



Meaning of Unlawful and Unjust Termination of Employment in Labor Law: A Perspective from International Law and National Law

Makna PHK Tidak Sah dan Tidak Adil dalam Hukum Ketenagakerjaan Perspektif Hukum Internasional dan Hukum Nasional

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Abstract: This article examines the legal protection and justice for workers/laborers for unlawful termination of employment through a comparison between Indonesian labor law and international labor law standards. The main problem lies in the absence of an explicit normative definition of unlawful layoffs and the absence of a special compensation standard for workers/laborers who are terminated without valid reasons or without proper procedures. This study uses normative legal research methods with legislative, conceptual, case, and comparative approaches. The analysis focused on Indonesia's labor regulations, industrial relations dispute resolution mechanisms, the Government Regulation on layoffs, ILO Convention No. 158, the discourse on international labor rights, and court rulings related to unlawful layoffs. The results of the study show that Indonesian law has regulated layoff procedures and workers' rights, but has not explicitly distinguished between legal layoffs and unlawful layoffs as a separate legal category. In contrast, international labor law emphasizes the principles of legitimate cause, fair procedure, human dignity, and effective remedies as the standard of protection against unjust layoffs. This article argues that unlawful layoffs need to be constructed as a specific violation of a law that demands restorative justice, certainty of compensation, and access to effective dispute resolution.

Keywords: industrial relations dispute; legal protection; remedial justice; unlawful termination; workers' rights

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INTRODUCTION

An employment relationship is a legal relationship that has a different character from an ordinary civil contractual relationship. The difference lies in the existence of elements of work, wages, and orders that place workers/laborers in a subordinate position to employers. In this kind of relationship, the worker/laborer is not only bound to perform the work, but is also in the structure of the work organization controlled by the employer. This subordinate character is the reason why labor law cannot be understood only as contract law, but as an instrument of protection for parties who are economically and structurally in a weaker position. Davidov asserts that employment law is built to protect workers because employment relationships contain dependencies and vulnerabilities that are not found in ordinary commercial contracts (Davidov, 2016).

Termination of employment is one of the most sensitive points in industrial relations because it ends the legal relationship between workers/laborers and employers. For entrepreneurs, layoffs can be seen as part of managerial authority to maintain business sustainability, adjust work organizations, or respond to changes in economic conditions. For workers/laborers, layoffs have a direct impact on the loss of jobs, income, life security, and the ability to meet family needs. These differences in consequences show that layoffs cannot be placed solely as a company's internal business decision. Layoffs are legal actions that must be subject to legitimate reasons, fair procedures, and proportionate legal consequences for affected workers/laborers.

In modern employment law, termination of employment cannot be done without a justifiable basis. The International Labour Organization through *the Termination of Employment Convention, 1982 (No. 158)* emphasizes that employment relations should not be terminated without valid reasons, whether related to worker capacity, worker behavior, or the operational needs of the company (International Labour Organization, 1982). This principle shows that fairness in layoffs is not only determined by the fulfillment of formal procedures, but also by the existence of objective and provable substantive reasons. Collins also emphasized that the assessment of the reasons for layoffs is an important element in *the law of unfair dismissal*, since weak or insubstantial reasons can make the termination of the employment relationship unfair even if it is packaged through formal procedures (Collins, 2022).

Indonesia's labor law has basically stipulated that layoffs must be avoided. Law Number 13 of 2003 concerning Manpower as amended through Law Number 6 of 2023 emphasizes that employers, workers/laborers, trade unions, and the government must strive

to prevent layoffs from occurring (Indonesia, 2003; Indonesia, 2023). Employers are also required to give notices, convey the reasons for layoffs, open negotiation rooms, and take industrial relations dispute resolution mechanisms if workers/laborers reject layoff plans. Government Regulation No. 35 of 2021 regulates the grounds for layoffs and workers' rights due to the termination of employment relationships, while Law No. 2 of 2004 provides a dispute resolution mechanism through bipartite negotiations, mediation, conciliation, arbitration, and Industrial Relations Courts (Indonesia, 2004; Indonesia, 2021).

