

Legal Protection for Workers' Rights Due to Termination of Employment in Tangerang Regency

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Abstract

This study aims to analyze the legal protection provided to workers affected by termination of employment (PHK) in Tangerang Regency. The research utilizes an empirical juridical method, which involves examining the application or implementation of normative legal provisions in real-life legal events occurring in society. The legal protection for workers affected by termination of employment is clearly stipulated in the Indonesian Law No. 6 of 2023 concerning the enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, specifically in Chapter IV, Articles 150 to 160. Article 156, That employers are required to provide severance pay, service compensation, and compensation for rights that workers are entitled to receive if their employment is terminated. Several factors influencing legal protection for workers' rights following termination in Tangerang Regency include: the existence of many practices that deviate from labor regulations, often exploited by employers to avoid paying workers' entitlements; lack of knowledge and awareness from both employers and workers regarding their rights and obligations; cultural factors from both workers, employers, and law enforcers; despite the theoretical balance between employers and employees, the practical reality often differs; and the financial capability of companies to meet workers' rights. Proposed solutions include: verification of every employment contract, company regulation, and collective labor agreements in companies operating in Tangerang Regency; fostering better understanding and collaboration between employers and workers (labor unions) as a preventive measure against violations of workers' rights and industrial disputes; regular dissemination of labor regulations to enhance employers' and workers' awareness; government intervention through more adequate regulations, along with strengthened guidance, supervision, and law enforcement.

Keywords: Legal Protection, Workers' Rights, Termination Employment

A. Introduction

Legal protection for workers in the field of labor is crucial in ensuring the fulfillment of workers' normative rights, which must be safeguarded. This legal protection exists to guarantee equality, opportunities, and fair treatment without discrimination, aiming to promote workers' welfare.

According to Article 1, paragraph 3 of Law Number 13 of 2003 concerning

Manpower, a worker/laborer is defined as “any person who works for a wage or other form of compensation.” This article clearly highlights the importance of workers/laborers, who play a vital role as the backbone of companies. Without workers, a company cannot function properly, nor can it contribute to national development. Recognizing that workers are often the weaker party in employment relationships, government intervention is necessary through comprehensive policies aimed at creating fair industrial relations. The government bears the primary responsibility for ensuring social justice, public welfare, and the greatest prosperity for the people.

In the history of labor law in Indonesia, several government policies have been jointly established with legislative bodies in the form of laws and government regulations. These legislative and bureaucratic policies include Law Number 23 of 1948 concerning Labor Supervision, Law Number 13 of 2003 concerning Manpower, Law Number 3 of 1992 concerning Workers' Social Security, Law Number 21 of 2003 on the Ratification of ILO Convention Number 81 concerning Labour Inspection in Industry and Commerce, Presidential Regulation Number 21 of 2010 concerning Labor Supervision, and the latest, Law Number 6 of 2023 on the Establishment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as Law, among others. These regulations reflect the government's efforts to provide legal legitimacy for the protection of workers' rights.

The government's role does not end there, as the ever-evolving nature of labor and the complexity of labor issues must remain a focus of attention. Existing regulations must continue to be monitored to ensure effective implementation. In doing so, the central government must maintain synergy and coordination with local governments to maximize the enforcement of labor laws.

In Indonesia, labor-related legal issues are still prevalent. Many workers continue to face violations of rights that should be granted by their employers. One of the most pressing labor issues is employment termination (PHK). According to Article 1, paragraph 25 of Law Number 13 of 2003 concerning Manpower, “employment termination is the cessation of employment for certain reasons, resulting in the end of rights and obligations between the worker/laborer and the employer.” Employment termination often leads to social inequality due to companies' inability to meet the necessary criteria for such actions. Companies tend to carry out dismissals unilaterally, which inevitably harms workers. Termination of employment is an undesirable event, especially for workers, as it results in the loss of livelihood for themselves and their families.

