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Juridical Review Legal Protection of Employees Subject To Termination

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ABSTRACT

The purpose of this research is to find out the legal arrangements for termination of employment (PHK) according to Law no. 11 of 2020 Concerning Job Creation. This research uses the method The type of research in this study is normative juridical law research, namely research based on literature studies which includes primary legal materials and secondary legal materials. As a result, a worker is given protection or a job loss guarantee in accordance with Article 28D paragraph (1) of the 1945 Constitution. This job loss guarantee is also regulated in the Regulation of the Minister of Manpower of the Republic of Indonesia number 15 of 2021 where it states that Job Loss Benefit is social security given to workers who experience layoffs in the form of cash benefits, access to job market information, and job training. The protection given to workers aims to achieve the rights that workers will receive. And this can be a reference for workers if one day they lose their jobs. And the reason why workers are given protection is to minimize the unemployment rate that occurs in Indonesia. If a company/employer wants to terminate their employment relationship with workers, the impact on the company is that the company must provide severance pay, compensation for years of service, and compensation for rights to workers in accordance with applicable laws and regulations.

Keywords: Law, Layoffs, Companies, Workers, Constitution

1. INTRODUCTION

Legal issues regarding employment are still very common in Indonesia, one of which is regarding termination of employment (PHK). When a layoff occurs, the rights that should be obtained by the workforce are not given by the company where they work (Wibowo & Herawati, 2021). Termination of employment is the last resort after various methods have been taken but failed to bring the expected results. By looking at the current facts that finding a job is not easy, many companies are reducing the number of workers/laborers with the possibility that these companies are unable to fulfill their obligations, such as paying wages in accordance with statutory provisions.

Layoffs still often cause problems that are not easy to resolve, both regarding the layoffs themselves and the legal consequences of layoffs. Some of the causes for the emergence of conflicts from layoff disputes stem from various things such as employers not following layoff procedures based on laws and regulations, reasons for laying off, both parties, both workers/laborers and employers not exercising their rights and obligations in the event of layoffs, including compensation issues where employers often delay payment terms, besides that there are

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also employers who suppress severance pay for workers/labourers by cutting the amount and some even not keeping their promises to pay severance pay at all. This gave rise to disputes, because just laying off jobs made workers/laborers feel difficult because they lost their jobs which they used to fulfill their daily lives (Rohendra Fathan Mubina, 2018).

Based on Law Number 13 of 2003 concerning Manpower, termination of employment for workers/laborers is regulated under quite strict conditions. However, it is different from Law Number 11 of 2020 concerning Job Creation where employers or companies can carry out layoffs for various reasons that are not objective so that it makes it easier for employers to carry out layoffs (Termination of Employment) (Sudjudiman & Najicha, 2020).

Companies that carry out layoffs should hold deliberations/negotiations with workers/laborers so that layoffs do not occur unilaterally. In addition, in carrying out layoffs, companies must also pay attention to termination procedures so that the processes and steps taken are in accordance with the law.

Law Number 13 of 2003 concerning Manpower, the potential for arbitrariness by employers in executing layoffs is limited by the provisions of Article 151 that layoffs must be preceded by negotiation and can only be carried out after a stipulation from the Industrial Relations Dispute Settlement Agency. Whereas Law Number 11 of 2020 concerning Job Creation reduces the protection provided because Article 151 paragraph (2) explains that in the event of layoffs being unavoidable, the purpose and reasons for the layoff are notified by the employer to the worker/laborer, paragraph (3) explains that in the event that the worker/labourer has been notified and refuses the layoff, the termination of the layoff must be carried out through bipartite negotiations between the entrepreneur and the worker/laborer, and paragraph (4) explains that in the event that bipartite negotiations do not get an agreement, the layoff is carried out through the next stage in accordance with the industrial relations dispute settlement mechanism. . Changes in layoff procedures raise concerns about unilateral layoffs because layoffs can only be carried out through notification from the employer without having to be preceded by negotiations (Yustisia, 2016).

Disputes over layoffs were motivated by the actions of employers to carry out layoffs unilaterally. In addition, layoff disputes occurred because of differences of opinion regarding the reasons for carrying out layoffs that affected workers' rights. Previously, Law Number 13 of 2003 concerning Manpower only allowed employers to make layoffs on the grounds of bankruptcy, closing due to losses, changes in company status, workers/laborers violating work agreements, workers/laborers making serious mistakes, workers/laborers entering retirement age,

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workers/laborers resigning, workers/laborers passing away, and workers/laborers being absent. However, Article 154A paragraph (1) point b of Law Number 11 of 2020 concerning Job Creation adds one more reason for laying off workers/laborers, namely that companies are making efficiency.