The arrangement has not fully answered the problem of illegal layoffs. Indonesia's positive law has not provided an explicit definition of unlawful layoffs, distinguishing parameters between legal layoffs and unlawful layoffs, as well as special compensation standards if layoffs are carried out without a valid reason or without proper procedures. The incompleteness of these norms opens up a wide space for interpretation in the practice of industrial relations. Layoffs without written notice, without bipartite negotiations, based on unproven allegations, under the pretext of resignation, or using reasons of efficiency without sufficient evidence, often only obtain a legal judgment after the worker/laborer files a lawsuit with the Industrial Relations Court.

The problem becomes more complex because layoffs that are considered invalid do not always lead to the restoration of employment relationships. In judicial practice, a damaged employment relationship is often considered difficult to continue, so judges determine the form of recovery through compensation. At this point, the court decision shows variations in the legal basis and variations in the amount of rights granted to workers/laborers. This research paper also shows that the disparity in verdicts in cases of unlawful layoffs is influenced by the absence of explicit definitions, the absence of standard parameters, and the absence of special compensation standards for workers/laborers who experience unlawful layoffs.

This inconsistency has a direct impact on legal certainty and worker protection. Workers/laborers cannot clearly estimate what rights will be obtained when the layoffs are declared invalid. Employers also do not have definite guidelines regarding the legal consequences if they lay off without a valid reason or procedure. From the perspective of legal certainty, such a situation shows the weak predictability of norms and the consistency of their application. Fuller stated that a good law must meet the requirements of clarity, consistency, and conformity between norms and their implementation in order to be an effective guideline of behavior (Fuller, 1969). Thus, the unclear norm of unlawful layoffs not only raises technical

problems in dispute resolution, but also weakens the function of law as an instrument of protection.

Justice for workers/laborers for unlawful layoffs is not enough to be interpreted as ordinary severance payment. Unlawful layoffs are actions that contain violations of legal procedures, substantive reasons, and the dignity of workers as legal subjects in employment relations. In the framework of relational justice, Collins explained that employment relationships contain standards of justice that originate from the employment relationship itself, including the obligation to treat workers appropriately, not arbitrarily, and respect the position of workers as human beings who depend on work to build their social and economic lives (Collins, 2023). Therefore, recovery from unlawful layoffs needs to go beyond the minimum compensation approach and be directed at the restoration of proportionate rights.

Based on this description, this article examines two main issues. First, what is the meaning of unlawful and unfair termination of employment in Indonesian labor law. Second, how to construct the justice of workers' rights over illegal termination of employment. This article uses normative legal research with legislative, conceptual, case, and comparative approaches. The legal materials analyzed include the Labor Law, the Job Creation Law, the Industrial Relations Dispute Settlement Law, Government Regulation Number 35 of 2021, ILO standards, labor law doctrines, and court decisions that show variations in the meaning and legal consequences of unlawful layoffs. With this approach, this article argues that unlawful layoffs need to be constructed as a violation of the law that has special consequences, so that workers/laborers obtain more certain, proportional, and equitable protection and restoration of rights.

RESULT AND DISCUSSION

The Meaning of Unlawful and Unfair Termination of Employment in Indonesian Labor Law

Termination of employment cannot be understood only as the end of the contractual relationship between workers/laborers and employers. In labor law, layoffs are legal actions that have a direct impact on the survival of workers/laborers because they end the right to work, wages, and economic certainty. Therefore, termination of employment must be placed within a broader framework than just freedom of contract. Employment relations have a special character because workers/laborers are in a subordinate position and dependent on the employer, so labor law needs to limit the authority of employers so that they do not develop into arbitrary actions (Davidov, 2016).

