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Settling Termination Disputes and Fulfilling the Rights of Dismissed Workers in Indonesia: The Framework after the Job Creation Law and Constitutional Court Decision 168/PUU-XXI/2023

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Abstract

Dismissal puts a worker's income and security most at risk, and the rules on how it must be carried out and contested have changed considerably since Law No 13 of 2003 was enacted. This article examines how disputes over termination of employment are settled in Indonesia and how the rights of dismissed workers are fulfilled under the law in force in October 2026. It is a normative legal study that uses statutory, conceptual and case-law approaches, drawing on Law No 13 of 2003 as amended by Law No 6 of 2023, Government Regulation No 35 of 2021, Law No 2 of 2004, Constitutional Court Decision No 168/PUU-XXI/2023 and the literature. The study finds that the former requirement of a prior determination by the dispute-settlement institution has been replaced by notification and bipartite negotiation, and that the Constitutional Court has restored the rule that a contested termination takes effect only after a final and binding decision, while wages and rights continue. Severance, service award and entitlement compensation depend on length of service and on the ground of termination, but obtaining them requires a long path through negotiation, mediation or conciliation, trial and cassation, and execution is weak. The article recommends that the new labour legislation adopt the Court's reading, shorten the pre-litigation stage and regulate execution.

Keywords

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Dismissal; Severance; Mediation; Industrial; Labour; Indonesia

Introduction

Most people earn their living by working for others, and in doing so they accept the direction and authority of the person who gives them work.[1] That dependence explains why the termination of employment, known in Indonesian law as *pemutusan hubungan kerja* (PHK), is the event workers fear most. Law No 13 of 2003 on Manpower defines PHK as the ending of an employment relationship for a particular reason that brings to an end the rights and obligations between the worker (*pekerja/buruh*) and the employer.[2] For the worker it means the loss of the wage that supports a household. For the enterprise it is also a cost, because trained staff are lost and the employer must meet the obligations that arise from the end of the relationship.[3] The two parties are not equally placed: the worker is usually the economically weaker one, which is why labour law protects the worker against arbitrary dismissal and against exploitation.[4]

The disputes that dismissal produces are of several kinds. Some arise because one party breaks a rule that the law has already fixed, for example by not paying what the statute requires; others arise because the employer treats workers differently on a prohibited basis.[5] Where the employment ended because a fixed term ran out, the parties knew the end date and there is rarely a dispute. Disagreement is sharpest where the employer ends the relationship against the worker's will, because the lawfulness of the dismissal and the amount owed are then both contested. In practice workers sometimes also demand more than the statute provides, which makes settlement harder. For this reason Indonesian law has built a specific system for industrial relations disputes, and it distinguishes four kinds: disputes of rights, disputes of interests, disputes over termination of employment and disputes between trade unions within one enterprise.[6]

The legal framework in which these disputes are settled has moved in the last few years. Law No 6 of 2023, which stipulated the Government Regulation in Lieu of Law No 2 of 2022 on Job Creation as a statute, rewrote the provisions of Law No 13

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[1] Zainal Asikin et al, *Dasar-dasar Hukum Perburuhan [Fundamentals of Labour Law]* (Jakarta: RajaGrafindo Persada, 2008) at 1.

[2] Law No 13 of 2003 on Manpower (Indonesia), art 1(25).

[3] B Siswanto Sastrohadiwiryo, *Manajemen Tenaga Kerja Indonesia: Pendekatan Administratif dan Operasional [Indonesian Manpower Management: An Administrative and Operational Approach]* (Jakarta: Bumi Aksara, 2005) at 1.

[4] Zaeni Asyhadie, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja [Labour Law: Manpower Law on Employment Relations]* (Jakarta: Rajawali Pers, 2008).

[5] Aloysius Uwiyono, *Hak Mogok di Indonesia [The Right to Strike in Indonesia]* (Jakarta: Universitas Indonesia, 2001) at 215.

[6] Law No 2 of 2004 on the Settlement of Industrial Relations Disputes (Indonesia), art 2.

of 2003 on termination, severance and the continuation of rights during a dispute.[7] Government Regulation No 35 of 2021 lists the grounds and sets the procedure and payments for termination.[8] On 31 October 2024 the Constitutional Court, in Decision No 168/PUU-XXI/2023, partly granted a challenge to the manpower cluster of the Job Creation Law, gave new meaning to several of those provisions and ordered the legislature to enact a separate manpower statute within two years.[9] On 6 October 2026 the House of Representatives (*Dewan Perwakilan Rakyat*, DPR) passed a Labour Protection Law (*Undang-Undang tentang Pelindungan Ketenagakerjaan*) in response; at the time of writing its promulgation and effective date had not been confirmed in the sources consulted, and an official of the Ministry of Manpower was reported to have said that it would have a one-year transition period from promulgation.[10][11] Accounts of how a dismissed worker obtains his or her rights that rely on the text of Law No 13 of 2003 as originally enacted are therefore no longer accurate on important points, and this article corrects them where it matters.

