JILPR Vol. 8, No. 1 October 2026
Journal of Indonesia Law & Policy Review 2715-498X

LEGAL ANALYSIS OF UNLAWFUL ACTS IN THE PRACTICE OF UNILATERAL TERMINATION OF EMPLOYMENT RELATIONS WITHOUT A LAWFUL INDUSTRIAL RELATIONS PROCEDURAL BASIS

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Abstract

The phenomenon of unilateral termination of employment (PHK) by employers is increasingly prevalent, ignoring the formal procedures of bipartite negotiations and mediation required by Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI). Although layoffs should be a last resort (ultimum remedium), in practice, this action is often carried out arbitrarily only through an internal company decree. Protection of workers' rights must guarantee legal certainty that dispute resolution procedures are an absolute requirement that is mandatory. The state, through the rule of law and the principle of justice, is obliged to ensure that ignoring these procedures is not only considered an administrative defect, but also a violation of legal obligations (rechtsplicht) that give workers the right to demand more comprehensive accountability. To analyze the procedural provisions for resolving industrial relations disputes according to Law No. 2 of 2004; and to analyze the qualifications of unilateral dismissal without procedure as an Unlawful Act (PMH) based on Article 1365 of the Civil Code. Research Method: This research uses a normative juridical method with a statute approach and qualitative document analysis. The procedures in the PPHI Law are mandatory formal requirements. Ignoring these procedures constitutes a violation of the employer's legal obligations (rechtsplicht). Legally, unilateral dismissal fulfills the elements of PMH if there is an active action by the employer that violates the law, there is an error, and causes material and immaterial losses to workers who have a direct causal relationship with the action. This study concludes that unilateral layoffs without legal procedures have the potential to be declared null and void by law and open up opportunities for workers to demand more comprehensive compensation beyond just normative employment rights.

Keywords: Termination of Employment, Unlawful Acts, Industrial Relations Procedures, Legal Protection of Workers

INTRODUCTION

An employment relationship is a legal relationship between workers and employers arising from an employment agreement containing elements of work, wages, and orders (Damanik & Ummah, 2026). This relationship gives rise to reciprocal rights and obligations that must be implemented in a balanced manner based on the principles of justice and legal certainty. Regulations regarding employment relations in Indonesia are generally regulated by Law Number 13 of 2003 concerning Manpower, which was later amended by Law Number 11 of 2020 concerning Job Creation.

In industrial relations practice, disputes between workers and employers are not uncommon. These disputes can include disputes over rights, disputes over interests, disputes over termination of employment (PHK), or disputes between labor unions within a single company. To ensure a fair and structured resolution mechanism, the state established a specific legal instrument through Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (hereinafter referred to as the PPHI Law) (Halim & Indrianto, 2022).

The Industrial Relations Dispute Resolution Law (PPHI) stipulates that all industrial relations disputes must be resolved through bipartite negotiations between workers and employers. If an agreement is not reached within 30 days, the dispute may be pursued through mediation, conciliation, arbitration, or a lawsuit before the Industrial Relations Court (PHI) (Manalu *et al*., 2026). This provision demonstrates that dispute resolution procedures are a formal requirement that must be met before any legal action, including layoffs, is legally valid. Termination of Employment (PHK) is a legal action that ends the employment relationship and directly impacts the worker's livelihood. Therefore, Indonesian labor law considers layoffs as a last resort (ultimum remedium). Article 151 paragraph (1) of the Manpower Law stipulates that employers, workers, labor unions, and the government must strive to prevent layoffs (Sinambela *et al*., 2025).

However, in practice, many cases of unilateral layoffs by employers without following the procedures stipulated in the PPHI Law remain. Such layoffs are often carried out without bipartite negotiations, mediation, or even a ruling from the Industrial Relations Court. Workers are unilaterally dismissed through an internal company decree without any legal dispute resolution mechanism (Sinlae *et al*., 2024).

