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## **Job Loss Guarantee Program Policy as Legal Protection for Terminated Workers Based on Job Creation Law Article 46**

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### **Abstract**

To provide legal protection for workers who have experienced termination of employment, the government of Indonesia has issued a new policy in the form of Article 46 of Law No. 11 of 2020 concerning the Job Creation Law. This increases the type of protection for social security programs, namely the job loss guarantee program. This paper uses a juridical-normative research method. The results indicate that the legal protection policy for workers affected by termination of employment was not appropriate. Therefore, an amendment was made to Law Number 40 of 2004 concerning the National Social Security System. Specifically, Article 46A of the Job Creation Law states: “Workers or employees who have their activities terminated are entitled to collateral due to loss of profession”. Article 46C(2) also states that the Central Authority should pay the professional burnout insurance contributions. In this case, non-professional collateral benefits are not focused on money but on cash, access to actionable market data, and job training. It is not explained in detail what percentage of the total compensation will be obtained by workers affected by termination of employment through this job loss guarantee scheme. This is only stated in Article 46D paragraph (2), “Job loss guarantee will be provided for 6 (six) months of wages”.

**Keywords:** Job Loss Guarantee; Job Creation Law; Legal Protection; Termination of Employment.

### **Introduction**

In Indonesia, a country that follows the Continental European legal system, all aspects of life in government and society must always be based on the law. The fundamental written law in Indonesia is the 1945 Constitution. Article 1(3) of the Constitution states, “The State of Indonesia is a State of Law”. The use of laws aims to provide security and discipline, and ensure the safety of citizens from the state. The law itself, in addition to regulating humans in disasters that threaten them, also

maintains the relationship between humans. The purpose of the benefits of law can be considered in terms of the protection of human needs; in this sense, law has a direction or target to accomplish. In addition, to achieve the purpose of the law itself, protection for workers or laborers must be given more attention.

The Indonesian Government passed Law No. 11/2020 on Job Creation (hereafter the Job Creation Law). With the enactment of the Job Creation Law, there have been changes in regulations related to human resources; the legislation covers many sectors to generate fields of activity. Due to this coverage, it increases foreign investment to advance the country's economy. The Job Creation Law is also considered a universal law. It removes and amends several articles regarding employment in Law No. 13 of 2003 on Manpower (hereafter the Manpower Law).

A worker is a human being who works for others for pay. Being employed is a right for all Indonesian citizens. The 1945 Constitution is the fundamental law that protects workers' rights and forms the basis for labor laws, which explicitly regulate such rights. On occasion, there are arguments between employers and employees that can lead to termination of employment. Termination of employment is the end of an activity relationship that can be incorporated by an automatic method at the time of the activity relationship as determined by the employees or workers with the employers. Termination of employment is a very stressful experience for workers or laborer as it involves the loss of their livelihoods. Terminating the activity relationship between workers and employers cannot be done at will without certain aspects being agreed on by both parties. Consequently, termination of employment should not injure the sense of equality between the parties.

For the workers themselves, termination of employment is the beginning of their loss of livelihoods, which represents a serious obstacle as they have no longer have work nor income to fulfill their daily needs. Therefore, each party must make every effort to avoid the occurrence of termination of employment and to make their industry run smoothly.<sup>1</sup>

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<sup>1</sup> FX Djumialdji, *Perjanjian Kerja* (Sinar Graphic Publisher 2005).[15].

Termination of employment, if occurring due to the agreement of both parties, does not result in subsequent problems. However, if termination is attempted by only one party, an industrial dispute may occur between the parties concerned. An industrial relations dispute is a comparison of opinions between the parties which relates to rights, a debate about needs, and a debate about termination of employment.

Prior to the Job Creation Law, regulations related to the relationship between employers and employees or workers were regulated in The Manpower Law. However, despite the regulations, employers still frequently deviated from them and carried out arbitrary termination of employment. Consequently, many workers or laborers were left unemployed. The regulations related to severance pay in The Manpower Law are clear, but in practice, companies that pay severance pay do not comply with the provisions of the law. This is clearly detrimental to workers and the workforce. In addition, it can also affect economic development in Indonesia.