Amid the challenges posed by the COVID-19 pandemic, many businesses have suffered losses, which have inevitably affected workers. This is in line with the implementation of the Large-Scale Social Restrictions (PSBB) policy aimed at accelerating the handling of the COVID-19 pandemic, as stipulated in Government Regulation No. 21 of 2020. The policy includes restrictions on community activities, which have significantly impacted workers' rights. Due to these restrictions, many companies have been forced to either require employees to work from home or, in some cases, place them on unpaid leave. Additionally, wages have been cut, and

there has been an increase in the practice of unpaid leave, as well as employment termination (PHK).

According to data from the Ministry of Manpower (Kemnaker), 29.4 million people were affected by the pandemic. This figure includes those who were laid off, placed on unpaid leave, or experienced reductions in working hours and wages. Based on data from the Banjarmasin Regency Department of Manpower (Disnakerin), there were 35,196 workers who faced employment termination by 2022. Of these, 8 cases across 4 companies were mediated by Disnakerin, while 91 workers were laid off without mediation.

Given the significant number of workers affected by layoffs during the pandemic, it is important to note that even when employees are terminated, companies are still required to fulfill their obligations to those workers. The rights of employees who have been laid off are regulated under Article 156, paragraph (1) of the Manpower Law, which states, "In the event of termination of employment, the employer is obliged to pay severance pay and/or long service pay and compensation for entitlements that should have been received." Employers must comply with this obligation, and failure to do so may result in criminal penalties, including imprisonment and/or fines, as stipulated in the applicable legislation.

B. Conceptual Framework

1. Legal Protection

Legal protection refers to the actions taken by the law to safeguard every citizen. In other words, it is a manifestation of the law's function, representing a concept in which the law provides justice, order, certainty, utility, and peace. According to Satjito Rahardjo, legal protection is the effort to protect an individual's interests by granting them the power to act in accordance with their human rights. Therefore, legal protection safeguards the human rights of legal subjects based on legal provisions, shielding them from arbitrary actions or as a regulation that protects one entity from another. In this study, the focus is on legal protection for workers' rights in the event of termination of employment to ensure that their human rights remain protected.

2. Workers' Rights

Workers' rights consist of legal regulations and human rights pertaining to the relationship between employees and employers. These rights are typically granted through labor laws. In fulfilling the rights of workers who experience termination of employment, it is essential to recognize that this is also a form of corporate responsibility, which must align with the applicable laws and regulations.

Several amendments have been made to Law No. 13 of 2003 on Manpower, as outlined in Law No. 11 of 2020 on Job Creation. In the case of termination of employment between employers and employees, companies are still obligated to fulfill their responsibilities as the party initiating the termination.

3. Termination of Employment

Termination of employment refers to the ending of a working relationship due to specific reasons, resulting in the cessation of rights and obligations between employees and employers. According to Article 1, paragraph 25 of Law No. 13 of 2003 on Manpower: "Termination of employment is the termination of a working relationship for a specific reason, resulting in the cessation of rights and obligations between workers/employees and employers."

Termination can occur for various reasons, and depending on the cause, it may require an institution to resolve industrial disputes. Termination of employment should not be conducted arbitrarily or unilaterally and must be carried out for valid reasons. Article 151 of Law No. 13 of 2003 on Manpower states the following:

- a. Employers, workers/employees, labor unions, and the government must make every effort to avoid termination of employment.
- b. If all efforts have been made but termination cannot be avoided, the intention to terminate must be negotiated between the employer and the labor union, or directly with the worker/employee if they are not a member of a labor union.
- c. If the negotiations mentioned in paragraph (2) do not result in an agreement, the employer may only terminate the employment relationship after receiving a ruling from an industrial dispute resolution body.

C. Research Methods

To obtain the necessary data in a systematic and focused manner, and to answer the research problems, the following methods were used:

1. Type of Research

Based on the title and the issues discussed in this study, the researcher employed a normative juridical research method. Normative juridical research is a legal study conducted by examining literature or secondary data, which serves as the primary material by reviewing regulations and literature related to the issues being investigated. The main focus of this research is the legal protection of workers' rights in cases of termination of employment.

