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# Legal Certainty for Companies That Unilaterally Terminate Employment Relations to Workers

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**Abstract:** In this study, we have discussed legal certainty for companies in carrying out the process of unilateral termination of employment relations against workers. This study applies a normative juridical research method with the approach taken, namely the legislative and conceptual approaches. This study explains the procedure for legal termination of employment, as well as aspects of legal certainty, especially for companies, and also explains the impacts such as legal and economic impacts of termination disputes. The results of this study prove that there is legal certainty for companies that can be accepted based on compliance with the legal termination procedure, namely by bipartite negotiations, mediation, and fulfillment of legal requirements according to the reasons for termination. The company has the right to validate the reasons for termination of employment and has legal protection in the industrial relations court.

**Keyword:** Employment Termination, Legal Certainty, Companies, Industrial Relations Disputes.

## INTRODUCTION

In essence, we as humans must have our own needs, be it clothing, food, or board and other basic needs. In order to achieve these desires, of course, an effort is needed. The business can be done by establishing a business or business, in addition to working under a certain company. This is of course done in order to get income to meet desires or needs, both basic and non-basic. People who have worked under the company are also called workers. If you focus on workers, workers themselves are individuals who work as the backbone of the company, because if there are no workers, it will be difficult for a company to run its business (Ony Rosifany, 2019).

Workers in general will be given wages for their work in the form of money. Wage can be interpreted as something that is the right of the worker as a form of remuneration for the work carried out, besides that wage is also interpreted as a reward given by the employer to the worker directly, the provision of the wage can be based on the work performance of the worker which can be measured using a certain unit (Idris & Nikmah, 2023). So it can be said that the

better the performance of workers who work in the company where they work, the greater the chance for the worker to get wages. Everyone who has the opportunity to work will always want income from their work to finance their own lives or provide for their families.

In reality, in the world of employment, there are still people who face difficulties when looking for or getting a job, and it can also be seen that there are still many of them who have tried to register themselves where they want to work but are rejected for certain reasons. If we talk about every individual who has a job opportunity, it must have been thought that their life will always be prosperous, this is certainly interpreted as something that cannot be ascertained in reality, because in reality in our own country, namely Indonesia, there are still many treatments that are felt unfair to workers, namely cases of termination of employment (PHK). Layoffs, especially in Indonesia, are a form of phenomenon that cannot be ignored, because this phenomenon is popular until now.

In Indonesia alone, cases of layoffs have been recorded as many as more than 300,000 (three hundred thousand) from around 40,000 (forty thousand) companies. The data is based on the Ministry of Manpower which has been released in 2020 (Paramita et al., 2024). Based on this phenomenon, of course, the aspect of justice or welfare is very crucial for workers who experience it. Basically, in the world of employment, a work activity can be categorized as industrial relations. This relationship is a relationship between parties who have an interest in the process from production to service of goods and services in a company. Parties with these interests include entrepreneurs as shareholders, workers, the community and many more (Nida Nafisa, 2022). Industrial relations must be well maintained, because by maintaining industrial relations, harmonious industrial relations can also be created.

The harmony of the relationship can create a good work environment. As is known, layoffs are a form of disharmonious industrial relations. Actually, phenomena such as layoffs can be minimized if the parties, both employers and workers, have a good understanding of what the meaning of industrial relations is harmonious. Harmonious industrial relations can be created if each party is willing and willing to apply it in the world of employment. If we look back at the previous understanding of the termination of employment, it can be seen that the rights and obligations of workers and employers who were initially integrated will simply end. Workers are entitled to their rights such as severance pay, service period awards and also compensation based on applicable regulations, then the employer no longer has an obligation to the employee to provide work and pay wages because the employment relationship has ended.

The phenomenon of termination of employment can be caused by reasons such as due to gross violations, efficiency from the company and other reasons. The phenomenon of termination of employment relations arises through a termination process that can be categorized as an act of terminating employment relations for certain reasons. From the termination act, both the rights and obligations of workers and employers or employers have also ended. The understanding of the termination of employment is contained in Article 1 paragraph (25) of Law Number 13 of 2003 concerning employment. .

