



# An Legal Protection for Termination Post the Court Decisions Are Still Powerful

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## Abstract

Research objectives this is for explain about how to do protection law on employees who are laid off after decision court powerful law fixed. The research method used is with approach juridical normative that drips focus on legal processes that do not in accordance with theories law, doctrine law. Literature study used for study decision powerful court law fixed. Research results show that protection law to employees who have restored with decision court not yet could held completely, because in implementation depends on the company that obeys the decision court. However in reality company not yet there is awareness for doing decision the court that has have strength law fixed.

**Keywords:** Protection law; Termination connection work; Company and employees

## Introduction

Labour is asset important for something organization or company because without employee organization as big as whatever, it's hard for success. Labour or employee in doing work set in Law No. 13 of 2003 concerning employment. As for the nature is private / civil who owns connection between individuals starting with agreement work among businessman with workers. But the tone of nature the public is also existence law labour like penalty criminal, sanction administrative and regional minimum wages [1]. In reality on the ground often occur disconnection connection work this thing caused by because existence demands from party labourer / worker for fight for right the normative tail Termination Connection Work (PHK). Because of that conditions that occur moment this is still many among workers who do not brave demand rights they though not yet in accordance with existing rules because reason classic afraid to do Termination Connection Work [2]. Though agreement work has bind the parties however implementation often walk no like what to expect for example problem time work, problem wages and so on even cause dispute connection work over with disconnection connection work. " Two " different view Among entrepreneurs and workers where one side worker want to get light work with lots of income

entrepreneur on the other hand want to give wages little and hope high productivity and gain maximum profit [3]. There are rules legislation addressed for control good for giver worker as well as given work, respectively must controlled and subdued yourself in everything applicable rules and regulations. Where each party is must could responsible in doing their respective activities duties and authorities so that compatibility and harmony will always realize [4]. Solution arranged disputes in Law no. 2 of 2004 concerning Solution Dispute Good Industrial Relations through Bipartite Mediation or Conciliation or Arbitration even through Court Industrial Relations felt not yet enough for give protection law to workers. Amount decision institution solution disagreements that don't siding to workers, for example just decision employ return worker in accordance with position and position beginning if worker conducted Termination Connection Work one-sided. Because of that already it's time government for thinking how for create system good industrial relations, which is not only must fair inside solution dispute employment will but also sensitive to problems employment future that can profitable all party.

## Literature Review

### Protection law

**Received date:** 18 October 2022; **Accepted date:** 06 November 2022; **Published date:** 10 November 2022

**Citation:** Azizah Zuhriyah N, Purnama Sari A (2022). An Legal Protection for Termination Post the Court Decisions Are Still Powerful. SunText Rev Econ Bus 3(4): 172.

**DOI:** <https://doi.org/10.51737/2766-4775.2022.072>

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Protection law becomes something important because it must elements is inside a country and not except in Thing protection law to workers. In life patriotic already certain happening something connection good among fellow citizens and between countries and inhabitant his country. Connection this is later could cause rights and obligations, protection law is Becomes right citizen and give protection law is Becomes state obligations. In theory protection law mentioned that interest man divided into 3 (three) interests that is interests public, interests' society, and individual interests [5]. Interest the most important general "includes" the interests of the state as a legal entity in maintain personality and substance cover the interests of the state as Security interest society. Interest Public that is interest safety public, interests' institution social, interests Public to moral damage, interests Public to maintenance source social, interests Public to progress public and interests' life man individually. Temporary interest individual among other things, interests' personality for example like freedom put forward opinion, interest connection house ladder like protection marriage and interests' substance like independence industry and contracts. Main goal law that is create arrangement orderly society, making \_ order and balance. With achievement order inside \_ Public expected interest man will protected. In achieving goal that law on duty share rights and obligations between individual inside community, share authority and regulate method solve problem law as well as maintain certainty law [6]. Ability for ensure policies, rules, decisions made obeyed as existence strength social. In the Pacta Sunt Servanda theory, a contract that binds the parties tie it up same with strength Laws made parliament but pacta sunt servanda apply just as a theory base it means when realized in practice so required various interpretation and adjustment [7].

