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## PROCESS WAGES AS A LEGAL INSTRUMENT FOR PROTECTING WORKERS' RIGHTS IN UNILATERAL TERMINATION OF EMPLOYMENT

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### Abstract

Termination of Employment (PHK) is an important event in industrial relations that must be carried out in accordance with valid legal procedures and reasons. In practice, it is not uncommon for layoffs to be carried out unilaterally by employers without going through a fair settlement mechanism, which has the potential to harm workers' rights. The purpose of this study is to determine the role of process wages as a legal instrument in protecting the rights of workers who experience unilateral layoffs. The research method used is normative legal research with a descriptive research type. The research approach used is a legislative approach with data collection techniques carried out through literature studies involving the collection of secondary data in the form of primary, secondary, and tertiary legal materials. Based on the results of the study, layoffs in Indonesia are strictly regulated by the Job Creation Law and the Manpower Law. The layoff process must be carried out by clearly explaining the background and reasons in accordance with Article 154 A of the Job Creation Law. Layoffs can only be carried out after going through a fair negotiation and dispute resolution process to protect workers' rights. As an effort to protect workers from arbitrary actions, labor law regulates workers' rights to process wages. Process wages are a legal instrument that guarantees workers to continue to receive wages even though workers are not working. This principle is an exception to the principle of "no work no pay". The employment relationship is considered to continue until there is a final and binding decision. Based on this, workers are still entitled to wages during the dispute process. Thus, process wages function as a form of protection for workers that prioritizes the balance of interests between workers and employers and upholds the principle of justice in industrial relations.

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## I. INTRODUCTION

As a country that places the principles of justice and people's welfare as its main foundation, Indonesia has a constitutional obligation to protect the basic rights of every citizen, including the right to get a job. This protection is reflected in the 1945 Constitution (UUD 1945), specifically Article 27 paragraph (2) which states that "Every citizen has the right to work and a decent living." In addition, a similar guarantee is reaffirmed in Article 28D paragraph (2) of the 1945 Constitution, which states that "Everyone has the right to work and receive fair and decent remuneration and treatment in employment relations." The state's obligations do not stop there, the government is required to guarantee, protect,

and enforce workers' rights based on the principles of human rights as regulated in Article 71 of Law Number 39 of 1999 concerning Human Rights, various derivative regulations, and international law (Lawendatu, 2021). This is a strong foundation for the formation of a national employment policy.

Employment plays a vital role in the economic and social order of the country because it directly affects individual welfare, family stability, and community development in general. Employment includes everything related to labor, both in terms of placing someone under the leadership of another party, and in relation to living conditions that are directly related to the work (Khakim, 2014). In other words, employment not only functions as a source of income, but also contributes to shaping personal identity, life goals, and increasing one's self-esteem in society.

Employment law is a collection of legal norms that regulate all aspects of employment relations, from the recruitment process, implementation of work, to the completion of employment relations. This law forms a binding legal basis between workers and employers. The creation of an employment relationship must meet three main elements, namely the existence of a job as the object of the agreement, the existence of instructions from the employer to the worker, and the provision of wages as compensation whose regulations involve the role of employers, government, wage councils, and labor unions (Rahayu, 2015). With this legal structure, employment relations become directed and bound in a fair and balanced corridor.

The formation of an employment relationship has legal implications in the form of reciprocal rights and obligations between workers and employers. On the one hand, employers are obliged to pay wages, create a safe and healthy work environment, and respect workers' rights. On the other hand, workers have the right to receive proper compensation and be treated fairly, while carrying out the tasks that are their responsibility. This reciprocal relationship, if managed properly, will create harmony and productivity in the work environment. Thus, employment relationships should not be viewed as an arena for conflicts of interest, but rather as strategic cooperation to encourage company growth while improving the welfare of both parties (Suwadji, 2019).