2. Approach Method

This study uses an empirical juridical approach to solve the problem. Empirical juridical research involves examining the application or implementation of normative legal provisions in specific legal events that occur in society. The juridical approach views the law as norms or "das sollen" (what ought to be), as the discussion of the issues in this study uses legal materials (both written and unwritten laws,

including primary, secondary, and tertiary legal sources). Meanwhile, the empirical approach sees the law as a social or cultural reality, or "das sein" (what is), because this study uses primary data obtained directly from the field.

Thus, the empirical juridical approach in this research combines primary, secondary, and tertiary legal materials (which are secondary data) with primary data collected from the field on the legal protection of workers' rights in cases of termination of employment in Banjarmasin.

3. Types and Sources of Research Data

- a. Types of data, this research uses qualitative data. Qualitative data is collected in the form of words or images rather than numbers. This type of data is gathered through observation, one-on-one interviews, focus groups, and similar methods.
- b. Data sources, this study utilizes both primary and secondary data sources. According to Umi Narimawati, primary data comes from original or first-hand sources.

This data is not readily available in compiled forms or files. The secondary data includes:

- a. Primary legal sources, primary legal materials are authoritative and binding on individuals and society. In this study, primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 11 of 2020 on Job Creation, Law No. 13 of 2003 on Manpower, and Government Regulation No. 37 of 2021 on the Implementation of the Job Loss Guarantee Program.
- b. Secondary legal sources, secondary legal materials are used to support the analysis of primary legal materials. These include law journal articles, books, and articles from print and electronic media related to labor issues.
- c. Tertiary legal sources, tertiary legal materials provide explanations of primary and secondary legal materials, such as legal dictionaries, the Indonesian dictionary, English dictionaries, and encyclopedias.

4. Data Collection Methods

In this study, data was collected using library research and interviews. The library research process began by inventorying positive law and other legal materials relevant to the research problem, followed by a literature review using print and electronic media. The legal materials were then categorized and analyzed.

The interviews involved face-to-face verbal interactions where two or more individuals discussed and directly listened to the information provided. Interviews were conducted openly and freely, using a prepared list of questions (as an interview guide) relevant to the issues being investigated, allowing for spontaneous follow-up questions. The aim of the interviews was to allow informants to freely express their views or those of their group.

5. Data Analysis Method

The analysis of all collected legal materials in this study will be conducted using a qualitative juridical approach. The juridical analysis technique involves interpreting and constructing legal data and linking each piece of data with related legal norms, principles, and rules, using inductive logic thinking from specific instances to general conclusions. The data will then be analyzed qualitatively, leading to conclusions using a deductive method, which produces a general conclusion that addresses the research problems and objectives.

D. Results and Discussion

1. Legal Protection of Workers' Rights Due to Termination of Employment in Banjarmasin Regency

Employment is generally defined as an interaction between two parties: workers and employers. Workers are individuals who work for employers with the aim of receiving wages, while employers refer to either individuals or legal entities who operate a company and provide jobs to workers in exchange for wages. A crucial aspect of employment is the concept of work itself, which is considered a fundamental need for every individual, as it enables them to earn an income and achieve well-being. Within the broader context of societal organization, this implies a focus on the welfare of workers in Indonesia.

Legally, the relationship between workers and employers is based on equality. No one is to be enslaved, oppressed, or subjected to servitude, as these practices violate the principles of Pancasila and the 1945 Constitution of the Republic of Indonesia, which serve as the legal foundation of the country. However, in reality, workers often find themselves in a less-than-equal position. Given the scarcity of job opportunities compared to the number of people seeking work, workers may be forced to accept unfavorable employment terms.