### Dispute Industrial Relations

Dispute is situation where two or more party who fights destination each of them who do not could united and each party try convincing other parties regarding truth each of these goals [8]. Article 1 Number 16 of Law no. 13 of 2003 states that something system relationship formed \_ between the actors of the production process goods and services based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. Disputes industrial relations is difference opinion so that result in contradiction Among businessman with worker or union worker related with rights, disputes interests, disputes disconnection connection work and disputes Among union worker in one company. Article 1 Number 2 of Law no. 2 of 2004 states that dispute right is the resulting dispute because no fulfilment rights, consequences existence difference implementation or difference interpretation provision regulation legislation, agreement work, rules company, or agreement work together. Article 1 Number 4 of Law no. 2 of 2004 states that dispute disconnection connection

work is disputes that arise because no existence suitability opinion about ending connection work done by one party. Negotiations dispute among workers and entrepreneurs named bipartite [9]. Besides \_ there is also mediation industrial relations, namely solution dispute rights, interests and termination connection work conducted with deliberations mediated by an independent mediator. Solution disputes can also conducted with arbitration whose decision binding and final. Temporary there is again through court where industrial relations inspection dispute implemented in court industrial relations [10-13].

### Research Methods

Design from study this use approach juridical normative based secondary data in the form of a legal process that does not match with theories law, doctrine law, what to expect that the legal process based in provision The law in force in Indonesia (Das Solen), but in reality, no in accordance with hope (Das Saint). Literature study was also carried out for strengthening the decision database powerful court law fixed. Source primary and secondary law used as a database in to do by normative qualitative. Literature study with strengthening the decision database powerful court law fixed. Source ingredient primary and secondary law used as a database in to do analysis by normative qualitative.

### Research Result

In Article 1 Number 25 of Law no. 13 of 2003 determines that disconnection connection work must made effort or action last by all party moment occur dispute industrial relations within connection employment. Termination Connection Work (PHK) for the sake of the law only could occur because reason limit time agreed work has finished or if worker died as based on Article 61 Paragraph 1 of Law Number 13 Year 2003 that agreement work end if worker died; ending period time agreement work; existence decision court and/ or decision or determination institution solution dispute industrial relations that have strength law fixed ; existence state specified in the agreement work , rules company or agreement work together (PKB) which can cause ending connection work. Party worker entitled for decide connection work with party entrepreneurs, because in principle worker no can forced to for Keep going work when worker no want it. Resigned workers self must Fulfil condition with submit application resignation self by written no later than 30 days before date start resignation self; no bound in bond official and permanent doing obligation until date start resignation self. In Article 163 to Article 165 of the Law Number 13 of 2003 determines that reason n businessman can To do Termination Connection Work to worker / labourer is that layoffs are wrong because company closed consequence experience loss continuously accompanied

