

## FORM OF LEGAL PROTECTION FOR EMPLOYERS AND WORKERS DURING THE PROCESS OF RESOLVING DISPUTES TERMINATION OF EMPLOYMENT

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### ABSTRACT

This research was created to determine the form of legal protection for employers and workers during the process of resolving disputes termination of employment. This study uses a positive legal literature study on employment using a deductive-inductive approach and emphasizes on reality (law in action). The results showed a form of legal protection for employers and workers during the process of termination of employment consists of prevention (preventive) which in the context of the process of resolving disputes termination of employment is a concrete effort of the state in providing guarantees to human rights in the right of association and the right to negotiate together by providing opportunities to the parties who are disputing in terms of termination of employment relationships to conduct bipartite negotiations aimed at preventing the termination of employment in ways that can be agreed by both parties and can be carried out without anyone feeling harmed and justified by the law and repressive settlement in the process of resolving termination of employment disputes is the arrangement of settlement procedures arranged in such a way as to ensure equal opportunities upfront in law and fair treatment in employment relationships, whose concrete form is termination of employment without or not obtaining determination from the institution of settlement of industrial relations disputes is null and void, which results in the deletion of all or part of the matter related to termination of employment so that the employment relationship continues and all rights and obligations for the parties remain in force that must remain in force as long as it has not obtained a determination from the institution of settlement of industrial relations disputes until the decision or determination of a permanent legal force (inkraht van gewijsde)

**Keywords:** rights and obligations, industrial relations, termination disputes

### INTRODUCTION

The State Constitution of the Indonesian Constitution of 1945 states that the purpose of the state is to prosper every citizen, to achieve the goal, the Government of the Republic of Indonesia conducts "the development of employment in a complete and comprehensive manner for the creation of a fair, prosperous, evenly distributed society both materially and spiritually in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. Employment development arrangements to fulfill the basic rights of workers and workers including creating a conduciveness of work for the continuity and development of the business world on the basis of cohesion and cooperation between workers, employers and the government in accordance with the principle of democracy pancasila and justice. With the issuance of Law No.

13 of 2003 on Manpower is the state's efforts in carrying out employment development formed when Indonesia faces an economic and political crisis, where the country wants high economic growth while on the other hand efforts to improve the welfare of workers must also be accommodated. "Indonesia as a developing country conducts gradual development carried out in a concurrent manner where the development of industrialization with efforts to improve welfare is carried out at the same time, because the implementation of two different interests where the development of industrialization requires high economic growth by directing the law that favors employers or investors, while on the other hand the urgent thing at that time is to improve the

welfare of the community, not least the workers"<sup>1</sup>. Seeing the above situation will be difficult for the government to implement economic growth improvement by protecting employers and improving the welfare of workers at the same time because of differences in interests between employers and workers, so it is possible at the time of implementation of Law No. 13 of 2003 on Employment will occur interesting interests and differences of opinion that can end in conflict or dispute between employers and workers.

The dispute between workers and employers will certainly be a barrier to the achievement of the objectives of employment development and a harmonious, dynamic, and dynamic working relationship and justice based on Pancasila and the 1945 Indonesian Constitution. Disputes between workers and employers are referred to as labor disputes stipulated in Law No. 22 of 1957 concerning Settlement of Labor Disputes and Disputes concerning termination of employment stipulated in Law No. 12 of 1964 concerning Termination of Employment in Private Companies.

Increasing quantity and quality as well as increasingly complex problems between workers and employers, among others, concerning termination of employment to workers individually causes existing and applicable laws<sup>2</sup> at that time was unable to resolve and accommodate the problem again because it only regulates the collective termination of employment and is not regulated regarding the process and procedures of termination of employment of individuals.

Therefore, the Law is considered incapable of resolving and accommodating the interests of the dissenting parties, then in 2004, Law No. 2 of 2004 on Settlement of Industrial Relations Disputes or industrial relations actors referred to as the "PPHI Law" which was later declared valid in 2006<sup>3</sup>.

In fact, the relationship between workers and employers is a voluntary will of both parties to be bound to each other in a working relationship. therefore, if in the future one of the parties is not willing to continue the bond of employment, then the working relationship can not run in harmony, harmonious and balanced so that it has the potential to be a termination of employment to

workers or vice versa. Termination of employment is a natural thing in the employment relationship if the termination of the employment relationship ends well through an agreement, but on the contrary it will be a long conflict of exhausting if one of the parties refuses to be terminated because of disagreements in the termination of employment, this is what in the PPHI Law is referred to as a dispute over termination of employment.

Disputes between workers and employers can harm either party or both parties or even have a wide impact on the general public, disrupting the stability of national security, order and economy. On the basis of this instability then the state through the Government as the controller of the national economy has an interest in being involved and intervention in resolving disputes termination of employment including providing legal protection for the parties to the dispute.

The doctrine of guaranteeing the protection of human rights is universally accepted as a moral, political and legal basis in building a peaceful life without fear and oppression and unfair treatment<sup>4</sup> no exception Indonesia as a legal country that guarantees the protection of human rights (human rights), so that in the context of legal protection in the field of employment, Indonesia as a legal country guarantees the protection of workers and employers contained in article 28D paragraph (2) of the Indonesian Constitution 1945 which states that work and get decent rewards and fair treatment in employment relationships that are part of human rights. Expressly in the provision there are 3 (three) elements of human rights called: work, proper reward and fair treatment in working relationships.