Labor laws are designed to ensure the protection and social justice of workers, who play a key role in the workforce. However, instances of social injustice still occur, one of which is the termination of employment, or layoffs (PHK). According to Article 1, Section 25 of Law No. 13 of 2003, commonly referred to as the Labor Law, termination of employment is defined as the cessation of the employment relationship due to certain reasons, resulting in the end of rights and obligations between the worker and the employer.

Legal protection for workers who experience layoffs is regulated by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, which was later enacted as law. This law, in conjunction with Government Regulation No. 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Time, and Termination of Employment, provides detailed guidelines regarding the mechanisms for layoffs and the procedures following a termination. These regulations are summarized as

follows:

2. Layoff Mechanism

Termination of employment is the cessation of the employment relationship for specific reasons, resulting in the end of rights and obligations between workers and employers. The layoff process includes the following steps:

- a. Employers, workers, labor unions, and the government should make every effort to avoid layoffs.
- b. If a layoff is unavoidable, the employer must notify the worker and/or labor union in writing at least 14 business days before the layoff, or 7 business days if the worker is still in the probation period.
- c. If the worker accepts the layoff after receiving the notice, the employer must report the termination to the Ministry of Manpower and/or the relevant provincial and local government agencies.
- d. If the worker rejects the layoff, they must submit a written rejection with reasons no later than 7 business days after receiving the layoff notice.
- e. In case of a disagreement regarding the layoff, the matter should be resolved through bipartite negotiations between the employer and the worker and/or the labor union. If an agreement is not reached, the dispute should proceed through the industrial relations dispute resolution mechanism in accordance with the applicable laws and regulations.

3. Types of Employment Termination

Employment termination is a critical issue for workers in labor relations. In labor law theory, there are four types of employment termination:

- a. Termination by Operation of Law. Termination by operation of law occurs automatically upon the expiration of a contract between the employer and the worker. For example, in the case of contract-based work, the employment relationship will end when the task is completed. This type of termination does not require any formal declaration or notice period once the contract has expired. It is commonly referred to as "automatic termination by law."
- b. Termination by Employer. Termination by the employer cannot be done unilaterally. If there is a dispute between the worker and the employer, it must be resolved through deliberation or by involving a labor dispute resolution committee.
- c. Employers may terminate a worker's employment based on serious misconduct, including: 1) Fraud, theft, or embezzlement of company property or funds. 2) Providing false or misleading information that harms the company. 3) Intoxication, use, or distribution of narcotics, psychotropic substances, or other addictive drugs in the workplace. 4) Engaging in immoral behavior or gambling at work. 5) Carelessly or deliberately damaging company property, leading to losses for the company. 6) Disclosing company

- secrets unless required for national interest. 7) Committing other acts within the company that are punishable by five or more years of imprisonment (Article 158, paragraph (1) of Law No. 13 of 2003 on Employment).
- d. Termination by Workers have the right to terminate their employment, as they cannot be forced to continue working against their will. Termination initiated by the worker occurs when the worker actively requests to end the employment relationship. The right to resign is inherent to all workers, and no one can be compelled to continue working if they do not wish to. Workers may terminate their employment through voluntary resignation without requiring approval from an industrial relations dispute resolution body. Workers who resign are entitled to compensation as stipulated in Article 156, paragraph (4) of Law No. 13 of 2003 on Employment.
 - e. Termination by court occurs when a civil court grants a request for employment termination, either from the employer or the worker, based on significant reasons. These may include urgent matters or changes in the personal circumstances or assets of the party requesting termination, such that it is reasonable to end the employment relationship. If all efforts to avoid termination fail, the employer and worker or the worker's union must hold negotiations regarding the termination. If no resolution is reached, the employer may submit a written request to the Industrial Relations Dispute Resolution Agency with supporting reasons for the termination request.

4. Factors Influencing Legal Protection for Workers' Rights Due to Termination of Employment in Banjarmasin District and Possible Solutions

Labor law arises from the need to provide protection for parties involved, particularly workers who are seen as the weaker side in employment relationships. This protection aims to achieve social justice among parties that are equal as humans but differ in socio-economic status, wherein workers rely on employers for their income. Social justice in the labor sector is partly realized by safeguarding workers from excessive employer power through legal instruments.

