Legal Consequences for Companies that Carry Out Unilateral Termination of Employment

I Gusti Ayu Putu Lingsiani¹, I Gede Agus Kurniawan¹

¹Universitas Pendidikan Nasional, Denpasar, Indonesia

*Corresponding Author: I Gusti Ayu Putu Lingsiani

Abstract

The COVID-19 pandemic has resulted in the Company taking steps to streamline company costs by laying off workers. Many companies experience labor relations disputes, one of which is that the company carries out unilateral termination of employment (PHK) of workers without negotiating with the workers and does not pay attention to the rights of these workers. This research aims to find out and examine the mechanism for resolving industrial relations disputes in Badung Regency as well as knowing and studying the legal consequences for companies that carry out unilateral layoffs of workers with a fixed term work agreement (PKWT) and workers with a fixed term work agreement (PKWTT) in Badung Regency. This research is empirical legal research with a factual approach and a statutory approach. The research results confirm that there are 2 (two) alternative dispute resolution mechanisms for industrial disputes, either through non-litigation channels, namely by bipartite negotiations, mediation, conciliation, arbitration or by litigation, namely through the industrial relations court (PHI). Layoffs can be said to be valid if they have received a decision from the PHI and if without this decision the employer continues to lay off workers in PKWT and PKWTT who received layoffs unilaterally, then the layoffs are not legally valid and are considered null and void. The legal sanction for employers who lay off PKWT workers before their term of employment ends is to fulfill the workers' rights, namely by providing severance pay, gratuity money, compensation money due to the layoff.

Introduction

The company is a place where production activities take place and all factors of production of goods and services are gathered (Iswardani, 2021). The main purpose of the company is to make a profit or profit. Data from the Central Bureau of Statistics states that in 2020 there were 4,209,817 companies spread across Indonesia, with the existence of companies being a positive impact on society, because it can improve the community's economy and there are extensive employment opportunities. However, since March 2, 2020 the Government officially announced Covid-19 (Corona Virus Disease 2019) entering Indonesia (Haitami & Rengganis, 2021). To prevent the spread of the Covid-19 virus, the Government has issued Presidential Decree of the Republic of Indonesia (KEPRES) No. 12 of 2020 concerning the determination of the Corona Virus Disease 2019 non-natural disaster as a national disaster (Aviariska, 2020). One of the policies is physical distancing and work from home. The purpose of this policy is to reduce the spread of the virus, reduce activities outside the home both work and social interaction.

The Central Bureau of Statistics reported that Indonesia's economy increased by 5.01% in the first quarter of 2022 compared to the 2020 economic growth of only 2.97% per year (Suryana & Aziz, 2023). The government has taken efforts to transition the pandemic into an endemic...
in economic recovery through the tourism sector by preparing for the return of foreign tourism (Ulak, 2020).

Despite the increasing economy in Indonesia, it takes a long time for companies or industrial businesses to bounce back. One of the provinces affected by the Covid-19 pandemic is Bali Province, precisely in Badung Regency, which is the center of tourism and has the most tourist objects compared to other regencies (Yasa, 2020). Due to the greatly reduced purchasing power of the community, the company was forced to stop production. Because during this pandemic, most companies are implementing measures to streamline Company costs and most companies experience disputes with their workers, such as: companies are unable to pay workers' wages which should be the top component of the company's budget, both companies are forced to lay off their workers, until the company terminates employment (hereinafter referred to as PHK) to workers with a specific time work agreement (hereinafter referred to as PKWT) and workers with an indefinite time agreement (hereinafter referred to as PKWTT) without paying workers' rights, such as: severance pay, award money and other compensation money, and there are even companies that carry out unilateral layoffs without negotiating with workers so that workers feel disadvantaged and report it to the Manpower Office (Madia et al., 2022).

