



Layoff of Mass Employment without Severance in the Perspective of Human Rights

Vina Sabina, Wiwik Afifah, Sultoni Fikri

shabinavinaofficial@gmail.com, wiwikafifah@untag-sby.ac.id, sultonifikri@untag-sby.ac.id

Universitas 17 Agustus 1945 Surabaya

Abstract

The purpose of this research is to find out the Termination of Employment by analyzing it using the perspective of human rights. This study uses a normative juridical method. The approach used is the statutory approach. The result is that since the existence of the COVID-19 pandemic it has had a negative impact because it has affected the economy which has threatened the life of the nation and state, and not many countries in the world have been able to survive. Indonesia has experienced imbalances in various fields and living arrangements, especially in the economic sector which has resulted in decreased income of economic actors and led to inequalities in society such as layoffs, due to the many losses experienced by companies ranging from operating restrictions, decreased income and even many companies or medium to lower businesses that have experienced a decrease in income so that it can be said to be bankrupt. This resulted in the company being forced to lay off employees because they were no longer able to pay employee wages. The large number of workers who are laid off or affected by layoffs affects the increase in the number of unemployed in Indonesia. Even though there are provisions regarding layoffs, many companies that lay off their employees do not provide severance pay as stipulated. The problem is that mass layoffs without severance pay are a form of human rights violation.

Keywords: Covid-19 Pandemic, Termination of Employment, Employee Wages

Introduction

In a company, work plays an important role which is one of the factors supporting development. Improving the quality of human resources cannot be achieved without certain life guarantees, as well as improving the quality of work and job protection must be in accordance with human dignity. Companies that are developing to progress require workers to work to achieve certain goals. Workers are members who are part of an institution or company that works for the development of the company. Employees themselves are divided into two, some work in government agencies which are called Civil Servants (PNS), and some in private institutions. Civil servants are workers who devote themselves to the state and their rights and obligations will be regulated by government regulations.¹ Meanwhile, private employees are

¹ Sherly Ayuna Putri, Agus Mulya Karsona, and Holyness Singadimedja, 'Dirumahkannya Pekerja Yang Berujung Pemutusan Hubungan Kerja (Phk) Pada Masa Pandemi Covid-19 Secara Sepihak Berdasarkan Penyelesaian



workers who work in private institutions or companies where their rights and obligations are regulated by company regulations based on statutory regulations. Employees who work in private institutions or companies are often referred to as laborers.

For the development of a company in terms of achieving or realizing its goals, then a company needs workers. However, there is one thing that workers are worried about, namely termination of employment (PHK). Layoffs are a fundamental part of several factors that must be taken into account as the company grows. Moreover, workers can become a serious threat to political stability² if their rights are not guaranteed and fulfilled by the state. In Indonesia, positive laws governing termination of employment have been regulated in Law no. 13 of 2003 concerning Manpower.³

The issue of layoffs has recently become a concern, especially with the drastic economic downturn during the COVID-19 pandemic in Indonesia. The large number of employers laying off workers was affected by the declining rate of economic growth. According to this study, several examples of termination of employment by employers were not in accordance with established regulations.⁴ In Law No.13/2013 Article 151 explains that employers, the government, and workers are obliged to try to prevent layoffs. However, company losses are the main reason for layoffs. Whereas in Article 164 of Law No.13/2003 it has been explained that employers are allowed to layoffs when their business is no longer profitable or there are losses for 2 (two) consecutive years and eventually the company has to be closed/bankrupt.

With COVID-19 having a direct impact on the country's economic sector, layoffs had to be carried out during this pandemic. Thus, it has an impact on the world of entrepreneurs who in the end have to lay off their workers or lay off because they are unable to pay employee wages. The company's decision to layoffs to avoid greater losses. A large number of business actors and companies that carry out layoffs will result in a lot of unemployment so the percentage of unemployed in Indonesia is increasing. The main reason is because of the

Sengketa Ketenagakerjaan Secara Non Litigasi', *ADHAPER: Jurnal Hukum Acara Perdata*, 8.1 (2022), 167 <<https://doi.org/10.36913/jhaper.v8i1.176>>.

² Michael Neureiter, 'Organized Labor and Democratization in Southeast Asia', *Asian Survey*, 53.6 (2013), 1063–86.