Based on Law Number 13 of 2003 concerning Manpower, companies can only do layoffs if the company is permanently closed, meaning that if a company is only temporarily closed, it cannot fire its workers. However, in Law Number 11 of 2020 concerning Job Creation, companies can carry out layoffs for reasons of efficiency, either followed by closing the company or not followed by closing the company because the company has suffered losses. This gives the company leeway to do layoffs because layoffs can be done without having to close the company. Entrepreneurs who lay off workers/laborers for reasons of efficiency aim to reduce the burden on companies so that companies continue to operate, as in the current global crisis conditions which require a reduction in workers/laborers, employers do not need to worry about laying off employees for reasons of efficiency because there are legal reasons regulated in Article 154A paragraph (1) point b of Law Number 11 of 2020 concerning Job Creation. However, employers are required to fulfill the rights of workers who have experienced layoffs as stipulated in Article 156 paragraph (1) of Law Number 11 of 2020 concerning Job Creation which explains that in the event of a layoff, the entrepreneur is obliged to pay severance pay, long service pay and compensation for rights (RI, 2003).

Termination of employment can be regarded as a violation of human rights (HAM), Satjipto Rahardjo stated that legal protection is the provision of protection for human rights (HAM) that are harmed by other people and that protection is given to the community so that all rights granted by law can be enjoyed. In this case, legal protection also applies to workers who have experienced layoffs because labor rights have the dimension of human rights which are related to the necessities of life.

Legal protection is explained in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia that everyone has the right to work and to receive fair and proper compensation and treatment in a work relationship. For workers/laborers, layoffs are the beginning of a loss of livelihood, which means workers/laborers lose jobs and income. Termination of employment may not be carried out without having clear reasons, because no one may be deprived of his constitutional right to work and earn a living without making mistakes and with the right reasons.

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One of the legal protections for workers/laborers is the protection of the right to terminate employment relations, workers/laborers have the right to receive compensation from the employer in the event of layoffs, compensation consists of severance pay, gratuity pay, and compensation for entitlements. Arrangements regarding compensation in Law Number 13 of 2003 concerning Manpower have been amended through Law Number 11 of 2020 concerning Job Creation, then further regulated in Government Regulation Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Break Time, and Termination of Employment, in this regulation the amount of compensation in the Manpower Law is larger, while in the Job Creation Law and PP Number 35 of 2021 it reduces the amount severance pay and long service pay based on the reason for the layoff.

In the event of a layoff, if the rights of the worker/laborer are not fulfilled by the employer, legal action can be taken by the worker/laborer through the Industrial Dispute Settlement Institution. Settlement of disputes can be resolved through bipartite negotiations, mediation, conciliation and through lawsuits to the Industrial Relations Court. Even though laws and regulations have been in force, in reality workers/laborers are still in the weakest position and fulfillment of the rights that should be received in the event of layoffs has not guaranteed justice and welfare for workers/laborers, the changes contained in the Job Creation Law especially regarding employment only side the interests of the employers and provide leeway for employers in carrying out layoffs, there are obstacles in providing legal protection for workers both from applicable laws and regulations as well as the government's role in supervision and law enforcement.

2. RESEARCH METHOD

The type of research in this study is normative juridical law research, namely research based on literature studies which include primary legal materials and secondary legal materials. Primary legal material is carried out by reviewing laws and regulations related to the legal issues being investigated and secondary legal materials in the form of books, journals and documents, as well as related studies related to predetermined titles. by the author. case approach, the legal approach is carried out by identifying and discussing the applicable laws and regulations, which are related to the problems in this study.

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3. RESULTS AND DISCUSSION

Termination of Employment (PHK) According to Law Number 11 of 2020 Concerning Job Creation.

There are 6 procedures that must be carried out by employers in carrying out layoffs, namely:

1. Prepare Complete Supporting Data

Supporting documents contain reasons or causes for the need to lay off workers. For example, the form of violations committed by workers, how is the condition of the company so that it needs to do layoffs.

2. Notification to Relevant Workforce

After the supporting documents are available, the entrepreneur must then notify the worker concerned. because this industrial relationship is a two-party relationship, do not let employees suddenly be laid off without any notification, or if there is a workers' union, then before carrying out layoffs, the employer must communicate the plan to the workers' union.

3. discussion

When a layoff occurs, the procedure that is first taken is to hold deliberations by both parties, namely workers/laborers and employers. Deliberation aims to get a consensus known as bipartite. Through deliberation the two parties held talks to find the best solution for the company.

4. Media with the Department of Manpower

If it turns out that the problems that occur cannot be resolved through deliberation, then the assistance of the local employment office is needed, with the aim of finding a way of resolution through mediation or reconciliation.

5. Conducting Legal Mediation

If with the help of the Office of Manpower it has not been found, legal efforts can be made up to court. If indeed in the end the dismissal is still carried out, then it is submitted by making a written application to the Industrial Relations Court accompanied by reasons why the layoff occurred.