In accordance with article 156 of Law No. 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law) then amended into article 156 of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law) which came into force on March 31, 2023, companies that carry out layoffs are obliged to pay workers' rights, such as: severance pay, long service pay and compensation pay that should have been received (Asuan & Rizayusmanda, 2023).

Based on article 151 of the Manpower Law which was later amended into article 151 of the Job Creation Law, it explains (Barnard, 2020): (1) Employers, workers/laborers, labor unions, and the Government must strive to prevent termination of employment; (2) In implementing unavoidable termination of employment, the intention and reasons for termination of employment shall be notified by the employer to workers/laborers and/or trade unions/labor unions; (3) If the worker/labor has been notified and refuses the termination of employment, the settlement of the termination of employment shall be carried out through bipartite negotiations between the employer and the worker/labor and/or trade union/labor union; (4) bipartite negotiations as referred to in paragraph (3) do not reach an agreement, termination of employment shall be carried out through the next stage in accordance with the mechanism for resolving industrial relations disputes.

Unilateral dismissal by companies to workers is prohibited without any clear reason. If layoffs cannot be avoided, companies are obliged to negotiate with workers first, but there are still many companies that continue to carry out unilateral layoffs without paying attention to applicable regulations (Asya et al., 2023). In addition, the regulations governing employment are Government Regulation No. 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment Relations (hereinafter referred to as PP PKWT-PHK), Government Regulation No. 36 of 2021 concerning Wages, Government Regulation No. 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program and Ministerial Regulation No. PER.31/MEN/XII/2008 concerning Guidelines for Settling Industrial Relations Disputes Through Bipartite Negotiations.

According to Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement (hereinafter referred to as PPHI Law) there are two (2) ways of settlement, namely (Pramono,
2020): Dispute settlement through the Industrial Relations Court (litigation) and outside the Industrial Relations Court (non-litigation) which includes bipartite settlement, mediation, conciliation, or arbitration. In layoff disputes, settlement through bipartite negotiations should be sought. The implementation of bipartite negotiations is carried out through deliberation between employers/employers and workers/laborers. If no agreement is reached in bipartite negotiations, either party may report to the Manpower Office, which offers arbitration in unilateral dismissal disputes (Marbun, 2020).

Based on this, according to the author, if layoffs are still carried out by the Company, the Company must follow the industrial dispute resolution mechanism so as not to cause disputes with workers. Furthermore, layoffs can be said to be valid if they have received a decision from PHI and if without such a decision the employer continues to lay off workers in PKWT and PKWTT who get unilaterally terminated, then the layoff is not legally valid and is considered null and void. The legal sanctions received by companies that carry out layoffs against workers must reflect justice and PKWT workers who get terminated before the end of their working period, the Company is obliged to fulfill their workers' rights, namely by providing severance pay, long service award money, compensation money due to the termination. And for non-permanent workers, the company is obliged to provide severance pay, reimbursement of working period and compensation in accordance with the Job Creation Law.

Methods

This type of research is empirical legal research which is a legal research method that seeks to see the law in a real sense or it can be said to see, examine how the law works in society. This is related to the legal consequences for companies that carry out unilateral layoffs at the Badung Regency Industry and Manpower Office, using primary data obtained from field data through interviews and secondary data consisting of primary legal materials which are laws and regulations related to the problems to be studied and secondary legal materials are literature studies that provide explanations of primary legal materials, such as: research results, scientific works from legal circles, and legal journals.

The data collection technique in writing this thesis uses the literature study technique by using a study of books, literature, notes, and reports that have to do with the problem being solved. And using the Interview Technique by conducting interviews with parties that are closely related and in accordance with the problems studied by the author, in accordance with the interview guidelines.

Furthermore, to answer the problems in this study, it is analyzed with descriptive, juridical, and qualitative steps, then the final part is a conclusion which is a summary of the discussion of the issues raised, then continued by providing suggestions and recommendations related to unilateral layoffs that occur in labor relations.

