THE PRINCIPLE OF TERMINATION IN EMPLOYMENT CONTRACT: A COMPREHENSIVE ANALYSIS OF INDONESIA LABOUR LAW

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ABSTRACT

This research aims to analyze the development of principles in the termination of employment relations that exist in the legislation regarding employment in Indonesia, and its impact on the legal protection of the right to job security for workers. The legal research method in this research is normative research using a historical approach to analyze the development of the principles of employment termination in the history of the existence of labor law in Indonesia starting from post-independence Indonesia, and explain how these developments affect legal protection for workers. The results of this study show that during the period of the enactment of the Civil Code at the beginning of Indonesian independence, there was no role of the state in regulating the principles of employment relations as a form of legal protection for workers. The development of the principles of employment termination guaranteed by the state began during the socialization process of labor law and is seen in the enactment of the Labor Law, the Labor Dispute Resolution Law, the Law on Termination of Employment in Private Companies, up to the Employment Law. The latest development seen in the enactment of the Job Creation Law has significantly degraded the application of the principles of employment termination and resulted in reduced legal protection for workers.

Keywords: Principles; Termination; Labour Law.

ABSTRAK

Penelitian ini bertujuan untuk menganalisis perkembangan asas-asas pemutusan hubungan kerja yang ada dalam peraturan perundang-undangan tentang ketenagakerjaan di Indonesia, dan dampaknya terhadap perlindungan hukum terhadap hak atas jaminan kerja bagi pekerja. Metode penelitian hukum dalam penelitian ini adalah penelitian normatif dengan menggunakan pendekatan sejarah untuk menganalisis perkembangan asas pemutusan hubungan kerja dalam sejarah keberadaan hukum ketenagakerjaan di Indonesia mulai dari pasca kemerdekaan Indonesia, dan menjelaskan bagaimana perkembangan tersebut mempengaruhi perlindungan hukum. untuk pekerja. Hasil penelitian ini menunjukkan bahwa pada masa berlakunya KUH Perdata pada awal kemerdekaan Indonesia, belum terdapat peran negara dalam mengatur asas-asas hubungan kerja sebagai bentuk perlindungan hukum terhadap pekerja. Perkembangan asas pemutusan hubungan kerja yang dijamin negara dimulai pada proses sosialisasi undang-undang ketenagakerjaan yang terlihat pada lahirnya UU Ketenagakerjaan, UU Penyelesaian Perselisihan Perburuhan, UU Pemutusan Hubungan Kerja pada Perusahaan Swasta, hingga UU PHK. Hukum Ketenagakerjaan. Perkembangan terkini yang terlihat dari pemberlakuan UU Cipta Kerja telah

mendegradasi penerapan prinsip pemutusan hubungan kerja secara signifikan dan berdampak pada berkurangnya perlindungan hukum bagi pekerja.

Kata Kunci : Prinsip, Pemutusan Hubungan Kerja, Hukum Perburuhan

A. BACKGROUND

Employment relations in labour law cannot be equated with civil law relations in general, because between workers and employers there is inequality or inequality of position which causes workers not to have the freedom to determine the terms of employment.[1] The worker is the weaker party (inferior) when compared to the employer (superior). Based on this inequality or inequality of position, the state has the obligation to intervene in employment relations in the form of a law to protect workers as the weaker party. The form of state intervention in labor relations shows a shift in labor law from private to public law (socialization process).[2] The shift of labor law in Indonesia to public law is based on several things as presented by Soepomo as Panca Krida of Labor Law consisting of liberation from slavery, *poenale sanctie*, fear of unilateral loss of employment, and provision of equal economic position to workers. Based on the above, the socialization process of labor law in Indonesia cannot be separated from the history of Indonesia's independence struggle.[3] The 1945 Constitution of the Republic of Indonesia mandates Indonesia as a state to fulfill the right to work and a decent livelihood for workers, including protection provided by the state in employment relations and termination of employment.[4] The socialization process of labor law in Indonesia proves that there are three stakeholders in labor law, namely workers, employers, and the government.[5]

Termination of employment is basically very detrimental to the interests of workers. The termination of employment results in the loss of employment and a source of income for workers, which of course will have a direct impact on the survival of their families. For workers, the