As a rule-of-law state (*rechtstaat*), Indonesia acknowledges that society requires legal certainty and justice to attain welfare. Therefore, fair law enforcement and the protection of human rights are two crucial aspects of establishing the rule of law. Worker protection is mandated in the Preamble of the 1945 Constitution and reinforced by Article 27 paragraph (2) and Articles 28D paragraphs (1) and (2) of the Constitution.

Legally, Article 27 of the 1945 Constitution equates the status of workers with that of employers. However, from a socio-economic perspective, their positions differ, often leading to employers dominating the terms of employment contracts, prioritizing their own interests over those of the workers. Hence, government intervention is necessary to provide legal protection. The objectives of this protection include fulfilling workers' basic rights, ensuring equal opportunities, and providing non-discriminatory treatment.

Labor protection is designed to ensure harmonious employment relations without coercion from the more powerful party. Employers are obliged to adhere to applicable legal provisions. Article 27 paragraph (2) of the 1945 Constitution recognizes every citizen's right to work and earn a decent living. Although there is hope that labor laws will safeguard workers' rights, their implementation in Indonesia remains suboptimal due to various internal and external factors.

Here are some factors affecting legal protection for workers' rights due to termination of employment in Banjarmasin District:

- a. Employment Contracts, Company Regulations, and Collective Bargaining Agreements. In practice, there are still many instances where the rules in employment contracts, company regulations, and collective bargaining agreements deviate from labor regulations, creating loopholes for employers to evade fulfilling workers' rights.
- b. Workers' Organizations/Trade Unions. The role of trade unions in preventing industrial disputes arising from termination of employment has not been fully optimized, resulting in workers' rights not being adequately fulfilled.
- c. Lack of Knowledge and Awareness of Rights and Obligations. The awareness level among employers and workers regarding their rights and obligations is still low, often due to a lack of understanding of legal regulations. Consequently, workers' rights are frequently unmet.

In addition to the above factors, several obstacles hinder the protection of workers' rights:

- a. Regulatory factors despite the existence of numerous regulations related to labor, there are still gaps that allow for violations during implementation.
- b. Cultural factors employers and workers often fail to recognize the importance of each other's roles in the employment relationship. Employers tend to overlook the necessity of protecting workers' interests, while workers may not fully appreciate the employer's role in fostering a healthy work environment. Additionally, law enforcement officials often do not perform their duties optimally.
- c. Imbalance of power between employers and workers, although theoretically, the status of employers and workers is equal, in practice, employers often hold a stronger position, while workers find themselves in a weaker position and are more likely to accept the terms proposed by employers.
- d. Companies' ability to fulfill workers' rights, some companies face limitations, particularly financial ones, that prevent them from meeting workers' rights, such as failing to enroll workers in social security programs like Jamsostek or BPJS.

To address the aforementioned issues, the following alternative solutions are proposed:

- a. Verification of agreements conduct a thorough verification of all employment contracts, company regulations, and collective bargaining

- agreements within companies in Banjarmasin District. This is expected to reduce deviations from established rules by employers.
- b. Training for employers and workers, implement training programs for both employers and workers (including trade unions) as a preventive measure against the non-fulfillment of workers' rights, thereby helping to prevent industrial disputes.
 - c. Regular socialization of labor regulations, organize periodic socialization of labor regulations to enhance the understanding of both employers and workers. Collaborate with BPJS Kesehatan (Health Social Security) and BPJS Ketenagakerjaan (Employment Social Security) to increase participation in these programs, protecting workers from risks associated with their jobs.
 - d. Government intervention for fair employment relations, to establish equitable employment relationships, government intervention is necessary. This includes creating more adequate regulations, enhancing supervision, and improving law enforcement. Legal protection should be provided to ensure workers receive their rights. The government must consider the interests of all parties involved in employment relationships equitably to provide fair protection, thus maintaining a healthy employment environment.
 - e. Judicial consideration of employment issues, in cases of employment disputes, judges should not base their decisions solely on contracts, which stem from freedom of contract and consensual agreements. They must consider the alignment of all principles within contract law to achieve protection and justice for all parties involved.
 - f. Understanding rights and obligations, all parties involved in employment relationships should fully understand and uphold their rights and obligations. Employers must make genuine efforts to protect workers' interests, recognizing the crucial role workers play in business operations. This includes providing training, guidance, and oversight related to their work. It is also essential to prioritize workplace safety and health by providing personal protective equipment, such as masks and ear protection, as well as ensuring adequate health protections like maternity leave, breaks, and annual leave, alongside fair compensation.

