



The Principle of Justice in Unilateral Termination of Employment: A Critical Legal Analysis of the Job Creation Law

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Info Articles	Abstract
Article History Received: 2025-08-14 Revised: 2025-08-24 Published: 2025-09-30 Keywords: <i>Justice; termination of employment; critical law; Job Creation Law; worker protection.</i>	Unilateral termination of employment (PHK) has become a crucial issue in the dynamics of the Indonesian labor market, particularly following the enactment of Law Number 11 of 2020 concerning Job Creation. This study aims to analyze the principle of justice in the practice of unilateral layoffs through a critical legal approach. This approach is used to examine whether the provisions of the Job Creation Law reflect substantive justice for workers or actually strengthen the dominance of employer interests. The research method used is normative juridical with a statutory and conceptual approach, and qualitative analysis. The results show that although the Job Creation Law claims to provide flexibility in industrial relations, in practice it has the potential to weaken legal protection for workers experiencing unilateral layoffs. Therefore, a more balanced policy formulation is needed so that the principle of justice can truly be realized in the employment relationship between employers and employees.

I. INTRODUCTION

Termination of employment (PHK) is a legal action that significantly impacts workers' social and economic conditions. In the context of industrial relations in Indonesia, layoffs are often a sensitive issue and frequently trigger conflict between workers and employers. Employment law itself emphasizes that layoffs should be implemented fairly, equitably, and respectfully, while maintaining workers' human values. However, in reality, many cases demonstrate that companies carry out unilateral layoffs without following fair and responsible legal procedures.(Ovi Septiyana 2022).

The enactment of Law Number 11 of 2020 concerning Job Creation, also known as the Omnibus Law, has revised several provisions in Law Number 13 of 2003 concerning Manpower, including regulations regarding layoffs. This regulatory reform has sparked controversy in society. On the one hand, the Job Creation Law is intended to create a more efficient and flexible investment climate in the employment sector. However, on the other hand, many believe that this change actually reduces the protection of

basic workers' rights, particularly regarding the fairness of termination of employment.(Harahap 2019).

Justice is a fundamental principle in the Indonesian legal system, reflected in various national and international legal instruments. In industrial relations, the principle of justice is understood not only as equality before the law (formal justice), but also encompasses protection for socially and economically vulnerable groups, namely workers (substantive justice).(Setyanegara 2014).

Therefore, this principle should be present at every stage of the employment relationship, from recruitment and employment period to termination. The importance of the principle of fairness in layoff practices has become increasingly prominent since the enactment of the Job Creation Law. One crucial revision in this law is the removal of the provision requiring a decision from an industrial relations court before a layoff is implemented. Previously, Article 151 paragraph (3) of the Manpower Law stated that layoffs could only be carried out after a decision

from an industrial relations dispute resolution body.

However, in the Job Creation Law, these provisions were amended to give employers greater flexibility to terminate employment without strict oversight mechanisms. This change raises concerns that unilateral layoffs will become more frequent without considering the principle of fairness for workers. The loss of legal protection for laid-off workers is seen as weakening their bargaining position in employment relationships. Given that workers are generally in a weaker position than employers in Indonesia's socio-economic structure, the state should be present through fair regulations to protect vulnerable workers.(Harahap 2020).

To understand this issue comprehensively, a critical legal approach is considered most relevant. This approach doesn't view law solely as a normative text, but also considers how law functions in real socio-political contexts. Law is not always neutral; it can reflect the interests of certain parties.

Therefore, the provisions of the Job Creation Law require a critical review to ensure that the principle of justice remains the primary foundation of employment relations in Indonesia. Based on this explanation, this study aims to assess the extent to which the principle of justice is applied in the practice of unilateral layoffs following the enactment of the Job Creation Law. This study will highlight the normative changes that have occurred, their implications for the protection of workers' rights, and offer a more socially just alternative approach. The results of this analysis are expected to contribute to building a labor law system that is more pro-social justice in Indonesia.

