

The Impact of Efficiency Policies as A Reason for Layoffs: A Comparison Between the Manpower Act and The Job Creation Act (Law No. 13/2003 And Law No. 11/2020)

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ABSTRACT: Workers are a relationship between workers and employers, but they provide little input. However, this study aims to analyze the influence of efficiency policies as the basis for termination of employment (PHK) in a comparative perspective between Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation. Efficiency policies are often used as a reason by employers to carry out layoffs, especially in conditions of economic instability or business strategy adjustments. This study uses a normative juridical method with a legislative approach, a comparative approach, and a conceptual approach. The results of the analysis show that there are fundamental differences between the two laws, particularly in the procedures and legal protection for workers affected by layoffs. Law Number 13 of 2003 emphasizes the protection of workers' rights and the requirement for resolution through industrial relations dispute mechanisms. Meanwhile, Law Number 11 of 2020 provides greater flexibility for employers to carry out layoffs on the basis of efficiency, which has the potential to reduce protection for workers. This poses challenges in maintaining the principles of social justice and balancing the interests of workers and employers. This study recommends a review of the implementation of efficiency policies in the Job Creation Law so as not to override the basic rights of workers, as well as the need to strengthen the role of the state in ensuring justice in industrial relations.

KEYWORDS: Termination of Employment; Efficiency; Social Justice; Labor Law; Job Creation Law.

I. INTRODUCTION

Termination of employment (PHK) is an event that has a major impact on the livelihoods of workers. One of the reasons often used by companies to carry out PHK is efficiency. The sentence "the company to carry out PHK is efficiency" sounds structurally incorrect. If your intention is to explain that the reason companies carry out layoffs is because of efficiency, then here are some versions of the sentence that are more grammatically and academically correct: Revised Sentences: a) The main reason companies carry out termination of employment (layoffs) is for operational efficiency. b) Efficiency is often used by employers as a basis for laying off workers. c) Layoffs due to efficiency reasons are a common strategy used by companies in facing economic pressures or organizational restructuring. d) Companies can carry out layoffs for efficiency reasons, as stipulated in labor regulations. e) Work efficiency and cost reduction are often used as normative reasons in companies' layoff policies.

In Law Number 13 of 2003 concerning Manpower, efficiency can only be used as a reason for layoffs if the company is truly closing down. However, after the enactment of Law Number 11 of 2020 concerning Job Creation, this provision underwent significant changes. The Job Creation Law allows layoffs on the basis of efficiency even if the company continues to operate, provided that there are losses or efforts to prevent losses. Termination of employment (PHK) is an event that has a major impact on the livelihood of workers. Workers must be protected, their dignity and integrity must be protected, and their human rights must be recognized based on legal provisions from arbitrariness or other matters.¹ One of the reasons often used by companies to carry out layoffs is efficiency. In Law Number 13 of 2003 concerning Manpower, the reason of efficiency can only be used if the company is truly closing down. However, after the enactment of Law Number 11 of 2020 concerning Job Creation, this provision has undergone significant changes. Article 154A of the Job Creation Law allows companies to lay off employees for efficiency reasons even if the company continues to operate.

The enactment of Law Number 11 of 2020 concerning Job Creation has brought about significant changes to the provisions regarding layoffs for efficiency reasons. Article 154A paragraph (1) letter b states that companies may carry out layoffs for

¹ Ashabul Kahfi, Perlindungan hukum terhadap tenaga kerja, jurnal Jurisprudensi volume 3, Nomor 2, Desember 2016, hlm.64

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efficiency reasons to prevent losses, even if the company remains in operation.² This differs from the provisions of Law No. 13 of 2003, which requires the closure of companies as a key condition for efficiency.³ This change has raised concerns about weak legal protection for workers, as the grounds for efficiency have become broader and potentially open to abuse by employers. On the other hand, this regulation is considered to provide flexibility for the business world in responding to uncertain economic conditions.⁴ Therefore, it is important to conduct a comparative analysis of the two laws to assess the extent to which these changes affect the balance of industrial relations between workers and employers.⁵ Therefore, it is important to conduct a comparative analysis of the two laws, namely Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation, in order to assess the extent to which regulatory changes regarding layoffs due to efficiency affect the balance of industrial relations between workers and employers.⁶