Conversely, workers must also clearly understand their responsibilities. Workers are essential to employers, and without them, the employment relationship loses its significance. Employers also require legal protection due to their role as job providers and economic drivers. Both workers and employers are interdependent; therefore, the rights and obligations of each must be fairly protected to maintain a healthy and effective employment relationship.

E. Conclusion and Suggestions

1. Conclusion

Based on the research findings addressing the legal protection of workers' rights in the event of termination of employment in Banjarmasin District, the author concludes the following:

- a. Foundation of labor law is rooted in the idea of providing protection for the parties involved, particularly workers as the weaker party, and promoting social justice in employment relationships characterized by significant similarities and differences. One way to achieve social justice in the labor sector is by safeguarding workers against the unchecked power of employers through existing legal frameworks.
- b. Legal protection for workers' rights. The protection of workers' rights in the event of layoffs is clearly outlined in the Republic of Indonesia Law No. 6 of 2023, which ratifies Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation. This is specified in Chapter IV, Articles 150 to 160. Article 156, Paragraph (1) of Law No. 6 of 2023 mandates employers to provide severance pay, including a financial reward (service pay), and to compensate workers for any rights they should have received upon termination.
- c. Factors affecting legal protection. Several factors influence the legal protection of workers' rights following termination in Banjarmasin District, including the prevalence of practices that deviate from labor regulations, which often allow employers to neglect their obligations to workers. The existence and role of trade unions have not been optimized, impacting the fulfillment of workers' rights. Additionally, there is a lack of knowledge and awareness among both employers and workers regarding their rights and obligations. Other factors include regulatory issues, cultural aspects concerning workers, employers, and law enforcement. Although theoretically balanced, the positions of employers and employees differ in practice, as does the capacity of companies to fulfill workers' rights.
- d. Recommendations for improvement to address these issues, it is necessary to verify all employment contracts, company regulations, and collective bargaining agreements within companies in Banjarmasin. Training for employers and workers (including trade unions) should be implemented to prevent the non-fulfillment of workers' rights, thereby avoiding industrial disputes. Regular socialization of labor regulations is essential to enhance understanding among employers and workers. Collaboration with BPJS Kesehatan and BPJS Ketenagakerjaan should be pursued to boost participation in these programs, protecting workers from risks associated with their jobs. Government intervention is crucial in establishing more adequate regulations, enhancing training, supervision, and law enforcement. In cases of employment disputes, fair resolution should be prioritized. All parties involved in the employment relationship must comprehend and properly fulfill their rights and obligations.

2. Suggestions

Based on the results and conclusions regarding legal protection for workers, the following suggestions can be recommended:

- a. Harmonious relations between government and employers. The government and employers should establish harmonious relationships in labor relations, recognizing their mutual dependence. Additionally, all parties should understand and adhere to their obligations according to applicable regulations. The government should also provide more adequate regulations and improve training, supervision, and law enforcement in the labor sector.
- b. Promoting workers' awareness of rights it is essential to cultivate a culture among workers that encourages them to understand their rights and obligations while employed. Workers should also be educated about legal protections available to them, enabling them to advocate for their rights if they do not receive the necessary protections.

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