In Indonesia, provisions regarding employment are regulated through Law Number 13 of 2003 concerning Employment (Labor Law), as amended by Law Number 6 of 2023 which ratifies Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into law (Job Creation Law). This regulation is an important foundation that manages various aspects of employment relations, such as employment contracts, minimum wage regulations, working hour provisions, work safety standards, and guarantees the protection of workers' rights. In addition, this law also regulates the mechanism for resolving labor disputes fairly and regulates the procedure for Termination of Employment (PHK) to ensure that the process does not harm workers. With this regulation, welfare and justice in employment relations are maintained.

Layoffs are often a major source of anxiety for workers, especially in cases where the layoffs are carried out unilaterally by the company. Unilateral layoffs are acts of terminating employment

relationships that are carried out without consultation or approval from the workers concerned. In practice, employers can suddenly decide to terminate employment contracts without providing rational reasons or complying with applicable legal procedures. As a result, workers are the most disadvantaged parties in this process. Unilateral layoffs not only rob workers of their right to work, but also cause prolonged financial uncertainty.

In industrial relations, workers are often in a weaker position than employers who have greater control over working conditions and managerial decisions. In this relationship, employers are more dominant in determining work conditions, while workers are often in a position to accept the situation. This inequality often exacerbates injustice, especially in cases of layoffs, where workers may lose their basic rights without adequate protection.

In reality, cases are often found where employers do not implement protection for workers properly. These deviant practices are the main problem complained about by workers regarding the arbitrariness of their rights. In situations like this, the role of law becomes very important. Employment law is present as a protection mechanism that aims to ensure that workers who are laid off continue to receive their rights, while minimizing the social and economic losses that can befall them (Wibowo & Amad, 2021).

Arbitrary layoffs by employers without a strong basis cause disputes between workers and employers. Workers view this kind of layoff as a form of abuse of power that solely benefits the employer. This situation shows the injustice felt by workers, who seem to be victims of unilateral policies without room for negotiation. From the perspective of workers, this arbitrary layoff not only reflects powerlessness in the face of employers, but also becomes a real form of violation of their rights that should be protected by law.

One form of legal protection provided to workers who experience unilateral layoffs is the right to process wages. This right is given as a guarantee that workers continue to receive income during the dispute. This provision aims to prevent inequality and injustice in the employment relationship between employers and workers during the legal process (Hananto & Gunardi, 2024).

In the context of unilateral layoffs, the main challenge faced by workers is the weak effective protection of their rights, including the right to due process wages. Although legal provisions have regulated protection mechanisms, in practice, the implementation and enforcement of these rights often encounter various obstacles. Therefore, the existence and strengthening of labor law is crucial to ensure that justice is maintained in industrial relations.

In addition to the right to process wages, workers also have the right to file a lawsuit against unilateral termination of employment with the Industrial Relations Court (PHI). PHI functions as a dispute resolution forum that aims to ensure that workers' rights are fulfilled. In court, workers can demand the fulfillment of their rights, including compensation and damages for illegal termination of employment. Thus, PHI becomes an important instrument in realizing justice for workers.

In practice, the settlement process at PHI often takes a long time and is complex. This becomes an additional burden for workers who have lost their source of income due to layoffs. Therefore, the existence of process wages is vital as a form of temporary protection during the legal process. By providing process wages, workers can meet their basic living needs until the dispute is resolved.

From the perspective of labor law, process wages are not just workers' rights, but a form of social protection provided by the state. This principle shows that employment relations are not only regulated by contractual interests alone, but also contain values of social justice. The state is obliged to protect the weak party in the employment relationship, namely the workers. Therefore, regulations regarding process wages must pay attention to the principle of substantive justice.

Based on the description, the author is interested in raising the theme with the title "Process Wages as a Legal Instrument for Protecting Workers' Rights in Unilateral Termination of Employment".

## **II. RESEARCH METHODS**

The research method used in this study is normative legal research, namely research that is based on literature review and secondary data sources (Soekanto & Mamudji, 2009). The main focus of this approach is on the analysis of legal norms and principles contained in laws and regulations related to the legal problems studied. The data collected comes from various relevant written legal literature, which is used as the basis for argumentation and the formation of a legal analysis framework in this study.