6. Preparation of Compensation Money

If a layoff occurs, the company is obliged to provide compensation money, in this case severance pay, long service reward money to workers/labourers.

The provisions in Law Number 11 of 2020 concerning Job Creation in Article 151 explain:

1. Employers, workers/labourers, trade unions/labor unions and the Government must make every effort to prevent termination of employment

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2. In the event that the termination of employment cannot be avoided, the purpose and reasons for the termination of employment are notified by the entrepreneur to the workers/laborers and/or the trade union/labor union.
3. If the worker/laborer has been notified and refuses to terminate the employment relationship, the settlement of the termination of employment must be carried out through bipartite negotiations between the entrepreneur and the worker/laborer and/or the trade/labor union.
4. In the event that the bipartite negotiations as referred to in paragraph (4) do not obtain an agreement, termination of employment is carried out through the next stage in accordance with the industrial relations dispute settlement mechanism.

Legal Arrangements for Termination of Employment (PHK) According to Law no. 11 of 2020 Concerning Job Creation

In a company, employers and workers/laborers are said to have a working relationship if both of them have made a work agreement or work contract. Work agreement according to law no. 13 of 2003 article 1 point 14 namely the agreement between the worker/labourer and the entrepreneur/employer which contains the terms of work, rights and obligations of the parties. This work agreement/work contract can be made in writing signed by both parties or carried out orally, the legal basis is contained in Article 1313 of the Civil Code which states that "an agreement is an act in which one or more people bind themselves to one or more other people".

In the case of a written work agreement, it must be made in accordance with the applicable laws and regulations. If the contents of the collective labor agreement conflict with the applicable laws and regulations, the provisions are null and void and only the provisions in the laws apply. Article 1320 of the Civil Code regulates the legal terms of an agreement, namely "there is an agreement between the two parties, both parties have the ability or skills to carry out legal actions, there is work that was agreed, the agreement that was agreed does not violate the laws and regulations". Thus, basically work agreements involve the parties, namely employers, workers/laborers, and the government (Charda, 2017).

From the work agreement, the rights of workers can arise, namely:

In article 88 paragraph (1) of Law no. 11 of 2020 concerning Job Creation states that "every worker/labor has the right to a decent living for humanity"

Article 88A paragraph (1) of the same law states that "The right of the worker/laborer to wages arises when a working relationship occurs between the worker/laborer and the entrepreneur and ends when the employment relationship is terminated.

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Paragraph (2) states "Each employee/laborer has the right to receive the same wages for work of equal value"

Paragraph (3) Entrepreneurs are obliged to pay wages to workers/labor according to the agreement.

Paragraph (4) the arrangement stipulated by agreement between the entrepreneur and the worker/laborer or trade union/labor union may not be lower than the wage stipulation stipulated in the law. And paragraph (5) states "if the agreement referred to in paragraph (4) is lower or contrary to statutory regulations, the agreement is null and void by law and the wage arrangement is carried out in accordance with statutory provisions.

Article 156 paragraph (1) of the same law states that "in the event of termination of employment, the entrepreneur is obliged to pay severance pay and/or long service pay and compensation pay that should have been received.

Based on the above rights, we can see that workers/laborers have their rights during their working period and if they experience termination of employment, the employer is obliged to pay severance pay or compensation for the period of service and compensation for rights that should be received by workers/laborers. In a company, termination of employment is not spared, either from the entrepreneur or from the worker/laborer himself with reasons or causes for each. In Law No. 11 of 2020 concerning Job Creation, it regulates the reasons or prohibitions that are allowed or not allowed to be used as reasons for terminating the relationship between the two parties and what causes the entrepreneur/employer and worker/labourer to decide to end their relationship (Arrizal & Wulandari, 2021).

To terminate the employment relationship between the employer and the worker/labourer, they must go through the existing legal process, they may not immediately terminate the employment relationship between the two parties. However, if a dispute occurs between the entrepreneur/employer and the worker/labourer, both parties can discuss it in a good manner, so that both parties can dissuade from terminating relations with one another. However, if this cannot be avoided, the entrepreneur or worker/laborer must follow the existing legal process. The first stage, namely "employers, workers/labourers, trade unions/labor unions, and the government must strive to prevent termination of employment". this is contained in article 151 paragraph (1) of law no. 11 of 2020 concerning job creation, this intends to prevent termination of employment and to provide protection to workers/labourers so that the unemployment rate that occurs in Indonesia does not increase/multiple (Mokoginta, 2022).

