to a lack of understanding of labor law on the part of companies and workers. It is important

to understand the Labor Law so that when there is a difference in conflict and it involves the realm of law, the two parties can discuss each other with the help of valid laws and regulations that apply.

Based on Law No. 13 of 2003 concerning Manpower, an employee is any person who works and receives wages or benefits. Basically, termination of employment relations has been recorded in a legal order so that no party is harmed; this is clearly stated in articles 158–169 of Law No. 13 of 2003 concerning Manpower. State clearly the implementation of legally correct termination of employment, as clearly written in the applicable laws and regulations. Termination of employment that is carried out unilaterally is certainly detrimental to workers because their rights are often not respected as they should.

Termination of employment itself can be from the employer or the worker. If the case involves unilateral termination of employment, this decision is usually taken by the employer. Quoted from page [kompas.com](https://www.kompas.com) (2022), the reasons for the company terminating the employment relationship, namely, the company is making efficiency; The company closed due to continuous losses for 2 years; Company closed due to force majeure; The company is in a state of postponement of debt payment obligations; As well as bankrupt companies. Apart from these reasons, it is mandatory for employers/workers to understand the procedural work agreements according to the law. Prevent disputes between employers and workers.

METHODS

The research that will be used is normative juridical research. Standard legal research uses a review of legal regulations and other literature. This is done by reviewing the laws and regulations that apply to a particular legal issue. In this study, researchers searched for and collected information by conducting a literature study on reading sources in the form of Labor Law No. 13 of 2003 and the works of academic researchers, legal experts, and scholars on topics covered by publications. Secondary legal materials consist of other reference materials that provide supporting information, such as law books, articles, writings, scientific papers, the internet, etc.

This source of information is obtained from the results of library research on books, journals, law, and others related to the study under study. Researchers in this study used a quantitative descriptive methodology. In other words, the resulting information is descriptive information that is collected from written information, documents from sources, or words that are collected from researched and reliable information. The data received is collected and processed, analyzed and interpreted to answer the problems presented. There are at least three data collection techniques used in this study, namely literature review, observation, and interviews. Investigation by experts relating to the problem being investigated, as well as observations and interviews with people close to them looking for facts about decisions that are relevant and related to the research topic.

RESULTS AND DISCUSSION

A. TERMINATION OF EMPLOYMENT (PHK) ARTICLE 158–169 OF LAW NO. 13 OF 2003 CONCERNING EMPLOYMENT

According to article 158 of Law No. 13 of 2003 concerning Manpower, it explains: 1 An employer can terminate the employment relationship with an employee if the worker makes a serious mistake; 2: Serious wrongdoing according to paragraph (1) must be proven; 3: An employee whose employment ends for the reasons under paragraph (1) may receive compensation; 4: Major termination of employment and its implementation are specified in the work agreement, company regulations, or collective agreement. If you look at the case.

According to Article 159 of Law No. 13 of 2003 concerning Manpower, it is explained that the worker concerned can file a lawsuit with the industrial relations court if the worker experiences layoffs, as referred to in Article 158 paragraph (1).

According to article 160 of Law No. 13 of 2003 concerning Manpower, it is explained, 1. If the authorities arrest workers for allegedly committing a crime, which is not based on a complaint from the employer, then the employer is not obliged to pay wages, but is obliged to help the worker's family; 2 The assistance referred to in paragraph (1) is given for a maximum of six months from the time the worker is arrested by the authorities, starting from

the first day; 3The employer can terminate the employment relationship after six months of being unable to work, because the criminal court is pending; 4If the court resolves the criminal case before the six-month deadline specified in paragraph (3) and the worker remains innocent, the employer is obliged to re-employ the worker; 5The court resolves the criminal case before six months have passed and the worker remains guilty, in which case the employer can terminate the employment relationship with the worker concerned; Termination of employment as referred to in paragraphs (3) and (5) occurs without the establishment of an institution to resolve labor market disputes. Employers are required to pay a one-time service fee and compensation to workers who terminate the employment relationship as referred to in paragraphs (3) and (5) in accordance with the regulations.