In this context, a legitimate layoff must meet two main measures, namely substantive measures and procedural measures. Substantive measures are related to the existence or absence of a valid reason to terminate the employment relationship, while procedural measures are related to the procedures that must be taken before layoffs are carried out. The two sizes are inseparable. Layoffs that are carried out with formal procedures but do not have a valid reason remain legally problematic. Conversely, layoffs that have a specific reason but are carried out without proper procedures also cannot qualify as fair layoffs. Collins emphasized that the reason for layoffs is an important element in *the unfair dismissal law* for reasons that are not substantial can weaken worker protections and leave too much room for employers to justify layoff decisions (Collins, 2022).

International standards also affirm that layoffs must be based on valid reasons. ILO Convention No. 158 concerning Termination of Employment at the Initiative of the Employer affirms that workers should not be dismissed unless there is a valid reason related to the capacity of the worker, the behavior of the worker, or the operational needs of the company (International Labour Organization, 1982). The principle of *valid reason* shows that layoffs should not be based on subjective reasons, unproven allegations, or considerations that are not related to the company's capacity, behavior, or objective needs. In this sense, the reason for layoffs must be testable, proven, and legally accountable.

Indonesian labor law has regulated a number of norms regarding the legal reasons, prohibitions, procedures, and consequences of layoffs. Law Number 13 of 2003 concerning Manpower as amended through Law Number 6 of 2023 places layoffs as an action that must be sought to be avoided. Government Regulation Number 35 of 2021 then regulates the reasons for layoffs, notification procedures, negotiations, and workers' rights due to layoffs. Law Number 2 of 2004 also affirms the settlement of industrial relations disputes through bipartite negotiations, mediation, conciliation, arbitration, and the Industrial Relations Court if no agreement is reached (Indonesia, 2004, 2021, 2023).

Nevertheless, Indonesia's positive law has not provided an explicit formulation of "unlawful layoffs" as a stand-alone normative category. The existing provisions regulate more reasons for layoffs, layoff procedures, workers' rights, and the prohibition of layoffs for certain reasons. As a result, the meaning of unlawful layoffs must be built through a systematic reading of several provisions, especially norms on layoff notifications, bipartite negotiations, industrial relations dispute resolution, the prohibition of layoffs, the reasons for layoffs, and

the obligation to pay workers' rights. The absence of an explicit definition causes illegal layoffs to often only obtain their concrete form through a court decision.

Conceptually, an unlawful layoff can be understood as a layoff that is carried out without a valid legal basis, without a specified procedure, or contrary to a legal prohibition. This meaning places illegal layoffs as a matter of legality. Thus, the main measure is whether the employer's actions are in accordance with positive legal norms that govern the reasons, procedures, prohibitions, and legal consequences of layoffs. If the employer lays off without written notice, refuses negotiations when the worker/laborer expresses objections, does not take the industrial relations dispute resolution mechanism, or uses unprovable reasons, then the action can be qualified as an invalid layoff.

Unfair layoffs have broader pressures than unlawful layoffs. Unfair layoffs not only assess whether the employer's actions violate the law are positive, but also assess whether workers/laborers are treated appropriately, proportionately, humanely, and not arbitrarily. Within the framework of relational justice, employment relations contain a moral and legal obligation for employers to treat workers as subjects with dignity, not just objects of managerial decisions. Hugh Collins explains that justice in work can be derived not only from the principle of general social justice, but also from the relational character of employment relations that demand respect, participation, and reasonable treatment of workers (Collins, 2023).

The difference between unlawful layoffs and unfair layoffs is important to emphasize. Unlawful layoffs are oriented towards violations of legal norms. Unfair layoffs are oriented towards the unsuitability of the process, reasons, and consequences of the termination of the employment relationship. A layoff can be both invalid and unfair if it is carried out without a valid reason and without proper procedures. However, a layoff can also be questioned as unfair even if the employer attempts to frame it within certain formal reasons, for example when efficiency reasons are used without sufficient evidence or allegations of misconduct are used without giving workers an opportunity to defend themselves. In such circumstances, formal legality should not close the judgment on substantive justice.

