

## Legal Protection of Workers In Employment

### Termination Disputes Without Judicial Review

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**Article History: Received: Oktober 15, 2025; Accepted: December 09, 2025**

#### ABSTRACT

This study examines legal uncertainty in the resolution of employment termination disputes resulting from the absence of regulation on the extraordinary legal remedy of judicial review (Peninjauan Kembali) under Law Number 2 of 2004 on the Settlement of Industrial Relations Disputes. The research gap lies in the lack of normative analysis explaining the legal rationale and implications of excluding judicial review, despite its recognition in general civil procedural law and judicial practice. This study offers novelty by conceptualizing the exclusion of judicial review as a deliberate legislative policy to ensure finality and expedited dispute resolution in industrial relations. Employing a normative legal research method with statutory and conceptual approaches, the study finds that positioning cassation as the final and binding legal remedy is intended to provide legal certainty and prevent prolonged disputes. Legal protection for workers is achieved when cassation decisions consistently deliver clear legal reasoning and definitive rulings on the fulfillment of workers' normative rights. Accordingly, consistent treatment of cassation as the ultimate legal remedy is essential to ensuring legal certainty and effective legal protection in employment termination disputes.

**Keywords:** Legal Protection, Termination of Employment (PHK), Judicial Review, Legal Certainty.

#### 1. INTRODUCTION

Despite the existence of a comprehensive regulatory framework, employment relationships do not always operate harmoniously in practice. Workers often face termination of employment based on unclear, non-objective, or unlawful grounds, prompting them to seek legal protection through state-provided dispute resolution mechanisms. This problem is evidenced by Supreme Court Judicial Review Decisions Number 10 PK/Pdt.Sus-PHI/2016 and Number 36 PK/Pdt.Sus-PHI/2017, which reveal legal uncertainty regarding the finality of dispute resolution in employment termination cases. (Asshiddiqie, 2020)

These decisions demonstrate that applications for judicial review (Peninjauan Kembali, hereinafter referred to as PK) have been submitted in dismissal cases. However, at the same time, judicial policy has effectively closed access to such remedies. This situation gives rise to legal uncertainty for workers seeking to defend their rights through further legal remedies (Manan, 2021).

The mechanism for resolving industrial relations disputes in Indonesia is regulated under Law Number 2 of 2004 on the Settlement of Industrial Relations Disputes (hereinafter referred to as Law No. 2/2004). This law serves as the legal basis for the establishment of the Industrial

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Relations Court (Pengadilan Hubungan Industrial or PHI) and determines procedures for resolving labour disputes through mediation, conciliation, arbitration, and litigation. Article 57 of Law No. 2/2004 provides that:

“The procedural law applicable to the Industrial Relations Court is the civil procedural law applicable to courts within the general judiciary, unless otherwise specifically regulated by this law.”

This provision is significant, as civil procedural law generally recognizes PK as an extraordinary legal remedy. Nevertheless, Law No. 2/2004 does not contain any provision explicitly excluding or prohibiting the filing of PK in industrial relations disputes (Rusli, 2021)

The issue becomes more serious when examined in conjunction with Article 110 of Law No. 2/2004, which states:

“Decisions on cassation applications shall be recorded in the general register and the financial register.”

Although this provision appears administrative in nature, it gives rise to a substantial legal vacuum. Article 110 merely regulates the administrative registration of cassation decisions and does not clarify whether PK may be pursued in industrial relations cases. When the law terminates procedural regulation at the cassation stage without providing certainty regarding the availability or exclusion of PK, workers are placed in a vulnerable position. They are left without clarity as to whether erroneous cassation decisions remain subject to correction. (Husni, 2021)

This legal vacuum has subsequently been filled unilaterally by the Supreme Court through Supreme Court Circular Letter Number 3 of 2018 (hereinafter referred to as SEMA No. 3/2018), which stipulates that dismissal cases may only proceed up to the cassation stage and that PK is not permitted. However, SEMA No. 3/2018 does not constitute statutory legislation with the authority to restrict legal remedies. As a result, workers lose access to corrective mechanisms against cassation decisions, thereby further limiting their legal protection and contradicting the principle of justice for weaker parties. Accordingly, the legal issue addressed in this research concerns the legal vacuum arising from the absence of regulation on PK under Law No. 2/2004, which is subsequently restricted through SEMA No. 3/2018, raising questions regarding the compatibility of such restrictions with the principles of legal protection and the hierarchy of laws and regulations (Khakim, 2020).