³ I Komang Edy Dharma Saputra, 'Analisis Hukum Pemutusan Kerja Pada Masa Pandemi Covid-19', *Jurnal Ilmiah Raad Kertha*, 4.2 (2021), 62–76.

⁴ A H P Putri, 'Menganalisis Perlindungan Hak Asasi Manusia Terhadap Tenaga Kerja', *De Cive: Jurnal Penelitian Pendidikan ...*, 1.8 (2021), 1–11.



inability to pay the salaries or wages of the workers⁵, which ultimately forces them to reduce the number of workers/layoffs. This condition could be the reason for the so-called "force majeure". Companies affected by force majeure can be said to be in default because the debtor does not have the ability to fulfill his achievements on the creditor's side, where this inability is unwanted or beyond the will and ability of the debtor.

When the COVID-19 Pandemic hit, there were many mass layoffs which resulted in companies being declared bankrupt because they were unable to fulfill their obligations to their workers. The existence of this termination of employment had to be done because it was the last resort for companies that suffered losses and had an impact on declining company revenues. Therefore, companies cannot provide wages or salaries to their workers. There are also many cases of mass layoffs that are not in accordance with statutory provisions which have resulted in protests from workers. This phenomenon then makes the author judge that mass layoffs are part of a form of human rights violation. As it is known that workers who are working have their rights as workers. However, when their rights are not fulfilled during layoffs, it can be said that there is a violation of human rights. Meanwhile, from the employer's point of view, workers' rights are often seen as a limitation on their activities which has the potential to negatively impact profitability.⁶ The author further analyzes why mass layoffs without severance pay are a form of human rights violation.

Research Methods

This study uses a normative juridical method. Normative legal research is a process to find a rule of law, legal principles, or legal doctrines to answer the legal issues at hand.⁷ The approach used is a statutory approach that utilizes legal rules, laws, legal theory, and expert opinion. Data collected apart from statutory regulations, the authors refer to several books, journals, and articles related to writing studies.

Layoff Procedures Based on Government Regulation Number 35 of 2021

Termination of employment is said to be the end of working time that has been agreed upon by the recipient/employee with the company/employer. Layoffs are a form of ending the employee's contract with the company. All layoff concepts are regulated under Law no. 13/2003, as well as regulated in Law no. 11/2020 concerning Job Creation, and also regulated in Government Regulation No. 35/2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment. This regulation

⁵ Fachry Ahsany, Ahmad Faiz Alamsyah, and Sholahuddin Al-Fatih, 'LEGAL PROTECTION OF LABOR RIGHTS DURING THE CORONAVIRUS DISEASE 2019 (COVID-19) PANDEMIC', *Jurnal Pembaharuan Hukum*, 7.2 (2020), 100–115.

⁶ Faradj Koliev, Thomas Sommerer, and Jonas Tallberg, 'Compliance without Coercion: Effects of Reporting on International Labor Rights', *Journal of Peace Research*, 20.10 (2020), 1–16.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2010).

applies to workers, civil servants, employees of private companies, employees, teachers, and others who have rights and fairness in the world of work, without distinguishing between positions above or employees.⁸

In Government Regulation No. 35/2021 there is a mechanism or procedure for layoffs such as notifications containing reasons for layoffs from employers for workers who will be laid off. This notice of dismissal is made in the form of a notification letter containing reasons for dismissal and officially delivered by the company to workers/employees no later than two weeks or 14 (fourteen) working days prior to termination of employment.⁹ If the dismissal is carried out during a probationary period, the notice must be submitted no later than one week or 7 (seven) working days prior to the termination of employment for the worker/employee. Then it can be seen in Government Regulation No. 35/2021 Article 38 that if the worker/employee has received a letter of notification of layoffs and does not submit a refusal of layoffs, the company must report termination of employment to the Ministry of Manpower/Dinas relating to government affairs in the Provincial and District/City Manpower sector.