This comparison is necessary to assess whether the new provisions in the Job Creation Law are still in line with the principles of fairness, legal protection for workers, and legal certainty in labor practices in Indonesia. By understanding the differences in norms between the two laws, it is hoped that solutions or recommendations can be found that promote fairer and more sustainable industrial relations. The question that then arises is whether Law Number 11 of 2020 concerning Job Creation is still in line with the principles of fairness, legal protection for workers, and legal certainty in employment practices in Indonesia. The principle of fairness demands a balance between the interests of employers in running their businesses and the rights of workers to obtain adequate protection. Meanwhile, legal certainty is necessary to prevent multiple interpretations of the reasons for termination of employment as stipulated in the law. If the new regulation opens up too wide a loophole for employers to use efficiency as a reason for termination of employment, without clear standards or conditions, then this has the potential to harm workers and weaken their position in industrial relations. Therefore, it is important to review the extent to which the regulation of layoffs due to efficiency in the Job Creation Law truly reflects fair and proportional protection for all parties. According to Imam Soepomo, legal protection for workers covers the following five areas:⁷

1. The field of labor deployment/placement is the legal protection required by workers before they enter into an employment relationship.
2. The employment relationship period is the period required by workers from the time they establish an employment relationship with an employer.
3. In the field of health, work is a legal relationship, and workers must receive health insurance.
4. The field of occupational safety refers to the working relationship between workers and the tools they use. In a relatively short or long period of time, workers will be safe and their safety will be guaranteed.
5. The field of social security for workers is currently regulated by Law No. 40 of 2011 concerning the Social Security Administration Agency.

Therefore, it is necessary to further examine whether the provisions regarding termination of employment due to efficiency in Law Number 11 of 2020 concerning Job Creation truly reflect fair and proportional protection for all parties involved.⁸ Fair protection requires that workers' rights not be sacrificed unilaterally in the name of efficiency, while the interests of employers in maintaining the continuity of their businesses are also accommodated. An emphasis on proportionality is important to ensure that efficiency is not used as a mere excuse to avoid normative obligations towards workers. In this context, a comparison between the provisions of Law No. 13 of 2003 and the changes brought about by the Job Creation Law is a crucial step in assessing whether this latest regulation has significantly shifted the balance of industrial relations.⁹ In this context, a comparison between the provisions of Law No. 13 of 2003 on Manpower and the changes brought about by Law No. 11 of 2020 on Job Creation is a crucial step in assessing whether the latest regulations have significantly shifted the balance of industrial relations. A comparative analysis of the two regulations is necessary to understand the substantial changes in the legal basis for termination of employment due to efficiency, the standard of proof of loss, and the form of compensation received by workers.¹⁰ Thus, it can be determined

² Republik Indonesia, Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja (Lembaran Negara Republik Indonesia Tahun 2020 Nomor 245), Pasal 154A ayat (1) huruf b.

³ Republik Indonesia, Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39), Pasal 164 ayat (3).

⁴ Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia* (Bandung: Citra Aditya Bakti, 2020), hlm. 215.

⁵ Aloysius Uwiyo, *Hukum Ketenagakerjaan di Indonesia* (Jakarta: RajaGrafindo Persada, 2019), hlm. 287–288.

⁶ Imam Soepomo, *Hukum Perburuahan Bidang Hubungan Kerja* (Jakarta: Djambatan, 2013), hlm. 134–135.