II. RESEARCH METHODS

The study of Termination of Employment (PHK) requires a deep understanding of the legal theories and regulations governing the issue. In compiling this article, the author summarizes various previous research findings related to legal protection for workers as a reference basis. The research was conducted using a normative juridical approach, utilizing both a statutory and a

conceptual approach to examine positive legal provisions relevant to the issue discussed. Research materials were collected through a literature review covering legal sources.(Mahmud Marzuki 2005).

Primary legal sources include statutory regulations, court decisions, and other legal provisions in Indonesia. Meanwhile, secondary legal sources include literature such as books, scientific journals, and online articles discussing legal protections for workers affected by layoffs. Furthermore, the author applies qualitative analysis methods to gain a deeper understanding of the dynamics of the problems occurring in society and to formulate recommendations that can provide constructive solutions for workers experiencing layoffs.

III. RESULTS AND DISCUSSION

A. Legal Efforts to Protect Unilateral Layoffs in the Job Creation Law

Legislation expressly prohibits the practice of unilateral termination of employment (PHK). If layoffs are unavoidable, employers are legally required to provide compensation in the form of severance pay to affected workers.(Wijaya, Solechan, and Suhartoyo 2022).

The state has a role in guaranteeing the protection of workers and ensuring their rights are fulfilled. The employment relationship itself is formed based on mutual agreement between the employee and the employer. Considering these two principles, unilateral layoffs clearly violate industrial relations law and ethics.(Wibowo and Herawati 2021).

In general, unilateral layoffs can be defined as termination of employment without the employee's consent. This type of layoff typically has serious negative impacts on the worker's social and economic well-being, as well as impacting the well-being of their family. Referring to Article 81, number 16 of the Job Creation Law, which amends Article 61 of Law Number 13 of 2003 concerning Manpower, it states that an employment relationship may end under the following conditions:(Hasibuan and Harahap 2022):

1. Worker died

2. The work contract period has ended
3. The promised task or work has been completed
4. The issuance of a court decision or determination from an industrial relations dispute resolution institution that has permanent legal force
5. There are certain circumstances or events as stated in the employment agreement, company regulations or collective work agreement which allow the employment relationship to end.

The procedure for terminating an employee's employment must comply with the provisions of the Employment Law and its amendments in the Job Creation Law. Layoffs cannot be carried out unilaterally by a company but must begin with a dialogue or deliberation process between both parties.(Harahap et al. 2023).

If negotiations fail to reach a meeting point or agreement, the company is only permitted to terminate the employment relationship after an official decision has been made by the industrial relations dispute resolution body. Companies or employers who unilaterally terminate their employment without following the procedures stipulated in applicable laws and regulations are obligated to reinstate the worker. This is in accordance with Article 81 number 43 of the Job Creation Law, which revises Article 153 of the Manpower Law. This article stipulates that terminations carried out for reasons prohibited by law are considered null and void, and employers are obligated to reinstate the worker to their original position.(Harahap 2019).

As a form of legal protection against unilateral layoffs, the law guarantees workers compensation in the form of severance pay, long-service bonuses, and other compensation. The amount of each component of this compensation is detailed in the Job Creation Law.

1. Provisions on Severance Pay Due to Unilateral Layoffs Under the Job Creation Law

In the event of unilateral termination of employment, the amount of severance pay that must be given to the worker is determined based on the length of service, namely:(Arifuddin Muda Harahap 2020)