This research is descriptive, meaning it aims to systematically, factually, and accurately describe the characteristics and elements related to the legal object being studied (Azwar, 1998). Descriptive research not only describes the phenomenon, but also describes the legal context as a whole to gain a deep understanding of the issues discussed. The approach used is the statute approach, namely by analyzing various regulations and legal provisions that are relevant to the issues discussed.

The types of data used in this study are secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include binding legal sources, such as laws and court decisions. Secondary legal materials include scientific references such as books, journal articles, and other academic writings that review similar issues. Meanwhile, tertiary legal materials are supporting materials that provide explanations for the two previous materials. Data collection techniques are carried out through library research, namely by identifying and analyzing various legal documents and relevant literature, through the process of searching, reviewing, and recording information related to the legal issues raised (Soemitro, 1990).

## **III. RESULTS AND DISCUSSION**

### **3.1. Termination of Employment from an Employment Law Perspective**

Layoffs are one of the legal events in industrial relations that have a major impact on the survival of workers. Layoffs not only sever the relationship between workers and employers, but also have economic, social, and psychological consequences for workers. Therefore, the regulation of layoffs in Indonesian labor law emphasizes the importance of procedures and legitimate reasons for doing so. Umar Kasim argues that layoffs are one of the main issues in employment relations, considering that the end of the relationship has the potential to cause workers to lose their livelihoods, which then leads them to unemployment and its various implications. In order to ensure the certainty and peace of workers' lives, ideally layoffs can be avoided, although in reality their existence cannot be completely eliminated (Kasim, 2004).

Termination of employment is an important part of the dynamics of industrial relations. In Indonesian employment law, termination of employment cannot be carried out unilaterally without fulfilling the applicable legal provisions. This aims to maintain a balance of rights and obligations between workers and employers. According to Article 1 paragraph (25) of the Employment Law, it is defined that "Termination of employment is the termination of an employment relationship due to a certain reason which results in the termination of the rights and obligations between workers/laborers and employers." With the termination of the employment relationship, all rights and obligations of the parties also end, resulting in workers/laborers losing their jobs as a source of livelihood and income.

With the enactment of the Job Creation Law, the provisions related to layoffs have undergone several changes. The Job Creation Law aims to simplify employment procedures, but still emphasizes that layoffs can only be carried out based on certain legitimate reasons and by following predetermined procedures. This new provision emphasizes the principle of caution in making layoff decisions

In this context, the provisions regarding layoffs are regulated in Article 154A of the Job Creation Law, which details various reasons that allow layoffs to be carried out, including: the company is merging, amalgamating, taking over, or separating and one party is unwilling to continue the employment relationship; the company is carrying out efficiency with or without closure due to losses; the company is closed due to losses for two consecutive years; the company is closed due to force majeure; the company is experiencing a delay in debt payment obligations; or the company is bankrupt. Layoffs can also be carried out at the request of workers/laborers if the employer abuses, insults, threatens, persuades or orders to commit a violation of the law, does not pay wages for three consecutive months, does not fulfill promised obligations, orders work outside the agreement, or provides work that endangers the life, safety, health, and morality of workers/laborers. In addition, layoffs can occur based on the decision of the industrial relations dispute resolution institution, if the employer still terminates the employment relationship even though it is not proven to have committed a violation. PHK can also be carried out if the worker/laborer resigns by fulfilling the requirements, is absent for five consecutive days without valid explanation even though they have been summoned twice properly and in writing, commits a violation with a gradual warning letter, is unable to work for six months due to being detained

for alleged criminal acts, experiences prolonged illness or disability after twelve months, reaches retirement age, or dies.