Therefore, through the Job Creation Law, the Government issued new provisions regarding one type of social security program, the Job Loss Guarantee. The Job Loss Guarantee is regulated by the amendment to Law No. 40 of 2004 concerning the National Social Security System. Article 46A of The Job Creation Law states: (1) "Laborers or employees who face termination of employment are entitled to receive guarantees for the loss of their profession." With the Job Loss Guarantee, the Government offers protection to workers or employees. By distributing legal protection to workers or employees who have been terminated, a new program in the Job Creation Law was created related to the Job Loss Guarantee program.

The government's aim was for the Job Loss Guarantee to take over the reduction in severance pay as described in the previous paragraph. Article 46C(2) also states that the contribution to the Job Loss Guarantee is paid for by Central Government. However, it has been argued that the benefits of such a guarantee are not focused on money, but in cash, access to activity market information, and activity training.<sup>2</sup> It is

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<sup>2</sup> Article 46D paragraph (1) of Law Number 11 of 2020 concerning Job Creation.

not explained in detail what percentage of their money terminated workers will get through the Job Loss Guarantee. Article 46D paragraph (2)<sup>3</sup> merely states that “Job Loss Guarantee is applied for with a salary of at most 6 (six) months”.

The Job Loss Guarantee program is implemented by the Government and BPJS Employment. This is done rationally based on the principle of social insurance. The Job Loss Guarantee related to severance pay has decreased from a maximum of 32 times the salary related to the period of activity. The Job Creation Law changed this to 25 times the salary, and the rest can be paid through the Job Loss Guarantee. Under the Job Loss Guarantee, terminated workers can be provided with job training and financial assistance for a certain period of time. The purpose of providing job training is to help workers find a new job so they are no longer unemployed. Many consider this article to be ambiguous and thus difficult to implement.

Based on the foregoing background, in this paper, the formulation of the problem is namely how legal protection for workers or employees who have suffered from termination of employment is covered in Article 46 of The Job Creation Law regarding the Job Loss Guarantee Program. The research procedure used in this research is a normative legal study, specifically research dealing with existing reference materials and related to the legal principles being monitored. The source of legal material used consists of three legal materials, namely primary, secondary, and tertiary legal materials. The method of collecting these materials was via a literature review model, namely by using legal material analysis and qualitative descriptive content analysis.

### **Basic Termination Regulation**

The working relationship between workers or employees and a company is indicated by the signing of an employment contract by both parties.<sup>4</sup> This relationship is based on mutual desire, whereby workers need to earn a living whereas companies

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<sup>3</sup> Article 46D paragraph (1) of Law Number 11 of 2020 concerning Job Creation.

<sup>4</sup> Soehartoyo, ‘Perlindungan Hukum Pekerja/Buruh Penyandang Disabilitas di Indonesia’ (2014) 43 Masalah Hukum.[477].

need workers to progress the company.<sup>5</sup> Cases between employers and workers may arise in the employment relationship, whether simple or environmental, and these can be resolved through family methods or legal channels.<sup>6</sup>

In the employment relationship, the subjects are employers and workers or laborers. In Article 1, number 15 of the Labor Law, “employment relationship is a relationship attempted by employers and workers based on employment contracts, in which there are factors of employment, wages, and orders.” The employment contract factor that is the basis of the employment bond is contained in Article 1, number 4 of the Labor Law, namely, where the employment relationship must be regulated regarding the employment agreement therein.

Article 1, number 14 of the Labor Law makes clear that the agreement between workers or employees and employers contains provisions regarding the rights and roles of the parties, as outlined in the employment contract. This employment relationship is established due to a contract between the employers and the workers or employees. Meanwhile, Article 1, number 25 of the Labor Law stipulates that termination of employment is the termination of employment due to certain problems that cause a termination of rights and division between workers and employers. For Manulang, the term termination of employment can have several meanings in common, namely:

1. Termination is the termination of employment bond due to the completion or expiration of the agreed activity contract. The expiration of the contract is when there is no agreement between the employees and management until the employee is obliged to leave the profession;
2. Dismissal is the termination of the bond of activity due to the employee’s violation of the authorized compliance. For example, employees commit misconduct, such as consuming alcohol or psychotropic drugs, mandating, committing crimes, interfering with work equipment owned by the factory;
3. Redundancy is the termination of employment as industries expand using the latest technological machinery;

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<sup>5</sup> Ferdy D. Putra, ‘Pemutusan Hubungan Kerja Pekerja/Buruh Perempuan Lepas oleh Perusahaan Karena Alasan Cuti Menstruasi’ (2020) 3 Media Iuris.[138].