- a. For workers with less than one year of service, compensation is given in the amount of one month's salary.
 - b. If the work period has reached one year but not yet two years, then the worker is entitled to two months' wages.
 - c. If the work period is two years or more but less than three years, then the severance pay given is equivalent to three months' wages.
 - d. For workers who have worked for three years or more but have not reached four years, severance pay of four months' salary is given.
 - e. For work periods of four to less than five years, five months' wages are given
 - f. Workers who have served five years or more but less than six years are entitled to six months' salary.
 - g. If the length of service has reached six years but not yet seven years, then severance pay of seven months' wages will be given.
 - h. For a period of service of seven years or more but less than eight years, workers receive eight months' salary as severance pay, and
 - i. If the worker has served for eight years or more, the amount of severance pay given is nine months' wages.
- #### 2. The Amount of Long Service Award Money (UPMK) in Unilateral Termination of Employment According to the Job Creation Law
- In the context of unilateral termination of employment, the law stipulates that workers are entitled to receive service award money (UPMK) based on the length of service they have served, with the following provisions:(Arifuddin Muda Harahap 2020)
- a. If the length of service reaches three years but not yet six years, compensation is given equal to two months' wages.
 - b. For work periods of six years or more, but less than nine years, workers receive three months' salary as a form of reward
 - c. If the worker has served for nine years or more but less than twelve years, then

compensation is given in the amount of four months' wages.

- d. For work periods of twelve to less than fifteen years, workers are entitled to five months' wages
 - e. If the length of service reaches fifteen years but not yet eighteen years, then severance pay of six months' wages must be given.
 - f. If the worker has a service period of eighteen years or more but has not reached twenty-one years, then the compensation is seven months' wages.
 - g. Workers who have served for twenty-one years or more, but not yet twenty-four years, receive eight months' salary as an award, and
 - h. If the length of service has reached twenty-four years or more, the amount of the award given is ten months' salary.
3. Compensation Components for Unlawful Dismissal Under the Job Creation Law

In the event of unilateral termination of employment, workers are entitled to compensation in the form of compensation for the following:(Arifuddin Muda Harahap 2020)

- a. The remaining annual leave rights that have not been used by workers and have not expired
- b. Transportation costs for the return of workers and their family members to their place of origin or initial location when starting work, and
- c. Other compensation as stipulated in the Employment Agreement, provisions in Company Regulations, or the results of agreements in the Collective Labor Agreement (PKB)

B. The Principle of Justice in the Practice and Regulation of Unilateral Dismissal According to the Job Creation Law

Termination of Employment (PHK) is a key topic in industrial relations in Indonesia. Unilateral layoffs, in particular, often attract attention because they are closely related to workers' rights and their social and economic conditions. Regulations regarding layoffs have undergone significant changes, most notably with

the issuance of Law Number 11 of 2020 concerning Job Creation (the Job Creation Law). These changes have sparked diverse reactions and debate among workers, employers, and academics, particularly regarding the aspect of fairness in worker protection.(Karo, Ides, and Susilo 2022).

In the employment sector, the principle of justice is defined as fair and proportional treatment of all parties, including the provision of appropriate compensation, a transparent layoff process, and legal protection for workers who are unilaterally laid off. This article aims to examine the extent to which this principle of justice is applied in the practice and provisions of unilateral layoffs as stipulated in the Job Creation Law.(Utami 2013).

One of the significant changes in the employment sector brought about by the Job Creation Law is the simplification of procedures for termination of employment (PHK) by employers. Based on Law No. 11 of 2020 and Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment (PP PKWT-PHK), employers can now immediately terminate employment by sending a notification letter to workers at least 14 working days before the termination.

If the employee receives the notification letter and does not object to the termination decision, the employer is required to report the termination to the Manpower Office. This agreement must be outlined in a collective agreement, which is then registered with the Industrial Relations Court. This termination letter is a crucial requirement for the employee to receive benefits from the Job Loss Insurance (JKP) program.(Charda 2022).

Meanwhile, workers who refuse to be laid off are required to submit a letter of rejection with written reasons no later than seven working days after receiving the notification. The termination of employment for workers who refuse to be laid off will be resolved through bipartite negotiations between the employer and the workers or the trade union. If bipartite negotiations fail to reach

a consensus, the dispute can be resolved through the industrial relations dispute resolution mechanism.(Mantili 2021).

This contrasts with the previous provisions in Law Number 13 of 2003, which stipulated that layoffs carried out without the approval of an industrial relations dispute resolution body were declared null and void. Before carrying out layoffs, employers are required to first engage in bipartite negotiations with workers.(Mantili 2021).