Unilateral layoffs without proper procedures raise legal issues, namely whether such actions can be classified as unlawful acts (onrechtmatige daad). In the Indonesian civil law system, the concept of unlawful acts is regulated by Article 1365 of the Civil Code (KUHPerdata), which states that any unlawful act that causes harm to another person requires the perpetrator to compensate for the loss (Sinlae *et al*., 2024). The elements of an unlawful act include the existence of the act, its unlawful nature, fault, loss, and a causal relationship between the act and the loss. In the context of unilateral layoffs, an employer's failure to follow the procedures stipulated in the Industrial Relations Law (PPHI) can be considered a violation of legal obligations (rechtsplicht). If the action causes material or immaterial losses to workers, then conceptually it can fulfill the elements of an unlawful act (Sinlae *et al*., 2024).

Theoretically, employment law is a lex specialis to general civil law. However, the provisions of Article 1365 of the Civil Code can still be applied as long as they are not specifically regulated in employment law (Sinlae *et al*., 2024). Thus, there is a link between general civil law and employment law in determining legal liability for unlawful termination of employment.

From a legal protection perspective, workers in industrial relations are often in a weaker position than employers. Therefore, the dispute resolution procedures stipulated in the Industrial Relations Law (PPHI) constitute a form of preventive and repressive legal protection for workers. If these procedures are ignored, the PPHI Law's goal of creating harmonious, dynamic, and equitable industrial relations will be defeated (Khairani *et al*., 2023).

Furthermore, empirically, various Industrial Relations Court decisions demonstrate that termination of employment that does not follow legal procedures can be declared invalid or null and void, and employers are required to pay compensation to workers. This demonstrates that procedural aspects play a crucial role in determining the legality of a layoff (Yunus *et al*., 2023).

Legal protection for workers. Normatively, the PPHI Law and the Manpower Law stipulate dispute resolution procedures as mandatory, preventative measures. However, in reality, employers frequently conduct unilateral layoffs that bypass these procedures, creating legal uncertainty and losses that are not reimbursed solely through normative rights (Sinlae *et al*., 2024). This gap widens further due to the lack of consistent legal standards regarding the qualification of employer actions that ignore procedures as Unlawful Acts (PMH) under Article 1365 of the Civil Code (Damanik & Ummah, 2026). Labor law, as lex specialis, is often deemed insufficient to provide comprehensive compensation for material and immaterial losses suffered by workers (Halim & Indrianto, 2022). Therefore, this research is crucial to examine whether this disregard for procedural procedures can be categorized as PMH and its legal implications for workers.

Based on this description, there is an urgency to conduct a legal review of whether unilateral layoffs without a valid industrial relations procedure under Law No. 2 of 2004 can be categorized as an unlawful act, and what the legal consequences are.

RESEARCH METHODS

This legal research employs normative juridical research, a scientific research method that positions law as a system of written norms. The primary focus of this research is an in-depth literature review to examine the harmony and consistency of positive legal norms governing employment. In its implementation, this research employs two primary approaches: the statute approach and the conceptual approach. The statute approach is used to critically examine the hierarchy, synchronization, and substance of employment regulations in Indonesia. Meanwhile, the conceptual approach refers to legal principles, fundamentals, and theories, particularly regarding the doctrine of unlawful acts (onrechtmatige daad) and the principle of lex specialis derogat legi generali, to construct a robust legal argument in assessing the legality of unilateral termination of employment.

The legal sources used in this normative research are divided into two main categories: primary legal materials and secondary legal materials. Primary legal materials are absolute legal materials with legally binding authority. In this context, primary legal materials include the Civil Code (KUHPerdata), specifically Article 1365, Law Number 13 of 2003 concerning Manpower, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI), and the labor cluster in the Job Creation Law and its implementing regulations. Secondary legal materials, on the other hand, are used to provide additional explanations and analytical tools for the primary legal materials. These secondary legal materials include civil and labor law textbooks, accredited legal journals, papers, and official documents relevant to the issue of termination of employment.