The scholarship on the subject is predominantly descriptive. Fatimah, writing in 2015, examined the causes of dismissal, the compensation due to dismissed workers and the settlement of the dispute through litigation and outside the court, and reported that a worker dismissed for serious misconduct could obtain only entitlement compensation.[12] Ginting examined the settlement of dismissal disputes based on serious misconduct and tested a cassation ruling of the Supreme Court against the statutory provisions, arguing that the current rules do not yet produce settlements that are fast, accurate, fair and inexpensive.[13] After the Constitutional Court's decision, commentators have asked what it does to the mediator's role in the pre-litigation stage.[14] These studies were written under the 2003 text of the Manpower Law, or concentrate on a single issue. What is missing is an account that

[7] Law No 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No 2 of 2022 on Job Creation into Law (Indonesia).

[8] Government Regulation No 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment (Indonesia).

[9] Constitutional Court of Indonesia, Decision No 168/PUU-XXI/2023 (31 October 2024).

[10] "DPR Sahkan UU Pelindungan Ketenagakerjaan, Ini Putusan MK yang Jadi Dasar Revisi [DPR Passes the Labour Protection Law, the Constitutional Court Decision behind the Revision]", *Kompas.com* (6 October 2026), online: <nasional.kompas.com/read/2026/10/06/17550051/dpr-sahkan-uu-pelindungan-ketenagakerjaan-ini-putusan-mk-yang-jadi-dasar>.

[11] "UU Pelindungan Ketenagakerjaan Resmi Disahkan, Kapan Efektif Berlaku? [Labour Protection Law Officially Passed, When Does It Take Effect?]", *CNBC Indonesia* (6 October 2026), online: <www.cnbcindonesia.com/news/20261006151306-4-773810/uu-pelindungan-ketenagakerjaan-resmi-disahkan-kapan-efektif-berlaku>.

[12] Yani Nur Fatimah, "Penyelesaian Perselisihan Hubungan Industrial di Pengadilan Hubungan Industrial dalam Pemenuhan Hak Pekerja/Buruh yang Diputus Hubungan Kerja [Settlement of Industrial Relations Disputes in the Industrial Relations Court in Fulfilling the Rights of Dismissed Workers]" (2015) 10:2 *Pandecta* 215, DOI: <10.15294/pandecta.v10i2.4954>.

[13] Rico Saputra Ginting, "Penyelesaian Perselisihan Pemutusan Hubungan Kerja (PHK) atas Kesalahan Berat [Settlement of Termination Disputes for Serious Misconduct]" (2022) 2:1 *Dharmasisya: Jurnal Program Magister Hukum FHUI*.

[14] Ahmad Maulana, "Putusan MK Ini Berpotensi Menumpulkan Peran Mediator dalam Penyelesaian Perselisihan PHK [This Constitutional Court Decision May Blunt the Role of Mediators in Termination Disputes]", online: *Hukumonline* <www.hukumonline.com/berita/a/putusan-mk-ini-berpotensi-menumpulkan-peran-mediator-dalam-penyelesaian-perselisihan-phk-lt673aab062f52f/>.

follows the dismissed worker through the whole sequence under the present law, from the employer's decision, through the bipartite, mediation or conciliation stages and the court, to the payment of what is owed, and that tests where the system fails the worker. That integrated account, set against the Constitutional Court's reading, is the contribution of this article.

Three questions guide the study. First, what must an employer do before and during a termination, and what protection does a worker have while a dispute is pending, under Law No 13 of 2003 as amended and Constitutional Court Decision No 168/PUU-XXI/2023? Second, what rights does a dismissed worker have, and how are they calculated? Third, how are termination disputes settled under Law No 2 of 2004, what role does the Industrial Relations Court play in giving legal certainty, and where does the system fall short? The purpose is to describe the law in force accurately and to formulate proposals for the new labour legislation and for the revision of the dispute-settlement law.

Method

This is normative (doctrinal) legal research. It uses a statutory approach, a conceptual approach and a case approach. The statutory approach examines Law No 13 of 2003 as amended by Law No 6 of 2023, Government Regulation No 35 of 2021, Law No 2 of 2004 and Law No 48 of 2009 on Judicial Power. The conceptual approach draws on the doctrine of labour protection and of legal certainty. The case approach is limited to Constitutional Court Decision No 168/PUU-XXI/2023, because the research did not collect or analyse decisions of the Industrial Relations Courts or the Supreme Court; a cassation ruling discussed in the literature is mentioned only as reported by its commentator.