Based on changes to layoff procedures stipulated in Law Number 11 of 2020 and Government Regulation Number 35 of 2021, there are four main principles regarding termination of employment. First, employers are permitted to terminate employees unilaterally, including in cases of urgent employee violations.

Second, layoffs no longer require approval from an industrial relations dispute resolution body. Third, layoffs can be carried out without prior bipartite negotiation. Fourth, the bipartite negotiation process is only mandatory if workers reject the layoff decision. Juanda reminded that in implementing layoffs, employers must pay attention to the reasons used, the timing of the implementation, the methods applied, and the compensation provided to workers.(Mantili 2021).

If the reason for termination of employment violates the provisions of Article 153 of the Manpower Law, as amended by Law No. 11 of 2020, the termination of employment is considered legally void, and the employer is obliged to reinstate the terminated worker. Prohibited reasons for termination of employment include conditions such as marriage, pregnancy, childbirth, miscarriage, or breastfeeding; and blood relations or marriage between workers in the same company.

The principle of justice in terminating employment can be seen from two main aspects, namely procedural justice and distributive justice.(Thalib 2022).

1. Procedural fairness emphasizes the importance of a fair process in implementing layoffs, such as providing adequate notice, opportunities for dialogue or mediation, and oversight by

authorized agencies. Although the Job Creation Law seeks to simplify and expedite layoff procedures, some argue that the regulation favors employers over workers.

2. Meanwhile, distributive justice relates to the amount of compensation and workers' rights that must be provided during layoffs. The reduction in severance pay stipulated in the Job Creation Law is considered to have reduced distributive justice for workers who experience unilateral layoffs.

C. Legal Implications of the Imbalance of Bargaining Position Between Workers and Companies

Dispute resolution through the courts is a litigation process that forces the parties to resolve their disputes based on a legally binding decision of a judge. The judge acts as a powerful third party because his or her decision is final and binding unless further legal action is taken. The judicial process is typically a win-lose process, meaning the decision will benefit one party and disadvantage the other, even though legally the parties are equal and have equal rights throughout the process.(Sugiarto 2019).

In practice, dispute resolution in court treats all parties equally, so that judges' decisions are based on formal examination and evidence, particularly in civil cases, which emphasize legal evidence without considering the substantive aspects of the case. Furthermore, judges in civil procedural law are passive, meaning they cannot rule on matters beyond those proposed by the parties.

Therefore, dispute resolution in the Industrial Relations Court (PHI), which follows civil procedural law, results in decisions based solely on formal examinations. The negotiating power of each party significantly influences the smoothness of the resolution process at the PHI.(Manurung and Adab 2023).

One of the weaknesses of this method is if there is an imbalance of power between the parties, where one party, usually the worker, is in a weaker position. This is mainly caused by a

subordinate or hierarchical working relationship (dienstverhouding)(Kusmayanti, Karsona, and Fakhriah 2020).

The employment relationship between workers and employers is characterized by subordination, where workers are obliged to follow the directions or instructions of their employers as their superiors. In social, psychological, and economic realities, workers tend to be more dependent on their employers. This dependence weakens workers' bargaining power when dealing with employers.(Sherly, Karsona, and Inayatillah 2021).

This power imbalance is the primary reason for the government's involvement in resolving conflicts between workers and employers. Furthermore, workers have sought to strengthen their position by forming trade unions as a collective tool. However, the government's involvement in dispute resolution has changed since the enactment of the Law on the Settlement of Industrial Relations Disputes (PPHI), which abolished the Regional and Central Committees and replaced them with the Industrial Relations Court (PHI) as the formal dispute resolution institution.

Although the government's role has been structurally reduced, its involvement remains in the mediation and conciliation process. Mediation is conducted by a mediator, a government employee appointed by the Minister of Manpower, who is tasked with providing written advice to the disputing parties. The conciliator, also appointed by the Minister, has similar responsibilities.