Unilateral layoffs are forced termination of employment without the consent of the worker. This action generally has a serious impact on the survival of the worker and has an impact on the welfare of his family (Wahyuni, 2025). Layoffs at the unilateral will of the employer have the potential to cause disputes between workers and employers, especially if they are carried out without fulfilling the rights that should be received by the worker, so that it is very detrimental to the worker. Workers often view layoffs as a form of injustice that is solely carried out for the benefit of the employer, and places them as victims of helplessness in facing the power of the company. Therefore, if a layoff occurs, the employer is obliged to fulfill all workers' rights as stipulated in the provisions of the legislation. Given that the relationship between employers and workers is based on the principle of freedom and responsibility, layoffs cannot be carried out unilaterally, but must go through the mechanism stipulated in the Job Creation Law (Inofani & Yuliana, 2021).

In the case of layoffs, there are several important terminologies that need to be considered, namely the reasons for layoffs and documents proving layoffs. Employers are not allowed to carry out unilateral layoffs without a clear basis. Every decision to lay off must be supported by measurable reasons and valid evidence. If the employer cannot prove that there has been a violation committed by the worker, then the reason for the layoff is considered invalid. In addition, the layoffs carried out must meet formal and material requirements simultaneously. Formal requirements relate to the fulfillment of administrative procedures, while material requirements concern the type of violation committed by the worker. These two requirements are an inseparable unit, and the incompleteness of one of them causes the layoff to be declared invalid (Wahyuni, 2024).

Article 151 paragraph (1) of the Employment Law states that "Employers, workers/laborers, workers' unions/labor unions, and the government must make every effort to ensure that termination of employment does not occur." What is meant by all efforts are positive activities that can ultimately prevent termination of employment, including through regulating working hours, saving, improving work methods, and providing guidance to workers/laborers (Pujiastuti, 2008).

The basic principle in Indonesian labor law states that layoffs may not be carried out without deliberation or negotiation. In practice, employers are required to first hold negotiations with workers or labor unions before carrying out layoffs. Layoffs carried out without deliberation are contrary to the principle of worker protection and show an imbalance in the position between workers and employers.

Article 151 paragraph (3) of the Employment Law states that "In the event that negotiations do not result in an agreement, the employer may only terminate the employment relationship with the worker/laborer after obtaining a decision from the industrial relations dispute resolution institution." This provision shows that termination of employment cannot be carried out unilaterally, but must go

through a fair legal process and in accordance with statutory provisions to protect workers' rights and maintain balance in industrial relations.

Thus, this termination procedure functions as a control mechanism against the power of employers so that they do not act arbitrarily in industrial relations. This procedure ensures that termination of employment can only be carried out based on legitimate reasons and through fair mechanisms, including bipartite negotiations, mediation, conciliation, or trials at an industrial relations dispute resolution institution (Faisal, 2019). This aims to create a balance between the rights and obligations of both parties, so that every termination of employment must be based on legitimate reasons, supported by clear evidence, and follow the process that has been regulated in legal provisions. If the employer violates this procedure and carries out unilateral termination of employment without a strong basis, the worker has the right to sue the action to the PHI. Through this lawsuit, workers seek to restore their rights that have been violated. The form of recovery can be in the form of compensation in the form of severance pay, compensation, or unpaid wages or restoration of employment relations, such as workers being asked to be rehired if the termination of employment is declared invalid. However, all of this is given if it is proven that there has been a violation of applicable legal provisions.

### **3.2. Process Efforts as an Instrument for the Protection of Workers' Rights**

In general, wages are payments received by workers/laborers while workers/laborers are doing work or are considered to be doing work that is accepted and stated in the form of money or benefits as compensation. Wages are given as a form of fair and appropriate compensation to workers for their services in achieving organizational goals. Wages are paid to workers based on working hours, the number of goods produced or the number of services provided (Zainal et al, 2019). Based on Article 1 paragraph (30) of the Manpower Law, it states that "Wages are the rights of workers/laborers received and stated in the form of money as compensation from employers or employers to workers/laborers which are determined and paid according to an employment agreement, agreement, or statutory regulations, including benefits for workers/laborers and their families for a job and/or service that has been or will be done".