In addition, in Government Regulation No. 35/2021 Article 39 explains workers/employees/laborers, and/or trade unions/labor unions if they refuse layoffs. Paragraphs (1), (2), and (3) describe the procedure for rejecting layoffs.¹⁰ If the worker/laborer receives a notification of dismissal and declares that they refuse to accept the notification, they must make a letter of refusal accompanied by reasons no later than one week or 7 seven (seven) working days after receiving the notification, and if there are different opinions regarding with the issue of layoffs, the resolution mechanism is carried out through deliberations or bipartite methods between employers and workers and/or trade unions. As can be seen in paragraph (3) which explains the bipartite negotiations as referred to in paragraph (2). However, if there is no agreement between the two parties, it will proceed to the next mechanism, namely the

⁸ Vicko Taniady and others, 'Phk Dan Pandemi Covid-19: Suatu Tinjauan Hukum Berdasarkan Undang-Undang Tentang Ketenagakerjaan Di Indonesia', *Jurnal Yustisiabel*, 4.2 (2020), 97 <<https://doi.org/10.32529/yustisiabel.v4i2.701>>.

⁹ Nurmadiyah Nurmadiyah, 'Penyelesaian Perselisihan Pemutusan Hubungan Kerja Menurut Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja', *Jiip - Jurnal Ilmiah Ilmu Pendidikan*, 5.8 (2022), 3167–72 <<https://doi.org/10.54371/jiip.v5i8.819>>.

¹⁰ Tenaga Kerja and Cipta Kerja, 'PERLINDUNGAN HUKUM UNTUK TENAGA KERJA YANG DIRUMAHKAN BERDASARKAN UNDANG-UNDANG-UNDANG NO 11 TAHUN 2020 TENTANG CIPTA KERJA KERTA DYATMIKA : Jurnal Ilmiah Fakultas Hukum Universitas Dwijendra', 18.2 (2021), 48–59.

settlement of industrial relations disputes in accordance with the provisions of the applicable laws and regulations.

This layoff occurred because of the concept of an employment relationship, which can be said to be the interaction between workers and the company during working hours.¹¹ Instead of this concept of an employment relationship, there are three classifications that are regularly defined as follows:

- a. An employment relationship that is terminated/terminated by law means that the employment relationship ends automatically, both employers and workers are passive.
- b. Employment relationships terminated/terminated because the employee is active to be followed up upon the end of his working period.

The employment relationship is terminated by the court, which means that both parties, the employer and the worker, apply for termination of employment to the district court for certain reasons.

1. The government cannot regulate companies to layoffs, which can be seen in Law no. 13/2003 Article 153 paragraph 1 concerning Manpower, which prohibits employers from dismissing their workers for the following reasons:
2. Workers/employees who are absent from work consecutively for no more than 12 (twelve) times due to medically declared illness
3. Workers/employees who cannot carry out their work because they fulfill their obligations to the state in accordance with the provisions of the applicable laws and regulations.
4. Workers/employees who perform religious rituals determined by their religion.
5. Married workers/employees.
6. Female workers are pregnant, giving birth, having an abortion, or breastfeeding their babies.
7. Employees/workers who have family relations or marital status with other employees/workers in the same company, unless otherwise specified in the work agreement, company policy, or PKB.
8. By agreement or in accordance with the requirements set forth in the work contract, directives from the supervisory authority, workers/employees who are members and/or union officials can carry out activities outside working hours or outside working hours.
9. Workers/employees who report the actions of contractors who commit violations to the authorities
10. There are differences of opinion regarding religion, politics, race, skin color, class, gender, physical condition, and marital status.

¹¹ Osgar Sahim Matompo, 'Perlindungan Hukum Bagi Tenaga Kerja Asing Di Indonesia', *Legal Standing : Jurnal Ilmu Hukum*, 4.2 (2020), 12 <<https://doi.org/10.24269/ls.v4i2.2938>>.

11. Workers/employees who are permanently incapacitated, sick as a result of a work accident, or sick as a result of a working relationship where, according to the doctor's assessment, the recovery time is uncertain.

Workers have the right to receive appropriate/proper and fair treatment in the employment relationship. Then, workers also get the right to arbitrary layoffs. The government is trying to provide legal protection to workers affected by layoffs based on the Manpower Law and the Job Creation Law through Government Regulation No. 35/2021 as evidenced by the final decision of the DPR Supreme Court of the Republic of Indonesia No. 20/Pdt.Sus-PHI/2021/PN Dps with results that show the fairest attitude possible without discriminating between the defendant and the plaintiff. For workers affected by layoffs, if they do not get legal protection, it causes workers not to receive social assistance because their rights are not respected according to applicable regulations, for example; laid-off workers are entitled to compensation in the form of severance pay, years of service in cash and costs for workers' rights.¹² However, during the pandemic, there were mass layoffs without severance pay for workers. Thus, these layoffs can be said to be a violation of human rights, because the layoffs were carried out unilaterally by the company and affected an increase in the percentage of unemployed in Indonesia.