[1] Siti Hajati Hoesin and Fitriana, *Memahami Hubungan Kerja dan Hubungan Industrial di Indonesia* (Jakarta: Damera Press, 2023), 5.
[2] Mr. Saprudin, "Socialisering Process Hukum Perburuhan Dalam Aspek Kebijakan Pengupahan," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 24, no. 3 (February 1, 2013): 542, https://doi.org/10.22146/jmh.16124.
[3] Hoesin and Fitriana, *Memahami Hubungan Kerja dan Hubungan Industrial di Indonesia*, 5.
[4] Manahan M. P. Sitompul, *Perkembangan Hukum Ketenagakerjaan Dan Perlindungan Hak-Hak Konstitutional Pekerja/Buruh Indonesia*, Cetakan ke-1 (Tapos, Depok: RajaGrafindo Persada, 2021), 181.
[5] Mohammad Fandrian Hadistianto, "Problematika Regulasi Mengenai Daluwarsa Gugatan Perselisihan Hubungan Industrial Di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 7, no. 1 (October 31, 2022): 1–18, https://doi.org/10.24246/jrh.2022.v7.i1.p1-18.

termination of employment will be the beginning of a period of unemployment along with all the consequences that will not only be felt by workers, but also the families of these workers. This proves that the employment relationship is not only seen from the economic aspect, i.e. employers need workers to do work for profit, and workers work to earn wages to fulfill the needs of themselves and their families, but also has a human rights aspect. Work relations in the aspect of human rights must be interpreted that workers have the right to be treated fairly and properly in employment relations, including protection against unfair and improper termination practices.

Based on the above, there are principles that must be adhered to by employers in order to terminate employment of workers, namely termination of employment must be used as a last resort (*ultima ratio*), the intention of termination of employment must be negotiated in advance with workers or trade unions that represent them, termination of employment must be based on justifiable reasons, the obligation of employers to reinstate workers if the reason for termination of employment is declared invalid by the authorized institution, and state the protection of workers' severance pay as compensation for termination of employment.[6] *First*, termination of employment must be the last resort (*ultima ratio*). This principle was first introduced by a Federal Court decision proposing several alternatives to termination of a particular contract and voiding the employer's contractual request to terminate the agreement as long as such alternatives were available, and was subsequently incorporated in the 1969 and 1972 amendments to the Law on Protection against Termination of Employment.[7] Secondly, the intention to terminate employment must be negotiated in advance with workers or trade unions that represent them, and thirdly, termination must be based on justifiable reasons. These two principles aim to realize respect for workers as human beings, and so that termination of employment must be based on reasons that can be justified by law. *Fourth*, the obligation of employers to reinstate workers if the reason for termination of employment is declared invalid by an authorized institution, and *fifth*, the protection of workers' severance pay as compensation for termination of employment. These two principles aim to ensure that unreasonable

[6] Budi Santoso, "Prinsip - Prinsip Pemutusan Hubungan Kerja oleh Pengusaha" (Prosiding Konferensi Nasional Hukum Ketenagakerjaan 2018 : Tantangan dan Peluang Hukum Ketenagakerjaan Menghadapi Era Pasar Bebas, Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2018), 129–45.
[7] Ayse Kome Akpulat, "The Principle of 'Ultima Ratio' in Termination of Employment Contract in Turkish Labour Law," *Annales de La Faculté de Droit d'Istanbul*, November 26, 2019, 43–57, https://doi.org/10.26650/annales.2018.67.0004.

termination of employment is guaranteed and are also a form of appreciation for the dedication of workers during their tenure. In the Indonesian context, the five principles of employment termination above are a reflection of the respect and certainty of the right to work and a decent livelihood for workers as mandated by Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia.[8]

The dynamics of the development of principles in the termination of employment can be seen in the rules governing the termination of employment in the history of the enactment of legislation in the field of labor in Indonesia, starting from independence until the current labor regulations. This paper will discuss the development of principles in the termination of employment that exist in the laws and regulations on employment in Indonesia.