Employers in deciding on a unilateral termination of employment relationship with their workers also have various or different reasons. An example of this reason is a difficult economy or finance, with the difficulty of the economy causing the company to go out of business. The existence of this phenomenon has a direct impact on the unilateral termination process carried out by the company (Nikodemus Maringan, 2015). Of course, if a company has experienced difficulties in terms of finances, then the company or employer will also have difficulties when it wants to provide wages to its workers. Because of this problem, as a company or employer has a decision that inevitably has to be made, namely by terminating the employment relationship of its workers.

Apart from the difficult economy, there are also reasons for dismissal due to the employer's dissatisfaction with the performance or work results of workers working in their company,

because if workers do their work not optimally, it will be detrimental to the company where they work. In addition to the two reasons for dismissal, termination or termination of employment relations with workers can also be efficient as the reason (Rizki & Imam, 2021). Efficiency is a step that can be applied by employers to workers. Employers who have carried out the process of terminating their workers for reasons of efficiency must be because the company has a special purpose, namely to minimize the burden in the company. With this reduction in burden, of course, the company that terminates the employment relationship can still run a business within the company as it should.

The occurrence of worker reduction during a global crisis by employers is also an act of termination of employment using efficiency reasons. But when you want to terminate the employment relationship for these reasons, it cannot be said to be a violation of the rules, it should be noted that although the process of terminating the employment relationship for reasons such as efficiency is legally justified, but when the termination of employment is carried out in real terms, the employer must fulfill what are the rights of the employee or labor, who has faced the phenomenon of termination of employment.

In fact, there is still a problem related to legal certainty for a company that carries out the termination process. Talking about legal certainty, of course this certainty has a meaning, namely a guarantee that the law is implemented later that the existence of the law can obtain rights and the implementation of the decision. Then legal certainty is also interpreted as a protection for those who seek justice because of arbitrary treatment. With this protection, a person can get something that is hopeful in certain conditions. The certainty of the law grammatically starts from the word definite which has a fixed and definite meaning. Legal certainty is a provision prepared by the state, in which case the state has the ability to submit guarantees to the rights and obligations of each citizen (Siti & Fakhurrahman, 2021).

When there is a termination process, legal certainty is needed, especially for companies. This can be said, because it can have a direct effect on business and legal protection when making decisions carried out by companies. When the termination process is carried out, especially unilaterally by the employer against its workers for certain reasons such as efficiency, dissatisfaction with the performance of workers, even though it is in accordance with the rules or laws, but still often faces legal challenges due to different or different interpretations. There are often lawsuits regarding termination of employment in industrial relations courts (PHI).

Companies that carry out the process of terminating employment according to legal procedures are a form of legal certainty for the company. A valid termination procedure can be used as legal certainty for the company, because as a legal basis for the actions of the company itself, it can then provide protection for the company from illegal lawsuits, and of course can be avoided from legal disputes. There are various types of termination procedures that inherit legal certainty. Starting from bipartite negotiations between employers as well as workers. If the negotiation does not reach an agreement, then the termination process can be carried out through other steps such as mediation or other stages relevant to the method of resolving industrial relations disputes.

Another aspect of legal certainty for companies arises when they execute employment termination processes based on legally justified grounds. These grounds include corporate separation, employer's unwillingness to retain workers, implementation of efficiency measures followed by company closure due to financial losses, company closure after experiencing consecutive losses for two years, closure due to force majeure circumstances, companies that have defaulted on or postponed debt payment obligations, bankruptcy, worker requests due to abuse or threats by employers, and decisions from industrial relations dispute resolution institutions that prove employers were not involved in cases of abuse or threats against workers. Legal certainty in these circumstances provides companies with a clear framework for legitimate termination actions while ensuring procedural fairness.