To address the imbalance in bargaining power between workers and employers at the Industrial Relations Court (PHI), ad hoc judges were appointed. These ad hoc judges came from trade unions and employer organizations, with the aim of creating balance in the decision-making process in court.(Karsona 2020).

The legal consequences of the "fee-based litigation" principle contained in civil procedural law can be waived for cases with a claim value of less than IDR 150,000,000.00 (one hundred and fifty million rupiah). This provision provides convenience for workers with financial constraints. The examination process through a

fast procedure limited to a maximum of 50 working days or less than two months, guarantees legal certainty in the resolution of cases. This primarily impacts the clarity of the worker's status in cases of termination of employment and the fulfillment of rights and obligations between the disputing parties so that it does not drag on. This mechanism is strengthened by the elimination of the appeal stage to the high court, so that the only available legal route is cassation to the Supreme Court, which in turn accelerates the process of resolving labor conflicts.(Kusmayanti et al. 2020).

However, there remains uncertainty regarding the duration of completion using the regular examination process, as well as the unclear definition of the term "sufficiently urgent" as a requirement for expedited examination. Consequently, the implementation of expedited examinations relies heavily on the subjective judgment of the Chief Justice of the District Court in interpreting the urgency of a case.

D. A Critical Legal Approach to Assessing the Fairness of Unilateral Dismissal Norms in the Job Creation Law

Termination of employment (PHK) is a legal action that has a significant impact on workers' livelihoods. In Indonesia, regulations regarding layoffs are stipulated in Law Number 13 of 2003 concerning Manpower and underwent significant revisions through Law Number 11 of 2020 concerning Job Creation. One of the main issues arising from this change is the practice of unilateral layoffs, namely the dismissal of workers by employers without mutual agreement.(Gunadi 2021).

The main issue that arises is how to measure the fairness of this provision, given the unequal position between employers and workers in industrial relations. To evaluate the fairness of this legal provision, a critical legal approach is an appropriate analytical tool. This approach not only reads the legal text normatively but also questions the social, political, and economic structures behind the formation of the law. In this way, this approach can identify potential inequalities and biases in unilateral layoff

regulations that are often hidden behind the formal legal framework.(Jahari and Artita 2023).

The critical legal approach is rooted in Critical Legal Studies (CLS) thinking, which developed in the United States since the 1970s. This approach rejects claims that law is neutral and objective. Instead, law is understood as the result of dominant social and economic power relations.(Gunadi 2021).

In many cases, the law actually reinforces injustice by formally legitimizing unequal structures. Therefore, the law needs to be understood contextually, taking into account social relations and class positions within society. In the realm of employment, a critical legal approach demonstrates that while the law normatively claims to provide protection for workers, in reality this is not always the case. When unilateral layoffs occur, the unequal power relations between workers and employers become increasingly apparent. Ideally, the law serves to protect the vulnerable, but in practice, it often favors the interests of capitalists.(Aloewic 1996).

The revisions made through the Job Creation Law include significant changes to several provisions in the Manpower Law, including regulations regarding layoffs. One significant change is Article 153, which originally prohibited layoffs for specific reasons. Although this prohibition remains in the latest version, its effectiveness has been reduced. Furthermore, the change in severance pay provisions, from a maximum of 32 months to 25 months (including those from the JKP program), indicates a policy direction that favors business flexibility over worker protection.(Aloewic 1996).

Formally, regulations state that layoffs must have a legitimate basis and be conducted through a deliberative process. However, in practice, employers often exploit legal loopholes to unilaterally terminate workers, particularly for reasons of efficiency or restructuring. When the law permits layoffs without employee consent, and the grounds are not explicitly prohibited, the fairness of the law is questionable.

From a critical legal perspective, the provisions regarding unilateral termination of employment

in the Job Creation Law reflect an imbalance in the power relationship between employers and workers. Structurally, business owners hold control over resources, management, and production processes, while workers tend to be subordinate due to their dependence on their jobs for their livelihood. When the law allows for termination of employment for reasons of efficiency or company losses without providing maximum protection for workers, the fairness of the law is questionable.