One form of loss of employment for a worker which means also the loss of benefits (wages) is termination of employment. If the termination of employment is at the will of workers voluntarily without pressure or coercion from any party, then the loss of work and benefits owned is not an event that harms him because it can be certain that the worker in question has other plans in tackling the consequences of job loss and wages that he usually receives. However, if the termination of employment is caused not by the will of workers but from the cause or coercion of other parties, of course this will harm the workers concerned because it will lose the right to work and the right to get rewards and fair treatment in the working relationship that is part of human rights as stated

<sup>1</sup> Rima Pratiwi, "Sejarah Perburuhan Indonesia Dari Masa Ke Masa," *JDIH Kemnaker* XIII, no. 3 (2011): 22-40.

<sup>2</sup> Maksudnya adalah UU No.22 Tahun 1957 dan UU No.12 Tahun 1964

<sup>3</sup> UU No.2 tahun 2004 tentang PPHI ditangguhkan pemberlakuannya menjadi 14 Januari 2006 dengan terbitnya UU No.1 Tahun 2005 tentang Penangguhan Pemberlakuan UU No.2 Tahun 2004 tentang PPHI

<sup>4</sup> Syafii Syafii dan M. Zamroni, "Constitutional Rights And Legal Protection Agency Participant Of The Organizers Of The Social Security, Health Aspects Of Administrative Law," *Jurnal Reformasi Hukum : Cogito Ergo Sum* (2018).

in article 28D paragraph 2 of the Indonesian Constitution 1945, this is what requires legal protection.

## RESEARCH METHODS

### 1. Types of Research

This research uses normative legal research methods or document or literature studies because hanaya is focused on related and written laws and regulations and is conducted by researching and observing literature materials or other companion data (secondary data) consisting of primary legal materials, secondary legal materials and tertiary legal materials<sup>5</sup>.

The object of the research is legislation related to employment (labor), settlement of industrial relations and social security disputes and the decisions of judges whether or not they have a fixed legal force.

### 2. Source of Legal Materials

The sources of legal materials used in this study include primary legal materials and secondary legal materials as follows:

#### a. Primary Legal Materials

The primary legal materials used in this study were:

- 1) Law No. 13 of 2003 on Employment as amended by Law No. 11 of 2020 on Work Copyright.
- 2) Law No. 2 of 2004 on Settlement of Industrial Relations Disputes.
- 3) Decision of the Constitutional Court No. 37/PUU-IX/2011.
- 4) Supreme Court Circular Letter No. 3 of 2015.

#### b. Secondary Legal Materials

What is dimaksud with secondary legal materials are certain legal materials and related directly or indirectly and can explain the provisions in the primary law that became the object in this study, among others: Books on the law, judge's rulings, other legal journals related.

#### c. Tertiary Legal Materials

What is meant is the legal facts or other related finding materials and can explain the provisions in the primary and secondary legal materials that are the object of this study, namely internet media and research experience.

### 3. Analysis Methods

While the method of analysis of legal materials in this study uses a deductive-inductive approach and is connected with socially awakened reality

(reality)<sup>6</sup>.

Because the object in this study is "The law which is one of the elements of the open legal system that opens the possibility for differences in interpretation so that with that interpretation the rules are always changing"<sup>7</sup>, then this research was conducted with a statutory approach (statue approach) grammatical, systematic and historical interpretation.

With secondary legal materials as instructions to direct the steps of researchers in conducting studies and discussions in this study. and related tertiary legal materials accessed through the internet and/or research experience in observing and dealing with termination disputes.

## RESULTS AND DISCUSSION

### 1. Subjects of Legal Protection in Termination of Employment

Law in Indonesia serves as a means of control and guidance in ensuring the protection of human rights including serves as a legal source in the resolution of conflicts that occur between legal subjects<sup>8</sup>. Which can also be interpreted that the law protects against forced disappearance of work and wages of a worker in a way that is contrary to the law itself.

In providing protection against all forms of human rights violations and other legal provisions, the law gives authority and authority to state organizers in carrying it out, so that it can be interpreted as the power to move on the orders of the law in providing legal protection to every citizen including workers and employers in employment relations. From this description it can be understood that the subject of legal protection is the state organizer in this case the executive (government) responsible in the field of employment and legislative institutions in terms of legal policy making including the making of legislation and judicial institutions in terms of law enforcement, namely the Supreme Court and the Industrial Relations Court.

In the context of employment law protection related to Termination of Employment, the Government and Parliament have established and enacted Law No.13 of 2003 on Employment,

<sup>6</sup> Ibid.

<sup>7</sup> Ditjen PP Kemenkumham, "Penafsiran Undang-Undang dari Perspektif Penyelenggara Pemerintahan," *Artikel Hukum Tata Negara dan Peraturan Perundang-undangan*.

<sup>8</sup> Bambang Panji Gunawan et al., "Constitutional Structure of Indonesia Based on 1945 Constitution before and after Amendments," *International Journal of Academic Research in Business and Social Sciences* (2018).