The second stage, in Article 151 paragraph (2) states that "In the event that termination of employment is unavoidable, the purpose and reasons for termination of employment are notified by

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the employer to workers/laborers and/or trade unions/labor unions. This article emphasizes that if the entrepreneur wants to terminate his employment relationship with the worker/laborer, the entrepreneur must notify the worker/laborer of his intent and purpose for terminating his employment relationship with the worker/laborer. And in Government Regulation no. 35 of 2021 regarding work agreements for a certain time, outsourcing, work time and rest time, and termination of employment, article 37 paragraph (3) states that "Notification of termination of employment is made in the form of a notification letter and is delivered legally and properly by the employer to workers/laborers and/or trade unions/laborers no later than 14 (fourteen) working days prior to termination of employment" and furthermore in the same article paragraph (4) states that "In the event that termination of employment is carried out during a probationary period, the notification letter is delivered no later than 7 (seven) working days prior to termination of employment.

Having this notification letter can make workers/laborers aware of the intentions and reasons why the employer wants to terminate their employment relationship with the worker/laborer and the worker/laborer can consider the reasons given by the entrepreneur, whether the reasons given by the entrepreneur are in accordance with those stipulated in the law, company regulations or collective bargaining agreements and the reasons given are logical so that the worker/laborer can take a stance to reject or accept termination of employment. This notice of termination of employment is made in the form of a notification letter and is delivered legally and properly by the employer to the worker/laborer no later than 14 (fourteen) working days before the termination of employment (Article 37 paragraph (3) of Government Regulation number 35 of 2021). In the event that the worker/laborer has received a letter of notification and does not refuse the termination of employment, the entrepreneur must report the termination of employment to the ministry that administers government affairs in the provincial and district/city manpower sector. This is stated in article 38 of Government Regulation no. 35 of 2021. Furthermore, in the same Regulation article 39 paragraph (1) states that "Workers/laborers who have received a notice of termination of employment and declare refusal must make a letter of refusal accompanied by reasons no later than 7 (seven) working days after receipt of the notification."

The third stage, if there is a difference of opinion between the employer and the worker/labourer, in Article 151 (3) Law No. 11 of 2020 concerning job creation states that "in the event that workers/laborers have been notified and refuse termination of employment, the settlement of termination of employment must be carried out through bipartite negotiations between employers and workers/laborers and/or trade unions/labor unions". In this stage, if there is

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a difference of opinion between the entrepreneur and the worker/labourer, bipartite negotiations or negotiations must be carried out by the employer together with the worker/labourer with the aim of reaching a mutual agreement between the two parties (Islamuddin & Bima, 2021).

The fourth stage, if the previous stages have been taken but have not yet reached a mutual agreement, in Article 151 paragraph (4) law no. 11 of 2020 explains that "In the event that the bipartite negotiations as referred to in paragraph (3) do not reach an agreement, termination of employment is carried out through the next stage in accordance with the industrial relations dispute settlement mechanism". Below are several industrial relations dispute settlements that can be reached outside of court.

In the settlement of industrial relations disputes outside the court there are 4 types of stages, namely as follows:

Bipartite, namely a negotiation conducted by employers and workers/laborers to resolve disputes that occur in order to reach a mutual agreement between the two parties. This bipartite settlement must be carried out and minutes signed by both parties are made. the dispute resolution process through this bipartite must be completed no later than 30 (thirty) working days from the date the negotiations began. Furthermore, if within a period of 30 (thirty) days one of the parties refuses to negotiate or has done so consultation but do not reach an agreement, then the bipartite negotiations are considered failed. (Article 3 paragraph (2) and (3) law number 2 of 2004). If in this negotiation the two parties reach a mutual agreement then in article 7 paragraph (1) law number 2 of 2004 states that "in the event that the deliberations as referred to in article 3 can reach an agreement on settlement, a joint agreement is made which is signed by the parties". However, if this negotiation has been carried out, the parties have not yet reached a mutual agreement, then one of the parties or both parties shall register the dispute with the agency responsible for the local manpower sector by attaching evidence that efforts to resolve it through bipartite negotiations have been made. And after receiving the records from one or the parties, the agency responsible for the local manpower sector is obliged to offer the parties to agree to choose a settlement through conciliation or through arbitration (article 4 paragraph (1) and (3) law number 2 of 2004)

Mediation, namely the settlement of rights disputes, interest disputes, employment termination disputes, and disputes between trade unions within one company only through deliberations mediated by one or more neutral mediators (article 1 point 11 law number 2 of 2004). So, mediation is the settlement of disputes within one company with a neutral mediator as an intermediary. In this case the mediator only helps the parties to reach an agreement which can only be decided by the disputing parties, the mediator does not have the authority to force, the mediator