Results and Discussion

Mechanism for Settlement of Industrial Relations Disputes in Badung Regency

Settlement of industrial relations disputes is the termination of disputes arising in industrial relations between workers and employers, due to, among other things, disagreement in employment relations. The settlement of industrial relations disputes is regulated in Law No. 2 of 2004 concerning the settlement of industrial relations disputes.

The steps in resolving industrial relations disputes begin with non-litigation settlement, if it is unable to resolve the problem, then the effort taken is litigation settlement.
Out-Of-Court Dispute Resolution (Non-Litigation)

Bipartite Negotiations

Based on Article 3 paragraph 1 of Law No. 2 Year 2004, bipartite negotiations are negotiations between employers or a combination of employers and workers or trade unions/labor unions or between trade unions/labor unions and other trade unions/labor unions in one company that are in dispute. Bipartite is essentially a deliberative effort for consensus.

Scope: covers four types of disputes, namely rights disputes, interest disputes, employment termination disputes, and disputes between labor unions in one company.

Mechanism: At most 30 working days (Article 3 paragraph (2) If one party refuses to negotiate or negotiates but does not agree, the bipartite effort is considered a failure (Article 3 paragraph (3) Mechanism (continued): The party registering the dispute with the labor agency attaches evidence that bipartite efforts have been made (Article 4 paragraph (1) the labor agency is obliged to offer a settlement through conciliation or arbitration (Article 4 paragraph (3) if the parties do not make a choice within 7 days, the labor agency delegates to a mediator (Article 4 paragraph (4) if bipartite negotiations reach an agreement, a collective agreement is made signed by the parties (Article 7 paragraph (1).

Tripartite Negotiations

Tripartite is one way to resolve disputes in Industrial Relations Disputes (PHI), Tripartite itself is regulated in Law Number 2 of 2004 concerning Industrial Relations Settlement (PHI). Tripartite is a negotiation conducted between the worker/labor party and the employer/company, which involves a facilitator, namely a third party to be able to become a facilitator between the two parties in dispute. Then the stages in tripartite negotiations are as follows:

Mediation

Mediation is the settlement of rights disputes, interest disputes, layoff disputes, and disputes between trade unions/labor unions within one company only through deliberation mediated by one or more neutral mediators. Scope: covers four types of disputes, namely rights disputes, interest disputes, layoff disputes, and disputes between labor unions in one company. (Article 1 point 11 of Law No. 2 Year 2004). Mechanism: If an agreement is reached, a joint agreement is made signed by the disputing parties and witnessed by the mediator, and registered with the industrial relations court (Article 13 ay (1) If there is no agreement, the mediator issues a written recommendation to the parties no later than 10 days. The parties must respond in writing within 10 working days, agreeing or rejecting. If the parties agree to the written recommendation, the mediator assists the parties to make a collective agreement, within 3 working days and then register it with the industrial relations court (Article 13 ay (2) The mediator completes the mediation task within 30 working days from the submission of the case (Article 15).

Conciliation

Conciliation is the settlement of interest disputes, employment termination disputes or disputes between trade unions/labor unions only in one company through deliberation mediated by one or more neutral conciliators. The conciliator is one or more persons who fulfill the requirements as stipulated by the Minister and shall provide written recommendations to the disputing parties. Conciliators can provide conciliation if they have been registered at the government office responsible for labor. Conciliation settlement can be carried out if there is an agreement between the disputing parties such as employers and workers or trade unions made in writing
to be resolved by the conciliator. The conciliator in resolving industrial relations disputes basically through deliberation for consensus. In the event that an agreement is reached on the settlement of industrial relations through conciliation, a collective labor agreement shall be made signed by the parties and witnessed by the conciliator, and registered at the Industrial Relations Court at the District Court in the jurisdiction to obtain a certificate of proof of registration. Conversely, if no agreement is reached then: (1) The conciliator issues a written recommendation; (2) No later than 10 (ten) working days after the first conciliation hearing must have been submitted to the parties; (3) The parties must have responded in writing to the conciliator, agreeing or rejecting the written recommendation within a period of no later than 10 (ten) working days after receiving the written recommendation; (4) A party that does not provide an opinion or answer is deemed to have rejected the written recommendation; (5) The parties agree to the written recommendation and no later than 3 (three) days after the written recommendation is agreed, the conciliator must have finished assisting the parties to make a Collective Agreement to be registered at the Industrial Relations Court at the District Court in the area where the parties enter into a collective agreement to obtain a proof of registration certificate; (6) So that the settlement of industrial relations disputes through the Conciliation Institution is carried out no later than 30 working days from the receipt of a request for dispute settlement.