According to article 158 of Law No. 13 of 2003 concerning Manpower, it explains: 1 An employer can terminate the employment relationship with an employee if the worker makes a serious mistake; 2: Serious wrongdoing, according to paragraph (1), must be proven; 3: An employee whose employment ends for the reasons under paragraph (1) may receive compensation. 4: Major termination of employment and its implementation are specified in the work agreement, company regulations, or collective agreement. If you look at the case.

According to article 161 of Law No. 13 of 2003 concerning Manpower, it is explained, 1. A worker violates the regulations stipulated in the work contract, company regulations or collective agreement, the employer can terminate the employment relationship after receiving the first, second and third warning letters in a row; 2 The warning letter referred to in paragraph (1) is valid every six months, unless stated otherwise in the work contract, company regulations or collective agreement; 3 Employees who terminate employment for the reasons specified in paragraph (1) receive severance pay equal to one term of office, salary and replacement money equal to one mandate for a long working relationship in accordance with statutory regulations.

According to article 162 of Law No. 13 of 2003 concerning Manpower, it explains: 1. Workers who voluntarily leave work will be given compensation for their rights in accordance with regulations; 2. Employees who resign voluntarily, whose duties and duties do not directly

represent the interests of the employer, will receive compensation, the amount and application of which is regulated in the work, in addition to severance pay, contracts, company rules, or collective agreements; 3. Workers who leave the job mentioned in paragraph 1 must meet the requirements; 4. Voluntary termination of employment occurs without the establishment of a labor market dispute settlement body.

According to article 163 of Law No. 13 of 2003 concerning Manpower, it is explained that employers can terminate the employment relationship with their workers if their position changes, merges, or the owner of the company moves and the worker does not agree to continue the employment relationship, in the event that the worker is entitled to one termination. work under the employment contract. regulation; 2 one-time service season honors; 3 money to replace rights according to the provisions.

According to article 164 of Law No. 13 of 2003 concerning Manpower explains, 1 Employers can terminate the employment relationship with workers due to suspension of company operations, continuous losses for two years from the company or force majeure, provided that workers are entitled to one-time dismissal, payment ; 2The company's losses as referred to in paragraph (1) must be proven by audit-controlled financial audits for the last two years; 3 The employer may terminate the employment relationship with the worker because the company has been terminated, not because the company has suffered losses for two consecutive years or not because of force majeure, but because the company has reduced its workforce, provided that the worker has the right to equal dismissal. double the amount of salary earned for long service equal to the full amount and the right to compensation according to the rules.

According to Article 165 of Law No. 13 of 2003 concerning Manpower, it is explained that an employer can terminate the employment relationship with an employee in the event that the company goes bankrupt, provided that the employee is entitled to one-time redundancy payments, one-time bonuses, and compensation in accordance with regulations.

According to article 166 of Law No. 13 of 2003 concerning Manpower, in the event that the employment relationship ends after the death of the employee, the heirs will be paid an

amount of money, which is the same amount as regulated double severance pay, a single long-term work payment. according to regulations, and compensation according to regulations.

According to article 167 of Law No. 13 of 2003 concerning Manpower, it is explained, 1 Employers can terminate employment relations with workers because they are approaching retirement age, and if the employer has included workers in the pension system whose insurance premiums are paid in full by the employer, the worker is legally not is entitled to dismissal, performance of long service periods, salary according to regulations, but he is still entitled to receive compensation according to regulations; 2. In the event that the amount of guarantees or pension benefits received simultaneously in the pension program as referred to in paragraph 1 turns out to be less than the number of multiple terminations and bonuses and one-time compensation. paid according to the terms, the merchant pays the difference; 3 If the employer has enrolled the worker in a pension system for which the insurance premium is paid by both the employer and the employee, then the pension paid by the employer shall be considered as dismissal; 4 The provisions referred to in paragraph 1, paragraph 2 and paragraph 3 can be regulated in different ways in work agreements, association regulations or collective agreements; 5. In the event that the contractor does not take into account employees/employees who have terminated their employment due to old age retirement in the pension system, the contractor is obliged to pay the employee twice the specified severance pay, one time the service fee. and payment of compensation in accordance with regulations. The right to pension benefits specified in paragraphs (1), (2), and (3) does not eliminate the worker's right to old age security, which is mandatory according to the applicable laws and regulations.