In Indonesian labor law practice, unlawful layoffs can appear in several forms. First, layoffs are carried out without written notice to workers/laborers or labor unions/labor unions. Second, layoffs are carried out without bipartite negotiations when workers/laborers reject the layoff plan. Third, layoffs are carried out without first resolving disputes through industrial relations mechanisms. Fourth, the layoffs were carried out based on disciplinary violations without the required warning letter stages. Fifth, the layoffs were carried out under

the pretext of resignation, even though the resignation was not voluntary. Sixth, layoffs are carried out for reasons of efficiency or loss of the company without objective proof. This category is in line with the construction in the research manuscript that links unlawful layoffs with violations of Article 151, Article 154A, and Government Regulation No. 35 of 2021.

The following table can be used to clarify the category of unlawful layoffs and the basis for their testing in Indonesian labor law.

Table 1. Categories of Unlawful Termination of Employment and Its Testing Basis

Category of Unlawful Layoffs	Forms of Violation	Testing Policy	Relevant Legal Consequences
Layoffs without written notice	Workers/laborers are not given official information about the reasons and plans for layoffs	Article 151 of the Manpower Law as amended by the Job Creation Law; Government Regulation No. 35 of 2021	Layoffs can be questioned for not meeting the initial procedures
Layoffs without bipartite negotiations	Employers do not open a dialogue space when workers/laborers reject layoffs	Law No. 2 of 2004; Government Regulation No. 35 of 2021	Disputes must be resolved through industrial relations mechanisms
Layoffs without dispute resolution	Employer terminates employment relationship unilaterally without formal mechanism	Law No. 2 of 2004; Article 151 of the Labor Law	Layoffs can be considered procedurally defective
Layoffs based on unproven allegations	The reason for layoffs is not supported by objective evidence	The Principle of <i>Valid Reason</i> ; The Standard of Proof in Court	Employees are entitled to the restoration of rights
Layoffs under the pretext of resignation	Resignation is not done freely and voluntarily	Provisions for resignation in Government Regulation No. 35 of 2021	Can qualify as a disguised layoff

Layoffs due to efficiency without evidence	The reason for the company's efficiency or losses is not supported by adequate data	Government Regulation No. 35 of 2021; The Principle of Proportionality	Compensation and legal consequences need to be determined fairly
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Source: Processed by the author based on Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement; Law No. 13 of 2003 concerning Manpower as amended by Law No. 6 of 2023; Government Regulation No. 35 of 2021; ILO Termination of Employment Convention, 1982 (No. 158); and Collins (2022).

The table shows that unlawful layoffs cannot be reduced to just one form of violation. Unlawful layoffs can be born from procedural defects, defects in reason, violations of legal prohibitions, abuse of formal reasons, or failure of the employer to prove the basis for layoffs. Therefore, the assessment of invalid layoffs must be carried out in layers. It is not enough for the court to only check whether the employer has submitted a reason for layoff, but also to assess whether the reason is valid, relevant, proven, proportionate, and pursued through the correct procedures.

The construction also helps distinguish between *unlawful termination* and *unfair dismissal*. *Unlawful termination* is closer to a positive violation of law, while *unfair dismissal* emphasizes injustice in the reason, process, and consequences of termination of employment. In the comparative labor law tradition, *unfair dismissal* develops to limit the employer's power not to use contractual relationships as a basis for arbitrary dismissal. Collins considers that *the law on unfair dismissal* must pay serious attention to the substance of the reason for layoffs so that worker protection does not stop at formal procedures (Collins, 2022). Thus, the term unlawful layoffs in the Indonesian context should not only be understood as a procedural violation, but also as a violation of substantive conditions that are the basis of justice in termination of employment.

The meaning of unlawful layoffs must also be associated with the position of workers/laborers as vulnerable parties in industrial relations. Layoffs that are carried out unilaterally without an objective reason can worsen the inequality of position between workers and employers. Within the framework of employment justice, workers not only need compensation payments after job loss, but also need assurance that layoff decisions are taken reasonably, testable, and do not degrade their dignity as human beings. Bogg emphasized that labor law is not enough to regulate formal rights, but must ensure effective remedies

when workers are in a position that is disadvantaged by an unbalanced labor relationship structure (Bogg, 2012).