Arbitrase

Arbitration is the settlement of an interest dispute and a dispute between trade unions/labor unions within one company only, through a written agreement of the disputing parties to submit the settlement of the dispute to an arbitrator whose decision is binding on the parties and is final. The scope of arbitration is interest disputes and disputes between labor unions in one company (Article 1 point 15 of Law No. 2 Year 2004).

Mechanism: Conducted by an arbitrator (Article 29) Conducted based on the agreement of the disputing parties (Article 32 ay (1)) The agreement is made in writing a letter of arbitration agreement, in triplicate (Article 32 ay (2), and then selects the arbitrator The arbitrator completes the arbitration task no later than 30 working days from the letter of appointment of the arbitrator (Article 40 (1), If peace is reached, the arbitrator/ panel of arbitrators shall make a Deed of Peace signed by the disputing parties and the arbitrator/ panel of arbitrators, and registered with the industrial relations court (Article 44 ay (2) and (3).

Mechanism (continued): Arbitration awards have legal force binding on the parties to the dispute and are final and permanent (Article 51 ay (1)) Industrial relations disputes that are being or have been resolved through arbitration cannot be submitted to the industrial relations court (Article 53).

Settlement of industrial relations disputes through litigation channels

Industrial Relations Court

The Industrial Relations Court is a special court established within the district court that is authorized to examine, hear and give decisions on industrial relations disputes. If there is no settlement through conciliation or mediation, either party may file a lawsuit with the industrial relations court.

Mechanism: Civil procedural law applies, unless specifically regulated in this Law (Article 57) A lawsuit is filed with the industrial relations court at the District Court of the jurisdiction where the worker/laborer works (Article 81) The minutes of settlement through mediation or conciliation must be attached, otherwise the judge returns the lawsuit (Article 83 ay (1)) The decision of the panel of judges must be given no later than 50 working days from the first
hearing (Article 103) According to Article 56 of Law No. 2 Year 2004, the Industrial Relations Court has absolute competence to examine and decide: i. At the first level regarding rights disputes and employment termination disputes; ii. At the first and last instance regarding interest disputes and disputes between trade unions/labor unions within one company; ii.

**Legal Consequences for Companies Conducting Unilateral Layoffs in Badung Regency**

If the company carries out unilateral termination without an agreement from PKWT and PKWTT workers, the termination is not legally valid and is considered null and void. PHK can be said to be valid if the company and workers have agreed to terminate the employment relationship and have obtained a decision from PHI. So that companies that carry out layoffs will get legal sanctions against PKWT workers before their work period ends by fulfilling their workers' rights, namely by providing severance pay, long service pay, compensation money due to the layoff. And for PKWTT by fulfilling the rights of workers, namely severance pay, reimbursement of working period and compensation money.

**Legal Sanctions against Companies that unilaterally terminate workers on Fixed-Term Employment Agreements (PKWT)**

The provisions of Article 81 number 12, Article 56 paragraph (2) of the Job Creation Law basically stipulate that non-permanent contracts are work agreements made between Workers and Employers to establish employment relationships based on a certain period of time or the completion of a certain job.