The following are the main points of Government Regulation No. 35/2021 in the field of employment which is part of efforts to ensure labor protection, including:

a. Specific Time Work Agreement (PKWT)

A Specific Specific Time Work Contract is a concept of a working relationship for a certain time for a certain type of work for a specified time. Therefore, this type of employment relationship can be measured by the work that can be carried out based on the agreements between the employer and the prospective employee at a specified target point in time. However, there are several new claims including:

1. Previously, PKWT was only formed for a period of two years, but in this arrangement, it can be extended twice in 1 (one) year and extended once every 2 (two) years. Meanwhile, government decision 35/2021 states that PKWT can be implemented for a maximum of 5 (five) years with that period including the extension period. Furthermore, the government has also abolished the rest period of 30 (thirty) days in the PKWT extension which was previously regulated in Law no. 13/2003.
2. In addition, employers are required to report PKWT records online to the Ministry of Manpower no later than three days after the day the work is done and signed.

¹² Mochamad Arifinal, Aris Suhadi, and Rani Sri Agustina, 'Perlindungan Pekerja Buruh Terhadap Pemutusan Hubungan Kerja Pada Perusahaan Swasta Di Masa Pandemi Covid-19', *Legal Standing Jurnal Ilmu Hukum*, 4.2 (2020), 290–300.

However, if PKWT registration online is not yet available, then employers can register PKWT in writing and submit it to local government officials in the field of manpower no later than 7 (seven) days after signing the PKWT.

b. Outsourcing

On the basis of Government Regulation No.35/2021, every outsourcing company must be in the form of a legal entity and must also have a business license issued by the central government. In addition, there is a certainty that every worker has a working relationship with an outsourcing company in accordance with the PKWT or permanent work agreement (PKWTT). Outsourcing companies are required to be responsible for protecting employees, wages, benefits, working conditions, and any disputes that arise. Respect for employee rights is based on applicable legal provisions, such as a collective agreement or company regulations. In the case of a subcontractor using the PKWT system, the work contract must contain provisions for the transfer of worker protection in the event of a change of subcontractor (provided that the work object remains).¹³

c. Determination of working hours and breaks

Based on Government Regulation No. 35/2021 this does not change the discipline of the duration of working hours. However, the government gave some companies permission to work less than expected. For several branches that use shorter working hours than specified, the characteristics are indicated by the performance of less than 7 (seven) hours or flexible working hours and the work can be done outside the workplace. While for fields whose working hours can apply higher than those stipulated by the Minister for government affairs in the field of manpower. Therefore, in this new ratification, Government Regulation No.35/2021 explains that overtime can be used for a maximum of 4 (four) hours per day or 18 (eighteen) hours per week.

d. Work termination

Government Regulation No.35/2021 confirms the reasons for layoffs are regulated in Article 154A Law No.11/2020. An important update regarding layoffs is that currently the employer is obliged to notify the layoff in writing, with a maximum period of 14 (fourteen) days.¹⁴ In addition, it must also be accompanied by reasons. After the notification, there are 2 (two) choices, namely the worker accepts or rejects. If the worker chooses to accept the termination of employment, then the company is obliged to provide a report regarding the dismissal to the Ministry of Manpower. Conversely, if the employee chooses to refuse termination of employment, the worker is obliged to submit a letter of refusal accompanied by reasons for the refusal. Then no later than 7 (seven) working days after the termination of employment is received.

¹³ Arifinal, Suhadi, and Agustina.

¹⁴ Pakuan Law Review, 'https://doi.org/10.33751/Palar.V8i3 .', 08.September (2022), 694–702.