⁷ Asri Wijayanti, *Hukum Ketenagakerjaan, Pasca Reformasi*, Jakarta: Sinar Grafika 2009 hlm.11

⁸ Republik Indonesia, *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja* (Lembaran Negara Republik Indonesia Tahun 2020 Nomor 245), Pasal 154A ayat (1) huruf b.

⁹ Republik Indonesia, *Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan* (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39), Pasal 164 ayat (3).

¹⁰ Aloysius Uwiyo, *Hukum Ketenagakerjaan di Indonesia* (Jakarta: RajaGrafindo Persada, 2019), hlm. 287.

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whether these changes still guarantee the principles of fairness and legal protection for workers, or whether they actually strengthen the dominance of employers in determining the fate of labor relations. Assessing this issue is important in order to steer labor law reforms in a direction that is more fair, balanced, and in line with the mandate of the constitution.

This creates legal uncertainty and opens the door to abuse by employers who want to avoid labor obligations. These changes have sparked debate about legal certainty and the protection of workers' rights.¹¹ Therefore, it is important to conduct a comparative analysis of the two laws to determine the extent to which efficiency policies affect workers' bargaining power, and whether the new provisions are still in line with the principles of fairness and protection in industrial relations. These changes have sparked debate regarding legal certainty and the protection of workers' rights. The new provisions, which give companies more leeway to lay off workers for efficiency reasons without having to close their businesses, are seen as opening the door to potential abuse and weakening the bargaining position of workers.¹² On the other hand, this regulation is considered to provide greater flexibility for employers in facing economic pressures. Therefore, it is important to conduct a comparative analysis of the two laws, namely Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation, to determine the extent to which efficiency policies impact industrial relations, workers' bargaining positions, and whether these new provisions are still in line with the principles of fairness, legal protection, and certainty in labor practices in Indonesia. Based on the provisions of the Labor Law, we can conclude that the scope of protection for workers includes:¹³

1. The fundamental rights of workers/laborers to negotiate with employers
2. Occupational safety and health
3. Special protection for female workers/laborers, children, and persons with disabilities, and
4. protection regarding wages, welfare, and social security for workers.

The ability of companies to terminate employment for reasons of efficiency without having to close their businesses, as stipulated in Law Number 11 of 2020 concerning Job Creation, is considered to open the door to potential abuse.¹⁴ This provision allows employers to terminate employment on the basis of efficiency, which is not always based on actual losses, but may also be driven by internal restructuring strategies or other operational efficiencies.¹⁵ As a result, workers' bargaining position in industrial relations becomes weak, because they do not have adequate protection mechanisms to reject or challenge these efficiency arguments.¹⁶

In addition, the absence of a requirement to close a business as a condition for efficiency differs fundamentally from the previous provisions in Law No. 13 of 2003 concerning Manpower, which required the closure of a company as the main basis for conducting layoffs due to efficiency.¹⁷ This change in norms creates an imbalance between the interests of employers and the rights of workers, because companies can continue to operate while reducing their workforce without having to prove concrete losses.¹⁸ This raises serious questions about the impartiality of regulations regarding the principle of social justice in Indonesian labor law.¹⁹

Law No. 13 of 2003 itself is also often considered to have not fully realized social justice in industrial relations.²⁰ Some critics say that the provisions in the law still create inequality between the interests of employers and workers in four main aspects, namely:

1. Termination of Employment (PHK)

The layoff procedure is considered insufficiently protective of workers, as it allows employers to lay off workers on the grounds of efficiency or economic conditions without guaranteeing adequate compensation for workers.²¹

2. Minimum Wage

The minimum wage is often not in line with a decent living standard, so it does not fully guarantee the welfare of workers.²²

3. Social Protection and Welfare

¹¹ Tri Sulistiyono, "Implikasi Omnibus Law Cipta Kerja terhadap Perlindungan Hak-Hak Pekerja," *Jurnal RechtsVinding* Vol. 10 No. 3 (2021): hlm. 421–423.