The absence of an explicit definition of unlawful layoffs in Indonesia's positive law has an impact on the non-uniformity of the law given by the courts. In some cases, layoffs whose reasons are not proven still lead to the end of the employment relationship because the relationship between workers/laborers and employers is considered no longer harmonious. In such conditions, judges often use the construction of layoffs due to efficiency, layoffs without worker error, or layoffs that are equated with early retirement to determine compensation. This research paper shows that this pattern causes problems because the root of the problem is not efficiency or retirement, but layoff actions that from the beginning do not have a valid basis or procedure.

From the perspective of legal certainty, this situation indicates the existence of a vacuum or incompleteness of norms. Positive law has regulated layoffs in general, but has not provided specific categories and legal consequences for unlawful layoffs. As a result, workers who are in similar circumstances can obtain different forms of recovery. This condition not only creates uncertainty for workers, but also reduces the legal deterrence of employers who lay off without a legitimate basis. In this framework, unlawful layoffs need to be formulated as a legal category that has special parameters and consequences, not just as a variation of other reasons for layoffs that have been regulated in Government Regulation No. 35 of 2021.

Based on this analysis, this subchapter finds that the meaning of unlawful and unfair layoffs in Indonesian labor law must be constructed through a legal-substantive approach. An unlawful layoff is a layoff that is unlawful for not meeting a legitimate reason, required procedure, or certain legal prohibitions. Unfair layoffs are layoffs that, although they may be wrapped in a certain formal form, still do not meet the standards of feasibility, proportionality, proof, and respect for the dignity of workers. The two are interrelated because unlawful layoffs almost always contain elements of injustice, while unfair layoffs can be the basis for re-examining the adequacy of applicable legal norms. Thus, the regulation of layoffs in Indonesia needs to be directed towards the formulation of clearer definitions, more measurable parameters, and more consistent legal consequences for workers/laborers who experience unlawful layoffs.

Protection against Unlawful Termination of Employment in the Perspective of International Employment Law

Unlawful termination of employment is not only a national labor law issue, but also related to the development of international labor law standards. Within the framework of international law, the protection of workers is no longer understood solely as an issue of domestic industrial relations, but rather as part of the agenda for the protection of workers' rights in the global legal system. This development shows that employment relations cannot be completely left to market logic or freedom of contract, because workers are in a vulnerable position to the employer's use of economic and organizational power. Alston explained that the international labor rights regime underwent a transformation through the strengthening of core labor standards that placed worker protection as an important part of the modern international legal system (Alston, 2004).

In this context, the International Labour Organization has an important position as an international institution that establishes normative standards for worker protection. ILO standards not only serve as a moral reference, but also as a benchmark for countries in formulating fair labor policies. The debate over core labor standards shows that international labor law is not always easy to apply uniformly because each country has different economic structures, legal systems, and labor market conditions. However, this complexity does not diminish the importance of international standards as a framework to prevent labor practices that harm workers (Alston, 2005). In relation to unlawful layoffs, international standards are important to assess whether national law has placed sufficient limits on the employer's authority to terminate an employment relationship.

One of the main principles in international labor law regarding layoffs is the principle of valid reason. ILO Convention No. 158 concerning Termination of Employment at the Initiative of the Employer affirms that workers should not be dismissed unless there is a valid reason related to the capacity of the worker, the behavior of the worker, or the operational needs of the company (International Labour Organization, 1982). This principle rejects termination of employment that is carried out only based on the employer's unilateral will, subjective reasons, or pretexts that cannot be objectively proven. Thus, the ILO standard directs that the validity of layoffs must be tested through two main measures, namely the existence of valid substantive reasons and the fulfillment of fair procedures.