According to article 168 of Law No. 13 of 2003 concerning Manpower, it is explained: 1. A worker who is absent from work for at least five consecutive working days without a written statement with a valid certificate and to whom the employer makes two written calls can be dismissed because he has the option of leaving the job; 2. A written statement with valid evidence as referred to in paragraph (1) must be submitted no later than the first working day of the employee; 3: Termination of employment as referred to in paragraph (1): Workers are

entitled to compensation and severance pay, the amount and application of which are stipulated in the work agreement, company regulations, or collective agreement.

According to Article 169 of Law No. 13 of 2003 concerning Manpower, it is explained that employees can request termination of employment from the Labor Market Conflict Committee if the employer takes this action. 2 After termination of employment for the reasons specified in paragraph (1), the employee is entitled to double severance pay, a one-time bonus, and compensation according to regulations. 3 If the contractor does not take the actions specified in paragraph (1) of the labor market dispute mediation body, the contractor's employment contract may be terminated without the decision of the labor market dispute mediation body. The employee concerned is not entitled to severance pay or future bonuses under the regulations.

B. CASE OF TERMINATION OF EMPLOYMENT RELATED TO PREVIOUS RESEARCH

In the research journal "**Juridical Review of Companies in the Implementation of Termination of Employment (PHK) According to Law No. 13 of 2003 Concerning Employment**", written by (Josviranto, 2022), the implementation of termination of employment carried out by companies must be in accordance with Law No. 13 of 2003 Concerning Manpower, which states that termination of employment is carried out in several processes, namely holding deliberations between employees and the company. If there is an impasse, then the final way is through the court to decide the case.

In the research journal "**Legal protection for workers in unilateral termination of employment (a review of Law Number 13 of 2003 concerning employment)**" written by (Kelana, 2022), The implementation of termination of employment (PHK) is a right granted by the government to employers, but still within the limits and conditions stipulated in Law No. 13 of 2003 concerning manpower. Preventive legal protection is carried out through the prevention of violations of workers' rights in layoffs. Repressive legal protection is carried out if there has been abuse of the rights of workers or laborers or unilateral termination of employment relations by employers.

In the research journal "**Juridical Review of the Implementation of Unilateral Termination of Employment (PHK) by Companies According to Law No. 13 of 2003 Concerning Employment**", written by (Maringan, 2015), The implementation of termination of employment by companies must be in accordance with Law No. 13 of 2003 concerning employment, which states that termination of employment is carried out in several processes, namely holding deliberations between employees and the company. If you reach a stalemate, then the last way is through the court to decide the case. As the responsibility of the company for workers who have been laid off where the law requires or obliges the company to provide severance pay, award money, and compensation money.

In the research journal "**The causes of termination of employment by employers against workers are reviewed based on labor law**," written by (Aponno, Axcel Deyong dan Arifiani, 2021), Implementation of Termination of Employment (PHK) in this study aims to determine the causes of termination of employment (PHK) by employers against workers as reviewed under labor law. Termination of employment is regulated in articles 150–172 of Law Number 13 of 2003 concerning Manpower. Termination of employment by employers must comply with the provisions of the law. With this, employers cannot unilaterally lay off workers.

In the research journal "**Juridical Review Regarding the Settlement of Disputes on Termination of Employment**," written by (Charda, 2022), Article 158 of Law No. 13 of 2003 concerning Manpower states that employers can terminate employment relations with workers on the grounds that they have made serious mistakes such as theft, fraud, embezzlement, and immoral acts in the work environment. Therefore, after the decision of the Constitutional Court, there were still terminations due to gross errors. The decision of the Constitutional Court is final and binding; therefore, it must be immediately stated and/or strengthened by the revision of Law No. 13 of 2003 concerning manpower, especially in terms of responding to termination of employment due to serious wrongdoing.