with proof finances that have been audited by accountant public for at least 2 ( two ) years last, or state force; Mass layoffs company closed because with reason company To do efficiency; Layoffs because of status change or change ownership company part or whole or company move location with terms work same new \_ with terms old work and workers no ready To do connection work; Layoffs because of status change or change ownership part or whole or company move location with businessman no ready accept worker in the company with reason whatever . As for the other reasons where businessman could to do Termination Connection Work because existence error from worker that alone, fine that error light nor error weight carried workers inside operate his obligations as workers. As for the error lightly done worker / labourer as arranged \_ in Constitution No. 13 of 2003 and Kepmenaker No. Kep-150/Men/2000, but set in Article 18 paragraph (1) Permenaker No. Per-4/men/1986, namely: After 3 (three) times in a row worker permanent reject for obey order or decent assignment \_ as listed in agreement work, deal work together (PKB/KKB) or regulation companies that have agreed. With on purpose or because negligent result in herself in state so, so no could operate given job to him. Not speaking to do profession although already try in the field existing task. Violate provisions that have been set in \_ deal work together, Rules Company, or agreement work. As for the error weight carried workers / labourers , who can made reason businessman could To do disconnection connection work on workers as arranged in Article 158 Paragraph (1) of Law no. 13 of 2003 is Fraud, theft and embezzlement property / money businessman or owned by friend worker or owned by friend entrepreneur ; give description fake and/ or faked so that harmful company or the interests of the State; drunk , drinking intoxicating hard , solid , wear drug dope or abuse drugs forbidden or stimulant other prohibited by regulations legislation invitation on the spot work and in designated places company ; To do deed immoral to do gambling on the spot work ; attack persecute , threaten , intimidate businessman or friend work in the neighbourhood work ; persuade businessman or friend worker for To do contradictory actions with regulation applicable and laws regulations ; with careless on purpose destroy , harm or let in state danger goods owned by company that generates loss for company; with careless on purpose damage, harm, or let friend worker or businessman in state danger in place work ; disassemble or leak confidential company that should kept secret except for the interests of the State; To do deed others in the neighbourhood threatened company criminal imprisonment of 5 (five) years or more. Termination Connection Work done with reason error heavy must truly pay attention to the Circular of the Minister of Manpower and Transmigration Republic of Indonesia No. SE-13/MEN/SJ-HK/I/2005 concerning decision Court Constitution (MK) on the judicial review of the Manpower Law

against the 1945 Constitution. The Court Constitution state that Constitution Number 13 of 2003 Article 158; Chapter 159; Article 160 Paragraph (1) as long as know child the sentence " no " on complaint entrepreneur"; Article 170 throughout know child the sentence "... Article 158 Paragraph (1) ...." Article 171 throughout concerning child the sentence "... Article 158 Paragraph (1) ...." Article 186 throughout know child the sentence "... Article 137 and Article 138 Paragraph (1)...." Then no have strength law bind. Related Thing it is in item 1 then Articles Constitution Number 13 of 2003 concerning declared employment no have strength law binding, considered no once yes and no could use again as base or reference in solution industrial relations. Solution case Termination Connection Work because worker To do error heavy so entrepreneurs who will To do Termination Connection Work with reason worker / labourer To do error heavy next dispute Termination Connection Work could conducted after there is the decision of the criminal judge who has have strength law fixed . If worker detained the authorities and workers / labourers no could doing profession as should be so apply provision Article 160 of the Law Number 13 of 2003 concerning Employment? In terms of there is a "reason " urgent" which resulted in no allow connection work continue, then businessman could go through effort solution through institution Solution Dispute Industrial Relations. Layoffs because of decision court industrial relations or including the decision issued district court because case criminal. Businessman could To do disconnection connection work through district court with reason worker has To do error weight as regulated in Article 158 Paragraph 1 of the Law Number 13 of 2003. As for the error in question based on provision in Article 158 Paragraph (2) of the Law Number 13 of 2003 which must be supported with proof among others: Workers / labourers caught hand; There is a confession from the worker / labourer concerned; Another proof is in the form of report incident made \_ party authorized in the company concerned and supported at least two witnesses. Since Court the Constitution (MK) has state Article 158 of the Law Number 13 of 2003 is considered unconstitutional so based on decision Court Constitution Republic of Indonesia Case Number: 012/PUUI/2003 on October 28, 2004, then businessman no again could direct to do Termination Connection Work to worker if only there is guess worker to do error heavy. Based on principle presumption no guilty businessman new could to do disconnection connection work if worker has proven to do error heavy including act criminal, with issued decision district court that has have strength law fixed. Related Legal Protection Occur Termination Connection Employment (PHK) unilaterally by Employers. Basically, position among businessman with worker is same in accordance with provision Article 5 and Article 6 of Law No. 13 of 2003. Article 5 states that every power work have same opportunity \_ without discrimination for get job. Article 6