The urgency of this research lies in the need to address such legal uncertainty and to assess whether the policy restricting PK through SEMA No. 3/2018 aligns with the principles of worker protection and justice in the settlement of industrial relations disputes. Furthermore, this

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research is necessary to re-evaluate the orientation of legal protection that the state ought to provide to workers, who occupy a structurally weaker position compared to employers (Soepomo, 2020).

As part of an effort to strengthen the analysis, this study employs a comparative approach by examining the German legal system, which is selected due to its civil law tradition and legal structure comparable to that of Indonesia. Germany provides specific statutory regulation on dismissal through the Kündigungsschutzgesetz (KSchG), which holds the same normative status as an act of parliament. Under Article 4 of the KSchG, workers are granted a clear and time-bound right to challenge the validity of a dismissal before the Labour Court. This comparative analysis demonstrates a normative lesson for Indonesian legal reform, namely the importance of explicit statutory regulation that guarantees accessible and definitive corrective mechanisms for workers' dismissal disputes. Accordingly, Indonesian law should provide clear legislative guidance on the finality and scope of legal remedies in employment termination disputes to ensure legal certainty and effective legal protection for workers. (Pujiastuti, 2008).

Through this comparative analysis, the research seeks to identify normative solutions to strengthen legal certainty and legal protection for workers in Indonesia, particularly concerning access to the extraordinary legal remedy of judicial review in dismissal disputes (Natamihardja, 2022). Based on the foregoing discussion, it is essential to conduct a more in-depth study of the legal vacuum in the regulation of judicial review remedies in termination of employment cases, particularly due to the cessation of regulation at Article 110 of Law No. 2/2004 and the unilateral restriction imposed through SEMA No. 3/2018. This legal vacuum generates uncertainty regarding the guarantee of legal protection for workers and has the potential to result in injustice due to the absence of a corrective mechanism for cassation decisions.

## 2. RESEARCH METHOD

This research employs a normative juridical (doctrinal) method, as the study examines legal norms governing the restriction of the extraordinary legal remedy of judicial review (PK) in the settlement of termination of employment disputes before the Industrial Relations Court. This approach is appropriate because the issue primarily concerns normative inconsistencies and legal certainty within statutory regulations and judicial decisions. The research applies statute, case, conceptual, and comparative approaches. The comparative approach is used to identify normative lessons from foreign legal systems relevant to strengthening legal certainty and worker protection in Indonesia. Legal materials, consisting of primary, secondary, and tertiary sources, are collected

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through library and online legal research and analyzed qualitatively using grammatical, systematic, and comparative interpretation techniques.

### **3. RESULTS DAN DISCUSSION**

#### **Ratio Legis Underlying the Elimination of the Extraordinary Legal Remedy of Judicial Review (Peninjauan Kembali) in the Settlement of Industrial Relations Disputes Concerning Termination of Employment**

Termination of employment disputes constitute a specific category of industrial relations disputes due to their direct impact on the livelihood of workers/labourers. Accordingly, their resolution is required not only to provide legal certainty but also to ensure the protection of rights and substantive justice for parties who are structurally in a weaker position. Within the industrial relations dispute settlement system under Law Number 2 of 2004, the legal remedies explicitly regulated extend only to the cassation level, without express provisions governing the availability of the extraordinary legal remedy of judicial review (PK). This condition has generated juridical debate, particularly after the Supreme Court, through Supreme Court Circular Letter Number 3 of 2018 (SEMA No. 3/2018), affirmed that PK may not be submitted in termination of employment disputes. (Wijayanti, 2021)

- a) Regulation of Judicial Review under Law No. 2/2004, Its Restriction through SEMA No. 3/2018, and the Legal Vacuum in Termination of Employment Disputes

In Indonesian civil procedural law, judicial review (PK) is recognized as an extraordinary legal remedy filed against decisions with permanent legal force as a final corrective mechanism for errors in the application of law or judicial oversight. PK is regulated under Article 67 of the Supreme Court Law and functions as an instrument for protecting the rights of justice seekers, ensuring that court decisions are not only formally final but also substantively just, particularly in cases with significant implications for the rights of the parties.

In the context of industrial relations disputes, Law No. 2 of 2004 does not explicitly regulate either the availability or the prohibition of PK. On the contrary, Article 57 of Law No. 2 of 2004 refers to the applicability of civil procedural law insofar as it is not specifically regulated otherwise. Systematically interpreted, this provision opens the possibility for applying PK, as civil procedural law recognizes it as an extraordinary legal remedy.

