

**TERMINATION OF EMPLOYMENT RELATIONSHIP BASED ON LAW  
REGULATION NUMBER 11 OF 2020 CONCERNING EMPLOYMENT  
CREATION**

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**ABSTRACT**

*The study aims to examine/analyze legal protection for workers/laborers for termination of employment (PHK) due to Force Majeure experienced by the company. The research method used in this proceeding uses normative juridical research methods, namely research that is focused on examining the application of norms or norms in normative law, namely an approach that uses the positivist conception of legis. This concept views law as identical to written norms made and promulgated by authorized institutions or officials. The conception views law as a normative system that is independent, closed, and detached from the real life of society. Based on the research results about Termination of Employment (PHK) due to Force Majeure from the Covid-19 Virus pandemic, many private companies have used it so many have terminated their work relationships so that workers/laborers lose their daily livelihood for themselves and their families. The need for legal protection for the rights of workers/ laborers affected by layoffs is clarified to provide legal certainty. So that there will be no more Termination of Employment experienced by workers/laborers, and also employers take the opportunity to cheat in this situation.*

**Keywords: Labor rights, termination of employment, Force Majeure**



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**INTRODUCTION**

The establishment of an omnibus law was first conveyed by President Joko Widodo in his first post-inauguration speech in his second term as President of the Republic of Indonesia at the General Assembly of the People's Consultative Assembly (MPR) on October 20, 2019. President Joko Widodo invited the People's Representative Council (DPR) ) to discuss major laws, including the Taxation Law, Job Creation, and the Law on Empowering Small and Micro Medium Enterprises (MSMEs).

President Joko Widodo interprets and explains that the omnibus law is "One law which simultaneously revises several laws, even dozens of laws." Then on October 5, 2020, the DPR ratified the Draft Job Creation Act into law, and the ratification caused multiple reactions in the community. However, on November 2, 2020, President Joko Widodo signed this Law as Law Number 11 of 2020 concerning Job Creation, called the Omnibus Law (Rofikoh, 2021).

Omnibus Law is taken from the words Omnibus and Law. Omnibus itself comes from the word "Omnis" in Latin which means "all" or "many." While the meaning of Law is "law" it can be concluded that Omnibus Law is a law that regulates all things in a field (Jatmika, 2020).

In the era of globalization as it is today, the problem of human resources (labor) in a company demands more attention, because no matter how sophisticated the technology used in a company and no matter how much capital the company plays, labor is still the most important asset in the company's life because, without employees, equipment and capital cannot be used optimally. Labor is one of the main elements in a working system, so labor is still very much needed by every company (Kansil, 1989).

Everyone has the right to get a job, so that he can meet the needs of his life and his family As the 1945 Constitution Article 27 Paragraph (2) states that: "Every citizen has the right to work and a decent living for humanity."

The termination of employment through the agency, of course, reasons social effects that bring about disputes among the agency and the group of workers so a truthful system is wanted withinside the shape of policies so that employees get safety in addition to their rights as consistent with the relevant law.

Employers terminating their workers' employment relations are generally carried out arbitrarily because workers are considered not to know the regulations regarding termination of employment which in the end workers accept the Termination of Employment (PHK) unilaterally, and are reluctant and disappointed.

The existence of these rights and obligations arises after the agreement between the entrepreneur and the worker is stated in the work agreement. The rights and obligations between one party and another are the opposite. If on one side it is a right, then it is an obligation on the other side (Soepomo, Poerwanto, & Rachmat, 1987).

In the amendments to the Manpower Law, it turns out that the Job Creation Law should be able to provide additional protection for workers but reduce it.

Society in general expects a benefit in the implementation of the law. The law is present in society and must be able to provide a benefit or use. Do not let the law be implemented even cause unrest in the community itself (Mertokusumo, 1919). Bentham also argues, quoted by Mohammad Aunurrohim, that a new law can be recognized when it provides the greatest benefit to as many people as possible (Aunurrohim, 2015). Similarly, John Stuart Mill said that an action or policy is considered right when it prioritizes blessedness, and wrong if it tends to undermine happiness (Leback, 2015).