states that worker / labourer entitled get same treatment without discrimination from entrepreneur. But in practice connection among businessman with worker no only reviewed by juridical but also reviewed from social economical. Socio economically here position among entrepreneurs and workers Becomes no the same, especially for workers who have minimal Skills so that need get attention. Position workers and employers or among entrepreneurs and workers different with position like among sellers and buyers. Sellers and buyers have position as well as same freedom for determine there is or whether or not agreement. Position among businessman with worker is no same. By juridical position labourer is free, but by social economical position labourer is no free. Protection law in disconnection connection important work is concerning worker status truth in connection work and truth reason in occur disconnection connection work. Reason used for drop disconnection connection work shared to in two group that is excuses that are allowed and reasons that are not allowed for drop disconnection connection work. Businessman new can to do disconnection connection work when worker to do error light or error the weight that has been set in Article 163 to Article 165 of Law no. 13 of 2003. The mechanisms and procedures is as arranged Article 156 Paragraph 2, Paragraph 3 and Paragraph 4 of Law no. 13 Year 2003 about rights normative worker because consequence disconnection connection work which includes severance pay, money long service award or service fee, change money make a loss housing and medical treatment, and severance pay. Businessman only could to do disconnection connection work if worker has proven to do error heavy including act criminal, after issued decision the court that has have strength law fixed and binding. Reasons not allowed to businessman for to do disconnection connection work that is related with disconnection connection work done by unilateral outside Article 163 to Article 165 of Law no. 13 Year 2003. As for what is included to in disconnection connection work unilateral among others businessman no mention reason disconnection connection work (PHK), reasons disconnection connection the job looking for or the reason fake, result stop that loss worker more heavy than profit stop for entrepreneurs and workers dismissed contrary with provision in Constitution or habit, and not there is reason important for no fulfil provision that. In Law no. 2 of 2004 concerning Solution Dispute Industrial Relations, efforts law that can conducted in case disconnection connection work by unilateral could conducted by Bipartite, Mediation / Conciliation / Arbitration, up to Court Industrial Relations. Even no seldom from so much many case disconnection connection work by unilaterally carried out by entrepreneurs disconnected null and void for the sake of the law and the entrepreneur Required hiring return workers in positions and places work back by Court Industrial Relations. But inside implementation occur difficulty in application decision if the

businessman no operate decision Court Industrial Relations. Decision to do deed law inside case Termination Connection Work unilateral like hiring return workers in positions and places work beginning difficult for conducted execution if businessman no with volunteer doing Amar decision that. In Article 57 of Law no. 2 of 2004 explained that procedural law applicable to the court industrial relations is civil procedural law that applies to the court environment Justice general unless regulated by special in Constitution this. Source civil procedural law main applicable for district court is Het Herziene Indonesia Regulation (HIR) for the Java region as well as Madura and Retroelement Buitengewesten (RBg) for the outer region Java and Madura. In the system civil procedural law known with the term forced money (Dwangsom). In Article 606 a Recht Verordering (RV) that what is meant with Dwangsom is along the judge 's decision contains punishment for something else than payment some money then could determine that along or every time punished no fulfil punishment the by him must handed over a large amount of money set in judge 's decision.

## Conclusion

Draft protection law to affected employee disconnection connection work and then has restored through decision court should carried out by the company, however reality not yet could fully implement, because fulfilment right restored workers depend on companies that comply decision court. Termination connection work said legitimate along in accordance with provision the law that governs it even including disconnection connection work by entrepreneurs. Reason for termination connection work by entrepreneur can conducted with 2 (two) ways that is excuses that are allowed and reasons that are not allowed. Permissible reasons when worker to do error light or error adjustable weight Article 163 to Article 165 of Law no. 13 of 2003 concerning Employment. Reasons not allowed because the obstacles inside implementation judge 's decision in fulfilment rights employee caused not yet optimal court because object dispute enter the private area; lack of awareness law for company for doing results the judge 's decision powerful law fixed; lack of understanding workers inside fulfilment his rights based on decision court.

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