B. RESEARCH METHODOLOGY

This research is a normative analysis and uses a historical approach based on concrete legal history data, both in terms of its legal history and the history of the establishment of laws and regulations.[9] The materials used in this research are primary legal materials which are laws in the field of labor in Indonesia, and secondary legal materials consisting of publications on law that are not official documents such as the views of legal experts (doctrine), legal research results, legal dictionaries, legal encyclopedias.[10]

C. FINDING & DISCUSSION

Problems in labor law in fact have occurred long before Indonesia gained independence, especially regarding the lack of justice in employment relations so as to create a compulsion to accept injustice in employment relations.[11] This condition is reflected in the history of labor in

[8] Nyoman Mas Aryani, Ayu Putu Laksmi Danyathi, and Bagus Hermanto, "Quo Vadis Protection of The Basic Rights of Indonesian Workers: Highlighting The Omnibus Legislation and Job Creation Law," *Pandecta Research Law Journal* 17, no. 1 (July 4, 2022): 104–20, https://doi.org/10.15294/pandecta.v17i1.34948.
[9] Suhaimi, "Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif," *Jurnal Yustisia* 19, no. 2 (2018), https://doi.org/10.53712/yustitia.v19i2.477.
[10] David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusatara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021), http://dx.doi.org/10.31604/jips.v8i8.2021.2463-2478.
[11] Holyness Singadimedja, "RESENSI BUKU: Hukum Ketenagakerjaan: Hakikat Cita Keadilan Dalam Sistem Ketenagakerjaan," *Jurnal Bina Mulia Hukum* 4, no. 2 (March 15, 2020): 369, https://doi.org/10.23920/jbmh.v4i2.419.

Indonesia where work has been known since before Indonesia's independence known as slavery (*pandelingschap*) and peruluran (*horigheid perkhorigheid*), rodi work, *poenale sanctie*, romusya and kinrohosyi.[12] At the beginning of the independence period in 1945, the rules regarding termination of employment were based on the Code of Civil Law as a Dutch colonial legacy. This law positioned workers and employers in an equal position, therefore the regulation of employment relations including termination of employment was truly based on the freedom between workers and employers.[13] The Code of Civil Law in relation to employment termination rules only regulates notification of termination of employment and does not regulate severance pay as compensation for termination of employment. The provisions regarding notice of termination of employment for employment agreements that have been limited in time by agreement can be seen in the provisions of Article 1603e of the Code of Civil Law which basically states that it is only done if it has been agreed beforehand between the worker and the employer. The rules for notification of termination of employment are regulated differently for indefinite term employment agreements. The provisions of Article 1603i of the Code of Civil Law stipulate that the notice period for termination of employment shall be at least one month, and if the employment relationship has existed for a period of one year but less than two years, at least two years but less than three years, or at least three years continuously, the termination period may be extended by one month, two months or three months respectively. Notification of termination of employment is exempted for termination of employment based on urgent reasons for employers as outlined in the provisions of Article 1603o of the Code of Civil Law while for employees it is outlined in the provisions of Article 1603p of the Code of Civil Law. In addition, the Code of Civil Law does not regulate the reasons that prohibit employers from terminating the employment of workers. Based on the explanation above, it proves that during the enactment of the Code of Civil Law, the principles of employment termination were not reflected at all, and this is reasonable considering that this regulation is a legal product of Dutch heritage in Indonesia.

Starting in 1948, Indonesia only made laws in the field of labor, namely Law Number 1 of 1951 concerning the Declaration of the Enactment of the 1948 Labor Law Number 12 of the

[12] Manotar Tampubolon, Gindo L. Tobing, and Wahyuningtyas, "Human Enslavement: Indonesians' Encounter During Dutch Colonization," *Asian Journal of Research in Education and Social Sciences*, March 1, 2022, https://doi.org/10.55057/ajress.2022.4.1.6.

[13] Abdul Bari Azed, "Aspek Yuridis Pemutusan Hubungan Kerja di Perusahaan Swasta," *Jurnal Hukum dan Pembangunan*, n.d., 434–48.