¹² Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia* (Jakarta: RajaGrafindo Persada, 2018), hlm. 193–194.

¹³ Eko Wahyudi, *Hukum Ketenagakerjaan*, Cetakan Pertama, Jakarta, sinar Grafika, 2016, hlm. 32

¹⁴ Republik Indonesia, *Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja* (Lembaran Negara Republik Indonesia Tahun 2020 Nomor 245), Pasal 154A ayat (1) huruf b.

¹⁵ Tri Sulistiyono, *Loc.Cit.*

¹⁶ Abdul Khakim, *Loc.Cit.*

¹⁷ Republik Indonesia, *Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan* (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39), Pasal 164 ayat (3).

¹⁸ Lalu Husni, *Op.Cit.*, hlm. 193.

¹⁹ Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Rajawali Pers, 2010), hlm. 66.

²⁰ Aloysius Uwiyo, *Hukum Ketenagakerjaan di Indonesia* (Jakarta: RajaGrafindo Persada, 2019), hlm. 287–289.

²¹ Tri Sulistiyono, *Loc.Cit.*

²² Djumadi, *Hukum Perburuhan Indonesia: Suatu Pengantar* (Jakarta: RajaGrafindo Persada, 2017), hlm. 154.

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Social security coverage such as BPJS Employment and BPJS Health still does not fully cover all workers, especially contract and informal workers.²³

4. Industrial Relations and Workers' Bargaining Power

In practice, workers often find it difficult to claim their rights due to their weak bargaining position and limited access to effective dispute resolution mechanisms.²⁴

From a social justice perspective, labor laws should ideally be able to balance the interests of employers and workers proportionally.²⁵ This principle is reflected in Article 2 of Law Number 13 of 2003, which stipulates that employment must be carried out based on the principle of social justice for all Indonesian people.²⁶ This means that the state is obliged to provide protection to workers who are economically and bargaining positionally weaker, in order to prevent exploitation and injustice in industrial relations.²⁷

The principle of social justice in labor law not only includes formal legal protection, but also covers aspects of welfare, fair access to employment opportunities, and recognition of workers' basic rights, such as fair wages, social security, safe working conditions, and freedom of association.²⁸ However, if the law favors the interests of employers by reducing protections for workers, then the goal of social justice becomes difficult to achieve and has the potential to widen social inequality and cause instability in industrial relations.²⁹

In this context, Law No. 11 of 2020 on Job Creation is indeed intended to improve the investment climate and expand employment opportunities, but at the same time it raises concerns because it is considered to shift the orientation of labor law from social justice to economic efficiency.³⁰ In this context, Law No. 11 of 2020 on Job Creation is indeed intended to improve the investment climate and expand employment opportunities, but at the same time it raises concerns because it is considered to shift the orientation of labor law from social justice to economic efficiency.³¹

The objectives of labor law include the following:³²

1. To achieve social justice in the field of employment. This further demonstrates that labor laws must maintain order, security, and achieve peace at work and business continuity.
2. To protect workers from the unlimited power of employers.

The principle of social justice in the Manpower Act (Law 13/2003) and the Job Creation Act (Law 11/2020) is formally recognized as the basis for the implementation of manpower, namely providing special protection for workers who are economically and bargaining position weaker so that they are not exploited. However, its implementation remains a challenge and a subject of debate, particularly regarding the balance between worker protection and ease of doing business for employers.

II. FORMULATION OF THE PROBLEM

1. How are the provisions for termination of employment (PHK) due to efficiency reasons regulated in Law Number 13 of 2003 concerning Manpower?
2. How have the provisions for termination of employment due to efficiency reasons changed in Law Number 11 of 2020 concerning Job Creation?