Furthermore, Article 110 of Law No. 2 of 2004 merely governs the administrative registration of cassation decisions without affirming their final and binding character. As such,

it cannot be construed as closing access to PK. This condition demonstrates the existence of a legal vacuum concerning the final limit of legal remedies in termination of employment disputes. This vacuum was subsequently filled through judicial policy by the Supreme Court via the issuance of SEMA No. 3/2018, which stipulates that legal remedies in termination of employment disputes are limited to the cassation stage.

The policy aims to standardize judicial practice and to promote legal certainty and efficiency in the settlement of industrial relations disputes. Nevertheless, from a normative standpoint, restricting PK through a Supreme Court Circular raises juridical concerns, as SEMA does not constitute statutory legislation with the authority to establish new norms limiting procedural rights. Consequently, the exclusion of PK in termination of employment disputes does not derive from an explicit legislative mandate but rather represents a judicial policy adopted by the Supreme Court to address an existing legal vacuum.

b) **Ratio Legis of the Elimination of Judicial Review in Termination of Employment Disputes**

The ratio legis underlying the elimination of judicial review (PK) in termination of employment disputes reflects a legislative policy choice that prioritizes legal certainty and procedural efficiency. In line with Gustav Radbruch's theory, legal certainty is essential in termination disputes because the finality of judicial decisions directly determines employment status and the realization of workers' normative rights. This objective is reinforced by Philipus M. Hadjon's concept of preventive legal protection, whereby positioning cassation as the final legal remedy is intended to prevent prolonged disputes and provide clear, enforceable outcomes for the parties. In this sense, the finality of cassation decisions functions simultaneously as an instrument of legal certainty and a form of preventive legal protection.

However, this policy choice also carries significant implications. By excluding PK, the legal system places greater emphasis on formal legal certainty while limiting corrective mechanisms in cases of judicial error at the cassation level. This condition potentially weakens repressive legal protection, particularly for workers as the structurally weaker party in employment relations. Therefore, while the elimination of PK is normatively justified by considerations of efficiency and certainty, it necessitates complementary policy measures, such as strengthening the quality, consistency, and accountability of cassation judgments, to ensure that legal certainty does not come at the expense of substantive justice and effective protection for workers. (Jumiati, 2011).

## c) Analysis Based on Philipus M. Hadjon's Theory of Legal Protection

Philipus M. Hadjon's theory of legal protection conceptualizes legal protection as a state obligation to guarantee citizens' rights through preventive and repressive mechanisms. Preventive legal protection aims to avoid legal uncertainty through clear procedures and efficient dispute resolution, while repressive legal protection serves to restore violated rights through judicial remedies. This framework can be analytically integrated with Gustav Radbruch's theory of legal certainty, which emphasizes predictability and finality as essential elements of justice in the application of law.

In termination of employment disputes, the elimination of judicial review (PK) under SEMA No. 3/2018 reflects a policy choice that prioritizes legal certainty as a form of preventive legal protection. By positioning cassation as the final legal remedy, the legal system seeks to prevent protracted litigation and to provide clarity regarding employment status and the fulfillment of workers' normative rights. In this context, legal certainty functions not merely as a procedural objective but as an instrument of legal protection that safeguards workers from prolonged legal uncertainty.

At the same time, repressive legal protection is concentrated at the cassation stage, which must operate as the ultimate safeguard for correcting legal errors and ensuring substantive justice. Accordingly, the absence of PK does not eliminate legal protection but reconfigures its mechanism by shifting the focus toward the quality, accuracy, and consistency of cassation judgments. This integration demonstrates that legal certainty and legal protection are not competing values but complementary principles that must be balanced to ensure effective protection for workers in termination of employment disputes. (Waluyo, 2021).

**The Manifestation of Legal Certainty for the Protection of Workers/Labourers in Cassation Decisions in the Absence of Judicial Review in the Settlement of Termination of Employment Disputes**

The absence of the extraordinary legal remedy of judicial review (Peninjauan Kembali or PK) in the settlement of termination of employment disputes, as practiced following the issuance of Supreme Court Circular Letter No. 3 of 2018 (SEMA No. 3/2018), positions cassation decisions as the final legal remedy. This condition carries juridical consequences in that cassation decisions of the Supreme Court assume a central role in realizing legal certainty for the parties, particularly for workers/labourers who have lost access to further corrective legal mechanisms (Oeripkartawinata, 2021).



In this context, legal certainty is no longer understood merely as the finality of judicial decisions, but also as a guarantee that cassation rulings effectively provide protection for workers' rights in accordance with labour law regulations. Accordingly, the discussion under this second research issue focuses on how the Supreme Court, through its cassation decisions, seeks to realize just legal certainty despite the absence of judicial review in termination of employment disputes (Harahap, 2023).