Republic of Indonesia for the Whole of Indonesia (Labor Law), Law Number 22 of 1957 concerning the Settlement of Labor Disputes (Labor Dispute Settlement Law), and which is closely related to the termination of employment is Law Number 12 of 1964 concerning Termination of Employment in Private Companies (Termination of Employment in Private Companies Law). The aforementioned laws were passed by Soekarno as the first President of the Republic of Indonesia who was closely associated with communism, including the labor movement, so that the politics of labor law emphasized the protection of workers.[14] During this period, there was a shift in the position of labor law from private to public law (socialization process) which was marked by the passing of many regulations in the field of labor by the government. Government intervention to protect the interests of workers in the field of labor relations can be seen in the Labor Law which, among other things, regulates the prohibition of child labor, limits the types and forms of work that can be done by female workers, limits working hours and regulates rest periods for workers. Furthermore, in terms of labor disputes, it is reflected in the Law on Settlement of Labor Disputes which replaced the previous regulation, Emergency Law No. 16/1951 on Settlement of Labor Disputes. These two laws were born from the rampant strikes that occurred due to the unresolved labor disputes between trade unions and employers, so that the Labor Dispute Resolution Committee was formed at the Regional and Central levels as an institution given the authority to resolve labor disputes that occurred.[15] The Labor Dispute Resolution Committee has the authority to resolve limited labor disputes between trade unions and employers, and does not have the authority to resolve disputes between individual workers and employers.

The government's intervention in termination of employment is only reflected in the Law on Termination of Employment in Private Companies. This law expressly repeals the provisions of Articles 1601 to 1603 of the Code of Civil Law on Agreements to Perform Work. The government is clearly interested in regulating in such a way that termination of employment does not occur, on the grounds that termination of employment for workers is the beginning of a period of unemployment which has a negative impact not only on workers but also on the survival of

[14] Mirza Satria Buana and Rahmat Budiman, "INDONESIA'S MINIMUM WAGE POLICY AFTER THE OMNIBUS LAW," *UUM Journal of Legal Studies* 13 (2022), https://doi.org/10.32890/uumjls2022.13.2.8.
[15] Sherly, Mulya Karsona, and Inayatillah, "Pembaharuan Penyelesaian Perselisihan Ketenagakerjaan Di Pengadilan Hubungan Industrial Berdasarkan Asas Sederhana, Cepat Dan Biaya Murah Sebagai Upaya Perwujudan Kepastian Hukum."

their families, therefore all forms of termination of employment must be endeavored by employers so that it does not occur, and termination of employment can only be carried out in stages. The *first stage* is that employers are required to take other measures first to prevent termination of employment, and position termination of employment as a last resort. Other measures to prevent termination of employment can be taken by employers, such as reducing work shifts, limiting or eliminating overtime work, reducing working hours, laying off workers in rotation, or temporarily laying off workers. If all efforts have been made by the employer and termination of employment cannot be avoided, the intention to terminate employment must first be negotiated with labor unions if the workers are members of labor unions or direct workers if they are not members of labor unions. The obligation to negotiate the intention to terminate employment is binding on the worker and the employer and is the *second stage* in the termination of employment, as well as a condition for the receipt of permission to terminate employment by the Labor Dispute Resolution Committee. If there is no agreement on the purpose and intent of the termination of employment, then the *third stage* in termination of employment is the obligation to obtain permission to terminate employment from the government through the Labor Dispute Resolution Committee at the Regional and Central levels. Permission from the government for termination of employment is an imperative rule so that all forms of termination of employment carried out without permission from the government are declared null and void.

This law provides exceptions for employers to be able to terminate employment without permission from the government only on certain grounds, namely workers still in the probationary period, the completion of the agreed working period in the employment agreement, workers resigning, and workers reaching retirement age. In addition, the Regulation of the Minister of Manpower, which is the implementing regulation of this law, also prohibits employers from terminating workers on the grounds of matters related to membership, formation, and implementation of duties and functions as trade unions, differences in religious beliefs, sects, tribes, groups, or gender, and for female workers getting married, pregnant, or giving birth. The rules regarding severance pay, service pay, and compensation as compensation for termination of employment are also regulated in the Minister of Manpower Regulation, which is the implementing regulation of the Law on Termination of Employment in Private Companies.