III. RESEARCH METHODOLOGY

This study uses a normative juridical method, which is legal research conducted by examining written legal materials such as legislation, legal literature, and relevant court decisions. The approaches used in this study include:

1. Statute Approach:

This study uses a normative juridical method, which is legal research conducted by examining written legal materials such as legislation, legal literature, and relevant court decisions. The approaches used in this study include:

2. Comparative Approach:

²³ Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan, *Laporan Tahunan 2022* (Jakarta: BPJS Ketenagakerjaan, 2023), hlm. 19–20.

²⁴ Nurhasan Ismail, "Keadilan Sosial dalam Regulasi Hubungan Industrial di Indonesia," *Jurnal Hukum Ius Quia Iustum* Vol. 27 No. 2 (2020): hlm. 198–200.

²⁵ Satjipto Rahardjo, *Hukum dan Masyarakat* (Bandung: Angkasa, 2009), hlm. 56–57.

²⁶ Republik Indonesia, *Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan*, Pasal 2.

²⁷ Imam Soepomo, *Hukum Perburuahan Bidang Hubungan Kerja* (Jakarta: Djambatan, 2013), hlm. 142.

²⁸ ILO, *Decent Work Agenda: Promoting Jobs, Protecting People* (Geneva: International Labour Office, 2019), hlm. 11–13.

²⁹ Lalu Husni, *Op.Cit.*, hlm. 198.

³⁰ Aloysius Uwiyono, *Op.Cit.*, hlm. 291.

³¹ Tri Sulistiyono, *Op.Cit.*, hlm. 424.

³² Andi farina, *Aspek Legal, Sumber Daya Manusia menurut Hukum Ketenagakerjaan* akarta Mitra Wacana Media, 2012, hlm .5

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Used to compare the legal provisions on termination of employment based on efficiency grounds between the two laws, both in terms of substance and protection of workers' rights.

3. Conceptual Approach:

Used to examine concepts of labor law, corporate efficiency, and labor protection as a basis for normative analysis.

IV. RESULTS AND DISCUSSION

Provisions on Termination of Employment (PHK) for Efficiency Reasons in Law Number 13 of 2003 concerning Manpower

Law No. 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law) is a major milestone in the regulation of industrial relations in Indonesia. This law is a manifestation of the spirit of the welfare state, which places workers as legal subjects who must be protected from potential exploitation. In this context, employment relationships are not viewed solely as private contracts between workers and employers, but also as social relationships that must be regulated by the state in order to create social justice and economic welfare.

The basic principles of the Manpower Act are confirmed in Article 2, which states:

“Employment development shall be carried out based on the principle of integration using norms of justice and equity, to guarantee the basic rights and protection of workers as well as equal opportunities and treatment without discrimination on any basis in order to realize the welfare of workers and their families.”

This norm emphasizes that labor administration in Indonesia must be oriented towards justice and legal protection for workers, not merely for economic interests. This principle of fairness is rooted in Pancasila, particularly the fifth principle, and in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution, which guarantees the right of every citizen to obtain employment and adequate protection.

Within this legal framework, termination of employment is the most sensitive issue because it directly affects the livelihoods of workers and their families. Therefore, the Manpower Act treats termination as a last resort (*ultimum remedium*) that can only be taken if all efforts to maintain employment have failed.

The normative provisions regarding termination of employment due to efficiency are clearly regulated in Article 164 paragraph (3) of the Manpower Act, which reads:

"Employers may terminate the employment of workers/laborers due to the closure of the company, not because of two consecutive years of losses or force majeure, but due to efficiency, with the provision that workers/laborers are entitled to severance pay of twice the amount stipulated in Article 156 paragraph (2), service pay of once the amount stipulated in Article 156 paragraph (3), and compensation in accordance with the provisions of Article 156 paragraph (4)."

From these provisions, there are several important elements:

1. Efficiency can only be achieved if the company closes.

This means that employers cannot use efficiency alone as a reason for internal restructuring or reducing the number of employees in order to reduce production costs. Efficiency in this article has an extreme meaning, namely the last rational action taken due to business conditions that make it truly impossible to continue.