## RESEARCH METHOD

The type of research used to prepare the Proceeding is normative legal research. In the approach to problems in this normative juridical research, the authors choose to use a statutory approach (statute research) (Anggono, 2020).

The source Materials used in this study are primary legal materials and secondary legal materials. This study uses Primary legal materials, namely legal materials obtained from statutory regulations including the 1945 Constitution of the Republic of Indonesia, the Civil Code ([Burgerlijk Wetboek](#)), Law Number 13 of 2003 concerning Manpower, Law Number 11 of 2020 concerning Job Creation, Law Number 2 of 2004 concerning Settlement of Industrial Relations.

The analysis of legal materials is carried out qualitatively to find answers that can be scientifically justified, namely by analyzing the applicable legal principles and statutory regulations.

## RESULT AND DISCUSSION

### **Company Liability due to unilateral termination of employment (PHK) based on the Job Creation Law Number 11 of 2020**

In the world of employment, the problem that still occurs is the unilateral termination of employment (PHK). Based on the results of interviews conducted by researchers with three research sources, it can be seen that the reason the company laid off research sources was because of the COVID-19 pandemic which resulted in a decrease in the company's income level and the company was unable to pay all employee salaries. To keep the company running, the company was forced to lay off several new employees and elderly employees ([Cakranegara & Rahadi, 2020](#)).

The Job Creation Law Number 11 of 2020 explains the protection for employees and individual communities. In the Job Creation Law Number 11 of 2020, the Government creates strategic policies through the job creation law which aims to: (1) Increase business and investment activities (2) Protect and strive for the welfare of the workforce (3) MSMEs are empowered and protected (4) Improving national strategic projects and strategic projects ([Catur et al., 2020](#)).

The Job Creation Act is considered to balance the rights between permanent workers and contract employees, both contracted from companies and outsourcing (outsourcing) because it is considered a form of the business relationship. Workers/or laborers have basic rights that are inherent and protected by the constitution through the 1945 Constitution of the Republic of Indonesia Article 27 paragraph (2).

This is in line with Law Number 11 of 2020 which also explains the purpose of layoffs from a company, agency, or organization. Article 151 (2) of the Manpower Law which is amended into the Copyright Law explains that "If the

termination of employment is unavoidable, the purpose and reason for the termination of employment shall be notified by the employer to the workers/laborers and/or trade unions/labor unions."(Wibowo, Dermawan, & Sudiro, 2022)

Based on the results of the research and discussions that have been carried out, the researchers concluded that the reason the company laid off employees during the COVID-19 pandemic was due to Force Majeure or circumstances that were against the will of the company/worker/trade union/state/community, as well as for reasons. In this study, force majeure was due to the COVID-19 pandemic.

The company has also explained why it was forced to do layoffs, but the company does not provide efficiency to employees. The company has also provided salaries to employees according to the employee's performance. So the company's responsibility to employees who have been laid off during the COVID-19 pandemic under Law Number 11 of 2020 concerning employees who have been laid off (Abdullah, 2014).

### **Workers' Right Acquired as a result of Layoffs Based on Job Creation Law**

The role of the workforce is crucial to the protection of workers is necessary to guarantee the primary rights of workers/laborers and ensure equal opportunity and treatment without discrimination on any basis to realize the welfare of workers/(laborers (Sutedi, 2011).

Under the provisions in Article 81 of the Job Creation Law which amends the provisions of Article 88 of Law Number 13 of 2003 concerning Manpower (Labor Law), it is determined that the rights of workers, including PKWT workers, include a decent living and wages. In addition, in a derivative regulation of the Job Creation Law, namely Government Regulation Number 35 of 2021 concerning PKWT, Outsourcing, Working Time and Rest Time, and Layoffs (PP PKWT), it is stipulated that other rights that employers must give to PKWT workers are rights on severance pay.

The JKP is organized by the Social Security Administering Agency ("BPJS") for Manpower and the central government, and employers are required to include workers as participants in this JKP program. The right to obtain these JKP benefits can be lost if the worker; (a) Not submitting a claim for JKP benefits for 3 months after the layoff; (b) has found a job; or (3) died (Pratiwi, 2022).