<sup>6</sup> Sonhaji, ‘Analisis Yuridis Pemutusan Hubungan Kerja Akibat Pelanggaran Serius Pekerja’ (2019) 2 Jurnal Hukum Administrasi & Tata Kelola.[61].

4. Retrenchment is the termination of employment related to economic issues.<sup>7</sup>

The basic background of Termination of Employment is found in Article 151 of the Job Creation Law. As explained by Manulang, the cause of termination of employment may come from two parties. However, it is often the case that one party often terminates the employment relationship. In the Job Creation Law, Article 154A paragraph (1) regarding the permissible reasons for terminating employment is considered not to protect workers or laborers. Several points from the paragraph explain termination of employment, which is considered detrimental to workers or laborers. Article 154A paragraph (1) reads as follows:

1. The company conducts a grouping, consolidation, acquisition, or division of the company, and the workers or employees do not wish to continue the employment bond, or the employers do not wish to welcome the workers or employees;
2. The company exercises its capabilities accompanied by the closure of the company or not accompanied by the closure of the company because the company faces losses;
3. The company is closed because the company has suffered continuous losses for 2 (two) consecutive years;
4. The company is closed due to force majeure;
5. The company is in a state of pledge of loan repayment roles;
6. The company went bankrupt;
7. There is a request for termination of employment from the activity bond submitted by the workers or employees;
8. There is a decision of the Industrial Relations Dispute Management body reporting that the employers took no action, as well as the means in letter g that the workers or employees applied and the employer decided to terminate the employment bond;
9. The workers or employees resign of their own free will;
10. Workers or employees are absent for 5 (five) consecutive days or more without explanation;
11. The workers or employees commit a violation that has been stipulated in the employment contract;
12. The workers or employees are of no ability to perform their profession for 6 (six) consecutive months as a result of being detained by the rightful party;
13. The workers or employees face ongoing illness or disability due to work

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<sup>7</sup> Ayu Ratna Hari Putri *Et. Al.*, 'Perlindungan Hukum Terhadap Hak-Hak Pekerja yang Terdampak Pemutusan Hubungan Kerja Akibat Efisiensi Perusahaan Berdasarkan Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan di Kota Semarang' (2016) 5 Tinjauan Hukum Diponegoro.[6].

accidents;

14. The workers or employees reach retirement age; or
15. The workers or employees die.

### **Legal Protection for Temporary-Employed Workers or Laborers who are Terminated in the Job Creation Law**

Worker protection, as stipulated in the Manpower Law, is intended to ensure harmonious working ties between workers or employees and employers, with no pressure being put on the weak by the strong. Therefore, employers who have a substantial socio-economic role must help implement protection provisions in accordance with applicable laws and regulations.

In the Job Creation Law, there are changes related to legal protection for workers or laborers who have been terminated. The legal protection for the temporary-employed workers or laborers in the Law is as follows:

- a. Compensation for Temporary Employment Contract
- b. The provision of Temporary Employment Contract compensation payments are in accordance with the era of the workers or employees' activities. The Temporary Employment Contract can only be made for certain professions and cannot be made for permanent employment.
- c. Severance Pay  
Workers or employees who face termination of employment always receive severance pay, appreciation of years of service, and exchange of rights in accordance with laws and regulations. Workers or employees who face termination of employment wish to receive compensation of 25 times their salary, consisting of 19 times borne by the employers and six times guaranteed by the Government through the Job Loss Guarantee Program.
- d. Job Loss Guarantee  
Job Loss Guarantee was established by BPJS Employment and the government. This program does not reduce the benefits of JKK, JIM, JHT, and JP. Besides, Job Loss Guarantee financing comes from the management of the BPJS Employment and the State Budgets.
- e. Working Hours  
The determination of the duration of activities is always in accordance with Law No. 13/2003 on long work, and there are more flexible arrangements for additional working hours for certain jobs such as part-time work, working in the digital economy, and others.