Mass Layoffs Without Severance Pay as A Form of Human Rights Violation

Layoffs of employment according to Imam Supomo is the termination of employment relations individually or collectively, both by employers and workers, carried out individually or in bulk. Layoffs are carried out due to something that causes the end of the rights and obligations of workers with employers. Thus, workers no longer have the obligation to work when the employment relationship has ended. Conversely, in this case, the company is no longer obliged to pay the wages of employees. According to Sendjurn H. Manulang, there are four terms in understanding layoffs, as follows:

1. Termination, the end or termination of the employment relationship due to the end or completion of the work agreement.
2. Dismissal, the end or termination of the employment relationship due to disciplinary action by the employee.
3. Redundancy, termination, and termination of employment relations due to linkages and technological developments.
4. Retrenchment, the end or termination of employment due to economic problems, as a result, the company is unable to provide or fulfill its obligations to its employees.

Meanwhile, Law No. 13/2003 regarding employment, both from the perspective of employers and workers, is regulated based on positive law in Indonesia. The existence of this law is expected to be able to create the development of industrial relations, where there is a system of interaction between the government, employers, and workers involved in the production of goods and/or services in accordance with the values of Pancasila and the 1945 Constitution. The issue of layoffs is also explained in Law No. 13/2003. According to the working relationship partnership principle which states that both employers and workers alike can terminate the employment relationship in accordance with the applicable laws and regulations.¹⁵ Then the working relationship regulated as in this rule can be terminated. However, in practice, many terminations or terminations of employment are not in accordance with applicable law, such as; carried out unilaterally without regard to workers' rights, as the case raised by the author

Termination of employment that is not in accordance with applicable regulations is a form of violation of Human Rights, although there is debate regarding labor rights including as a human right or not¹⁶, according to the author, dismissal that does not comply with applicable regulations is a form of violation of workers' rights. Violations of workers' rights occur when these rights are not in accordance with applicable legal standards. The protection of workers' rights is strictly regulated in accordance with Human Rights standards. Thus, it is

¹⁵ Review.

¹⁶ Larry Savage, 'Workers' Rights as Human Rights: Organized Labor and Rights Discourse in Canada', *Labour Studies Journal*, 34.1 (2009), 8–20.

the company's obligation to protect workers' rights and the important role of the state in ensuring the balance of fulfillment of rights and obligations through applicable laws.

Guarantees and recognition of the rights of workers/laborers have indeed been regulated in Law No. 13/2003. The following are the rights of workers regulated in Law No. 13/2003:

1. Article 5: “Every worker is given the opportunity to get a job without any form of discrimination”.
2. Article 6: “Guarantee the rights of workers/laborers to receive equal treatment from employers”.
3. Article 79 paragraph (1): “Entrepreneurs are obliged to provide days off or leave”.
4. Article 80: “Entrepreneurs are obliged to provide spare time for workers/laborers so that they can carry out worship in accordance with their beliefs or religion”.
5. Article 86 paragraph (1): “Workers/laborers are guaranteed and fulfilled the right to occupational health and safety, as well as treatment according to human dignity and religion”.
6. Article 88 paragraph (1): “Workers/laborers are entitled to a wage that is adequate and sufficient to support the standard of living of the workers”.

At least these articles are sufficient to describe that the rights of workers/laborers are guaranteed and recognized by the state. However, what the author focuses on is related to violations of termination of employment or layoffs that are carried out unilaterally without any severance pay.¹⁷ Therefore, layoffs without severance pay can be regarded as a form of human rights violation. According to the current understanding of human rights, all people have basic rights from birth, and must also be granted fundamental rights based on human dignity. The modern notion of human rights rooted in western liberal and humanitarian philosophy¹⁸ must be universal and inalienable and must be upheld at all costs, regardless of other factors. There is universal agreement that recognition of human dignity is at the heart of human rights¹⁹, then everyone must uphold that dignity. The notion of basic rights includes protection of freedom of association and the right to collective bargaining; elimination of all forms of forced or compulsory labor; elimination of child labor, and labor protection for children and minors; elimination of discrimination in employment and position; and protection of acceptable

¹⁷ Indi Nuroini, ‘Konsekuensi PHK Berdasarkan Peraturan Pemerintah Nomor 35 Tahun 2021 (Nuroini, 2022)’, *Jurnal Hukum, Politik Dan Ilmu Sosial*, 1.3 (2022), 178–83.

¹⁸ Sarbani Guha Ghosal, ‘HUMAN RIGHTS: CONCEPT AND CONTESTATION’, *The Indian Journal of Political Science*, 71.4 (2010), 1103–25.