- a) The Position of Cassation Decisions as the Final Legal Remedy in Termination of Employment Cases

In the settlement of termination of employment disputes, cassation decisions of the Supreme Court occupy a crucial position due to the unavailability of judicial review as affirmed by SEMA No. 3 of 2018. Consequently, cassation serves as the final and binding legal remedy, as well as the sole judicial corrective mechanism against decisions of the Industrial Relations Court. The finality of cassation decisions has a direct impact on legal certainty, given that termination of employment disputes involve fundamental rights and the livelihood of workers/labourers. In the absence of judicial review, the quality of legal reasoning and the clarity of the operative part (amar putusan) of cassation decisions become the primary determinants of substantive legal certainty and the protection of workers' rights (Sutiyoso, 2022).

The designation of cassation as the final legal remedy places the Supreme Court as the ultimate arbiter of justice and legal certainty for the parties. With the elimination of judicial review through SEMA No. 3/2018, cassation decisions are final and binding, rendering them the sole judicial corrective mechanism against Industrial Relations Court rulings. This condition causes legal certainty in termination of employment disputes to depend heavily on the quality of legal reasoning and the operative rulings of cassation decisions. Therefore, cassation decisions are required not only to provide formal legal certainty through finality but also to ensure substantive legal certainty and the protection of workers' rights, given the absence of further extraordinary remedies.

- b) Protection of Workers' Rights in the Operative Rulings and Legal Reasoning of Cassation Decisions

In the absence of the extraordinary legal remedy of judicial review, the protection of workers' rights in termination of employment disputes depends entirely on the quality of the operative rulings and legal reasoning of Supreme Court cassation decisions. Cassation judgments thus represent not only the conclusion of litigation but also the primary instrument

for ensuring the fulfillment of workers' normative rights in accordance with labour legislation. Such protection is reflected in the Supreme Court's assessment of the legality of termination grounds, employers' compliance with termination procedures, and the enforcement of workers' normative entitlements, including severance pay, long-service awards, and compensation for rights. Furthermore, in its legal reasoning, the Supreme Court frequently adopts a substantive approach by considering the structurally weaker position of workers, ensuring that the interpretation of labour norms does not remain purely formalistic.

Accordingly, in the absence of judicial review, cassation decisions must do more than merely provide legal certainty through finality; they must actively ensure the protection of workers' rights through careful, substantive, and equitable legal reasoning. Given the absence of PK, the protection of workers' rights in termination disputes is entirely determined by the operative rulings and legal reasoning of cassation decisions.

c) Comparative Analysis with the German Legal System

As a comparative reference, the German legal system is relevant due to its comprehensive regulation of termination of employment under the Kündigungsschutzgesetz (KSchG), which integrates both substantive and procedural aspects of dismissal. This comparison provides a normative lesson for Indonesian legal reform, namely the importance of harmonizing substantive employment protection and procedural dispute resolution within a clear statutory framework to strengthen legal certainty in termination of employment disputes.

The KSchG not only stipulates the substantive requirements for lawful termination but also clearly regulates objection mechanisms, time limits, and dispute resolution forums. Article 4 of the KSchG provides that workers who contest a termination must file a claim before the Labour Court within three weeks of receiving the termination notice. Failure to meet this deadline results in the termination being deemed legally valid. This regulation demonstrates that legal certainty is achieved at an early stage of dispute resolution through clear and binding statutory norms.

By contrast, within the Indonesian legal system, although Law No. 2 of 2004 regulates stages of industrial relations dispute settlement, provisions concerning time limits for filing termination claims and their legal consequences are not explicitly formulated. This normative gap is filled in practice through Supreme Court Circular Letters, which hierarchically do not constitute statutory legislation. Consequently, legal certainty depends heavily on judicial practice and policy.

Moreover, legal certainty in Indonesia tends to be achieved through the finality of decisions by positioning cassation as the final legal remedy and eliminating judicial review. This approach differs from the German system, which constructs legal certainty through strict procedural regulation from the outset without restricting access to legal remedies. This comparison demonstrates that legal certainty in termination of employment disputes can be realized more equitably when procedural norms are clearly and firmly established at the statutory level (Khairandy, 2023).

d) A Model of Cassation Decisions Oriented toward Legal Certainty and Worker Protection

In the absence of judicial review in termination of employment disputes, cassation decisions of the Supreme Court must be positioned as the primary instrument for realizing both legal certainty and the protection of workers' rights. Accordingly, a model of cassation decisions is required that emphasizes not only finality but also substantive justice for workers as structurally weaker parties.