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is only obliged to meet and bring together the parties to the dispute. Settlement of disputes through mediation is carried out by mediators who are in each office of the agency responsible for manpower affairs in the district/city (Article 8 law number 2 of 2004). After being appointed as a mediator within 7 (seven) working days after receiving the delegation of dispute settlement, the mediator must have conducted research on the case and immediately hold a mediation hearing (Article 10 law number 2 of 2004). In the event that an agreement is reached on resolving industrial relations disputes through mediation, a Collective Agreement is made which is signed by the parties and witnessed by the mediator and registered at the industrial relations court at the district court in the jurisdiction where the parties enter into the Collective Agreement to obtain a deed of proof of registration. If in the event that an agreement is not reached on the settlement of industrial relations disputes through mediation, the mediator issues a written recommendation (article 13 paragraph (1) and (2) letter a law number 2 of 2004). The mediator completes his duties no later than 30 (thirty) working days after receiving the delegation of dispute settlement (Article 15 law number 2 of 2004).

Conciliation, namely the settlement of disputes over interests, disputes over termination of employment or disputes between trade unions/labor unions within only one company through deliberations mediated by one or more neutral conciliators (article 1 point 13 of law number 2 of 2004). So, the conciliator carried out its duty to resolve a dispute that occurs if the parties submit their request in writing and has been agreed upon by both parties. within a period of not later than 7 (seven) working days after receiving a written request for settlement of the dispute, the conciliator must have conducted research on the circumstances of the case and by no later than the eighth working day the first council session must have been held (Article 20 law number 2 of 2004). If an agreement is reached to settle industrial relations disputes through conciliation, a collective agreement is made which is signed by the parties and witnessed by the conciliator and registered at the Industrial Relations Court at the District Court in the jurisdiction where the parties entered into the Collective Agreement to obtain a deed of proof of registration. And if in the event that no agreement is reached on resolving industrial relations disputes through conciliation, the conciliator issues a written recommendation (Article 23 paragraph (1) and (2) letter a law number 2 of 2004). The appointed conciliator completes his duties no later than 30 (thirty) working days from receiving the request for dispute settlement (Article 25 law number 2 of 2004) (Supriyanto, 2022).

Arbitration, namely the settlement of a dispute over interests, and disputes between trade unions/labor unions within only one company, outside the industrial relations court through a

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written agreement from the disputing parties to submit the settlement of the dispute to an arbiter whose decision is binding on the parties and is final (Article 1 point 15 law number 2 of 2004). The arbitrator authorized to resolve industrial relations disputes must be an arbitrator appointed by the minister. And the arbiter's work area covers the entire territory of the Republic of Indonesia (Article 30 paragraph (1) and (2) law number 2 of 2004). The settlement of industrial relations disputes through an arbitrator is carried out on the basis of the agreement of the disputing parties and is stated in writing in the arbitration agreement, and is made into 3 (three) copies and each party gets 1 (one) which has the same legal force (Article 32 paragraph (1) and (2) law number 2 of 2004). After the parties have signed the arbitration agreement, the parties have the right to choose an arbitrator from the list of arbitrators determined by the minister and after the appointment of an arbitrator is made by the parties, an arbitrator requested by the parties is obliged to inform the parties about matters that might affect their freedom or lead to partiality of the decision to be given (Article 33 paragraph (1) and (7) law number 2 of 2004). Before starting the trial for the settlement of industrial relations disputes by the arbiter, it must begin with efforts to reconcile the two disputing parties and if this effort is successful, the arbitrator or arbiter assembly must draw up a deed of reconciliation signed by the disputing parties and the arbiter or arbiter assembly. If this peace attempt has been made and fails, the arbitrator or arbitral tribunal continues the arbitral hearing (Article 44 paragraph (1), (2) and (5) law number 2 of 2004). Examination of this dispute must begin no later than 3 (three) working days after signing the agreement for the appointment of the arbitrator (Article 40 paragraph (2) law no 2 of 2004). In the arbitral proceedings the parties are given the opportunity to explain in writing or orally their stance each and show the evidence deemed necessary to strengthen their position within the time period set by the arbitrator or arbitrator assembly and the arbitrator or arbitrator assembly can call one witness/more or one expert witness/more to hear their testimony, before giving their testimony the witnesses or expert witnesses must swear an oath or promise in accordance with their respective religions and beliefs (Article 45 paragraph (1) and Article 46 paragraph (1) & (2) of law no. 2 of 2004). Inspection of industrial relations disputes by arbitrator or assembly ar Biter is done in private unless the disputing parties wish otherwise and in the arbitration session, the disputing parties can be represented by their authority with a special power of attorney (Article 41 and Article 42 of law no. 2 of 2004). And if on the day of the first session and subsequent sessions one of the parties or his authority without a valid reason is not present even though it has been duly summoned, the arbitrator or the arbitrator's assembly can examine the matter and pass the decision without the presence of one of the parties or his authority, and if on the day of the session the parties in dispute