¹⁹ Ghosal.



working conditions with respect to minimum wages, and occupational safety and health.²⁰ The right to work also includes the right to get fair treatment in the world of work.

In Articles 23 and 24 of the Universal Declaration of Human Rights (UDHR) it can be seen that it has been clearly and unequivocally regulated regarding workers' rights and rights at work as part of human rights:

Article 23:

1. “Everyone has the right to work, is free to choose a job with reasonable and decent working conditions, and has the right to protection from termination of employment.”
2. “Everyone has the right to get the same wages for the same effort without any discrimination.”
3. “Every person who works has the right to receive fair and decent wages to guarantee a decent life for himself and his family, and if necessary, additional social protection will be provided.”
4. “Everyone has the right to form and join trade unions to protect their rights.”

Article 24:

“Everyone has the right to rest/leaves and holidays, including reasonable limitations on working hours and periodic holidays, with pay.”

From the two Articles, it is quite clear and firm that the right to work and the right to work are basic human rights that must be guaranteed and fulfilled. Labor rights cover a wide range of rights, from procedural rights, such as the right to free association and collective bargaining, to more substantive rights, such as freedom from forced labor and the right to equal treatment.²¹ There are two principles as the basis for workers' rights not to be terminated Humans as workers/laborers have the right to receive proper and fair treatment in work relations. This includes fair and proper treatment when layoffs occur. Because the recognition of the rights of workers/workers does not only provide guarantees for association²², but also rights must be guaranteed in the form of protection against arbitrary layoffs. Thus, the right to a fair dismissal or termination of employment relations is adapted to the concept of guarantees and fulfillment which is influenced by the idea of human rights, namely to respect, value, and treat workers/laborers based on human dignity. terminate their employment relationship unfairly, namely, the principle of dignity and the principle of autonomy. The Dignity principle means recognition and respect for the dignity of workers/laborers. This means that there are

²⁰ Maria Anna Corvaglia, ‘Labour Rights Protection and Its Enforcement under the USMCA: Insights from a Comparative Legal Analysis’, *World Trade Review*, 20 (2021), 648–67.

²¹ Zhiyuan Wang, ‘Democracy, Policy Interdependence, and Labor Rights’, *Political Research Quarterly*, 70.3 (2017), 549–63.

²² Robert Blanton and Shannon Lindsey Blanton, ‘Globalization and Collective Labor Rights’, *Sociological Forum*, 31.1 (2016), 181–202.



rational requirements from the employer if he wants to terminate or terminate the employment relationship with workers/laborers. Layoffs that do not have a rational basis are considered as a violation of employee dignity. Meanwhile, the principle of autonomy means recognition of the nature of work which is an important part of workers/laborers to give meaning to their lives. Therefore, the employer should not be allowed to interfere in the affairs of the worker outside of working time. The principle is to respect workers/laborers as individuals who are free to organize their lives.

These two principles explicitly explain that the right not to be dismissed unfairly (Just cause principle) is a fundamental principle of human rights from the perspective of layoffs. From these two principles, it can also be understood if there is justice that must be achieved in the layoff aspect, namely, substance and procedural justice. Substantial justice means referring to rational reasons in carrying out layoffs, while procedural justice refers to giving workers/laborers the opportunity to defend themselves in the event of a layoff that has no reason and is not based on the applicable legal regulations.

The just cause principle, which has become a principle to guarantee workers' rights, actually emerged because of the negative influence of the Industrial Revolution. Apart from that, the influence of the Covid-19 pandemic that hit all countries also played an important role in the number of layoffs carried out by companies or employers. Thus, many countries are aware of the limitations of the principle of freedom of contract which is one of the basic principles of the theory of economic liberalism. The fundamental reason for this limitation is the lower negotiating power of workers compared to employers. When work agreements are drawn up, these deficiencies usually begin to become apparent. Even though the principle of a balance of the parties exists in the preparation of a work agreement, the meaning of a work agreement is certainly different from the concept of an agreement in general, which is defined as a balance of the parties. Many employees and laborers are in a vulnerable situation. Therefore, legal restrictions must protect workers/laborers from potential abuse of position, including providing protection from arbitrary layoffs.