Furthermore, if Workers with non-permanent contracts are terminated by the Employer before the contract expires, then in accordance with the provisions of Article 62 of the Manpower Law which was last updated with the Job Creation Law Jo Article 15 and Article 16 paragraph (1) of Government Regulation No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time and Termination of Employment, Workers will receive: severance pay, long service pay, compensation due to the termination of employment.

Case descriptions of unilateral dismissal of workers with a specific time work agreement (PKWT) in Badung Regency are as follows:

**Case NW**

NW is a 42-year-old Indonesian citizen who worked under a contract system with Company Y. NW was unilaterally dismissed and verbally dismissed by Company Y. The dismissal was carried out because NW did not come to the office for 12 (twelve) times without explanation. In principle, if the company has terminated the employment relationship with the worker, the rights and obligations between the company and the worker have ended, and Company Y did not carry out its obligation to provide rights to NW.

Due to the unilateral dismissal of NW by Company Y, NW submitted a request for bipartite negotiations to Company Y regarding her rights, as there was no good faith and no agreement between them. NW then submitted a request for resolution of this issue to the Manpower Office. As a result of the negotiations, Company Y did not want to rehire NW and paid severance pay, long service pay, and compensation for rights and NW was finally willing to be terminated.

In accordance with the above description, the company should give a warning letter to the worker if it is not heeded, then make a summons and if layoffs cannot be avoided, the purpose and reasons for layoffs are notified by the company to workers with a notice of layoff made in the form of a notification letter and delivered legally by the employer to the worker no later than 14 (fourteen) working days before layoffs. And if the worker who has received the PHK
notification letter refuses, the worker must make a letter of refusal no later than 7 (seven) working days after receipt of the notification letter. If there is a difference of opinion regarding layoffs, it can be done through bipartite negotiations between the company and workers, if the negotiations do not reach an agreement, then the next stage of layoff settlement is carried out through the mechanism for resolving industrial disputes in accordance with statutory provisions.

In accordance with PP No: 35 of 2021 article 51: Employers can terminate the employment of workers/laborers due to the reason that workers/laborers are absent for 5 (five) or more consecutive working days without information in writing which is equipped with valid evidence and has been summoned by the Employer 2 (two) times properly and in writing, workers/laborers are entitled to: (a) compensation money in accordance with the provisions of Article 40 paragraph (4); and (b) separation pay, the amount of which is stipulated in the Work Agreement, Company Regulation, or Collective Labor Agreement.

**Legal Sanctions against Companies that unilaterally terminate workers on Indefinite Time Work Agreements (PKWTT)**

Indefinite Time Work Agreement (PKWTT) is a work agreement between workers and employers to establish a permanent working relationship, there is no time limit. There are labor rights related to layoffs. The rights of workers include severance pay, long service pay (service money), compensation for housing and medical treatment, and separation pay. The rights of workers arise from the relationship between the status of workers, workers’ wages and the reasons for layoffs in the form of: (a) Whether workers are entitled to severance pay, long service pay, and compensation for housing and medical treatment; (b) If eligible, how much

The case descriptions regarding unilateral dismissal of workers with indefinite term employment agreements (PKWTT) in Badung Regency are as follows:

**EK case**

EK is a 43-year-old male Indonesian citizen who works at Company X. The employment relationship between EK and Company X is confirmed by a letter of appointment with a position as a permanent employee. EK has worked for 10 (ten) years. When he first started working, EK did his job well, because he basically liked his job. EK was sick and the doctor recommended that EK be given permission for 2 (two) days. Then EK submitted a doctor's certificate to the Human Resource Department staff (hereinafter referred to as HRD) so that he could continue to work from home, so EK took his laptop home, with the permission of the office security department. Suddenly, Company X issued a warning letter accusing EK of serious misconduct at work. EK was informed by HRD that EK was no longer trusted to work at Company X. Then the office security asked EK to hand over the laptop he was carrying. EK was shocked, as she had never made any serious mistakes during her employment. The HRD provided a letter of collective agreement, which basically explained that Company X planned to terminate EK's employment, but because EK did not accept the termination, the letter was not signed and he immediately went to the Labor Office. The supervisor advised EK to continue fighting for his rights in accordance with the provisions of the Labor Law, Company X offered compensation with the language of terminating the collective labor agreement in the amount of 6 (six) times the wage, because EK still wanted to continue working, so EK ignored the offer. The termination letter left EK confused; if EK had indeed made a mistake, Company X should have provided guidance and evaluated EK's mistakes as alleged in the warning letter.