The legal material collection technique in this study was conducted through library research. The researcher collected legal materials by searching, reading, recording, and organizing literature and regulatory documents relevant to the scope of labor and industrial relations law. The collected legal materials were then processed through a data reduction stage. This reduction process aims to select, simplify, and focus the material to maintain consistency with the research objective, which is to analyze the characteristics of unlawful acts in unilateral termination practices that ignore valid legal procedures.

Next, all processed legal materials will be analyzed logically, critically, and systematically using deductive reasoning through the syllogism method and legal interpretation. Deductive reasoning is applied by drawing conclusions from general statements

to specific ones. In this syllogism method, positive legal rules and civil law doctrine are positioned as major premises, while the employer's disregard for formal procedures in unilateral terminations is positioned as minor premises. Through logical correlation between these premises, supported by various legal interpretation methods, the researcher can formulate valid and comprehensive legal conclusions to address all the legal issues addressed in this study.

RESULT AND DISCUSSION

Structural inequality in industrial relations is a sociological and legal reality that consistently places workers in a significantly weaker bargaining position than employers. Philosophically, labor law emerged as a form of state intervention in general civil law, which is based on the principle of freedom of contract. In classical civil law, the parties are assumed to be equal. However, in the reality of employment relations, this assumption is merely a legal fiction that masks economic exploitation (Razzak *et al*., 2023).

Employers control the means of production, managerial structures, and capital, while workers possess only labor and are entirely dependent on monthly wages for the survival of themselves and their families. This absolute economic dependence creates an unequal relationship of subordination. Consequently, the principle of freedom of contract is often abused by capital owners to dictate terms of employment, including imposing their will in termination scenarios (PHK) (Gunawan & Lie, 2025).

Within the framework of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (UU PPHI), this structural weakness manifests itself clearly when layoff disputes arise. The non-litigation procedures stipulated therein, such as bipartite negotiations, are designed with the assumption that both parties can deliberate equally to reach a consensus based on the principle of partnership. However, in practice, these negotiation forums often degenerate into arenas of veiled intimidation. Employers exploit their economic superiority and access to information to pressure workers into accepting layoff decisions with compensation that falls below normative standards. Workers, often lacking legal literacy, lacking strong unions, and having limited financial resources to pursue formal legal recourse, are forced to submit to management's wishes.

Based on the theory of legal protection and the concept of the welfare state, the government cannot remain passive or merely a neutral spectator. The state is required to actively intervene in this unequal balance of power. This intervention is realized through tripartite mechanisms, such as mediation by the Manpower Office. Labor supervisory institutions should serve as the last line of defense, protecting workers' subjective rights to continued employment. When the law fails to systematically compensate for workers' weak bargaining positions, the non-litigation process mandated by the PPHI Law loses its democratic value and substantive justice. Workers not only lose out economically, but are also marginalized in their access to justice due to the absence of a countervailing mechanism that clearly supports the restoration of their violated rights (Bastomi & Nailul, 2026).

The Indonesian labor law regime explicitly stipulates that layoffs are an ultimum remedium measure, a final step or last option, and may only be taken after all preventative measures have been exhausted. This normative mandate is outlined in Article 151 of Law Number 13 of 2003 concerning Manpower, as amended by Law Number 6 of 2023 concerning the Enactment of the Job Creation Regulation into Law. Before issuing a layoff letter, employers are legally required to demonstrate good faith through preventive measures, including reducing working hours and eliminating overtime, adjusting or reducing benefits for upper management, retraining workers for internal rotation, transferring workers to other productive departments or business units, and transparent bipartite dialogue regarding the company's financial condition (Silalahi *et al*., 2026).