In terms of layoffs, the International Labor Organization (ILO) also recognizes the concept of the just cause principle as a basic human rights principle. "Labor is not a commodity/Labor is not a commodity," as stated indirectly in Article 1 of the ILO Constitution. The ILO is the main organization for developing and monitoring international labor standards²³, indicating that workers/laborers are a matter of international concern before human rights.²⁴ The existence of the statement "labor is not a commodity" which shows that there are certain aspects of employment that distinguish workers/laborers from general commodities in commercial activities. Workers do not agree to be considered exploitable property and are

²³ Koliev, Sommerer, and Tallberg.

²⁴ Virginia Mantouvalou, 'ARE LABOUR RIGHTS HUMAN RIGHTS?', *European Labour Law Journal*, 3.2 (2012), 151–72.



transferred at the owner's discretion by agreeing to work for them. Workers anticipate that they will be treated fairly in all aspects of their work, including compensation, benefits, continuity of work, and safety. The author outlines several international instruments which emphasize that layoffs without severance pay are a form of human rights violation. Article 4 paragraph (4) of the 1961 European Social Charter explains that employers are required to ensure that employees receive notification in sufficient time if their employment relationship will be terminated. The right to receive notification is a condition of workers' rights prior to termination of employment. This legal right is essential to give workers sufficient time to find and accept new jobs. In addition, Article 24 of the European Social Charter from 1996 has received much attention, which calls on the state to protect workers' rights by preventing arbitrary termination of employment and to ensure that those who are laid off receive compensation. The same applies to Article 30 of the Charter of Fundamental Rights of the European Union which states that "Every worker has the right to protection against unfair termination of employment".

If layoffs cannot be avoided, what must be done is to refer to the agreement between the worker and the employer, of course not reducing the obligations of the employer and the worker to fulfill their obligations. This is in accordance with the national.²⁵ The instrument on layoffs. Entrepreneurs and workers who do not reach an agreement in terms of layoffs can follow the process stipulated in Law no. 2/2004 concerning Settlement of Industrial Relations Disputes, which includes Bipartite, Tripartite, and Industrial Relations Disputes (PHI) cases. As the argument described by the author, mass Layoff of Employment (PHK) without severance pay is a form of human rights violation. Therefore, solving layoff issues that are not based on existing legal regulations, requires intervention by the state.

Conclusion

According to Government Regulation No.35/2021, which regulates employment, employers must first have a working relationship with workers or laborers before terminating the employment relationship. Employment agreements can be made verbally or in writing during the employment relationship. Thus, if workers are terminated, legal requirements must be followed, and the employer is liable for any costs incurred. If there are layoffs carried out by employers against workers if they refer to the applicable regulations, then employers should provide compensation money because that is the right of workers. Meanwhile, if an employer does layoffs without giving severance pay or compensation, according to the author, that is a form of human rights violation.

²⁵ Victorio H Situmorang, 'Kebebasan Beragama Sebagai Bagian Dari Hak Asasi Manusia', *Jurnal HAM*, 10.1 (2019), 57 <<https://doi.org/10.30641/ham.2019.10.57-67>>.