Such a model should encompass several essential elements. First, comprehensive and transparent legal reasoning, including clear and systematic judicial assessments of termination grounds from both procedural and substantive perspectives, as well as employers' compliance with labour regulations. Second, proportional evaluation of the parties' interests by considering the imbalance between workers and employers, ensuring that worker protection remains aligned with principles of justice and the protective nature of labour law. Third, clear and definitive operative rulings concerning the legal consequences of termination and the fulfillment of workers' normative rights, such as severance pay, long-service awards, and compensation for rights to prevent multiple interpretations in enforcement. Fourth, consistency with the objectives of legal protection within the industrial relations system, enabling cassation decisions to function not only as dispute resolution instruments but also as precedents for similar cases.

Thus, cassation decisions in termination of employment disputes must be oriented toward just legal certainty, legal certainty that does not merely end disputes through finality, but also ensures tangible protection of workers' rights. In the absence of judicial review, the quality of legal reasoning and the clarity of operative rulings in cassation decisions constitute the decisive factors in achieving legal certainty.

e) Analysis Based on Gustav Radbruch's Theory of Legal Certainty

Gustav Radbruch's theory of legal certainty (Rechtssicherheit) identifies legal certainty as one of the fundamental values of law, alongside justice and utility. Legal certainty

requires norms that are clear, definite, consistent, and predictable in their application, enabling legal subjects to ascertain their rights and obligations. In termination of employment disputes, legal certainty is particularly critical as it concerns employment status, income, and workers' livelihoods.

The elimination of judicial review in termination disputes through SEMA No. 3/2018 is intended to realize legal certainty through the finality of cassation decisions (Friedrich, 2021). By positioning cassation as the final legal remedy, disputes are expected to conclude more swiftly and avoid prolonged litigation. However, under Radbruch's theory, legal certainty encompasses not only finality but also clarity and consistency of regulation. Law No. 2 of 2004 does not explicitly regulate the availability or prohibition of judicial review; instead, Article 57 refers to civil procedural law, which recognizes PK. Consequently, restricting PK through a Supreme Court Circular produces only partial legal certainty, as it does not derive directly from statutory law (Huijbers, 2021)

The finality of cassation decisions satisfies formal legal certainty, but it may generate substantive uncertainty when cassation judgments contain legal errors without any available corrective mechanism (Ali, 2023). This reflects an inherent tension between legal certainty and justice. Applying Jan M. Otto's indicators of legal certainty, the policy of eliminating PK has been implemented consistently by the Supreme Court, yet it has not fully satisfied the requirements of normative clarity and protection of workers as vulnerable parties (Otto, 2021)

Accordingly, based on Gustav Radbruch's theory, the elimination of judicial review in termination of employment disputes has fulfilled legal certainty in a formal sense through the finality of cassation decisions, but has not fully achieved substantive legal certainty. Ideally, legal certainty should not merely ensure the conclusion of disputes, but also guarantee that dispute resolution processes and outcomes are predictable, fair, and provide balanced protection for workers as the most vulnerable parties in industrial relations.

#### **4. CONCLUSION**

The elimination of the extraordinary legal remedy of judicial review (Peninjauan Kembali/PK) in termination of employment disputes reflects a legislative policy aimed at realizing dispute resolution that is swift, efficient, fair, and cost-effective, as mandated by Article 2 letter (b) of Law Number 2 of 2004. Limiting legal remedies to the cassation stage is intended to ensure legal certainty regarding employment status and the fulfillment of workers' rights. In this context, legal certainty, as emphasized by Gustav Radbruch, functions as a foundational value that provides

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clarity and finality in industrial relations disputes, while, from Philipus M. Hadjon's perspective, such finality operates as a form of preventive legal protection by preventing prolonged legal uncertainty.

However, this policy choice also carries important implications. The strong emphasis on formal legal certainty and finality places substantial responsibility on cassation decisions as the sole repressive mechanism for correcting legal errors. Consequently, the effectiveness of legal protection for workers becomes highly dependent on the quality, consistency, and accuracy of cassation judgments. Therefore, to prevent legal certainty from undermining substantive justice, policy measures are required, including strengthening judicial reasoning at the cassation level and providing clearer normative guidelines to ensure that final decisions genuinely protect workers' rights. In this way, legal certainty and legal protection can operate in a complementary manner, rather than at the expense of substantive justice in termination of employment disputes.

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