<sup>5</sup> Elisabeth Nurhaini Butarbutar, *Metode Penelitian Hukum (langkah-langkah Untuk Menemukan Kebenaran Dalam Ilmu Hukum)*, ed. Rachmi F Kurnia, Kesatu. (Refika Adhitama, 2018).

specifically related to legal protection in the event of termination of employment against workers is stipulated in Law No.13 of 2003 on Employment as amended by Law No. 11 of 2020 on Copyright.

## **2. Object of Legal Protection in Termination of Employment**

In the considerations weighing letter d of Law No.13 of 2003 on Manpower called which in essence protection to the workforce is intended to guarantee the basic rights of workers, equality of opportunity, treatment without discrimination aimed at realizing the welfare of workers and their families while paying attention to the progress and continuity of the business world.

So from the consideration is clear, that the object of legal protection is the basic rights of workers for workers and the right to advance business for employers, which can also be understood in relation to termination of employment, the legal protection is given the right to the opportunity to maintain employment and get wages and other rights arising in the employment relationship for workers, on the contrary protection to the right to give work orders to do work for the sake of business continuity for employers.

## **3. Forms of Legal Protection Related to Termination of Employment**

In its implementation the law upholds the supremacy of law, equality before the law, and law enforcement in a way that is not contrary to the law (due process of law)<sup>9</sup>. The form of legal protection or state efforts in the event of a dispute termination of employment, it is regulated in such a way that the supremacy of law and justice is carried out in a way that is not contrary to the law and does not harm the parties or one of the parties in dispute then there are 2 (two) forms of legal protection, namely preventive and repressive legal protection carried out by the stage of implementation, as follows:

### **a. Preventive Legal Protection Against Termination of Employment**

As stipulated in article 151 paragraph (1) of Law No. 13 of 2003 on Employment as amended in article 81 paragraph (37) of Law No. 11 of 2020 concerning Work Copyright that requires all elements in industrial relations both employers, workers, trade unions and the government itself with all efforts must try to avoid termination of employment. As for all efforts to prevent termination of employment in

the explanation if the will of Termination of Employment comes from the employer is "positive activities that can ultimately avoid the occurrence of Termination of Employment, among others, the timing of work, savings, improving working methods, and providing guidance to workers and other alternative measures such as reducing the wages of workers at the managerial level, reducing overtime, offering early retirement opportunities for age-eligible workers, temporarily housing workers for a while in turn conducted by communicating with trade unions or representatives of workers representative, while to avoid termination of employment on the will of workers one of the efforts that can be made according to article 92 of Law No. 13 of 2003 on Employment as amended in article 81 paragraph (30) of Law No. 11 year 2020 on Copyright Work is "improving the welfare of workers both related to wages by drafting a wage scale structure based on class, position, tenure, education and competence and periodic review of wages, in addition to that in accordance with article 99 and article 100 of Law No. 13 of 2003 on Employment, working conditions and social security including other welfare facilities need to be a concern for workers to be calmer in working.

However, if all efforts to prevent Termination of Employment have been made and Termination of Employment is inevitable, then termination of employment can be done through the mechanism of resolving industrial relations disputes as stipulated in the PPHI Law.

### **b. Repressive Legal Protection in The Problem of Termination of Employment**

In the event that one party terminates the employment relationship to the other party and the other party refuses to terminate the employment as a result of a disagreement regarding the termination of the employment relationship, it becomes a dispute, according to article 151 paragraph (3) and paragraph (4) of Law No. 13 year 2003 on Employment as amended in article 81 paragraph (37) of Law No. 11 of 2020 on Copyright work, the settlement of termination of employment shall be done through bipartite negotiations between employers and workers and/or trade union and in the event that bipartite negotiations do not get an agreement, termination of employment shall be done through the next stage in accordance with the mechanism of resolving industrial relations disputes. If observed both provisions in Law No. 11 of 2020 on Copyright, the law regulates and provides protection to the parties in order to get fair treatment in the employment relationship so that both parties

<sup>9</sup> MPR RI, *Panduan Pemasyarakatan Undang-Undang Dasar Republik Indonesia Tahun 1945 dan Ketetapan Majelis Pemusyawaratan Rakyat Republik Indonesia*, Ketujuh be. (Jakarta: Sekretariat Jenderal MPR RI, 2018).

avoid arbitrariness from parties who seek to impose their will to conduct termination of employment unilaterally and the law provides protection and legal certainty against the loss of rights of the parties in the employment relationship with pe clarity as follows:

**1) Protection of The Obligation to Implement Bipartite or Non-Litigation Mechanisms in Conducting Termination of Employment**

The purpose of article 151 paragraph (3) of Law No. 13 of 2003 on Employment as amended in article 81 paragraph (37) of Law No. 11 of 2020 concerning Copyright work related to the implementation of Termination of Employment conducted by employers to workers, but workers refuse and have not or have not conducted bipartite negotiations. The legal subjects in termination of employment as referred to in the provision are workers and employers who are bound in the employment relationship, either employment relationship on the basis of a Specific Wawaktu Employment Agreement or An Indefinable Time Work Agreement.

In practice in the last five years, along with the development of information technology that results also in the mindset of employers in conducting termination of employment to workers, where employers tend to perform termination of employment without precedence with negotiations or bipartite discussions with trade unions.