Wages are an important element needed by every worker or employee to meet their daily living needs. The provision of these wages is an obligation of employers to workers who are bound by an employment relationship based on a valid employment agreement. In determining the amount of wages, employers are required to pay attention to legal provisions governing minimum wages, both those set by the central government and local governments. Therefore, policies and mechanisms for wage distribution must be prepared and implemented fairly, transparently, and in accordance with applicable laws and regulations, in order to guarantee workers' rights.

One of the important foundations in wage regulation is the principle of "no work no pay". This is stated in Article 93 paragraph (1) of the Manpower Law which states that "Wages are not paid if

workers/laborers do not do work." In addition, this is also clearly stated in Article 40 paragraph (1) of Government Regulation Number 36 of 2021 concerning Wages (PP Pengupahan) which states that "Wages are not paid if Workers/Laborers do not come to work and/or do not do work." This principle emphasizes the existence of a reciprocal relationship between the implementation of work and the right to wages, where workers are only entitled to receive wages if they actually come to work and have carried out work as a form of real service.

The principle of "no work no pay" in employment relations cannot always be fully implemented. There are certain limitations stipulated in Article 93 paragraph (2) of the Employment Law which states that "employers are required to pay wages if: a. the worker/laborer is sick so that he/she cannot do the work; b. female workers/laborers who are sick on the first and second day of their menstruation so that they cannot do the work; c. the worker/laborer does not come to work because the worker/laborer gets married, marries off, is circumcised, baptizes his/her child, wife gives birth or has a miscarriage, husband or wife or child or son/daughter-in-law or parent or in-law or family member in the same household dies; d. the worker/laborer cannot do his/her work because he/she is carrying out an obligation to the state; e. the worker/laborer cannot do his/her work because he/she is carrying out religious duties ordered by his/her religion; f. the worker/laborer is willing to do the work that has been promised but the employer does not employ him/her, either due to his/her own fault or obstacles that the employer should have been able to avoid; g. the worker/laborer exercises his/her right to rest; h. the worker/laborer carries out the duties of the trade union/labor union with the approval of the employer; and i. the worker/laborer carries out educational duties from the company."

Furthermore, Article 40 paragraph (2) of the PP on Wages also regulates the same thing, stating that "Employers are required to pay wages if workers/laborers: a. are prevented from working; b. carry out other activities outside of their work; c. exercise their right to rest or leave; or d. are willing to do the work that has been promised but the employer does not employ them due to the employer's own fault or obstacles that the employer should have been able to avoid." All of these provisions indicate that even though workers are not physically working, they are still entitled to wages as long as the absence is due to valid reasons.

In the context of industrial relations disputes, especially unilateral layoff cases, issues arise regarding the continuation of workers' rights to wages. Although workers are no longer actively working due to a layoff dispute, legally the employment relationship has not ended until there is a legally binding decision. Therefore, workers still have the right to receive wages, which in this context are referred to as process wages.

Process wages are a form of legal protection for workers during the settlement of a layoff dispute. Process wages are salary payments to workers during the course of a layoff dispute until a legally binding decision is reached. This mechanism aims to maintain the survival of workers while

facing uncertainty due to layoffs. Thus, process wages become an important instrument in maintaining the balance of industrial relations.

Constitutional Court Decision Number 37/PUU-IX/2011 highlights the importance of protecting workers' rights through regulating process wages. In this case, the Court tested the phrase "not yet determined" in Article 155 paragraph (2) of Law Number 13 of 2003 which was considered to create legal uncertainty and was considered to be in conflict with Article 28D paragraphs (1) and (2) of the 1945 Constitution. The Court then interpreted that the employment relationship must continue to be considered ongoing until there is a decision that has permanent legal force, so that during this period the employer remains obliged to pay process wages to workers as a form of guarantee of legal certainty and fair treatment (Gunadi, 2020).