In practice, a chronic compliance crisis occurs among business actors. Employers tend to take shortcuts and view layoffs as the most practical, quick, and efficient business tool to cut operational costs or restructure corporations. This capitalist logic operates by ignoring the principles of Pancasila industrial relations, which prioritize kinship and partnership. Neglecting these preventative measures triggers disputes that could essentially be resolved through honest social dialogue. The lack of clarity regarding the extent to which employers must demonstrate maximum preventative efforts allows management to act arbitrarily without fear of legal consequences. This corporate compliance crisis creates a destructive cycle, where the disregard for preventative measures such as rotation or streamlined working hours directly leads to the unilateral issuance of a Decree on Layoffs, ultimately leading to a serious violation of due process by bypassing the mandatory thirty-day bipartite negotiation and tripartite mediation (Gofar *et al*., 2025). This arrogance of management power reached its peak when the layoffs were executed solely on the basis of an internal company decree, legally bypassing the formal procedures of bipartite negotiations and tripartite mediation required by the Industrial Relations Court (PPHI) Law. Once the unilateral decree was issued, physical actions such as confiscating employee ID cards, blocking access to computer systems, and even evictions by security officers were immediately taken. This unilateral action constitutes a serious procedural violation that undermines the order of labor law procedures. The PPHI Law imperatively requires bipartite negotiations to be held for a maximum of 30 working days, and if they fail, they must proceed to the tripartite stage before a lawsuit can be filed with the Industrial Relations Court (PHI). By bypassing this process, employers deliberately deny workers the opportunity for protection and their democratic right to have their voices heard (Satvika *et al*., 2026).

There is a very dangerous distortion of understanding among business actors and some legal practitioners who reduce the negligence in ignoring the mandatory procedures of the PPHI Law to mere administrative defects or violations of formalities. This pragmatic view holds that procedural violations can be forgiven and remedied simply by paying severance pay at a later date. This transactional perspective reduces the law to a mere instrument of financial commodification, where industrial ethics and legal compliance can be ignored as long as the company has the capital to pay the fine (Zulfikar *et al*., 2025).

When analyzed through a syllogistic deduction of the procedural law of termination of employment, the major premise establishes that the PPHI Law procedure is imperative or coercive (rechtsplicht), while the minor premise demonstrates the reality that employers often carry out unilateral terminations without legitimate bipartite and mediation processes. Considering that violations of procedural law result in a legal product lacking a legal basis, the legal conclusion is clear: the unilateral termination decree is deemed legally flawed and void ab initio.

In the theory of legal certainty and procedural justice, procedures are not merely ornaments or secondary paperwork, but rather the concrete manifestation of due process of law in the employment sphere. Procedures are established by the state as the primary protective shield for the vulnerable party from the threat of abuse of circumstances (misbruik van omstandigheden). Therefore, compliance with procedural law is imperative and coercive (dwingend recht). If these processes and procedures are understood strictly as an essential legal obligation, then any violation of these procedures absolutely results in the nullification of the legal action of the termination of employment by law. Any legal product resulting from a flawed process is deemed non-existent, and the employment relationship and workers' rights must be restored to their original state (Maharani, 2025).

The irregular interpretation within law enforcement and the passivity of the Industrial Relations Court (PHI) judges, who often only examine the formal validity of the termination decree and focus the proceedings on calculating the severance pay table, render the law's

function as a protector of workers ineffective. When employment procedures are reduced in importance, the law's preventive function is lost, and employers become increasingly permissive in engaging in non-procedural actions. Regulatory reform and a paradigm shift in judicial authority are urgently needed to uphold the dignity of the rule of law. Judges must consistently impose sanctions, automatically canceling layoffs for any disregard of the bipartite and tripartite stages, to force corporations to submit to social control and state judicial oversight, rather than acting as if they have absolute independent jurisdiction.