**Case Example 1:**

Termination of Employment to Workers is done by sending a letter of termination of employment through courier services "JNE" Termination of Employment conducted by PT. Platinum Ceramics Industry to Mujiono and friends by sending a notification letter through the delivery service JNE <sup>10</sup>, That is why the workers filed a lawsuit to the Industrial Relations court at the Surabaya District Court. After going through a long trial stage finally the Panel of Judges of the Industrial Relations Court at the Surabaya District Court decided with a warning verdict that states "Defendant has violated the provisions of Article 151 paragraph (3) of Law No. 13 of 2003 concerning Employment"<sup>11</sup> so that then the Termination

of Employment that has been done by the Defendant against the Plaintiffs is null and void.

**Example Case 2:**

Termination of Employment to Workers is done by sending a letter of termination of employment through a short message "SMS" In early 2015, PT. Indoraya Megah Tehnik terminated the employment of Sunar Junaidi by sending a short SMS message to the worker <sup>12</sup>

**Example Case 3:**

Termination of Employment to Workers is done by the Employer by sending a letter of termination of employment through social media "WhatsApp"

At the end of 2018, CV. Unity Indo Sukses termination of employment with Royke Puri Wardaya by sending a message through WhatsApp application to the worker<sup>13</sup>

**Example Case 4:**

Termination of Employment to Workers conducted by employers by sending a letter of termination of employment through the announcement.

In 2020, shoe manufacturers PT SYF termination of employment by announcing to the workers <sup>14</sup>

From the brief description of the example of the above case, Termination of Employment conducted by the employer without or has not been conducted bipartite negotiations between workers or trade unions with employers so that it is not in accordance with the provisions of article 151 paragraph (3) Law No. 13 of 2003 on Employment as amended in article 81 paragraph (37) of Law No. 11 of 2020 on Copyright. Other than that in accordance with the provisions of article 3 and article 4 of the 2004 Law on Settlement of Industrial Relations Disputes, any industrial relations dispute must be resolved first through bipartite negotiations and pursued to be completed 30 (thirty) days from the commencement of the negotiations.

<sup>12</sup> Buruh Online, "Tak Terima di-PHK Dengan SMS, PHI Menangkan Buruh," *Buruh Online* (Barito Selatan, April 2015).

<sup>13</sup> Buruh Online, "Pemberitahuan PHK Lewat WhatsApp, Pekerja Tuntut Pesangon," *Buruh Online* (Bandung, 2019).

<sup>14</sup> Alie Channel, *Pemberitahuan PHK dari PT.SHYANG YAO FUNG kepada karyawan*, 2020.

<sup>10</sup> Mahkamah Agung RI, *Putusan PHI Surabaya No. 97/Pdt.Sus-PHI/2019/PN Sby*, n.d.

<sup>11</sup> Ibid.

Bipartite negotiations are declared to fail if after a period of 30 (thirty) days of negotiations do not reach an agreement or either party refuses to negotiate. Evidence of failure of negotiations must be attached when further settlement efforts are made, namely the recording of termination of employment disputes in the institution responsible for employment and if there is no evidence of failure of bipartite negotiations then the institution responsible for recording is obliged to return to be completed within a period of 7 (seven) days.

From the understanding of the process stipulated by Law No. 2 of 2004 on Settlement of Industrial Relations Disputes as mentioned above and looking at the development of the implementing situation, the following facts will be obtained:

- a) Employers conduct termination of employment without or have not conducted bipartite negotiations, it will be seen the next interest is on the part of workers who feel harmed and will actively make settlement efforts while the employer is on the passive side. So it is possible that the application for settlement or lawsuit will be done by the workers.
- b) Employers who feel uninterested as referred to in letter a) are more likely to not respond (in the sense of not refusing nor accepting), either bipartite requests from workers or even calls for responsible agencies in the field of employment.
- c) Workers who are active in making settlement efforts tend to choose settlement efforts through mediation in the responsible agencies in the field of employment, with practical and cheap reasons.
- d) Settlement through mediation or conciliator of the final product in the form of Recommendations that do not have binding legal force, but only as a condition formil in making further efforts in PHI. So the tendency of employers to ignore the settlement process at the mediation level is very high and in the end only the information of the workers can be heard and noticed by the mediator. Furthermore, it can be certain that the contents of the Recommendations will be in favor of workers.
- e) Since the Advice does not have legal force that can force employers to carry out or not carry out the

contents of the Recommendations, then that will make workers back active to make efforts to resolve disputes in the Industrial Relations Court.

- f) The provisions of the procedural law applicable in the Industrial Relations Court are special civil procedural laws and generally follow the civil provisions applicable in the general civil court. Therefore, under common civil law, the prevailing principle is "whoever claims or postulates a right or event, he must prove it" (article 163 HIR). This principle is often a barrier for workers to win the efforts of termination of employment in the Industrial Relations Court because most of the evidence is owned by employers.

From the description, researchers can explain that one of the causes of the emergence of the case as in the example of the case above is because the efforts to resolve at the bipartite level that concerns evidence of failed settlement bipartite or Recommendations that show the existence of bad faith from employers or workers are not used as a guide or preliminary evidence as a form of formal conditions in deciding the case of Termination of Employment by the Court of In Relationship dustrial but only used as a condition as a means of obtaining or not a case of Termination of Employment recorded or registered as a dispute termination of employment.