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or his authority without a valid reason is not present, even though he has been duly summoned, then the arbitrator or the arbitrator's assembly can cancel the arbitrator's appointment agreement and the task of the arbitrator or the arbitrator's assembly is considered complete (Article 43 paragraph (2) and (1)) law no. 2 of 2004). An arbitrator or a panel of arbitrators must resolve industrial relations disputes within 30 (thirty) working days at the latest from the signing of the arbitrator appointment agreement and upon the agreement of the parties, the arbitrator is authorized to extend the industrial relations dispute resolution period 1 (one) time by a maximum of 14 (fourteen) working days (Article 40 paragraph (1) and (3) of law no. 2 of 2004). Regarding the activities in the inspection and arbitration hearing, a report of the inspection is made by the arbitrator or arbitrator panel and the decision of the arbitration hearing is determined based on the applicable laws, agreements, customs, justice and public interest (Articles 48 & 49 of law no. 2 of 2004). This arbitrator's decision has the force of law that binds the disputing parties and is a final and permanent decision and this arbitration decision is registered in the District Court in the arbitrator's territory (Rosyadi et al., 2022). Industrial relations decisions and disputes that are being or have been resolved through arbitration cannot be submitted to the Industrial Relations Court (Article 51 paragraph (1) & (2) and Article 53 of law no. 2 of 2004). During the resolution of industrial relations disputes, employers and workers/labourers must continue to carry out their obligations until the completion of the industrial relations dispute resolution process according to their level and employers can take action to suspend workers/labourers who are in the process of termination of employment by still paying wages and other rights that workers/labourers normally receive (Article 157a of law number 11 of 2020).

In the event that an employee or laborer is detained by the authorities for allegedly committing a criminal act, the entrepreneur is not obliged to pay wages but is obliged to provide assistance to the family of the employee/laborer who is dependent on him, the assistance given is a maximum of 6 (six) months from the first day the employee/laborer is detained by the authorities after the end of 6 (six) months and the employee/laborer is unable to do his job, then the entrepreneur can terminate their employment relationship. But in the event that the court decides the criminal case before the end of 6 (six) months and the employee/laborer is declared innocent, the employer must rehire the employee/laborer and if the court decides the criminal case before the end of 6 (six) months and the employee/laborer is found guilty, the employer can terminate the employment relationship of the employee/laborer concerned (Article 160 of law number 11 of 2020).

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In the event of termination of the employment relationship between the entrepreneur and the worker/labourer, the employer is obliged to pay severance pay and/or gratuity pay and compensation for rights that should have been received (Article 156 paragraph (1) law number 11 of 2020). In the event that a company is declared bankrupt or liquidated based on statutory provisions, wages and other rights that have not been received by workers/laborers are debts that are prioritized for payment before payment to all creditors except creditors holding material guarantee rights (Article 95 law number 11 of 2020) (Sjaiful, 2021).

Protection for Workers Experiencing Termination of Employment (PHK)

In a job, the termination of the employment relationship between the employer and the recipient of the work is not spared, whether the termination comes from the worker or the employer so that they decide to end their employment relationship with one another. But employers, workers/labourers, trade/labor unions and the government must try to prevent termination of employment. However, if this cannot be avoided, the entrepreneur or worker/laborer can proceed to the next stage and if an agreement has been reached and it ends with terminating the relationship between the two parties, then in accordance with Article 28D paragraph (1) it states that "Every person has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law".

This is the basis for workers if they experience termination of employment with an employer or employer. protection for workers is also the basis for employers/employers to fulfill, the things that must be protected are occupational health and safety, special protection for women workers and people with disabilities, welfare and social security for workers. this is intended with the aim of fulfilling basic rights and protection for workers and creating a conducive climate for the development of the business world.

The reason why workers need to be protected is that this refers to labor problems that arise especially in Indonesia due to several factors, one of which is the increase in unemployment in Indonesia. Meanwhile, to deal with this problem, the workforce is the main driver in turning the wheels of the economy whose position is on the vulnerable side of non-fulfillment of their rights and interests (Nuroini, 2023).

When Workers/laborers experience termination of employment, so they have the right to get job loss guarantees, job loss guarantees are administered by the labor social security administering body and the Central Government. This job loss guarantee is social security provided to workers/laborers who experience termination of employment in the form of cash benefits, access to labor market information, and job training. Job loss guarantees are held to maintain a decent

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standard of living when workers/laborers lose their jobs. The job loss guarantee benefit in the form of cash is given every month for a maximum of 6 (six) months of wages with a stipulation of 45% of wages for the first 3 months and 25% of wages for the following 3 months.

The impact on the employer/employer if he terminates his employment relationship with the worker is that the employer is obliged to pay severance pay and/or gratuity pay and compensation pay that should be received by the worker. According to KBBI, severance pay is money given as provision to employees (workers and so on) who are dismissed from work in the context of reducing the workforce.