When labor dispute resolution mechanisms fail to provide substantive justice, unilateral layoffs that violate procedural law must be tested and constructed as Unlawful Acts (PMH) within the realm of general civil law under Article 1365 of the Civil Code (KUHPerdata). This conceptual step triggers a sharp paradigm clash between labor law, which is characterized by lex specialis, and general civil law, which is characterized by lex generalis. The labor regime implements a dispute resolution system with restrictive compensation, where workers' financial rights are limited to standard severance pay components. In contrast, Article 1365 of the Civil Code upholds the doctrine of full restitution (restitutio in integrum), which entitles victims to claim full compensation for all actual losses without conventional tariff restrictions.

General civil law should be positioned as a safety net when employer actions exceed the limits of ordinary industrial relations disputes and qualify as arbitrary, violating basic human rights. To test the validity of this argument, unilateral, non-procedural layoffs must be analyzed based on the four main elements of Article 1365 of the Civil Code. The legal construction of the first element, namely unlawfulness (onrechtmatig), in the context of unilateral layoffs refers to the extension of the doctrine following the historic 1919 Hoge Raad ruling in Lindenbaum v. Cohen. The definition of unlawful is no longer interpreted narrowly as violating written laws, but rather includes four accumulative parameters, namely violating the subjective rights of others to job security and decent work guaranteed by the constitution, contradicting the legal obligations of the perpetrator because it ignores mandatory stages, contradicting the rules of morality through sudden termination without room for dialogue, and contradicting the principles of propriety, caution, and appropriateness due to placing workers merely as cost variables for the sake of profit efficiency alone.

Meanwhile, the second element, fault (schuld), in civil law requires intent (dolus) or negligence on the part of the perpetrator. When dealing with corporate entities, this fault aspect is inherently inherent in the corporate legal entity through the actions of the board of directors or management who signed and executed the unilateral termination letter. Employers often cite operational reasons such as business restructuring, reorganization, or financial loss as logical justifications for their actions. However, from the perspective of PMH, the use of a corporation's dominant position to bypass formal legal channels for financial efficiency is a clear manifestation of deliberate violation of the rules of legal civilization. This action qualifies as abuse of circumstances, where management consciously exploits the employee's weak position to achieve unilateral operational advantage.

To prove the third element, concerning causality (causal verband), employees must refute the employer's defensive argument, which consistently argues that the loss of income was not the result of a violation of negotiation procedures, but rather a natural, logical consequence of the termination of the employment relationship itself due to the company's economic conditions. To this end, workers must develop an appropriate theory of civil legal causality, namely the theory of adequate veroorzaking, or cause that predicts the result. Based on this theory, the employer's actions in unilaterally terminating arbitrary layoffs in violation of procedural law are considered the primary determinant factor, which, according to human experience, naturally results in cascading losses for workers. If employers had complied with legal procedures and prioritized good faith in negotiations, such impulsive and destructive

layoff decisions could have been avoided, thus preventing the compound losses experienced by workers.

Finally, the fourth element, namely, loss (schade), encompasses both material and immaterial dimensions, demonstrating a sharp clash between the labor regime and the general civil regime. While the labor regime establishes a standardized and limited nature of compensation, where material losses are limited to standard wages and severance pay, without recognizing immaterial losses for administrative resolution, the general civil scheme promotes full and comprehensive recovery. This PMH scheme covers extensive material losses, such as loss of future earnings, lost promotional opportunities, accumulated debt, and psychological medical costs. It also recognizes immaterial losses such as psychological distress, clinical depression, social stigma, and loss of self-respect, with the aim of restoring the victim's dignity and providing a deterrent effect (punitive damages) against such arbitrary actions.

The series of losses that workers must unilaterally bear due to the implementation of flawed and illegal layoff procedures is not simply a matter of ordinary normative rights disputes, but rather an existential suffering with destructive impacts. Materially, the execution of unilateral layoffs that violate procedural guidelines directly creates a horrific economic domino effect for the working class due to the sudden loss of their primary source of income without any transition period, adequate warning, or financial adaptation preparation time. This exposes workers to the real threat of having their family assets, such as their home or vehicle, confiscated due to their inability to pay bank installments. They face the inability to finance their children's education, leading to their dropping out of school. They face the loss of access to essential healthcare services due to the company's unilateral freezing of their BPJS membership. They also face the loss of future income and valuable opportunities for promotions and professional advancement within the company.