The legal materials are of three kinds. Primary materials are legislation and the Constitutional Court decision. Secondary materials are books and journal articles on labour law and the settlement of industrial disputes. Tertiary materials are news reports, used only to establish the status of the Labour Protection Law passed in October 2026, whose final text was not available to the authors. The materials were collected from official publications and from published scholarship, and they were analysed qualitatively and deductively: the rules were first stated, then interpreted in the light of the Constitutional Court's reading, and finally compared with the findings of earlier studies. The study involved no interviews or fieldwork. The law is stated as at 26 October 2026.

Results and Discussion

The Legal Framework after the Job Creation Law and Constitutional Court Decision 168/PUU-XXI/2023

Law No 13 of 2003 remains the basic statute on manpower, but its provisions on termination have been replaced in several respects. The duty to prevent dismissal survives: employers, workers, trade unions and the government must make every effort to avoid it.[15] What has changed is the mechanism. Under the text of 2003, if dismissal could not be avoided the intention had to be negotiated with the union or the worker and, failing agreement, the employer could dismiss only after obtaining a determination from the industrial relations dispute-settlement institution; a dismissal without it was void by law, and the parties had to continue to perform their obligations until the determination was made. Law No 6 of 2023 replaced this with a lighter sequence. The employer must notify the worker, or the union, of the intention to terminate and its reasons; if the worker refuses, the matter is to be negotiated bipartitely; and if negotiation fails, termination follows the mechanism for settling industrial relations disputes.[16] The articles on the exceptions to the need for a determination (Article 154) and on the voidness of dismissal and the continuation of obligations (Article 155) were deleted. In their place the amended law lists notification-free cases in Article 151A, namely voluntary resignation, expiry of a fixed-term agreement, reaching retirement age and death of the worker, and sets out the grounds for termination in Article 154A, and the continuation of rights during a dispute in Article 157A.

Two other features of the amended law matter for dismissed workers. First, Article 153 keeps a list of grounds on which dismissal is prohibited, including sickness certified by a doctor for up to twelve consecutive months, performing religious worship, marriage, pregnancy or childbirth, trade union membership and activity, reporting the employer to the authorities, and discrimination on grounds such as religion, ethnicity or sex. A dismissal on these grounds is void by law and the employer must employ the worker again.[17] Second, the former provisions on serious misconduct (Articles 158 to 160), under which a worker caught in the act or confessing could be dismissed without a court's involvement, have disappeared. Article 158 had already been declared incompatible with the Constitution in 2004 because it allowed dismissal without proof in a court of the alleged crime,[18] and the amended law and Government Regulation No 35 of 2021 now deal with misconduct

[15] Law No 13 of 2003, *supra* note 2, art 151(1).
[16] Law No 6 of 2023, *supra* note 7, art 81 point 40.
[17] Law No 13 of 2003, *supra* note 2, art 153.
[18] Constitutional Court of Indonesia, Decision No 012/PUU-I/2003.

as a violation of the employment agreement, company regulation or collective agreement that is followed by warning letters.[19] Descriptions of the dismissal procedure that still rest on the evidential list of Article 158 (caught in the act, confession, a report supported by two witnesses) are therefore obsolete.

Constitutional Court Decision No 168/PUU-XXI/2023 changed the reading of the new provisions in four respects relevant here. As reported in the summaries of the decision, the Court held that the bipartite negotiation referred to in Article 151(3) must be carried out through deliberation to reach consensus; that, if bipartite negotiation fails, termination can be made only after a determination of the industrial relations dispute-settlement institution that has permanent legal force; that the employer's and worker's obligations under Article 157A continue until the dispute-settlement process is concluded by a final and binding decision, not merely until the current stage ends; and that the amounts of severance in Article 156(2) are minimum amounts (the phrase "at least").[20][21][22] The Court also ordered the legislature to separate the manpower provisions from the Job Creation Law and enact a new manpower statute within two years of the decision.[23] The first three points restore, in substance, the protection that the deleted Articles 151(3) and 155 once gave: dismissal cannot take effect over the worker's objection until the dispute has been decided with finality, and the worker's wage and rights run until then.

The Labour Protection Law passed by the DPR on 6 October 2026 follows from that order. Press reports say that it provides for stages in the prevention of dismissal, severance by length of service, a severance reserve, job-loss security and the conditions of platform workers; they do not give the number or the final text of the Act, and a Ministry official has said that it will operate after a one-year transition from promulgation.[24][25] Until it has been promulgated and takes effect, and unless it states otherwise, the framework analysed here (Law No 13 of 2003 as amended, Government Regulation No 35 of 2021, Law No 2 of 2004 and Decision No 168/PUU-XXI/2023) continues to govern. The conclusions about the new law below are therefore provisional and should be checked against its official text.