Referring to the provisions stipulated in the Employment Law, there are two situations that may occur before a decision is made by the industrial relations dispute resolution institution, namely: (Gunadi, 2020)

1. Workers continue to work as usual and are entitled to receive wages from the employer.

In a situation where workers or laborers continue to carry out their work, they have an obligation to fulfill the responsibilities as stipulated in the employment agreement. As a consequence, employers are obliged to provide wages in return for carrying out these obligations. Thus, the payment of wages in this context is in accordance with the principle of "no work no pay", because workers have actually carried out the work as mutually agreed. In addition, the principle of reciprocity, where each party is required to fulfill its obligations, is further emphasized in the provisions of Article 81 number 49 of the Job Creation Law which contains a new Article 157A paragraph (1) which states that "During the resolution of Industrial Relations Disputes, Employers and Workers/Laborers must continue to carry out their obligations."

2. Workers are unable to carry out their work because they have been suspended by the employer.

In conditions where workers or laborers are subject to suspension by employers, legal provisions still require employers to pay wages along with other normative rights. Even though during the suspension period the worker does not carry out work, the principle of "no work no pay" cannot be applied. This is because the worker's inability to work is not due to his own will, but rather a consequence of the employer's unilateral actions preventing him from carrying out work. This is in accordance with Article 93 paragraph (2) letter (f) of the Manpower Law. Therefore, the employer's obligation to continue paying wages during the suspension period is a form of compensation for the restrictions on work rights that occur. This is in line with Article 81 number 49 of the Job Creation Law which contains new Article 157A paragraphs (2) and (3), which emphasizes that employers can suspend workers who are in the process of being laid off by continuing to pay wages along with other rights that are usually received, and that the

implementation of this obligation applies until the industrial relations dispute resolution process is completed according to its level.

The obligation to pay process wages rests entirely on the shoulders of the employer as a consequence of the ongoing legal employment relationship. In this context, employers cannot release their responsibilities for any reason, including the reason for the lack of productivity from the worker because the worker's legal status has not ended until there is a final and binding decision. This provision is a reflection of the principle of good faith in industrial relations, where both parties are required to maintain their respective rights and obligations during the dispute resolution process (Wulan, 2016). Employers who ignore the obligation to pay process wages not only violate positive legal provisions, but also violate the principle of justice in employment relations.

The concrete form of legal protection for the right to process wages can be seen through the mechanism for resolving industrial relations disputes, namely by filing a lawsuit with the PHI. Article 1 paragraph (17) of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes states that the PHI has the authority to examine, try, and decide on disputes related to layoffs, including deciding on process wages. With legal protection for the right to process wages, it is hoped that there will be no imbalance of power between workers and employers, so that healthy industrial relations can be realized. Payment of process wages during the dispute period not only fulfills the formal legal aspect, but is also a form of respect for the dignity and honor of workers as subjects in equal industrial relations.

#### **IV. CONCLUSION**

Layoffs in Indonesian labor law cannot be carried out unilaterally by employers without fulfilling the procedures and legitimate reasons as regulated by the Manpower Law and the Job Creation Law. Layoffs without a strong legal basis can violate workers' rights and create inequality in industrial relations. Therefore, every act of layoff must meet formal and material requirements and be carried out through a fair negotiation and dispute resolution process. The principle of worker protection is the main foundation, where employers are required to take preventive measures before making a decision to lay off employees.

In this context, wages as a basic worker's right become an important element that cannot be ignored, especially when there is an industrial relations dispute. The principle of "no work no pay" emphasizes that wages are only given if workers actually carry out their work. However, this principle does not apply absolutely because there are exceptions in the Manpower Law that recognize workers' rights to wages even though they do not work for certain reasons that are legally valid. In cases of unilateral layoffs that are still in the process of being resolved, the employment relationship is still considered to be ongoing until a decision has permanent legal force, so that workers are entitled to process wages during the dispute. Process wages are positioned as a legal instrument to protect workers' rights against unilateral layoffs. The existence of process wages ensures that workers continue to obtain

their economic rights during the industrial relations dispute, both when workers are still working and when they are suspended. The provision of process wages maintains a balance of interests and upholds the principle of justice in employment relations, even when a conflict occurs. This scheme not only protects workers' rights to a decent living during the dispute, but also prevents employers from acting arbitrarily.

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