## **2) Protection of Termination of Employment Without Establishment of Industrial Relations Dispute Resolution Agency**

Prior to the enactment of Law No.11 of 2020 on The Creation of Employment Jo Government Regulation No.35 of 2021 on Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, it has been stipulated that Termination of Employment without the establishment of the Industrial Relations Dispute Resolution Agency is null and void, except those specifically regulated such as Termination of Employment due to resignation at the will of the workers themselves , termination of employment agreement, death or due to retirement age.

The purpose of the establishment of the Industrial Relations Dispute Resolution Agency is a decision made by the institution appointed by the law in the settlement of termination disputes, namely:

- a) Conciliator or Arbitration or if neither party chooses conciliators and

arbitrators, then settlement is made through the Mediator of Industrial Relations (Non Litigation). If both parties agree on such a settlement, a Joint Agreement is entered into and then registered with the Industrial Relations Court.

- b) Industrial Relations Court, if the settlement through non-litigation means does not reach an agreement or has been decided by a conciliator or mediator in the form of recommendations but either party or both parties refuse, unless the outcome of the settlement through arbitration cannot be pursued through the Industrial Relations Court but directly the supreme court's cassation. (Litigation)

Termination of Employment conducted without the establishment of the Industrial Relations Dispute Resolution Agency is referred to as Termination of Employment null and void and employers are obliged to rehire the worker concerned and pay all wages and rights that should be received.

Null and void (*nietigheid van rechtwege*) in the context of civil law is known in the law of the treaty article 1320 of the Civil Code, where the concept is null and void according to Prof. Subekti "concerning the object of the agreement itself or the act committed, where if the objective terms of the agreement are not met then the agreement is null and void which is *yuridis formal* since the original agreement is considered to have never existed and there is no agreement between the parties the intent of making the covenant"<sup>15</sup>. Termination of Employment is the termination of the employment relationship or can be referred to as termination of the employment agreement because in the principle of employment relationship occurs by the existence of an employment agreement that contains an agreement between the parties who make the agreement. Furthermore, Prof. Subekti explained that "one of the deletions of the alliance due to the entry into force of a cancellation requirement"<sup>16</sup>. So from the description as mentioned above termination of employment that is null and void is termination of employment that is considered non-existent from the beginning and the continuing

employment relationship between workers and employers in which also applies the rights and obligations of the parties as before.

Termination of Employment is null and void according to the researchers of a legal protection that removes in whole or at least partly related to termination of employment relationship caused by one or more objective conditions have not been or are not met. In its current development and practice, the legal consequences of termination of employment are null and void, in relation to:

- a) What is meant by Termination of Employment is null and void, not automatically termination of employment becomes null and void but still requires the decision of the Industrial Relations Court<sup>17</sup>.
- b) Termination of Employment Null and void, does not cancel the will of termination of employment employers perform Termination of Employment against workers, on the contrary if the worker at termination of employment by the employer then make a lawsuit to the Industrial Relations Court on the decision of termination of employment unilaterally then the subject of the dispute is a dispute termination of employment which means in the claim (*petitum*) workers must include the wishes a know the will disconnected work relationship, but if in *petitum* workers list the desire to be rehired without the will to be decided his employment relationship then the subject of the dispute shifts to a dispute of rights.
- c) Termination of Employment is null and void resulting in employers being obliged to rehire workers and pay all wages and other rights to workers.

#### Case Example 5:

Employers terminate their employment and file a lawsuit with *petitum* so that the lawsuit is not accepted (*niet ontvankelijke verklaard*)

Termination of Employment with the qualification of resigning between PT. Siloam International Hospitals, Tbk., (Siloam Hospitals Surabaya/Shsb), as The Applicant of Cassation /former plaintiff against Dr. Arnold Bobby Soehartono as The Respondent of

<sup>15</sup> Fajar Santosa, "Penerapan Konsep Batal Demi Hukum Di Peradilan Pidana, Perdata Dan Tata Usaha Negara," *MAKSIGAMA* (2015).

<sup>16</sup> Subekti, *Pokok-Pokok Hukum Perdata*, XXX. (Jakarta: PT Intermedia, 1985).

<sup>17</sup> Santosa, "Penerapan Konsep Batal Demi Hukum Di Peradilan Pidana, Perdata Dan Tata Usaha Negara."

Cassation / formerly Defendant. In this case, the Panel of Judges of the cassation level (Judex Juris) granted the application for cassation of the Applicant for Cassation and annulled the decision of the Industrial Relations Court at the Surabaya District Court number 131/G/2014/PHI Sby<sup>18</sup>. In its legal consideration, the Panel of Judges of the cassation level (Judex Juris) states that the applicant of the cassation (entrepreneur) performs termination of employment against the respondent of the cassation (worker) does not require the determination of the Industrial Relations Court as the provisions of article 151 paragraph (3) of Law No.13 of 2003 on Employment on the grounds that workers do not enter work for 5 (five) consecutive working days without a certificate and without any valid evidence and employers have 2 (two) proper and written summonses.