The provision of compensation for temporary-employed workers or laborers is stipulated in Article 61A paragraph (1) and paragraph (2) of the Job Creation



Law<sup>8</sup> and also in further implementation provisions stipulated in Government Regulation No. 35 of 2021, which is one of the subsidiary provisions of the Job Creation Law that has ended its discussion and has been approved by President Joko Widodo. The Government Regulation regulates the temporary employment Agreement, Outsourcing, Working Hours, and rest periods, as well as termination of employment.<sup>9</sup>

Regarding methods of protection for temporary-employed workers who face termination of employment, one of these is the Job Loss Guarantee. The Job Loss Guarantee for temporary-employed workers is the Collateral Profession and has been previously stipulated in Article 18 of the Law on the National Social Security System and in Article 1881 of the Job Creation Law, which reads as follows:

Several stipulations in Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 No. 39, Bonus to State Gazette of the Republic of Indonesia Number 42791 are replaced as follows:

a. The provisions of Article 13 are replaced with the following as follows:

Article 13

(1) Job training is defined by:

- a) government job training agency; b. private job training agency, or
- b) corporate job training agency

(2) Job training can be conducted in a training center or on-the-job training.

(3) Government activity training institutions as referred to in paragraph (1) letter in conducting job training can cooperate with private parties.

(4) Government activity training institutions as referred to in paragraph (1) letter a and industrial activity training institutions as referred to in paragraph (1) letter c include their activities with the Agency in charge of Manpower in the regency/city.

This Job Loss Guarantee is regulated by BPJS Employment based on social insurance principles and is for workers or employees who are victims of 6-month salary termination of employment. In this program, the Central Government pays

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<sup>8</sup> Article 61A paragraphs (1) and (2) of Law Number 11 of 2020 on Job Creation.

<sup>9</sup> Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Temporary Employment Agreement, Outsourcing, Working Hours, and Rest Time, and Termination of Employment.



the company's costs, in contrast to other social security areas such as BPJS Health, for example, where the burden of payment falls on each insurance participant. Although this guarantee initiative deserves to be assessed by the public, given that its implementation is highly dependent on the executive regulations that will govern it, the next step is to protect the formulation and implementation of the program.

The benefits provided by the Job Loss Guarantee for temporary-employed workers who experience termination of employment are in the form of:<sup>10</sup>

- a. Cash, given monthly, is a maximum of 6 months' salary, with 45% of the salary for the first three months and 25% of the salary for the remaining three months.
- b. Access to labor market data, delivered in the form of activity market data (providing job vacancy information) and job direction (self-assessment and job direction).
- c. Job training, in the form of competency-based training through government-owned, private, or corporate training bodies.

Based on this description, it can be concluded that legal protection for temporary-employed workers who face termination of employment is regulated in the Job Creation Law by providing compensation for temporary-employed workers in accordance with the period of work of workers or employees. A temporary employment agreement can only be made for certain jobs and cannot be made for permanent professions. In addition, there is a Job Loss Guarantee in the form of cash, submitted monthly with a maximum salary of 6 months, with a determination of 45% of salary for the first three months and 25% of compensation for three months. There is also access to labor market data, delivered in the form of labor market data (providing information on professional vacancies) and job direction (self-assessment and job direction) as well as training activities, in the form of competency-based training through government-owned, private, or company-owned job training agencies.

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<sup>10</sup> '18 Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Temporary Employment Agreement, Outsourcing, Working Hours, and Rest Time, and Termination of Employment '.

### **Legal Protection of Permanent Workers/Laborers who are Terminated in the Job Creation Law**

The Job Creation Law includes changes related to legal protection for permanent workers who are terminated. This legal protection is as follows:

a. Severance Pay

Workers or employees who face termination of employment are guaranteed severance pay, appreciation money for activities, and exchange of rights in accordance with laws and regulations. These workers or employees will receive compensation of 25 times their salary, consisting of 19 times guaranteed by the employers and six times guaranteed by the Government through the Job Loss Guarantee Program.

b. Job Loss Guarantee

The Job Loss Guarantee is organized by BPJS Employment and the Government. This program does not reduce the benefits of JKK, JKM, JHT, and JP. In addition, the Job Loss Guarantee financing comes from the management of the BPJS Employment and the State Budgets.

In addition, the implementation provisions are further outlined in Government Regulation No. 35 of 2021 concerning Temporary Employment Agreement, Outsourcing, Working Hours, Rest Time, and Termination of Employment.<sup>11</sup> Regarding protection for permanent workers who have experienced termination of employment, this includes the existence of the Job Loss Guarantee. The Job Creation Law increases one type of social security program, namely job loss insurance. This is regulated by Article 46A, which states: (1) “Workers/employees who face termination of employment are entitled to job loss insurance”.<sup>12</sup>

The terminology of Job Loss Guarantee emerged because this program is expected by the Government to take over the wage reduction described in the previous chapter. Article 46C paragraph (2) also states that the Job Loss Guarantee

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<sup>11</sup> Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Temporary Employment Agreement, Outsourcing, Working Hours, and Rest Time, and Termination of Employment.