Legal protection extended to companies encompasses fundamental rights such as the right to present evidence validating employment termination and the right to self-defense in industrial relations courts, which constitute essential aspects of legal certainty for businesses. Companies possess the right to defend themselves in industrial relations courts, as they may face potential lawsuits from workers who believe their rights were violated following employment termination. To preempt such situations, companies can implement preventive measures before any legal claims are filed, thereby avoiding industrial relations disputes. These preventive measures include effective approaches to communication, socialization programs, and appropriate incentive structures for their employees. As Khrisnu et al. (2021) argue, such proactive approaches are designed to foster workers' understanding of the company's circumstances and operational context.

Employers in the company when carrying out legal termination procedures will get legal certainty, but if in the process of termination of employment there has been a dispute, it will have a bad impact on the company's economy, such as legal fees, namely when paying for legal consultations, fees for lawyers during the trial, the possibility of being sanctioned in the form of fines that must be paid. In addition, if they are required to pay compensation in the form of workers' rights, such as severance pay, service period award money, and compensation money. The company becomes unproductive, with the unproductivity of the company, there is the potential to lose quality workers. The occurrence of disputes can also cause the company's reputation to decline. The discovery of such a case can occur because of the wrong interpretation of the worker. Therefore, a company that implements a valid termination procedure will make a company have legal certainty. The implementation of legal termination procedures aligns with the principles of restorative justice as outlined by Wala (2024), which emphasizes achieving balance and fairness between parties. In employment termination cases, this means ensuring that both company and worker interests are protected while maintaining legal certainty. The concept supports three fundamental legal principles justice (keadilan), benefits (kemanfaatan), and legal certainty (kepastian hukum) - which are essential in proper termination procedures. When companies follow established legal procedures for termination, they uphold these principles while protecting their legitimate business interests. This approach helps minimize disputes and supports harmonious industrial relations.

## **METHOD**

The type of legal research that has been applied is normative juridical research. In this study, written sources and secondary information are analyzed. Normative legal research examines written sources or secondary information (Iman et al., 2023). The research approach applied to this study is the Statute Approach and the conceptual approach. The legislative approach is by studying the Law on Employment, and also the concept of legal certainty. The legal materials applied are Law Number 13 of 2003 concerning employment, and regulations relevant to industrial relations. Then secondary legal materials used such as journals, law books that have relevance to employment, as well as tertiary legal materials with the use of related online articles. The technique of analyzing legal materials with qualitative descriptive analysis, because this study provides a special overview of legal conditions, analyzes regulations in detail, and also interprets legal data exploratory. Then the technique applied in drawing conclusions by applying the deductive method, namely by drawing a conclusion from the general to the specific.

## **RESULTS AND DISCUSSION**

### **Analysis of the Legal Termination of Employment (PHK) Procedure**

The procedure regarding the legal termination of employment is carried out by the company when the company has taken over or separated the company, so that the employee can no longer

continue an employment relationship, then there are other reasons that can be categorized as a reason for legally terminating the employment relationship from the company. The reasons for the termination can be because the company is doing efficiency to cause the company to close and until it has suffered losses for two years continuously, the company is in a condition that is forced to close, the company is in a condition of having debts and has postponed its obligations, the company is bankrupt. The reasons explained can be used as a legal certainty for the company when terminating its employees.

In Indonesia, based on the employment aspect, the termination process is a sensitive action felt by workers. This action has legal consequences, the existence of an act of termination of employment cannot be just done just or carelessly. Such termination action must be based on the correct mechanism, and must be on legally acceptable grounds as described in the preceding paragraph. By following the disconnection procedure properly, good industrial relations will also be created and of course harmonious. And the rights owned by workers have also been protected. However, ideally, termination of employment is avoided as much as possible by companies and workers. It is sought before the termination of employment, both parties must prevent it by negotiating or deliberating.