#### **Example Case 6:**

Industrial Relations Court at the Surabaya District Court broke the employment relationship faster than the will of termination of employment decided by the employer between PT. Platinum Ceramics Industry with Mujiono and friends (decision of the Industrial Relations Court at the Surabaya District Court Number: 97/Pdt.Sus-PHI/2019/PN. Sby)

#### **Case Example 7:**

The Industrial Relations Court of Surabaya district court broke the employment relationship at the same time as the will of termination of employment decided by the entrepreneur between PT. Platinum Ceramics Industry with Riani Dkk (decision of the Industrial Relations Court at the Surabaya District Court Number: 28/Pdt.Sus-PHI/2019/PN. Sby)

With the problems that often arise in practice as mentioned above shows the existence of legal uncertainty so that there is a legal inconsistency between the court's decision and the legislation.

### **3) Protection for The Implementation of Obligations of the Parties During the Process of Settlement of Termination of Employment That Has Not Been Established Industrial Relations Dispute Resolution Agency**

Prior to the enactment of article 81 paragraph (37) of Law No.11 on Copyright, which changes the provisions of article 155 paragraph (2) of Law No.13 of 2003 on Employment that as long as the decision of the institution of industrial relations dispute resolution has not been determined, both employers and workers must continue to carry out all their obligations. This provision raises legal polemics over the interpretation of the phrase "unassigned" among workers due to the variety of court rulings that result in legal uncertainty. In practice there are 3 (three) kinds of Industrial Relations Court related to wage process, namely: "First punishing employers paying process wages for 6 (six) months with the consideration of the judge based on the decision of the minister number 150 year 2000, secondly punishing employers pay wages process more than 6 (six) months on the grounds of a sense of justice judge and thirdly punishing employers pay wages process until the case gets a ruling that has the force of law remains purely berkiblat on the provisions of article 155 paragraph (2) of Law No. 13 of 2003 on Employment"<sup>19</sup>

Constitutional Court as one of the judicial institutions formed in the reform era with the authority to test a provision of the Law against the Constitution of the Republic of Indonesia 1945 at the first level and the final tearakhir whose decision is final and binding (article 24C paragraph (1) of the Indonesian Constitution 1945), finally in his ruling no. 37/PUU-IX/2011 interpreting the phrase "has not been set" article 155 paragraph (2) of Law No. 13 of 2003 on Manpower is contrary to the 1945 Constitution and has no binding power as long as it is not defined as having no permanent legal force. Another point contained in the decision of the Constitutional Court states that kepmenaker number 150 year 2000 is not the implementing regulation of Law No. 13 of 2003 on Employment so that it is no longer a positive law that can be used as a juridical basis to determine the wages of termination

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<sup>18</sup> Mahkamah Agung RI, *Putusan Mahkamah Agung RI No.520K/Pdt.Sus-PHI/2015*, 2015.

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<sup>19</sup> Pangaribuan Juanda, "Putusan MK dan Ragam Tafsir tentang Upah Proses PHK," *Hukum Online*.



of employment process of 6 (six) months wages"<sup>20</sup>

Then in response to the decision of the Constitutional Court and various rulings in the industrial relations judiciary finally the Supreme Court issued Circular Letter No. 3 of 2015 which is essentially related to the lawsuit that asks for wages process in the dispute Termination of Employment then the content of the warning of the verdict is Punishing employers pay wages process for 6 months, while the excess time in the dispute process in the Industrial Relations Court is no longer the responsibility party.

Circular letter of the Supreme Court is the authority of the Supreme Court that aims to ask for information and provide guidance to the court under it as a policy in performing the supervisory function after seeing the developments that exist and apply only in the judicial environment only, whereas according to the Former Chairman of the Constitutional Court Prof. Jimly: "Circular letter of the Supreme Court is a guide to the judge is not a law while the Decision of the Constitutional Court is a rule that must be obeyed by all law enforcement, does not carry out the decision of the Constitutional Court, the same as not implementing the Law"<sup>21</sup>. So with the Circular letter of the Supreme Court No.3 year 2015 which is different from the Decision of the Constitutional Court No.37/PUU-IX/2011 will be a new chapter in law enforcement in the field of employment that will result in inconsistencies in the decision of judges with legislation because it will certainly be a dilemma for judges running or not running the Circular Letter of the Supreme Court.

The authority of a decision issued by the judiciary lies in the binding power of a judicial review case must be a binding ruling that must be obeyed by anyone<sup>22</sup>, in relation to the provisions of wage payments during the process of resolving disputes Termination of Employment that there is dualism of research policy argues that the decision of the constitutional court is a regulation that binds all law enforcement but on the other hand the judge as one of the

law enforcement has independence in the judiciary that can not be intervened by anyone (article 24C paragraph (1) Constitution of the Republic of Indonesia 1945), however, "the decision of the judge that is not based on the existing and applicable laws and regulations and which should be used as the basis of the verdict is a verdict *onvoldoende gemotiveerd*"<sup>23</sup> which may be overturned by a higher court. Based on the description above, researchers in terms of analyzing the Decision of the Constitutional Court and the Circular letter of the Supreme Court related to the phrase "has not been set" in article 155 paragraph (2) of Law No. 13 of 2003 concerning Employment prefers and leans towards the Decision of the Constitutional Court even though in practice it is difficult or even almost will not be found again the decision of the Industrial Relations Court that agrees or in accordance with the Decision of the Constitutional Court considering the judges are structurally under the control of the Supreme Court, the reason researchers are:

- a) Employment relationships occur because of an employment agreement that is contained in the employment agreement of the rights and obligations of the parties.
- b) In article 61 paragraph (1) letter c of Law No. 13 of 2003 on employment, it is stipulated that the employment agreement may terminate due to a court ruling with permanent legal force.
- c) Article 155 paragraph (1) of Law No. 13 of 2003 on Manpower explains, Termination of Employment as referred to in Article 151 paragraph (3) of Law No. 13 of 2003 on Employment and without determination of the Industrial Relations Dispute Resolution Agency is null and void.
- d) Article 170 of Law No. 13 of 2003 on Employment, explaining termination of employment conducted without the establishment of the Industrial Relations Dispute Resolution Agency as referred to article 151 paragraph (3) of Law No. 13 of 2003 on Employment is null and void and subsequently employers are obliged to rehire workers and pay all rights that should be accepted.

<sup>20</sup> Ibid.

<sup>21</sup> Ambaranie Nadia Kemala Movanita, "Jimly : Jangan dipertentangkan antara SEMA dan Putusan MK," *Kompas*.

<sup>22</sup> Lanka Asmar, "Problematika Independensi Hakim Agung," *Koran Waspada*, 2014.

<sup>23</sup> M.Natsir Asnawi, *Hukum Acara Perdata (Teori,Praktik dan Permasalahannya di Peradilan Umum dan Peradilan Agama)*, Cet.Pertam. (UII Press, 2016).

So that the phrase "has not been set" can be interpreted as "legal force remains" considering the employment relationship occurs due to an employment agreement, while the employment agreement can terminate if there is a court ruling that has a permanent legal force therefore termination of employment agreement is a form of termination of employment agreement, then termination of employment without a court ruling that has the force of law remains null and void resulting in the employer is obliged to rehire the worker concerned or in other words the status of employment relationship b erlanjut and employers or parties who want termination of employment must still carry out all their obligations until the decision of a permanent legal force.

Furthermore, after the enactment of Law No. 11 of 2020 on Copyright Work article 155 of Law No. 13 of 2003 on Employment is removed and amended in article 157 A which essentially stipulates that "during industrial relations dispute resolution entrepreneurs and workers must continue to carry out their obligations and the implementation of obligations carried out until the completion of the process of resolving industrial relations disputes in accordance with their levels", therefore, based on the provision, it can be understood that during the process of resolving disputes termination of employment takes place each party both employers and workers are still bound in the implementation of their obligations and as a form of state protection against the parties in dispute in order to obtain justice and equal opportunities in the face of the law.

#### 4) Protection of Settlement of Termination of Employment Disputes in Industrial Relations Judiciary of a Special nature

Since the enactment of Law No. 2 of 2004 on Settlement of Industrial Relations Disputes, the dispute of Termination of Employment becomes part of the authority of the industrial relations court. Although the structure of industrial relations courts under the auspices of the general judiciary, but in addition to the usual civil procedural law applicable in the general judiciary there are special matters that only apply in industrial relations courts with the aim of ordering the judicial process to run fast, precise, fair and cheap.

Special matters of a special nature in the industrial relations court include:

- a) Any industrial relations dispute should include the minutes of negotiations between employers and workers in the form of mediation treatises (Recommendations from mediators or conciliators).
- b) The Union may act on behalf of workers who are members in industrial relations disputes.
- c) There is no appeal through the High Court, but directly the cassation to the Supreme Court, except for disputes of interest then the industrial relations court is the first and last level.
- d) Settlement of cases in the first level is limited to a maximum of 50 days and at the cassation level of 30 days, up to a total of 140 days (starting from bipartite 30 days and mediation/conciliatory level for 30 days).
- e) The judge handling the case is 1 (one) person from the union element and 1 (one) person from the entrepreneur element who is ad hoc.
- f) No costs for cases under 150,000,000.000(one hundred and fifty million rupiah)
- g) Calculation of the implementation of the verdict since the verdict is read to the party that came at the reading of the verdict and since the receipt of the verdict for the party that did not come when the verdict was received.

The process of resolving termination of employment disputes is determined as follows:

#### a) *Settlement Process If The Will of Termination of Employment Comes From The Employer*, Then:

- (1) The employer conveys the intention of termination of employment in writing accompanied by the reason to the worker concerned.
- (2) If the worker responds then bipartite negotiations are completed no later than 30 (thirty) days from the first negotiations and can be extended afterwards based on the agreement of both parties.
- (3) Furthermore, if within a period of 7 (seven) working days, the worker does not respond to the notice from the employer then the employer again conveys his intention for the second time.

(4) If then the worker still does not respond to the employer's notification the second time, then the employer can take a suspension action against the worker and register with the Office of Manpower at the city/district level if the company where the worker works only within one city/ district. However, if the scope of workers to be disconnected from work exceeds one city/district then the recording of disputes is done at the Provincial Labor Office and if the worker to be disconnected from his/her employment relationship covers more than one province then the recording of disputes is done at the Ministry of Manpower of the Republic of Indonesia.