During this period, the Government's attitude in protecting workers from all forms of termination of employment is very clear by applying the principles of termination of

employment, namely that termination of employment must be used as a last resort (*ultima ratio*), the intention of termination of employment must be negotiated in advance with workers or trade unions that represent them, termination of employment must be based on justifiable reasons, and protection of workers' severance pay as compensation for termination of employment. The Government's partiality is very visible in protecting workers as the weak party in order to realize the right to work and a decent livelihood for workers. In addition, this period marked the beginning of a shift in the position of labor law from private to public law (socialization process) which was marked by the passing of many regulations in the field of labor by the government to protect the interests of workers.

In 1969, Indonesia had a law that regulated labor, namely Law Number 14 of 1969 concerning Basic Provisions Regarding Labor (Basic Labor Law). This law introduced the term of manpower, which was not previously regulated in the Law on Work, the Law on Settlement of Labor Disputes, or the Law on Termination of Employment in Private Companies. In addition, this law only regulates basic matters of employment outside of labor relations such as the provision, distribution, and use of skilled and vocational workers. The enactment of the Basic Manpower Law does not revoke the enactment of previously existing laws and regulations in the field of manpower. The enactment of the Basic Manpower Law cannot be separated from the legal politics of the Soeharto government as the second President of the Republic of Indonesia, which was driven by economic factors, causing labor policies to become more pro-free market and investment.[16]

In its development, the Government considers that several laws and regulations on manpower that have been in force so far, including some that are still a legacy of colonial law products, are no longer relevant, so based on this background, Law Number 25 of 1997 on Manpower was enacted. This law is the Government's effort to update the legislation in the field of employment by combining some of the existing laws, including the Law on Work and the Basic Law on Manpower. This law does not include regulations on termination of employment and labor disputes, therefore the Law on Settlement of Labor Disputes, and the Law on Termination of Employment in Private Companies are still valid. The existence of this law was rejected by both Employers and Trade Unions so that in the end it never became effective

[16] Buana and Budiman, "Indonesia's Minimum Wage Policy After The Omnibus Law."

although the enactment of this law has been postponed twice from October 1, 1998 to October 1, 2000 and October 1, 2022. During this postponement period, it was stated that the Labor Law and the Basic Law on Manpower remained in effect to avoid a legal vacuum. Some of the reasons for postponing the enactment of Law No. 25/1997 on Manpower are the perception that this law does not protect the interests of workers, the ease of terminating employment, and restrictions on the freedom to organize and bargain with employers.[17] This is very contradictory because at this time Indonesia is in the process of labor development, and workers have an important role and position, because workers are not only limited to the subject of development, but also as the object of national development that will determine the survival of the Indonesian nation.[18]

In 1998 Indonesia entered the reformation order which greatly influenced the development of labor law, including the rules on termination of employment.[19] Starting from the enactment of Law Number 13 of 2003 on Manpower (Manpower Law) by the Government together with the House of Representatives in 2003 to answer the demands for improvement of Law Number 25 of 1997 on Manpower. In addition to the Manpower Law, at the same time the Government and the House of Representatives also passed Law No. 21/2000 on Trade Unions/Labor Unions (the Trade Union/Labor Union Law) which guarantees and specifically regulates freedom of association, and Law No. 2/2004 on Industrial Relations Dispute Settlement (the Industrial Relations Dispute Settlement Law) as a regulation on industrial relations dispute settlement procedures. The passing of these three packages of laws cannot be separated from the influence of the International Labour Organisation, which has a market liberalization agenda.[20]

The refinement of the Manpower Law can be seen from its very broad scope by replacing fifteen ordinances and laws in the field of labor that existed and applied before. Specifically regarding the rules for termination of employment, the Manpower Law still provides stages that are binding to carry out termination of employment. *First*, it obliges Employers, Workers, Trade Unions, and the Government to prevent termination of employment from occurring. Actions that can be taken to prevent termination of employment are work time arrangements, savings,