In a more intangible, yet equally destructive, immaterial loss that haunts victims of these non-procedural layoffs is a lifelong moral burden. The profound psychological trauma of feeling discarded like scrap metal without a civilized, dialogical process gives rise to a sense of learned helplessness. Workers must contend with the emotional stress of shame and negative social stigma in their communities and professional circles, where they are dismissed for serious mistakes. The loss of self-confidence, honor, and pride as heads of households due to the arbitrary revocation of their right to work often triggers clinical depression, which damages workers' mental health.

Rigid evidentiary barriers in civil procedural law often hinder workers from obtaining substantive justice. Civil judges frequently reject claims for long-term material damages, arguing that such components are speculative and uncertain. Similarly, in claims for immaterial damages, the lack of a uniform jurisprudential assessment standard for measuring the financial value of mental suffering makes judges hesitant to grant moral compensation claims, or even reject them altogether. This institutional neglect and rigidity of legal dogma validate the argument that the formal procedural framework within the current PPHI Law is insufficient to mitigate the impact of capital abuse.

Therefore, there is an urgent need for the highest judicial authority (the Supreme Court) to instill a new doctrinal firmness in Indonesian jurisprudence. Any disregard for layoff procedures must be ruled as an act of corporate PMH, which must be compensated with multiple levels of compensation, including punitive damages. Only by imposing the burden of heavy and frightening financial consequences for every violation of legal procedures can a new culture of compliance be fostered within the industrial relations ecosystem, so that the dignity, honor, and human rights of workers can be protected in a real, sustainable, and socially just manner under the legal protection of the Unitary State of the Republic of Indonesia.

CONCLUSIONS

The imbalance in bargaining power in industrial relations often renders the bipartite negotiation mechanism (Law No. 2/2004) a mere formality to legitimize unilateral layoffs. Employers' disregard for the principle of ultimum remedium and legal procedural obligations reflects a compliance crisis that fulfills the element of negligence (culpa) in Unlawful Acts (PMH). Often, these procedural violations are dismissed as "administrative defects," even though they constitute serious violations of due process of law and legal obligations. Consequently, procedurally flawed layoffs should be declared null and void. The losses suffered by workers go far beyond normative rights, encompassing material impacts (loss of income) and immaterial ones (trauma, damaged reputation, and loss of dignity). Therefore, progressive steps are needed from the courts. Judges must dare to go beyond standard severance pay calculations by awarding comprehensive compensation to workers. Through jurisprudential engineering, courts must be able to provide a deterrent effect on employers who engage in PMH. This is crucial for restoring the authority of the law and ensuring substantive protection of workers' dignity, so that justice is no longer merely a mere illusion but a reality experienced by the oppressed.

In challenging unilateral layoffs, Article 1365 of the Civil Code serves as the primary basis, requiring proof of four elements of an Unlawful Act (PMH). First, unlawful acts include violations of mandatory procedures such as bipartite negotiations/mediation, disregard for good faith, and actions contrary to social decency. Second, schuld (fault) includes deliberate action (dolus) prioritizing efficiency over the law, as well as negligence (culpa) resulting from the employer's failure to take preventative measures (ultimum remedium). Third, schade (loss) must be objectively proven, encompassing material losses (loss of wages/benefits) and immaterial losses (psychological distress, loss of dignity, and damage to professional reputation). Finally, causaal verband (causal relationship) requires concrete evidence, such as a unilateral termination letter and the absence of minutes of negotiations directly linking the employer's illegal actions to the losses suffered by the workers. By fulfilling these four elements, workers can demand full accountability for violations of their rights. Emphasis on concrete evidence and broad coverage of compensation, including non-economic losses, are key to ensuring justice for workers and providing a deterrent effect against arbitrary corporate actions.

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