From the above problems, it can be obtained that the stage of termination carried out by the Defendant to the Plaintiff, it appears quite clear that the stage of termination is contrary to the provisions of Article 151 paragraphs (1), (2) and (3) that all efforts must be made to avoid
layoffs, and if layoffs cannot be avoided then layoffs must be negotiated by the employer and workers, and if the negotiations do not result in an agreement, the employer can only terminate the employment relationship with the worker/laborer after obtaining a determination from the industrial relations dispute resolution institution.

**Pasal 161 paragraph (1) of the Labor Law**

(1) In the event that a worker/labor violates the provisions stipulated in a work agreement, company regulation or collective bargaining agreement, the employer may terminate the employment relationship, after the worker/labor concerned has been given the first, second and third consecutive warning letters.

Because the stage of termination of employment carried out by the Defendant is contrary to the provisions of Article 151 paragraphs (1), (2) and (3) of the Manpower Law, then based on the provisions of Article 155 (1) which reads: (1) Termination of employment without stipulation as referred to in Article 151 paragraph (3) is null and void. Therefore, the stage of termination of employment carried out by Company X to EK must be declared null and void.

The Industry and Labor Office has advocated for a bipartite process, mediation to seek an amicable settlement and deliberation for consensus based on good faith and the principles of justice, but Company X still insists on layoffs. With the Covid pandemic conditions like this, EK finally accepted the layoff by accepting his rights in accordance with the provisions of the Labor Law. EK filed a lawsuit with the Denpasar District Court to be examined and punished Company X to pay severance pay and other rights referring to the provisions of Article 156 paragraphs (1), (2), (3) and (4) of the Labor Law. In accordance with the cassation decision, Company X was ordered to pay severance pay, long service pay, compensation for rights, and to issue a work experience certificate in EK's name.

**Conclusion**

The mechanism in resolving industrial relations disputes can be resolved through 2 (two) channels, namely the settlement of non-litigation and litigation industrial relations disputes. The first is required through bipartite negotiations, if the negotiations fail, it is continued with tripartite negotiations conducted between the worker/laborer and the employer/company, which involves a facilitator, namely a third party to be able to become a facilitator between the two parties in dispute, the method of settlement is through mediation to reach an agreement in Article 13 paragraph (2) of Law No. 2 of 2004, if it does not find common ground, it is continued with conciliation to reach an agreement in Article 23 paragraph (1) if it does not find an agreement, it is continued through the industrial relations court, found in Article 55. Dispute settlement through litigation is pursued in 2 (two) ways, namely settlement by a judge contained in Article 81 and by a Cassation Judge in Article 113 of Law No.2 of 2004 concerning Industrial Relations Dispute Resolution. The legal consequences of companies that carry out unilateral layoffs without an agreement from PKWT and PKWTT workers are that the layoffs are not legally valid and are considered null and void. PHK can be said to be valid if the company and workers have agreed to terminate the employment relationship and have obtained a decision from the Industrial Relations Court. So that companies that carry out layoffs will get legal sanctions against PKWT workers before their work period ends by fulfilling their workers' rights, namely by providing severance pay, long service pay, compensation money due to the layoff. And for PKWTT by fulfilling the rights of workers, namely with severance pay, replacement money for the working period and compensation money. Before carrying out layoffs, companies are required to make efforts in advance so that layoffs do not occur against their workers.
References