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[19] Government Regulation No 35 of 2021, *supra* note 8.

[20] Decision No 168/PUU-XXI/2023, *supra* note 9.

[21] "Matriks Perubahan UU 13/2003 jo. UU 6/2023 Pasca Putusan MK Nomor 168/PUU-XXI/2023 [Matrix of Changes to Law 13/2003 as Amended by Law 6/2023 after Constitutional Court Decision 168/PUU-XXI/2023]", *BPK Perwakilan Provinsi Kalimantan Utara*, online: <kaltara.bpk.go.id/matriks-perubahan-uu-13-2003-jo-uu-6-2023-pasca-putusan-mk-nomor-168-puu-xxi-2023/>.

[22] Maulana, *supra* note 14.

[23] Kompas, *supra* note 10.

[24] "DPR Sahkan UU Perlindungan Ketenagakerjaan Baru, Ada Aturan Soal PHK dan Ijazah [DPR Passes New Labour Protection Law, with Rules on Dismissal and Diplomas]", *Infobanknews*, online: <infobanknews.com/dpr-sahkan-uu-perlindungan-ketenagakerjaan-baru-ada-aturan-soal-phk-dan-ijazah>.

[25] CNBC, *supra* note 11.

Table 1. Termination of employment: the 2003 text and the position in 2026

Subject	Text of Law No 13 of 2003 as originally enacted	Position in 2026
Procedure when dismissal is unavoidable	Negotiation; failing agreement, a determination of the dispute-settlement institution (Art 151(3))	Notification, then bipartite negotiation by consensus; if it fails, termination only after a final and binding decision (Art 151(2)–(4) as amended; Decision 168/PUU-XXI/2023)
Dismissal without the procedure	Void by law (Art 155(1))	Void by law for the prohibited grounds of Art 153; Arts 154 and 155 deleted
Rights during the dispute	Parties continue to perform; wage paid if the worker is suspended (Art 155(2)–(3))	Same rule in Art 157A, running until the process ends with a final decision (Decision 168/PUU-XXI/2023)
Dismissal for serious misconduct	Arts 158–160; Art 158 struck down in 2004	Arts 158–160 deleted; violation of the agreement, rules or collective agreement after warning letters (Art 154A; Government Regulation 35/2021)
Amount of severance	Fixed multipliers by length of service (Art 156(2)–(4))	Art 156 as amended; severance multipliers are minimum amounts after Decision 168/PUU-XXI/2023

Source: compiled by the authors from Law No 13 of 2003, Law No 6 of 2023, Government Regulation No 35 of 2021 and Constitutional Court Decision No 168/PUU-XXI/2023, as cited above.

Procedure Before and During Termination

The sequence that the law now requires can be stated in six steps. The employer must first try to avoid dismissal. This duty is not merely hortatory, because it frames the later assessment of whether termination was a last resort, and it applies to the union and the government as well as to the parties. Second, if dismissal cannot be avoided, the employer must give the worker, or the union, written notice of the intention and the reasons. Government Regulation No 35 of 2021 sets the period of notice and the worker's time to reply; the notice must be given at least fourteen working days before the intended date and the worker may respond within seven working days, and these periods should be verified in the text of the regulation.[26] Third, if the worker accepts, the employment ends and the payments described below become due. Fourth, if the worker refuses, the parties must negotiate bipartitely, and after Decision No 168/PUU-XXI/2023 the negotiation must aim at consensus. Fifth, if the negotiation fails, the dispute passes into the machinery of Law No 2 of 2004. Sixth, the termination takes effect only after the industrial relations dispute-settlement institution has made a decision that has permanent legal force.

The sixth step is the one that has changed the most, and it needs interpretation. The "institution" that settles industrial relations disputes is, under Law No 2 of 2004, the Industrial Relations Court (*Pengadilan Hubungan Industrial*, PHI) at the district court, with cassation to the Supreme Court. A decision with permanent legal force

[26] Government Regulation No 35 of 2021, *supra* note 8.

is therefore, for a worker who refuses dismissal, a decision of the PHI that no party appeals or, if a party appeals, a cassation ruling. A literal reading therefore means that an employer who wants to dismiss a worker who refuses must wait for the outcome of litigation, which may take months. One commentator argues that the effect is to remove the role of the mediators and conciliators in government institutions as a gateway to termination, since termination no longer depends on their recommendation.[27] That is a plausible reading of the Court's formulation. It does not follow, however, that mediation and conciliation disappear: Law No 2 of 2004 requires that a lawsuit to the PHI be accompanied by the record of mediation or conciliation, and a lawsuit that lacks it is returned to the claimant.[28] The consequence is that those stages remain a precondition for the claimant's suit even if they have lost their former function as a stage towards dismissal. Whether this combination was intended, and whether it is efficient, is a matter for the legislature; for dismissed workers the point is that these stages remain a chance to settle early, but no longer decide when the dismissal takes effect.