This severance pay is provided with the following conditions:

a) Work time is less than 1 year, 1 month salary

b) Working time 1 year or more but less than 2 years, 2 months wages

c) Work time 2 years or more but less than 3 years, 3 months wages

d) Work time 3 years or more but less than 4 years, 4 months wages It is) Work time 4 years or more but less than 5 years, 5 months wages

f) Working time 5 years or more but less than 6 years, 6 months wages

g) Work time 6 years or more but less than 7 years, 7 months wages

h) Working time 7 years or more but less than 8 years, 8 months wages

i) Work time 8 years or more, 9 months wages.

Long service reward money is given to workers with the following conditions:

a) Work time 3 years or more but less than 6 years, 2 months wages

b) Work time 6 years or more but less than 9 years, 3 months wages

c) Working time 9 years or more but less than 12 years, 4 months wages

d) Working time 12 years or more but less than 15 years, 5 months wages It is) Working time 15 years or more but less than 18 years, 6 months wages

f) Working time 18 years or more but less than 21 years, 7 months wages

g) Working time 21 years or more but less than 24 years, 8 months wages

h) 24 years or older, 10 months wages.

And compensation for entitlements that should be received includes annual leave that has not been taken and has not fallen off, costs or fees for returning workers/laborers and their families to the place where workers/laborers are accepted to work and other matters stipulated in work agreements, company regulations or collective bargaining agreements. (Article 156 paragraph (1-3) of law number 11 of 2020 concerning work copyright). the wage component used as the basis for

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calculating severance pay and long service pay consists of the basic wage and fixed allowances given to workers/laborers and their families (Nuroini, 2023).

If the worker/laborer's income is paid on a daily basis, the monthly wage is equal to 30 times the daily wage. If the worker/labourer's wages are paid on the basis of calculating output units, then the monthly wage is equal to the average income in the last 12 months and if this month's wage is lower than the minimum wage, the wage that forms the basis for calculating severance pay is the minimum wage that applies in the company area (Article 157 law number 11 of 2020 concerning work copyright).

If in a company there is termination of employment due to the company closing and due to force majeure, the worker/labourer is entitled to: a) severance pay of 0.5 times the provisions of Article 156 paragraph (2), b) long service pay of 1 times the provisions of Article 156 paragraph (3), c) compensation money according to the provisions of Article 156 paragraph (4). And in the event of termination of employment for workers/laborers which does not result in the company closing down, the workers/laborers are entitled to: a) severance pay of 0.75 times the provisions of Article 156 paragraph (2), b) compensation pay of 1 time of the provisions of Article 156 paragraph (3) and c) compensation money according to the provisions of Article 156 paragraph (4). In the event that the Employer terminates the Work Relations with the Worker/Labourer due to the reason that the Company is merging, consolidating or separating Companies and the Worker/Labourer is unwilling to continue their working relationship with the company, the worker/labourer is entitled to: a) severance pay in the amount of 1 times the provisions of Article 156 paragraph (2), b) gratuity pay in the amount of 1 time in the provisions of Article 156 (3), and c) compensation money in accordance with the provisions of Article 156 paragraph (4). And in the event that the company suffers continuous losses for 2 years and causes the company to close down, then the worker/laborer is entitled to: a) severance pay of 0.5 times the provisions of Article 156 paragraph (2), b) compensation pay of 1 time of the provisions of Article 156 paragraph (3), and c) compensation money according to Article 156 paragraph (4). And if the entrepreneur terminates the employment relationship with the worker/labourer due to the reason the company is closed and not because the company suffers a loss, the worker/labourer is entitled to: a) 1 time severance pay as stipulated in Article 156 paragraph (2), b) 1 time service pay as stipulated in Article 156 paragraph (3), and c) compensation money according to the stipulations in Article 156 paragraph (4).

In the event that an entrepreneur terminates employment because the company is bankrupt, the worker/labourer is entitled to: a) severance pay of 0.5 times the provisions of Article 156

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paragraph (2), b) gratuity pay of 1 time the provisions of Article 156 paragraph (3) and c) compensation pay according to the provisions of Article 156 paragraph (4). payment before payment is made to all creditors except creditors holding material collateral rights (Article 95 law number 11 of 2020 concerning work copyright).