Bibliography

- Ahsany, Fachry, Ahmad Faiz Alamsyah, and Sholahuddin Al-Fatih, 'LEGAL PROTECTION OF LABOR RIGHTS DURING THE CORONAVIRUS DISEASE 2019 (COVID-19) PANDEMIC', *Jurnal Pembaharuan Hukum*, 7.2 (2020), 100–115
- Arifinal, Mochamad, Aris Suhadi, and Rani Sri Agustina, 'Perlindungan Pekerja Buruh Terhadap Pemutusan Hubungan Kerja Pada Perusahaan Swasta Di Masa Pandemi Covid-19', *Legal Standing Jurnal Ilmu Hukum*, 4.2 (2020), 290–300
- Blanton, Robert, and Shannon Lindsey Blanton, 'Globalization and Collective Labor Rights', *Sociological Forum*, 31.1 (2016), 181–202
- Corvaglia, Maria Anna, 'Labour Rights Protection and Its Enforcement under the USMCA: Insights from a Comparative Legal Analysis', *World Trade Review*, 20 (2021), 648–67
- Ghosal, Sarbani Guha, 'HUMAN RIGHTS: CONCEPT AND CONTESTATION', *The Indian Journal of Political Science*, 71.4 (2010), 1103–25
- Kerja, Tenaga, and Cipta Kerja, 'PERLINDUNGAN HUKUM UNTUK TENAGA KERJA YANG DIRUMAHKAN BERDASARKAN UNDANG-UNDANG-UNDANG NO 11 TAHUN 2020 TENTANG CIPTA KERJA KERTA DYATMIKA: Jurnal Ilmiah Fakultas Hukum Universitas Dwijendra', 18.2 (2021), 48–59
- Koliev, Faradj, Thomas Sommerer, and Jonas Tallberg, 'Compliance without Coercion: Effects of Reporting on International Labor Rights', *Journal of Peace Research*, 20.10 (2020), 1–16
- Mantouvalou, Virginia, 'ARE LABOUR RIGHTS HUMAN RIGHTS?', *European Labour Law Journal*, 3.2 (2012), 151–72
- Marzuki, Peter Mahmud, *Penelitian Hukum* (Jakarta: Prenada Media, 2010)
- Matompo, Osgar Sahim, 'Perlindungan Hukum Bagi Tenaga Kerja Asing Di Indonesia', *Legal Standing : Jurnal Ilmu Hukum*, 4.2 (2020), 12 <<https://doi.org/10.24269/lis.v4i2.2938>>
- Neureiter, Michael, 'Organized Labor and Democratization in Southeast Asia', *Asian Survey*, 53.6 (2013), 1063–86
- Nurmadiyah, Nurmadiyah, 'Penyelesaian Perselisihan Pemutusan Hubungan Kerja Menurut Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja', *Jiip - Jurnal Ilmiah Ilmu Pendidikan*, 5.8 (2022), 3167–72 <<https://doi.org/10.54371/jiip.v5i8.819>>
- Nuroini, Indi, 'Konsekuensi PHK Berdasarkan Peraturan Pemerintah Nomor 35 Tahun 2021 (Nuroini, 2022)', *Jurnal Hukum, Politik Dan Ilmu Sosial*, 1.3 (2022), 178–83
- Putri, A H P, 'Menganalisis Perlindungan Hak Asasi Manusia Terhadap Tenaga Kerja', *De Cive: Jurnal Penelitian Pendidikan ...*, 1.8 (2021), 1–11
- Putri, Sherly Ayuna, Agus Mulya Karsona, and Holyness Singadimedja, 'Dirumahkannya Pekerja Yang Berujung Pemutusan Hubungan Kerja (Phk) Pada Masa Pandemi Covid-19 Secara Sepihak Berdasarkan Penyelesaian Sengketa Ketenagakerjaan Secara Non Litigasi', *ADHAPER: Jurnal Hukum Acara Perdata*, 8.1 (2022), 167 <<https://doi.org/10.36913/jhaper.v8i1.176>>

- Review, Pakuan Law, '<https://doi.org/10.33751/Palar.V8i3> .', 08.September (2022), 694–702
- Saputra, I Komang Edy Dharma, 'Analisis Hukum Pemutusan Kerja Pada Masa Pandemi Covid-19', *Jurnal Ilmiah Raad Kertha*, 4.2 (2021), 62–76
- Savage, Larry, 'Workers' Rights as Human Rights: Organized Labor and Rights Discourse in Canada', *Labour Studies Journal*, 34.1 (2009), 8–20
- Situmorang, Victorio H, 'Kebebasan Beragama Sebagai Bagian Dari Hak Asasi Manusia', *Jurnal HAM*, 10.1 (2019), 57 <<https://doi.org/10.30641/ham.2019.10.57-67>>
- Taniady, Vicko, Novi Wahyu Riwayanti, Reni Putri Anggraeni, Ahmad Alveyn Sulthony Ananda, and Hari Sutra Disemadi, 'Phk Dan Pandemi Covid-19: Suatu Tinjauan Hukum Berdasarkan Undang-Undang Tentang Ketenagakerjaan Di Indonesia', *Jurnal Yustisiabel*, 4.2 (2020), 97 <<https://doi.org/10.32529/yustisiabel.v4i2.701>>
- Wang, Zhiyuan, 'Democracy, Policy Interdependence, and Labor Rights', *Political Research Quarterly*, 70.3 (2017), 549–63