In the research journal "**Juridical Review of Legal Protection of Workers' Rights Due to Unilateral Termination of Employment by Employers Based on Law No. 13 of 2003 Concerning Employment**," written by (Hambali, 2022) This study aims to determine the factors causing unilateral layoffs by employers as well as to find out the form of legal protection for workers due to unilateral layoffs according to Law No. 13 of 2003 (Concerning Employment). The final results of this study indicate that the factors that cause unilateral layoffs are economic factors, factors concerning the employee's personal self, and factors originating from extraordinary circumstances. Factors causing unilateral layoffs are also contained in articles 158–169 of Law No. 13 of 2003 concerning manpower.

In the research journal "**Juridical Review regarding the Provisions for Severance Payments to Workers Who Have Experienced Termination of Employment (PHK)**" written by (Krisnandika et al., 2021), This study aims to identify and analyze the provisions for severance payments to workers who experience termination of employment (PHK). The results of the study show that termination of employment is something that cannot be prevented in an employment relationship between workers and employers. Disputes between workers and employers cannot be avoided in an employment relationship, which results in termination of employment. If layoffs are carried out by employers, they are usually based on several factors, including the company's economy and other factors that cause the work relationship to end.

In the research journal "**juridical review of the implementation of unilateral termination of employment by companies according to law number 13 of 2003 concerning employment (case study of the decision of the Supreme Court of the Republic of Indonesia number 277 k/pdt.sus-phi/2017)**" written by (Andini & Septiani, 2016) Termination of employment may not be carried out unilaterally or arbitrarily because termination of employment occurs for certain reasons that cause the worker to leave the employment agreement and responsibilities as long as he is bound by the employment agreement of the company where he works. However, in its

implementation, there are still many unilateral terminations of employment. The purpose of this study is to analyze the legal protection for workers who are unilaterally terminated by the company and to analyze the judge's consideration of cases of unilateral termination of employment based on Supreme Court Decision Number 277/K/Pdt.Sus-Phi/2017. Based on the research that has been done, it has been found that the legal fact is that unilateral termination of employment is not permitted by the company.

In the research journal **"juridical review of efforts to resolve unilateral termination of employment (PHK) disputes in terms of law number 13 of 2003 concerning employment (study of decision number 141/pdt.susphi/2018/pn bdg)"** written by (Muslihin et al., 2021), The implementation of termination of employment by companies should be in accordance with Law Number 13 of 2003 concerning Manpower, which states that termination of employment is carried out in several processes, namely holding deliberations between employees and the company, if there is a deadlock, and finally, through the court to decide the case. The result of the research is that the decision of the Constitutional Court No. 012/PUU-I/2003 resulted in a decision that basically states the provisions of Article 158 of the 1945 Constitution of the Republic of Indonesia and has no binding legal force. Circular Letter of the Ministry of Manpower and Transmigration Number: SE.13/MEN/SJ-HK/1/2005 It basically regulates two things, one of which is that termination of employment can be carried out after a criminal decision has been made, which has permanent legal force. The judge decides on dismissal due to an error based on the rule that in the event of a layoff of a worker or laborer for reasons of committing a serious mistake as stated in Article 158 of the Manpower Law after the Constitutional Court Decision 12/2003

CONCLUSION

Work relations occur between workers and employers because of a work agreement. Provisions regarding rights and obligations governing employment for workers and employers are regulated in Law Number 13 of 2003 concerning Manpower. In an employment relationship,

of course, there can be a termination of employment. Termination of employment (PHK) is the termination of a work agreement due to something that occurs between workers and employers in fulfilling their rights and obligations. Termination of employment can occur for several reasons: the company performs efficiently; the company closed due to continuous losses for 2 years; the company closed due to force majeure; the company is in a state of postponement of debt payment obligations; and bankrupt companies. Apart from these reasons, it is mandatory for employers and workers to understand the procedural work agreements according to the law. Prevent disputes between employers and workers.

Cases of unilateral termination of employment (PHK) by employers who intentionally do not provide layoff rights as they should make the workers feel disadvantaged. The labor legislation contained in Article 158–169 No. 13 of 2003 concerning Manpower describes in detail all the sequence of regulations that must be obeyed by employers and workers. Deliberations carried out with the agreement of the two parties are governed by statutory law.

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