[17] Payaman Simanjuntak, *Undang-undang yang baru tentang Ketenagakerjaan* (Jakarta: Elsam Lembaga Studi Dan Advokasi Masyarakat, 2003), 10.
[18] Mulyani Djakaria, "Perlindungan Hukum Bagi Pekerja Wanita Untuk Memperoleh Hak-Hak Pekerja Dikaitkan Dengan Kesehatan Reproduksi," *Jurnal Bina Mulia Hukum* 3, no. 1 (2018), https://doi.org/10.23920/jbmh.v3n1.2.
[19] M. Hadi Shubhan, "Penggunaan Instrumen Sanksi Pidana Dalam Penegakan Hak Normatif Pekerja/Buruh," *Arena Hukum* 13, no. 01 (April 30, 2020): 1–23, https://doi.org/10.21776/ub.arenahukum.2020.01301.1.
[20] Buana and Budiman, "Indonesia's Minimum Wage Policy After The Omnibus Law."

improvement of work methods, and guidance to workers. If preventive measures have been taken but termination of employment cannot be avoided, then in the *second* stage the employer is obliged to negotiate in advance about the intention to terminate employment with the Labor Union or direct workers if they are not members of the Labor Union. The *third* stage stipulates that termination of employment can only be carried out based on a determination from an industrial relations dispute settlement institution. These three stages have similar substance to what was previously regulated in the Law on Termination of Employment in Private Companies, namely that all forms of termination of employment must be prevented and avoided and if termination of employment cannot be avoided, the intention to terminate employment must first be negotiated, so that termination of employment cannot be carried out unilaterally by the employer. This Labor Law provides a difference in that termination of employment is no longer required based on permission from the government, but based on a determination from an industrial relations dispute settlement institution, which in this case must be interpreted as a decision of the Industrial Relations Court. This change is based on the enactment of the Industrial Relations Dispute Resolution Act, which replaces the Labor Dispute Resolution Act and the Private Company Termination of Employment Act. This law also stipulates that any form of termination of employment without being based on a decision of the Industrial Relations Court must be declared null and void and the worker must be reinstated to his or her original position of employment.

The next difference is in the rules regarding compensation for termination of employment, which consists of severance pay, long service pay, and compensation for rights. This change in the rules regarding compensation for termination of employment is better than the previous one which only consisted of severance pay and service pay. The discussion of the above regulations clearly reflects the principle that termination of employment must be used as a last resort (ultima ratio), the intention of termination of employment must be negotiated in advance with workers or trade unions that represent them, termination of employment must be based on justifiable reasons, the obligation of employers to reinstate workers if the reason for termination of employment is declared invalid by the authorized institution, and protection of workers' severance pay as compensation for termination of employment.

In 2023, the Government and the House of Representatives passed Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation

into Law (Job Creation Law). The history of the enactment of the Job Creation Law is quite long and has been met with widespread rejection from Trade Unions as it is considered non-participatory and has degraded the rules regarding the protection of workers from the Government which had previously been better regulated. Starting in 2020, the Government and the House of Representatives passed Law Number 11 of 2020 on Job Creation, an omnibus law that amended seventy-eight clusters of existing laws with the aim of expanding job creation by attracting investment.[21] The Manpower Law was the law that was amended as the labor rules in this law were deemed to hinder the entry of investment into Indonesia. In fact, creating more jobs requires investors, but using comparative advantage in the form of lenient labor regulations will lead to social dumping practices in Indonesia, therefore workers' rights should also be considered.[22] The rejection of the Labor Union against this law led to the issuance of Constitutional Court Decision Number 91/PUU-XVIII/2020 which basically stated that the process of forming Law Number 11 of 2020 concerning Job Creation was conditionally contrary to the 1945 Constitution. Against this Constitutional Court Decision, the Government responded by issuing Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation, which was subsequently passed into the Job Creation Law by the House of Representatives.