The procedural stages carried out together can provide good benefits, namely to overcome disputes in industrial relations. The procedural stage can be achieved by the implementation of bipartite negotiations, this negotiation in the settlement of industrial relations disputes has the purpose of resolving problems that occur between companies and workers. Bipartite negotiation is a negotiation carried out between workers and employers or employers to resolve a dispute in industrial relations. Then there are other procedural stages, namely mediation, especially mediation in industrial relations. Mediation is a step to resolve problems or disputes about rights, interests, to disputes in the process of termination of employment and disputes between workers in the company, mediation is carried out through deliberation involving a mediator who certainly has a neutral nature.

A mediator who has a neutral nature is part of an industrial relations mediator. This mediator is an employee of a government agency, the mediator has a responsibility that cannot be missed when facing cases related to the field of employment. A mediator is obliged to fulfill the conditions as a mediator that has been determined by the Minister, namely to carry out mediation duties and to carry out obligations by giving written recommendations to both parties to a dispute or disagreement. The purpose of giving him this recommendation is so that disputes over rights, interests, termination of employment, and disputes between workers in the company can be resolved peacefully and can produce a good and useful solution for each party. The process of terminating the employment relationship carried out by the company must meet the legal requirements. With the implementation of these conditions, the company can carry out the process of terminating employment relations for its workers. This legal term or provision, namely if the worker is still in the probationary stage, is sufficient with evidence in the form of a bipartite process or a negotiation process carried out between the worker and the employer or employer to overcome a dispute in the relationship, especially industrial, then the mediation process or steps to resolve problems or disputes about rights, interests, disputes in the process of termination of employment. Then if it is known that the worker has committed a criminal act, then the conditions for termination of employment are sufficient with evidence in the form of criminal proceedings such as the police to the district court, it can also be with a criminal verdict that has permanent legal force.

There are other legal requirements for termination of employment, such as the need for a death certificate. This requirement is needed for workers who have passed away. Then for workers who have retired, the legal condition for termination of employment, namely the retirement age that has been set by the company, the employee is also the reason for termination of employment and the condition for termination, namely by proving that the employee is absent

from work for 5 (five) consecutive days without reason or notice. And the reason for the termination of the employment relationship is because the worker has been known to have made a mistake or mistake by accusing the company of committing an act that violates the Law, the legal condition for the termination of employment is in the form of a decision from the industrial relations court (PHI). Therefore, the company can carry out termination of employment if it is followed by complying with the legal terms or conditions of the termination (Herman et al., 2020).

### **Legal Certainty for Companies in Carrying Out Termination of Employment**

Termination of employment because based on the time that has been stipulated in the agreement, as well as based on the reasons specified in the laws and regulations should not cause a dispute between the two parties, both the employee and the employer or employer. Because it is also necessary that the worker has understood and agreed from the beginning at the time of making a work agreement. Therefore, with the worker's knowledge of this, the worker should be able to accept the termination of employment imposed on him. In contrast to termination of employment that is carried out unilaterally or without the consent of both parties, it will definitely cause a problem or legal dispute. But not only because unilateral termination of employment can cause a legal dispute, but termination of employment that has been stipulated in the agreement can also cause legal disputes, this is due to wrong interpretation or lack of knowledge of workers. If there has been a dispute between the two parties, then legal certainty is needed, especially for the company.

The existence of legal certainty is one of the important aspects in terms of wanting to protect the company from disputes over termination of employment. An important aspect is a clear law or regulation and one related to the termination procedure. The law on labor is an important aspect of this legal certainty. Because in the Law the rights and obligations of both workers and employers or employers have been regulated. The termination process must go through the steps that have been determined, including by giving a warning letter and also giving the worker the opportunity to carry out repairs. Because by considering these two things, the risk of disputes in the future will be avoided. By holding a system such as mediation that has been described earlier, it will also provide an opportunity to resolve disputes efficiently. Because with the mediation and if the mediation process is successful, the company does not have to encounter a long and certainly expensive legal process.