During the process the employer cannot simply stop paying. Article 157A requires both parties to continue to perform their obligations until the dispute is resolved, allows the employer to suspend a worker who is facing dismissal but only if the wage and other usual rights continue to be paid, and, after the Court's decision, ties the end of the obligation to a final and binding decision.[29] This is a significant protection because the main economic harm for a dismissed worker during a dispute is the loss of income while waiting for a decision. The employer's side of the bargain is the right to suspend and so to remove the worker from the premises. There are at least two weaknesses. The first is that the rule is silent on what happens if the employer simply stops paying; the worker must then sue for wages, a separate dispute of rights, and the practical remedy is slow. The second is that the continued payment can be a substantial burden when the dispute runs through cassation, which is an incentive for employers to avoid the dispute altogether, by negotiating a settlement or, less legitimately, by pressuring the worker to resign. A resignation requires no determination and no notification under Article 151A, and the worker who resigns receives less than the one who is dismissed.

The employment agreement also shapes the outcome of a dispute. It is the legal basis on which the worker claims, and the principle in the Civil Code that

[27] Maulana, *supra* note 14.
[28] Law No 2 of 2004, *supra* note 6, art 83(1).
[29] Law No 13 of 2003, *supra* note 2, art 157A.

agreements lawfully made bind the parties as statutes[30] applies, but subject to the mandatory rules of manpower law: an agreement cannot give the worker less than the statute provides. Where the agreement is silent, company regulation or a collective labour agreement may fill the gap, and where they are silent too the statutory minimum applies. The validity of the agreement itself depends on the conditions of Article 1320 of the Civil Code, not on Article 1338.[31]

The Rights of Dismissed Workers

When employment ends other than by the worker's own fault, the employer must pay three components: severance (*uang pesangon*), a service award (*uang penghargaan masa kerja*, UPMK) and entitlement compensation (*uang penggantian hak*, UPH).[32] Severance rises with length of service from one month of wage for less than a year to nine months for eight years or more. The service award begins at three years of service, at two months, and rises to ten months at twenty-four years or more. Entitlement compensation covers unused annual leave that has not lapsed, the cost of return travel for the worker and family to the place of hire, and other matters set by the agreement, company regulation or collective agreement.[33] The earlier component equal to fifteen percent of severance and service award for housing and medical care is no longer in the statute. Table 2 sets out the scale of severance and service award.

Table 2. Severance and service award by length of service (months of wage)

Length of service	Severance (uang pesangon)	Service award (UPMK)
Less than 1 year	1	–
1 year to less than 2 years	2	–
2 years to less than 3 years	3	–
3 years to less than 4 years	4	2
4 years to less than 5 years	5	2
5 years to less than 6 years	6	2
6 years to less than 7 years	7	3
7 years to less than 8 years	8	3
8 years to less than 9 years	9	3
9 years to less than 12 years	9	4
12 years to less than 15 years	9	5
15 years to less than 18 years	9	6
18 years to less than 21 years	9	7
21 years to less than 24 years	9	8
24 years or more	9	10

Source: compiled by the authors from Article 156(2)–(3) of Law No 13 of 2003 as amended by Law No 6 of 2023; the scale applies to termination on a ground that carries full entitlements. Check against the official text of the Act.

[30] Burgerlijk Wetboek [Civil Code] (Indonesia), art 1338.
[31] *Ibid*, art 1320.
[32] Law No 13 of 2003, *supra* note 2, art 156(1).
[33] *Ibid*, art 156(2)–(4).

The scale in Table 2 is the starting point, not the amount in every case. Government Regulation No 35 of 2021 attaches different multipliers to different grounds of termination: the full scale applies, for example, where the employer ends the relationship for reasons not attributable to the worker's conduct, whereas reduced multipliers apply where the enterprise closes because of losses or force majeure, and the entitlements of a worker dismissed for a violation of the agreement, company regulation or collective agreement are lower still.[34] The multiplier for each ground is not reproduced here, and the table in the regulation should be used for any calculation. A worker who resigns of his or her own will, and who is not entitled to severance or service award, receives entitlement compensation and, if the agreement, company regulation or collective agreement provides it, separation pay (*uang pisah*).[35] A worker who asks the court to terminate the relationship because of the employer's conduct, for example assault or insult, non-payment of wages for three consecutive months or longer, or an order to do work outside the agreement, is dismissed for a ground attributable to the employer and is in a better position than one who simply resigns.[36]

Two groups were treated in earlier accounts as having no entitlement at all: workers dismissed during a probationary period and workers on fixed-term agreements. The second statement is out of date. Government Regulation No 35 of 2021 gives workers on a fixed-term agreement compensation when the agreement ends, calculated on their length of service, so that the end of the term is no longer entirely without payment.[37] In addition, Law No 6 of 2023 and Government Regulation No 37 of 2021 created a job-loss security programme administered through the social security system, which pays a cash benefit and gives access to training and information about vacancies to eligible workers who lose their jobs.[38] The programme does not replace severance; it supplements it, and eligibility depends on being registered and on the conditions in the regulation. The common assumption that a dismissed worker receives a single payment is therefore too narrow. In 2026 the worker may receive up to four types of money: severance, service award, entitlement compensation (or the fixed-term compensation) and the job-loss benefit.