The rejection of the Trade Unions to the Job Creation Law is evident at least from the changes in the rules regarding termination of employment. Changes in the rules regarding termination of employment can be seen from Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Rest Time, and Termination of Employment which is the implementing regulation of the Job Creation Law. This regulation has changed the process of termination of employment to be sufficient with notification to workers, and negotiations regarding termination of employment are only carried out if the worker rejects the notice of termination of employment given by the employer. This has fundamentally changed the process from one in which termination of employment must first be negotiated regarding the intention of termination of employment and termination of employment can only occur based on the Decision of the Industrial Relations Court to one in which notification of termination of

[21] Mohammad Fandrian Adhistianto, "Politik Hukum Pembentukan Rancangan Undang-Undang Cipta Kerja (Studi Klaster Ketenagakerjaan)," *Pamulang Law Review* 3, no. 1 (August 15, 2020): 1, https://doi.org/10.32493/palrev.v3i1.6530.
[22] Aloysius Uwiyono, "The Role Of Law In Labor Field In The Globalization Era," *Indonesian Journal of International Law* 1, no. 1 (August 12, 2021), https://doi.org/10.17304/ijil.vol1.1.199.

employment to the worker is sufficient. This change results in termination of employment already occurring when the notice of termination of employment is given, so that termination of employment is no longer used as a last resort (ultima ratio), and the intention of termination of employment is no longer required to be negotiated with trade unions or workers. In addition, this Government Regulation regulates more reasons for termination of employment than those in the Manpower Law. The additional reasons for termination of employment stipulated in this Government Regulation include termination of employment on the grounds of efficiency to prevent the company from losing money, and urgent violations. Termination of employment on the grounds of urgent violations is of particular note in this paper, because the reason for termination of employment excludes the obligation of notification of termination of employment by employers to workers. This results in a worker whose employment is terminated on the grounds of urgent misconduct can be carried out without notice from the employer, and moreover the substance of the reason for termination of employment is contrary to the 1945 Constitution of the Republic of Indonesia because it has the same substance as termination of employment on the grounds of gross misconduct in the Manpower Law.[23] The Job Creation Law also changes the rules regarding compensation for termination of employment to be worse than what was previously regulated in the Manpower Law. The regulation on compensation for termination of employment becomes worse because it limits the use of the formulation of twice the severance pay provision only to termination of employment on the grounds that the worker dies or the worker is permanently disabled and cannot continue the employment relationship. Reasons for termination of employment other than the two mentioned above no longer use the formulation of twice the severance pay provision. Moreover, the Job Creation Law has removed the provision in the Manpower Law that states that termination of employment without a Court of Industrial Relations Decision does not result in null and void termination of employment. This certainly does not reflect the implementation of the principle that termination of employment must be based on justifiable reasons, the obligation of employers to reinstate workers if the reason for termination of employment is declared invalid by an authorized institution, and the protection of workers' severance pay as compensation for termination of employment. The simplification of

[23] Mohamad Fandrian Adhistianto, "The Unconstitutionality of Termination of Employment on The Grounds of An Urgent Offence," *Pandecta Research Law Journal* 18, no. 1 (June 23, 2023): 88–99, https://doi.org/10.15294/pandecta.v18i1.41830.

employment termination rules in the Job Creation Law is likely to cause harm to workers, especially the massive exploitation of workers by employers.[24]

D. CONCLUSIONS AND RECOMMENDATIONS

The dynamics of the development of the principles of employment termination in Indonesian labor law are comprehensively reflected in the discussion of the history of the enactment of rules regarding employment termination which covers three scopes, namely the process or stages of employment termination, reasons for employment termination, and compensation for employment termination. Starting from the period after Indonesia's independence, the implementation of the Civil Code positioned labor law to be based solely on employment agreements between workers and employers without involving the government. The civil nature of the law meant that the principles of employment termination were not regulated. It is clear that there is no role for the state to protect workers in the process of termination of employment. The development of employment termination principles guaranteed by the state began during the shift in the position of labor law from private to public law (socialization process). This period is illustrated by the enactment of the Labor Law, the Labor Dispute Resolution Law, the Law on Termination of Employment in Private Companies, and the Employment Law. In this period, the legal protection provided by the state to workers can be seen from the application of the principles of employment termination. Today's development based on the enactment of the Job Creation Law has actually significantly degraded the application of the principles of employment termination and resulted in reduced legal protection for workers.

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[24] I Made Sarjana et al., “Omnibuslaw Employment Cluster: Is It a Form Of Labor Exploitation In The Indonesian Context?,” *UUM Journal of Legal Studies* 14 (2023), https://doi.org/10.32890/uumjls2023.14.1.3.

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