Workers/laborers who resign voluntarily and fulfill the conditions referred to in Article 154A letter i, are entitled to: a) compensation money in accordance with the provisions of Article 156 paragraph (4) and b) severance pay, the amount of which is regulated in the work agreement, company regulations or collective bargaining agreement. And the entrepreneur can terminate the employment relationship with the worker/labourer for the reason that there is an application for termination of employment submitted by the worker/labourer on the grounds that the entrepreneur committed the act in Article 154A letter g, so the worker/labourer is entitled to: a) severance pay of 1 times the provisions of Article 156 paragraph (2), b) gratuity pay of 1 time of the provisions of Article 156 paragraph (3), and c) compensation money according to the provisions of Article 156 paragraph (4). 81 And employers can terminate employment of workers/labor due to the reason for the decision of the industrial relations dispute settlement institution stating that the entrepreneur has not committed the act as referred to in Article 154A letter g, the worker/ laborer is entitled to: a) compensation money in accordance with the provisions of Article 156 paragraph (4) and b) severance pay, the amount of which is regulated in the work agreement, company regulations or collective bargaining agreement.

Entrepreneurs can terminate work relations with workers/labourers for the reason that there is an application submitted by workers/laborers on the grounds that the entrepreneur has committed an act as referred to in Article 154A paragraph (1) letter g, so the worker/laborer has the right to: a) severance pay of 1 times the provisions of article 156 paragraph (2), b) gratuity pay of 1 time of the provisions of article 156 paragraph (3) and c) compensation money in accordance with the provisions of article 156 paragraph (4).

If an employee/labourer is arrested by the authorities for allegedly committing a criminal act, the employer is not obliged to pay wages, but is obliged to provide assistance to the family of the employee/labourer who is his dependent with the following provisions: a) for 1 dependent, 25% of the wage, b) for 2 dependents, 35% of the wage, c) for 3 dependents, 45% of the wage, and c) for 4 or more dependents, 50% of the wage. This assistance is provided for a maximum of 6 months from the first day the employee/laborer is detained by the authorities. And the employer can terminate the employment relationship against the employee/laborer who after 6 months cannot perform work as it should be because of the criminal proceedings and in the event that before the

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end of the 6-month period and the employee/laborer is declared innocent, the employer must rehire the employee/laborer. And if the employee/labourer is declared guilty by the court before 6 months, then the employer can terminate the employment relationship with the employee/labourer and the employee/labourer is entitled to: a) work time appreciation money amounting to 1 times the provisions of Article 156 paragraph (3) and b) compensation money in accordance with the provisions of Article 156 paragraph (4). (Article 160 of law number 11 of 2020 regarding job creation and Article 54 of law number 35 of 2021).

In the event that a worker/laborer experiences prolonged illness or is disabled as a result of a work accident and is unable to carry out his work after exceeding the 12 month limit, the worker/laborer is entitled to: a) severance pay of 2 times the provisions of Article 156 paragraph (2), b) compensation pay of 1 time of the provisions of Article 156 paragraph (3) and c) compensation pay according to the provisions of Article 156 paragraph (4).

Entrepreneurs can also terminate employment of workers/laborers due to the fact that workers/laborers are entering retirement age, workers/laborers are entitled to: a) severance pay of 1.75 times the provisions of Article 156 paragraph (2), b) compensation pay of 1 time of the provisions of Article 156 paragraph (3) and c) compensation money according to the provisions of Article 156 paragraph (4).

If the employer terminates the employment relationship with the worker/labourer because the worker/labourer is declared dead, then an amount of money is given to the heir in the form of: a) severance pay equal to 2 times the stipulations in Article 156 paragraph (2), b) gratuity pay in the amount of 1 time the stipulation in Article 156 paragraph (3) and c) compensation for rights according to the provisions in Article 156 paragraph (4).

And if the company does not give the workers/laborers their rights, for example in the form of severance pay, then in article 185 law number 11 of 2020 states that "anyone who violates the provisions referred to in Article 42 paragraph (2), Article 68, Article 69 paragraph (2), Article 80, Article 82, Article 88A paragraph (3), Article 88E paragraph (2), Article 143, Article 156 paragraph (1), or Article 160 paragraph (4) will be subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 400,000,000.00 (four hundred million rupiah). The crime is a criminal act."

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4. CONCLUSION

Whereas in accordance with the discussion that has been discussed, a worker is given protection or a job loss guarantee in accordance with article 28D paragraph (1) of the 1945 Constitution. This job loss guarantee is also regulated in the Regulation of the Minister of Manpower of the Republic of Indonesia number 15 of 2021 where it states that Job Loss Benefit is a social security given to workers who experience layoffs in the form of cash benefits, access to job market information, and job training. The protection given to workers aims to achieve the rights that workers will receive. And this can be a reference for workers if one day they lose their jobs. And the reason why workers are given protection is to minimize the unemployment rate that occurs in Indonesia. If a company/employer wants to terminate their employment relationship with workers, the impact on the company is that the company must provide severance pay, compensation for years of service, and compensation for rights to workers in accordance with applicable laws and regulations. And if a company does not provide what is the right of the worker/laborer, he/she will be subject to criminal sanctions in the form of imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and will be fined a minimum of Rp.

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