[34] Government Regulation No 35 of 2021, *supra* note 8.
[35] Law No 13 of 2003, *supra* note 2, art 156(4).
[36] Lalu Husni, *Pengantar Hukum Ketenagakerjaan Indonesia [Introduction to Indonesian Manpower Law]* (Jakarta: RajaGrafindo Persada, 2003).
[37] Government Regulation No 35 of 2021, *supra* note 8.
[38] Government Regulation No 37 of 2021 on the Job Loss Security Programme (Indonesia).

A last point concerns the wage on which these amounts are calculated. The older Government Regulation No 8 of 1981 on wage protection, sometimes still cited, has been replaced by successive wage regulations, the present one being Government Regulation No 36 of 2021.[39] The regulation distinguishes the basic wage and fixed allowances from variable payments; the wage used to calculate severance and the other payments should be the components defined in Law No 13 of 2003 as amended and the regulations, and the wage that the employer actually paid, in the agreement or the payslips, is the evidence. Disputes about the amount are among the most common ones that reach the courts, because the employer and the worker often differ on which components count. The legal certainty of a worker's claim therefore depends on the clear drafting of the employment agreement and the company regulation.

Settlement of Termination Disputes under Law No 2 of 2004

Law No 2 of 2004 defines a termination dispute as a disagreement over the ending of the employment relationship by one of the parties.[40] The route is graded. The first stage is bipartite negotiation between the employer and the worker or union, which has to be completed within thirty days; if one party refuses to negotiate, or negotiation takes place without agreement, it is deemed to have failed.[41] The second stage begins when one or both parties register the dispute with the manpower agency of the district or city, enclosing proof that negotiation has been attempted. The agency offers the parties a choice between conciliation and arbitration; if they do not choose within seven working days, the dispute is referred to a mediator.[42] Mediation may deal with all four kinds of dispute; conciliation may deal with disputes of interests, termination disputes and disputes between unions; arbitration is open only to disputes of interests and disputes between unions.[43] It follows that arbitration is not an option in a termination dispute, which corrects the frequent statement that arbitration is among the routes open to a dismissed worker.

If mediation or conciliation ends in an agreement, the agreement is recorded in a joint agreement (*perjanjian bersama*) signed by the parties, witnessed by the mediator or conciliator and registered at the PHI, and if a party breaches it, the other party may ask the PHI for execution. If there is no agreement, the mediator or conciliator issues a written recommendation, and if a party rejects it, that party may sue in the

[39] Government Regulation No 36 of 2021 on Wages (Indonesia).
[40] Law No 2 of 2004, *supra* note 6, art 1(4).
[41] *Ibid*, art 3.
[42] *Ibid*, art 4.
[43] *Ibid*, arts 8, 17 and 29.

PHI.[44] Mediation and conciliation have a time limit of thirty working days. The lawsuit must be accompanied by the record of the failed mediation or conciliation; without it, the court returns the claim.[45] Table 3 summarises the stages.

Table 3. Stages of settlement of a termination dispute under Law No 2 of 2004

Stage	Legal basis	Main features
Bipartite negotiation	Art 3	Between employer and worker or union; thirty days; failure if a party refuses or no agreement; by consensus after Decision 168/PUU-XXI/2023
Registration with the manpower agency	Art 4	Proof of negotiation attached; choice of conciliation or arbitration within seven working days, otherwise mediation
Mediation	Arts 8–16	All four kinds of dispute; thirty working days; joint agreement or written recommendation
Conciliation	Arts 17–28	Interest, termination and inter-union disputes; thirty working days; joint agreement or recommendation
Arbitration	Arts 29–54	Not available for termination disputes
Industrial Relations Court	Arts 55–115	Civil procedure of the general courts unless otherwise provided; career judge and ad hoc judges; no court fee for claims below Rp 150,000,000; decision within fifty working days of the first hearing
Cassation	Arts 56 and 115	Supreme Court; thirty working days from receipt of the application

Source: compiled by the authors from Law No 2 of 2004; the time limits and article ranges should be checked against the official text of the Act.