One of the main criticisms of the critical legal approach lies in its ideological view of law, which separates rules from political and economic realities. In the context of the Job Creation Law, the formal narrative states that reducing workers' rights, such as severance pay or simplifying layoff mechanisms, aims to provide legal certainty and attract investment. However, the critical legal approach views this narrative as a form of justification that conceals the interests of capital behind legal policies.(Aloewic 1996).

Judgments of justice cannot rely solely on procedural clarity or consistent legal logic, but must also encompass the real impact on vulnerable groups. In other words, a critical legal approach demands that law be analyzed for its social consequences, not just its normative text. Furthermore, when layoff disputes must be resolved through industrial relations institutions, this places an additional burden on workers from economically disadvantaged backgrounds who have difficulty accessing the legal process. In fact, the law should be a tool for empowerment, not a reinforcement of an unbalanced economic structure.(Karo et al. 2022).

This approach is highly relevant for examining labor law reform in the neoliberal era, where policy directions prioritize labor market efficiency and flexibility. In such situations, workers tend to be treated as a cost burden to be reduced, rather than as individuals with inherent economic and social rights. Using a critical legal approach, we can understand that the unilateral layoff provisions in the Job Creation Law represent a compromise that better accommodates the interests of business owners.

On the one hand, the law legitimizes employers to terminate employment without workers' consent, while on the other hand, workers are inadequately protected. This indicates that the law is being used as a tool to formalize inequality in employment relations. Critical law serves not only as an analytical tool for investigating injustices within the positive legal system, but also as a tool to encourage reforms toward substantive justice.(Charda 2022).

In this case, justice is not enough if it is only enforced through normative prohibitions or formal procedures; it must be implemented through policies that can correct the power imbalance between business actors and workers. The state should play an active role in ensuring that the law is not used as an extension of market forces, but rather as an instrument of liberation for the working class. Therefore, a critical legal approach encourages us to continuously evaluate and amend the law to ensure it truly reflects the values of true social justice.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Within the framework of unilateral termination of employment (PHK), the principle of justice should be the primary foundation of any employment policy. However, based on critical legal analysis, the Job Creation Law actually demonstrates a legal tendency that favors capital interests and business efficiency over worker protection. Revisions to severance pay provisions, simplification of layoff procedures, and the legitimization of layoffs for efficiency reasons demonstrate that the law has been used as a legal instrument to legitimize the unequal power relations between employers and workers.

Under these conditions, workers, as the structurally weaker party, become increasingly vulnerable to unfair layoffs. A critical legal approach demonstrates that law cannot be separated from the social, political, and economic contexts that shape it. Therefore, justice cannot be sufficiently upheld through normative formulations in legislation but must be assessed based on its impact on vulnerable groups, in this case, workers.

The Job Creation Law, if not balanced with strong protection instruments for workers, risks perpetuating structural injustice in industrial relations. Therefore, a reformulation of labor law policy is needed that truly prioritizes substantive justice, namely justice that is not only evident in legal texts but also present in social reality.

B. Suggestion

The government and policymakers need to strengthen legal protection mechanisms for vulnerable workers, especially those who are disadvantaged in industrial relations and frequently face unilateral termination of employment (PHK). This effort can be realized through stricter regulations regarding requirements, procedures, and fair compensation to prevent abuse of power by employers. Clear legal protection must be accompanied by strict oversight and the imposition of strict sanctions for violators of PHK provisions.

Labor supervisory institutions need to be optimally empowered to ensure fair and non-discriminatory application of the law, and to provide workers with easy access to file complaints or resolve disputes. Furthermore, it is crucial to develop more responsive and pro-worker dispute resolution mechanisms, such as independent and affordable mediation or arbitration. This will ensure that workers, particularly those from disadvantaged economic groups, can obtain real justice without being hindered by complex, lengthy, and expensive legal processes.

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