2. Layoffs due to efficiency must provide greater compensation to workers.

In this article, the severance pay given to workers is double the general provisions of Article 156 paragraph (2). This shows a compensatory approach intended to balance the loss of workers' rights due to business closures.

3. Efficiency should not be used as an excuse to avoid legal obligations.

This norm also contains the moral message that efficiency is not a legal justification for mass layoffs without a justifiable financial basis.

In addition to Article 164 paragraph (3), there are several other articles that form the legal basis in the context of layoffs due to efficiency, including:

1. Article 151 paragraphs (1) and (2):

(1) “Employers, workers/laborers, labor unions, and the government must make every effort to prevent termination of employment.

(2) In the event that all efforts have been exhausted but termination of employment cannot be avoided, the intention to terminate employment must be negotiated by the employer and the labor union or with the employee if the employee concerned is not a member of a labor union”.

This provision reinforces the principles of prevention and deliberation in termination of employment. Every termination plan must first go through a (bipartite) negotiation mechanism before it can be ratified.

Article 155 paragraph (1):

“Termination of employment without a decision from an industrial relations dispute resolution institution is null and void.”

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This article provides procedural legal protection for workers, whereby every termination of employment must obtain a decision from the industrial relations dispute resolution institution (PHI).

Article 156 paragraphs (2)–(4):

“Regulates the financial rights of workers in the form of severance pay, service pay, and compensation.”

Through these provisions, it is evident that the 2003 Manpower Act upholds three fundamental principles of labor law, namely:

1. The principle of legal protection for workers: the state must guarantee the welfare and livelihood of workers.
2. The principle of social justice and balance of interests: neither workers nor employers should be disproportionately disadvantaged.
3. The principle of legal and procedural certainty: termination of employment is invalid if it does not follow the established legal procedures.

Thus, layoffs due to efficiency in Law No. 13 of 2003 have a protective character. The state actively limits the scope of employers in carrying out layoffs, so that there are no unilateral actions that harm workers.

From the perspective of labor law theory, the efficiency provisions in the Labor Law are in line with the theory of labor protection put forward by Imam Soepomo. According to him, workers must be protected by law because of their weaker bargaining position in industrial relations. The state has a moral and constitutional obligation to intervene in labor relations so that the principle of social justice can be realized.³³

In addition, this regulation is also based on John Rawls' theory of justice, specifically the difference principle, which states that economic inequality can only be justified if it benefits the weakest parties. In this context, the restriction on efficiency grounds aims to prevent employers from using this excuse to unilaterally harm workers.

However, in practice, many parties consider that these overly rigid efficiency provisions lack flexibility. In an era of dynamic economic globalization, companies need to make structural adjustments in order to survive. Limited room for efficiency is often seen as an obstacle to investment and economic adaptation. This is what became the basis for the reformulation of labor law policy through Law Number 11 of 2020 concerning Job Creation.

Changes to Layoff Regulations due to Efficiency in Law Number 11 of 2020 concerning Job Creation

Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law) is a concrete manifestation of the government's deregulation and debureaucratization policy aimed at facilitating business. Philosophically, this law embodies the spirit of enhancing national competitiveness, accelerating economic growth, and creating as many job opportunities as possible. However, in the context of labor law, the Job Creation Law brings about quite fundamental changes, including in the regulation of layoffs for reasons of efficiency.³⁴

The main legal basis for termination of employment due to efficiency in the Job Creation Law is Article 154A paragraph (1) letter b), which reads:

“Termination of employment may occur due to reasons of company efficiency caused by the company suffering losses or the company implementing efficiency measures to prevent losses.”

Meanwhile, Article 154A paragraph (2) emphasizes:

“Termination of employment as referred to in paragraph (1) shall be carried out with written notification from the employer to the employee and/or labor union.”