The first stage deserves a comment, because it is where most disputes should end. Law No 2 of 2004 deems bipartite negotiation to have failed if one party refuses to negotiate or if thirty days pass without agreement.[46] The rule is practical, since it prevents a party from blocking access to the next stage, but it also means that a refusal to negotiate carries no sanction, and the bipartite stage can become a formality that is completed on paper in order to obtain the record needed to proceed. The Constitutional Court's requirement that the negotiation be conducted through deliberation to reach consensus is a response to this risk, but the statute still attaches no consequence to a party that negotiates in bad faith. Practical protection therefore depends on whether the union or the worker's representative is present at the table, and on whether the employer sees the continuing wage obligation of Article 157A as a reason to settle early. Dismissed workers without a union, who may be common in small enterprises, are in the weakest position at this stage.

The PHI is a special court within the general courts and has the competence to try and decide industrial relations disputes.[47] Its introduction altered the system in two respects that earlier writers rightly stress. Settlement moved from the executive, which under the previous legislation decided disputes through administrative bodies, to the judiciary; and the procedure follows the civil procedure of the general

[44] *Ibid*, art 13.
[45] *Ibid*, art 83(1).
[46] *Ibid*, art 3.
[47] *Ibid*, art 56.

courts, the colonial procedural regulations (*Herziene Inlandsch Reglement* and *Rechtsreglement voor de Buitengewesten*) as supplemented by the special provisions of Law No 2 of 2004.[48] For workers there is a concrete advantage: a claim of less than Rp 150,000,000 incurs no court costs, including the cost of execution.[49] The panel consists of a career judge and ad hoc judges proposed by the employers' and workers' organisations, which brings industrial knowledge into the court. A decision in a termination dispute can be taken to cassation, where the Supreme Court is to decide within thirty working days of the application.

The system as designed is quick: bipartite thirty days, mediation or conciliation thirty working days, trial fifty working days, cassation thirty working days. Added together and including the periods for registration and filing, a termination dispute can in theory be finished in roughly seven to eight months. The empirical reality may be different, and this study did not measure the duration of actual cases. What can be shown from the text is that the periods are structurally cumulative, and that the effect of Decision No 168/PUU-XXI/2023 is to make the whole period one in which the dismissal has no effect while the worker is owed wages. This puts pressure on the enterprise to settle in the early stages and on the courts to keep to the statutory periods.

The Role of the Industrial Relations Court and Legal Certainty

The Industrial Relations Court gives legal certainty to a dismissed worker in three ways. It determines whether the dismissal was lawful, which settles the status of the employment relationship; it determines the amount owed, thereby translating the statutory scale and the contractual terms into a sum; and it issues an enforceable judgment. The first function depends on the law the court applies. Because the amended law contains few express substantive rules on the lawfulness of termination apart from the grounds in Article 154A and the prohibitions in Article 153, the judge has to apply the grounds of Government Regulation No 35 of 2021 to the facts, and the quality of this application determines whether workers and employers can predict outcomes.

The judge is bound in two ways. The court cannot refuse to decide a case on the ground that there is no law or that the law is unclear, and a judge who finds that there is no applicable provision must seek the law, and the values of justice that live in society.[50] Older accounts cite Article 16(1) of Law No 4 of 2004 for this; that statute

[48] *Ibid*, art 57.
[49] *Ibid*, art 58.
[50] Law No 48 of 2009 on Judicial Power (Indonesia), arts 5(1) and 10(1).

has been replaced by Law No 48 of 2009, in which the principle is now stated. The second constraint is that in civil procedure the judge decides within the claims made, so a worker who does not claim a component of the entitlement, for example the service award or the wage during the process, will not get it unless the claim is formulated broadly. It follows that the quality of the statement of claim, and of legal assistance for the worker, decides what a dismissed worker finally receives. This is one reason why the protection of the dismissed worker cannot be left to the court alone; the unions, the manpower agency and legal aid must prepare the worker's claim.

A comparison with the case discussed in the literature illustrates the point. Ginting's study of a cassation ruling of the Supreme Court on dismissal for serious misconduct concludes that settlement of such disputes does not yet satisfy the aim of a quick, accurate, fair and low-cost process.[51] The case concerns the pre-2020 regime, and the particular legal rule it applied has since been replaced, but the tension it reveals persists: the more the substantive ground for dismissal is open-textured, the more depends on the judge's assessment of the facts. After the amendments, grounds such as efficiency, closure after losses and violation of the agreement require proof of facts (financial statements, warning letters) which the employer controls and the worker finds hard to challenge. The Court's reading of Article 151 to require a final decision before dismissal is, in part, a response to this imbalance, since it prevents the employer from converting a contested ground into a completed fact.