<sup>12</sup> Article 46A of Law No. 40/2004 on the National Social Security System.

contributions are paid by the Central Government. In fact, the Job Loss Guarantee benefits are not focused on cash alone but “in the form of cash, access to actionable market data, and training activities”. However, the range of the percentage of money that will be obtained by workers affected by termination of employment through this out-of-work guarantee design is not explained in detail in the Law; it is only mentioned in Article 46D paragraph (2) that “the Job Loss Guarantee is proposed with 6 (six) months’ salary”.

When the old Labor Law and the Job Creation Law are compared in terms of form of protection for permanent workers who experience termination of employment, it is found that the latest provisions regarding severance pay in the Job Creation Law replace those of Article 156 of the Labor Law, which relates to the amount of wages paid-delivered to workers who have been terminated. Under the Labor Law, the amount of wages and or work compensation can be up to 32 times the monthly salary. However, the Job Creation Law lowers the amount to 25 times the salary, which consists of 19 months of income paid by the industry and six months through BPJS Employment through the Job Loss Guarantee program.

With this provision, the full burden of severance pay is not put on employers but it is also the responsibility of the authorities. However, concerning the wage article of the Labor Law, in practice, only 7% of industries comply with this provision.<sup>13</sup> Frequently, workers or employees are obliged to seek their right to severance pay through judicial methods at industrial bond law tribunals. Judicial methods are time- and budget-consuming; consequently, employees often give up on receiving the amount of wages given by the company. These case should be handled by the Government through strict supervision and enforcement methods for businesses. There is also no guarantee that by lowering the value of severance pay, companies will be more compliant. Article 185 paragraph (1) of the Labor Law, which was replaced by the Job Creation Law, proscribes a penalty of 1 year to

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<sup>13</sup> Syarifudin Yunus, ‘UU Cipta Kerja: Kontrol Ketat PP, Uang Pesangon Bisa Dilakukan 28 Kali Upah’ (*Bisnis.com*, 2020) <<https://ekonomi.bisnis.com/read/20201009/9/1302899/uucipta-kerja-kawal-tight-pp-severance-severance-payments-28-times-wage>> accessed on 25 April 2022.

4 years and a minimum compensation of Rp. one hundred million, and a maximum of Rp. four hundred million, for employers who do not pay the wages required under the law.

The Job Creation Law also eliminates many articles related to severance pay rights in the Labor Law, which in fact are articles of protection for workers or employees. The deleted provisions harm the rights of workers or employees and benefit employers. However, there is no explanation from legislators regarding the reasons for the deletion of these provisions. Regulatory changes related to capital and ease of business in the Job Creation Law should not reduce the rights of workers/employees because a significant investment climate has no reason to reduce workers' welfare.

### **Conclusion**

Given the above, Termination of Employment has a basic background in Article 151 of the Job Creation Law. Regarding legal protection for workers or employees who are terminated under Article 46 of the Job Creation Law regarding the Job Loss Guarantee program, workers or employees are divided into workers or employees, with temporary-employed and permanent workers or employees. Legal protection for temporary-employed workers who face termination of employment is regulated in the Job Creation Law by providing compensation for the workers in accordance with their length of service. The Temporary Employment Agreement can only be made for certain jobs and cannot be made for permanent jobs; in addition, there is JKP in the form of cash, submitted monthly with a maximum salary of 6 months, with a determination of 45% of salary for the first three months and 25% of salary for the subsequent three months. Also provided is monthly access to labor market data, delivered in the form of market data activities (providing data on job vacancies) and job guidance (self-assessment or job counseling) as well as job training in the form of competency-based training through work training bodies owned by the authorities, private sector, or industry. On the other hand, the legal protection for permanent workers

or employees as stipulated in the Job Creation Law is comprised of severance pay and the Job Loss Guarantee program. Workers or employees who face termination of employment always receive severance pay, commendation pay for years of service, and compensation for rights in accordance with laws and regulations. Workers or employees who face termination of employment will receive 25 times their salary, consisting of 19 times guaranteed by the employment donor and six times guaranteed by the Government through the Job Loss Guarantee Program. The Job Loss Guarantee's benefits are not focused on money.

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