The company also has the right to prove the reason for the termination of employment. Such as proving that the employee who has been known to have violated the agreement, regulations and collective bargaining agreement. Then workers who have resigned peacefully, then the company with its rights according to labor regulations, cannot provide severance pay up to the service period award money, but the worker is entitled to receive compensation money (Sokhib et al., 2022). However, even if the company has the right to prove the reason for the termination, the company must comply with all existing principles of fairness, such as by providing relevant documentation such as a warning letter. This is done by the company so that disputes do not arise. The existence of legal sources can also prove that the company carried out the termination process legally.

In addition to the company having the right to prove the reason for the termination of employment, the company also has the right to obtain the company's legal protection at the industrial relations court (PHI). This legal protection is very important, because it can ensure whether the termination of employment has been carried out in a good and fair way and in accordance with existing regulations. The industrial relations court itself is a special court in the general judicial environment, the court has the authority to adjudicate and resolve disputes or problems related to industrial relations (Yani Nur Fatimah, 2015). In the court, the company has the right to prove any reasons for termination of employment, as well as the company can

show if the procedures contained in the laws and regulations have been complied with. In addition to legal protection in the form of submitting arguments, the company also has the right to call witnesses.

### **Legal and Economic Impact of Termination Disputes**

Disputes or disputes in termination of employment can have an impact on the economy for the company. Based on the legal aspect, if the company cannot prove the legitimate reason for the termination of employment, it will be at risk of lawsuits, then have to pay severance pay, compensation money, or even administrative sanctions. Of course, these costs are not small and certainly become a burden for the company. In the economic aspect, disputes related to termination of employment can damage the reputation of the company itself to the most serious is that it can reduce the confidence of investors or investors in the company. Then the company is also likely to face a number of operational disruptions due to legal uncertainty. Therefore, companies must always be careful when carrying out the process of terminating their workers and must always obey the applicable rules. This is to avoid industrial relations disputes. And to avoid any adverse impact on the company's economy due to disputes, employers and workers with all their efforts try to avoid termination of employment.

In the condition of unilateral termination of employment, the impact or influence of the law or the economy faced by the company is indeed severe. Based on Article 156 in Law Number 13 of 2003 concerning employment, especially in Article 81 paragraph (44) which has been amended into the Job Creation Law. It has been explained that a company that carries out a unilateral termination of employment without a valid reason based on the regulations, the company is required to pay severance pay which is nominal twice the existing provisions, then in addition to severance pay, the company must also pay a one-time service period award money, and must pay compensation money based on applicable provisions or rules. This large amount of compensation will provide a financial burden for entrepreneurs.

Then it can be explained that according to data from the Ministry of Manpower in 2022, the cost of compensation due to unilateral termination of employment on average reaches around 20 times the monthly salary of the worker. In addition to finances, unilateral termination of employment can also result in disputes that cause indirect losses for entrepreneurs in the company. In addition, based on research from LIPI or Indonesian scientific institutions in 2021, it has been recorded that companies that are dragged into unilateral termination disputes have faced a decline in productivity during industrial relations disputes.

### **CONCLUSION**

A valid termination procedure is a basic foundation for companies. The procedure has consisted of systematic stages such as bipartite negotiations, mediation to dispute resolution through the industrial relations court. Compliance with these procedures can be used as the key to avoiding or overcoming industrial relations disputes and can ensure the legality of the company's steps. The existence of legal certainty for the company when carrying out the termination of employment can be created if through aspects such as the clarity of laws and regulations regarding employment, the right of the company to validate the reasons for the termination of employment, the existence of legal protection for the company in the industrial relations court, and the opportunity to carry out settlement with mediation. This legal certainty is not only a tool of protection for the company, but can also be a good thing to create a harmonious employment relationship, then it can also create a balance for the employer when carrying out the termination of employment and also regarding the protection of workers' rights must be maintained through compliance through existing procedures.

Legal and economic aspects that have a direct impact on the company when an industrial relations dispute occurs, namely the obligation to pay multiple compensation, must pay for all legal consultation processes carried out, until the impact of the company's reputation decline.

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