The weakest point is execution. Law No 2 of 2004 provides for registration of joint agreements and for a request for execution, but contains no separate regime for the execution of PHI judgments; the general rules of civil procedure apply.[52] A worker with a final judgment awarding severance must therefore request the chairperson of the district court to order the employer to pay, and, if the employer does not, to seize its property. For a dismissed worker without income, this long path erodes the value of the judgment, particularly where the employer has closed or become insolvent. It is on this point that the practical effect of all the formal protection described above will be decided, and the observation that the dispute law does not regulate execution fully is accurate and important. A reform that gave the PHI a simpler execution procedure and a priority for workers' claims against the

[51] Ginting, *supra* note 13.
[52] Law No 2 of 2004, *supra* note 6, art 57.

employer's assets would do more for the fulfilment of the rights of dismissed workers than the repetition of the substantive rules.

Comparison with Earlier Research

The analysis confirms several findings of earlier research and departs from others. It agrees with Fatimah and with Ginting that the dismissal dispute is above all a dispute about compensation, and that the route outside and inside the court is graded and long.[5354] It confirms Uwiyono's observation that many labour disputes arise from the violation of normative rights that the statute already fixes,[55] since the disputes in dismissals are in large part about whether and how much the statutory scale has been applied. It departs from Fatimah's statement that a worker dismissed for serious misconduct receives only entitlement compensation, because that rule belongs to the regime of the former Articles 158 to 160, which no longer exist; the amount now depends on the ground in Government Regulation No 35 of 2021. It also departs from accounts that describe the requirement of a prior determination of the dispute-settlement institution as the rule of the present law: that requirement was removed by Law No 6 of 2023 and has been re-created, in a different form, by the Constitutional Court's reading of Article 151(4).

On the effect of Decision No 168/PUU-XXI/2023 on mediators, the present analysis supports the observation that the decision reduces the practical importance of the pre-litigation stage for termination,[56] but adds that mediation and conciliation continue to be a procedural precondition for suit, so their role changes rather than disappears. It differs from earlier studies in method as well, as they rely on the text of 2003 or on interviews with court officials from several years ago, whereas this study covers the present text and the decision of the Court, but does not examine how courts in fact decide. That is the main limitation of the comparison, and it points to a gap which further empirical work should close: the collection of PHI and cassation decisions since Law No 6 of 2023, and since Decision No 168/PUU-XXI/2023, to test whether judges apply the new reading and whether the amounts awarded respect the minimum scale.

Conclusion

[53] Fatimah, *supra* note 12.
[54] Ginting, *supra* note 13.
[55] Uwiyono, *supra* note 5 at 215.
[56] Maulana, *supra* note 14.

On the first question, the study finds that under Law No 13 of 2003 as amended by Law No 6 of 2023, Government Regulation No 35 of 2021 and Constitutional Court Decision No 168/PUU-XXI/2023, an employer who wishes to dismiss a worker must try to avoid the dismissal, notify the worker, negotiate bipartitely by consensus and, if the worker refuses, obtain a final and binding decision from the dispute-settlement institution before the dismissal takes effect. Until then the wage and other rights continue. A dismissal on a prohibited ground is void by law. The description of the procedure in older sources, based on a prior determination and on the evidence list of the former Article 158, is out of date.

On the second question, a dismissed worker is entitled to severance, a service award and entitlement compensation, calculated by length of service and adjusted by the ground of termination; the severance scale is a minimum. A worker on a fixed-term agreement receives compensation at the end of the term, and eligible workers receive job-loss security benefits. The view that dismissed workers receive only severance and entitlement compensation holds for some grounds, such as resignation or violation of the agreement, but is not a general rule in 2026.

On the third question, disputes are settled by a sequence of bipartite negotiation, mediation or conciliation (arbitration is not open to termination disputes), trial in the PHI and cassation. The court gives legal certainty by deciding the lawfulness of the dismissal and the amount owed, within the claims made and the law as it stands, but the weakness lies in the length of the path and in the execution of judgments, which Law No 2 of 2004 does not regulate separately.

Three recommendations follow. First, the Labour Protection Law and the revision of Law No 2 of 2004 should state expressly the rule of Decision No 168/PUU-XXI/2023 on the finality of the decision, the continuing payment of wages and the minimum amounts, and should decide whether mediation and conciliation remain a precondition for suit. Second, the PHI should be given a simpler execution procedure, with a priority for the claims of dismissed workers on the employer's assets. Third, the Ministry of Manpower, the unions and legal-aid organisations should help workers to formulate complete claims, including the service award, entitlement compensation and wages during the process. The study is limited by its normative design: it analysed no court decisions beyond the Constitutional Court's, it relied on press reports for the status of the Labour Protection Law, and further research should test the conclusions against PHI and cassation decisions issued under the amended law.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials and literature used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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