(5) Furthermore, if it still does not reach an agreement then it is sued through the Industrial Relations Court in the area where the company domiciles for legal entities and the address of the administrator if an individual or not a legal entity.

**b) Settlement Process If The Will of Termination of Employment Comes From Workers, Then :**

(1) Direct workers or through union managers who are registered in the agency responsible for employment and have been given power of attorney or through a designated legal representative convey the intention of termination of employment in writing accompanied by the reason to the employer.

(2) Grace period of intent to stop working no later than 30 (thirty) working days after the date of delivery of the written notice to the employer.

(3) Furthermore, if the entrepreneur responds then bipartite negotiations are completed no later than 30 (thirty) days since the first negotiations are conducted and can be extended afterwards based on the agreement of both parties.

(4) If within a period of 7 (seven) working days, the employer does

not respond to notification from the worker then the worker again conveys his intention for the second time.

(5) If then the employer still does not respond to the notice of the employer the second time, then the worker can continue the work or stop carrying out the obligation to work no later than 30 (thirty) days from the first notice to the employer and then register to the Office of Manpower at the city / district level in accordance with the company's legal domicile.

(6) Furthermore, if it still does not reach an agreement then it is sued through the Industrial Relations Court in the area where the company domiciles for legal entities and the address of the administrator if an individual or not a legal entity.

**c) Settlement Process If The Will of Termination of Employment Comes From Employers and Workers Refuse But Employers Do Not Have Good Faith To Resolve, Then :**

(1) Direct workers or through union administrators who have been authorized or through a designated legal representative submit a request for bipartite counsel in writing accompanied by the reason to the employer.

(2) Furthermore, if the entrepreneur responds then bipartite negotiations are completed no later than 30 (thirty) days since the first negotiations are conducted and can be extended afterwards based on the agreement of both parties.

(3) If within a period of 7 (seven) working days, the employer does not respond to bipartite requests from workers then the worker again conveys his intention for the second time.

(4) If then the entrepreneur still does not respond to the entrepreneur's notice a second time, then the bipartite negotiations are considered a failure.

(5) Then the worker registers to the Office of Manpower at the city / district level in accordance with

the territory of the company's legal domicile.

- (6) Furthermore, if it still does not reach an agreement then it is sued through the Industrial Relations Court in the area where the company domiciles for legal entities and the address of the administrator if an individual or not a legal entity.

## CONCLUSION

Based on the results of the discussion and analysis that has been done, the researchers concluded the form of legal protection for employers and workers during the dispute process of termination of employment consists of prevention (preventive) which in the context of the process of resolving disputes termination of employment is a concrete effort of the state in providing guarantees to human rights in the right of association and the right to negotiate together by providing opportunities to the parties who are ott-in terms of termination of the working relationship to conduct bipartite negotiations that prohibit the breakdown of relations in ways that can be sorted by the parties and there are where some are evacuated by law. Bipartite negotiations are a condition formil to apply for the determination of termination of employment to the Industrial Relations Dispute Resolution Agency which if not met and the parties or one of the parties can not prove the bipartite negotiations and did not reach an agreement then the application for termination of employment is not accepted, this provision is a form of state presence (government) to provide legal protection in working relationship in realizing harmonious, dynamic and equitable industrial relations based on Pancasila and the 1945 Indonesian Constitution and repressive settlement in the process of resolving termination of employment disputes is the arrangement of settlement procedures arranged in such a way as to ensure equal opportunities upfront and fair treatment in employment relationships, concrete form is as stipulated in article 157 A paragraph (1) and paragraph (3) of Law No. 13 of 2003 on Manpower which has been amended in article 81 paragraph (37) of Law No.11 of 2020 on Copyright of Work employment relationships continue and all rights and obligations for the parties remain in force that must remain in force as long as they have not obtained a determination from the Industrial Relations Dispute Resolution Agency until the award or determination of the Industrial Relations Dispute Resolution Agency with a permanent legal force and is a form of protection of human rights as stipulated in the state constitution of the 1945 Constitution in terms of getting fair treatment in

employment relations and Settlement of disputes termination of employment can only be done in the Industrial Relations Court that adheres to the law of special civil events, proving the commitment of the state in providing legal protection in the field of employment. Based on the results of studies and analysis of legislation governing employment law and social security as well as the findings of researchers in practice, the researchers advise the Government in the field of Manpower to cut bureaucracy and administrative requirements that can impede or slow down the process of resolving industrial relations disputes. To the Supreme Court so that in setting the policy is done in a way that is not contrary to the law and easy to understand the perpetrators of industrial relations both employers / organizations of employers, workers and unions so that there is no inconsistency between the judge's ruling and the legislation and make time restrictions in the process of resolving industrial relations disputes that bind law enforcement including restrictions on the timing of settlement of cases entered in the Supreme Court until returning to the Industrial Relations Court where the case was filed and set the policy as a condition formil acceptance of the application for a lawsuit to the industrial relations court in the form of an obligation for the party to file a lawsuit by listing or attaching ri or evidence of bipartite negotiations or bipartite requests sent to parties who refuse bipartite negotiations and bind judges to serve as the main basis in examining the case of termination of employment disputes.

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