When compared to Article 164 paragraph (3) of Law No. 13 of 2003, it is clear that there is an expansion of the meaning of efficiency. In the Manpower Law, efficiency can only be used as a basis for termination of employment if the company closes permanently, while in the Job Creation Law, employers can implement efficiency even if the company is still operating, as long as it is done to “prevent losses”.³⁵

This shift marks a paradigm shift in labor law from a protective approach to labor market flexibility.³⁶ In the government's view, flexibility is considered important so that the business world can adapt to global economic changes without being hampered by rigid regulations. However, from a social law perspective, this policy poses a serious dilemma. The expansion of efficiency reasons that are not strictly limited has the potential to reduce the level of legal protection for workers and open up opportunities for abuse by employers.³⁷ The main normative weakness of Article 154A is the absence of objective parameters regarding the

³³ Imam Soepomo, *Hukum Perburuahan Bidang Hubungan Kerja* (Jakarta: Djambatan, 2013), hlm. 19.

³⁴ Tri Sulistiyono, *Loc.Cit.*

³⁵ Muhammad Fadli, “Kebijakan Hukum Ketenagakerjaan dalam Undang-Undang Cipta Kerja dan Dampaknya terhadap Perlindungan Tenaga Kerja,” *Jurnal Legislasi Indonesia* Vol. 18 No. 2 (2021): 157–168.

³⁶ Dimas Prasetyo, “Transformasi Paradigma Hubungan Industrial dalam Perspektif Omnibus Law Cipta Kerja,” *Jurnal Hukum Ius Quia Iustum* Vol. 28 No. 1 (2021): 45–62.

³⁷ Lailatul Qodriyah, “Asas Keadilan Sosial dalam Pengaturan Pemutusan Hubungan Kerja pada UU Cipta Kerja,” *Jurnal HAM* Vol. 13 No. 2 (2022): 215–229.

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condition of “preventing losses.” The law does not explain how such losses are measured, who has the authority to assess them, and what evidence must be presented to justify termination of employment for reasons of efficiency.³⁸

As a result, the phrase “efficiency to prevent losses” is subjective and open to interpretation, giving employers the freedom to interpret the conditions of efficiency according to their own interests. This contradicts the principle of legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution, which states:

“Every person shall have the right to recognition, security, protection, and legal certainty as well as equal treatment before the law.”

This change has various legal and social consequences:

1. Weakening of workers' bargaining position.

With the expansion of efficiency reasons, workers have less room to refuse layoffs. The absence of objective indicators makes it difficult for workers to prove that efficiency is not actually happening.

2. Reduced legal certainty.

The efficiency norm in the Job Creation Law does not provide implementable guidelines, so its application depends on individual interpretation. As a result, the potential for industrial relations disputes increases.

3. Shift in the meaning of social justice.

The principle of justice mandated by Pancasila has been displaced by the logic of economic efficiency. In practice, workers' rights to job security are less protected.

4. Disproportionate compensation.

Although Article 156 is still in effect and guarantees severance pay, this right cannot offset the socioeconomic impact of layoffs due to preventive efficiency measures.

These changes can be examined through several legal theories:

1. Labor Protection Theory According to Soepomo and Van der Heijden, labor laws were created to protect workers from economic power imbalances. By opening up opportunities for overly broad efficiency-based layoffs, the Job Creation Law actually weakens the basic rights of workers that should be guaranteed by the state.

2. Progressive Law Theory (Satjipto Rahardjo) Law should not be a tool of power, but a means to achieve substantive justice. Article 154A of the Job Creation Law, in practice, functions more as a legitimization of economic interests than an instrument of social justice.

3. The Theory of Distributive Justice (Aristotle and John Rawls) Justice demands the proportional distribution of rights and burdens. In this case, employers are given considerable leeway, while workers bear the burden of economic risk without adequate social security.

Therefore, changes to the provisions on termination of employment for reasons of efficiency in the Job Creation Law not only raise normative issues, but also contradict the basic principles of the constitution, namely the protection of citizens and social justice for all Indonesian people.