### **Legal Efforts That Can Be Done for Termination of Employment**

#### **1. Legal efforts for settlement of Industrial Relations disputes**

To resolve industrial relations disputes, the Law has provided an alternative settlement, namely as regulated in Law no. 2 of 2004. The procedure for settling industrial relations disputes can be settled out of court (non-litigation) and through court (litigation). Settlement of industrial relations disputes out of court can be carried out through the agreement of bipartite negotiations and tripartite negotiations (mediation, conciliation, arbitration). Meanwhile, the settlement of industrial relations disputes through the Court is carried out at the Industrial Relations Court (hereinafter abbreviated as PHI).

## 2. Settlement of Non-Litigation Industrial Relations Disputes

- a. Settlement Through Bipartite Negotiations. The provisions of Article 1 number 10 of Law no. 2 of 2004 stipulate that "Bipartite negotiations are negotiations between workers/ laborers or trade unions/ labor unions and employers to resolve industrial relations disputes." Bipartite settlement in the literature on Alternative Disputes Resolution (ADR) is referred to as a negotiated settlement.
- b. Settlement Through Mediation. Settlement of industrial relations disputes through mediation is carried out if the bipartite negotiations fail to reach an agreement between the disputing parties to make peace. Based on Article 1 number 11 of Law no. 2 of 2004 states "Industrial Relations Mediation, hereinafter referred to as mediation, is the settlement of disputes over rights, disputes over interests, disputes over the termination of employment, and disputes between trade unions/labor unions within one company only through deliberation mediated by one or more neutral mediators".
- c. Settlement Through Conciliation. Article 1 number 13 of Law no. 2 of 2004 stipulates "Industrial Relations Conciliation, hereinafter referred to as conciliation, is the settlement of disputes of interest, disputes over the termination of employment, and disputes between trade/labor unions in only one company through deliberation mediated by one or more neutral conciliators".
- d. Settlement Through Arbitration. Settlement of industrial relations disputes through arbitration is generally regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration is provided for in the Act. No. 2 of 2004 is a special regulation for the settlement of disputes in the field of industrial relations which applies the principle of *lex specialis derogate legi generalis*.
- e. Settlement through the Industrial Relations Court. Problems regarding industrial relations disputes occur very often and the problems faced are increasingly complex, for this reason, a special court is needed to examine, perceive, and decide on industrial relations disputes. The Industrial Relations Court is a special court within the general court environment which was present after the promulgation of Law no. 2 of 2004.
- f. Through the Supreme Court. The Industrial Relations Court does not stipulate legal remedies for Appeals so that after the judge decides on the case of the Industrial Relations Court, a Cassation is immediately submitted to the Supreme Court within 14 days after the verdict is read by the panel of judges in the trial or from the date of notification of the decision (Thaib & Nofrial, 2019).

## CONCLUSION

The form of corporate responsibility after unilaterally terminating employment relationships (PHK) to workers is under the Job Creation Law Number 11 of 2020 which explains that the victims of layoffs due to efficiency and Forge Maejure do not receive 2-fold severance pay. The form of accountability is to provide salaries by the performance of the workers/employees.

Termination of Employment (PHK) has a basic setting contained in Article 151 of the Job Creation Act. The article discusses ways to carry out Termination of Employment (PHK). The exception regarding Termination of Employment (PHK) is contained in Article 153 of the Job Creation Act. Termination of Employment (PHK) also has various reasons contained in it, so that Termination of Employment (PHK) can be carried out if it is not carried out unilaterally and is detrimental to the workers/laborers.

Legal protection regarding unilateral Termination of Employment (PHK) has been regulated in Article 153 of the Employment Creation Law, which in the case of termination of employment, employers have a prohibition on terminating employment (PHK). Unilateral termination of employment (PHK) is strictly prohibited. The right is obvious, but if certain circumstances force the layoff to be carried out, then there are also arrangements regarding wages and severance pay contained in Law Number 2 of 2004 concerning the Settlement of Industrial Disputes.

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