To ensure a balance between economic interests and worker protection, it is necessary to reformulate the legal norms derived from Article 154A, including by: 1) Clearly defining efficiency indicators through government regulations (e.g., decline in income, liquidity ratio, or independent audit reports); 2) Requiring a tripartite mediation process (government, employers, and labor unions) before layoffs are carried out; 3) Providing unemployment social security or reskilling programs for affected workers; and 4) Reaffirming the principle of layoffs as a last resort, not the first managerial option.

Comparative Analysis and Legal Implications

Legal Aspects	Law No. 13 of 2003	Law No. 11 of 2020 (Job Creation)
Legal basis for termination due to efficiency	Article 164 paragraph (3): only if the company closes	Article 154A paragraph (1) letter b: may be done to prevent losses
Obligation to negotiate	Mandatory bipartite negotiations and determination of PHI	Only written notification
Efficiency parameters	Company closure or actual losses	No objective criteria
Legal policy direction	Worker protection and social balance	Economic flexibility and ease of investment
Legal certainty	Relatively high and concrete	Open to interpretation and prone to abuse
Key principles	Social justice and welfare	Economic efficiency and business competitiveness

³⁸ Nurhasan Ismail, “Rekonstruksi Hukum Ketenagakerjaan Pasca Omnibus Law: Antara Efisiensi Ekonomi dan Perlindungan Sosial,” *Jurnal Konstitusi* Vol. 19 No. 1 (2022): 91–107.

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This comparison shows that the Job Creation Law shifts the orientation of labor law from protection to deregulation. Conceptually, this can be seen as an attempt by the government to balance two major interests: investment and welfare. However, empirically, this change creates normative inequalities that have the potential to harm workers.

In a constitutional context, labor law should remain grounded in the principles of social justice and protection of the vulnerable, not just economic efficiency. Therefore, a progressive interpretation of Article 154A is needed so that its implementation does not conflict with the values of justice and humanity.

CONCLUSIONS

1. Based on the results of research on Law Number 13 of 2003 concerning Manpower, it can be concluded that regulations regarding termination of employment (PHK) for reasons of efficiency explicitly place workers as legal subjects who must be protected by the state. Article 164 paragraph (3) states that termination of employment due to efficiency can only be carried out if the company closes, not solely because of a policy to reduce operational costs. This provision reflects the spirit of labor law that protects workers by providing severance pay twice the general provision as compensation for job loss. In addition, Articles 151 and 155 also emphasize that termination of employment is only valid if it has gone through a negotiation process between employers and workers and has been determined by an industrial relations settlement institution. Conceptually, the legal system in Law Number 13 of 2003 is based on the theory of worker protection and the principle of distributive justice, which places worker welfare as part of the welfare state's objectives. Thus, the regulation of layoffs due to efficiency in this law is more oriented towards social protection, legal certainty, and substantive justice for workers.

2. Based on an analysis of Law Number 11 of 2020 concerning Job Creation, it can be concluded that there has been a fundamental change in the paradigm of labor law in Indonesia, namely from a protection system to a more flexible and pro-investment system. Article 154A paragraph (1) letter b expands the grounds for efficiency so that layoffs can be carried out not only because the company is experiencing losses, but also to prevent losses, even though the company is still operating. This expansion gives greater leeway to employers, but at the same time reduces the level of legal protection for workers. The absence of objective parameters regarding efficiency conditions creates the potential for multiple interpretations and legal uncertainty, which in turn can weaken the bargaining position of workers in industrial relations. From a social law perspective, this change indicates a shift in the orientation of the law from labor protection to economic flexibility that emphasizes business efficiency. Therefore, further regulation is needed through implementing regulations that clearly define the limits and indicators of efficiency, as well as ensure a balance between the interests of employers and the protection of workers' rights so that the implementation of layoffs remains in line with the principles of social justice and human values mandated in Pancasila and the 1945 Constitution.

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