The principle of *valid reason* is also closely related to the right of workers to receive fair treatment before the employment relationship ends. Workers should be informed of the reasons for the layoffs, given the opportunity to defend themselves, and gain access to an

independent dispute resolution mechanism. Such protections suggest that layoffs should not be viewed as ordinary managerial actions, but as legal decisions that have a direct impact on the lives of workers. In this perspective, layoffs that are carried out without a testable reason, without an opportunity to defend themselves, or without an effective forum of objection can be categorized as a form of termination of an employment relationship that is contrary to international labor law standards.

The development of international law also shows a tendency to read protections against unjustified dismissal as part of human rights. Collins stated that there is beginning to be recognized for the right to protection from unjustified dismissal as a growing right within the human rights framework (Collins, 2021). This view is important because unlawful layoffs not only cause economic losses, but can also impact the dignity, social identity, family life, and ability of workers to maintain a decent standard of living. Thus, protection against unlawful layoffs cannot be reduced to a matter of severance pay, but must be placed within the framework of protecting human dignity in employment relationships.

The question of whether employment rights are part of human rights is also an important concern in the international labour law literature. Mantouvalou emphasized that workers' rights can and need to be understood as human rights because they concern the basic conditions that allow a person to live with dignity (Mantouvalou, 2012). In the context of unlawful layoffs, this view provides the basis that workers should not be treated as objects whose employment can be unilaterally terminated without proper reasons and procedures. Workers are legal subjects who have the right to be treated fairly, heard, and given redress when their rights are violated.

The human rights approach to worker protection is also seen in the development of European law. Mantouvalou explained that employment rights can be read in an integrated manner with the European Convention on Human Rights, especially when employment practices have an impact on the freedom, dignity, and protection of individuals in social life (Mantouvalou, 2013). Protection from unjustified dismissal was then strengthened through European social instruments, including the European Social Charter and the EU Charter of Fundamental Rights. Papadopoulos points out that the European Social Charter has an important role to play in assessing dismissal law reforms, particularly when changes in national law weaken workers' protections against unfair termination (Papadopoulos, 2023).

The linkage between international law and European regional law shows that worker protection develops through the interaction of various legal sources. Robin-Olivier explained

that the relationship between international law and European labor law has an impact on the development of international and European social law, especially in strengthening worker protection standards at the national level (Robin-Olivier, 2020). In this context, international standards do not always work as rules that directly replace national laws, but as normative sources that influence the way states formulate, interpret, and implement employment protections. Therefore, Indonesian law can use international standards as a conceptual reference to clarify the meaning of unlawful layoffs and a form of fair redress.

The debate over core labour standards also suggests that international labour law must be understood dynamically. Langille criticizes the overly narrow approach to core labor standards and emphasizes the need to read workers' rights in a broader framework, including the relationship between freedom, human capacity, and social justice (Langille, 2005). This view is relevant to unlawful layoffs because protections for workers do not simply stop at a formal prohibition against certain dismissals, but must ensure that workers are in a tangible position to reject, test, and obtain redress when layoffs are unlawfully executed.

In the international legal literature, labor rights are also understood as part of the legitimacy of the international legal order. Dukes states that international labor rights have a role in legitimizing the international legal order because it shows that the global legal system not only regulates markets, trade, and investment, but also provides a place for the protection of workers (Dukes, 2017). In the context of layoffs, this view emphasizes that economic efficiency and labor market flexibility should not be used as a basis for ignoring protections for workers who lose their jobs illegally. Employment law must maintain a balance between business needs and worker protection as part of social justice.

The development of European labour law also shows an increasing variety of sources that can affect worker protection. Schmitt and Rocca point out that the development of new sources in EU labour law expands the way workers' rights are understood and applied in national legal systems (Schmitt & Rocca, 2022). Although Indonesia is not in the European legal system, these developments remain relevant as a conceptual comparator. Protection against unlawful layoffs can be strengthened through the recognition that workers need clear standards regarding the reasons for layoffs, objection procedures, access to dispute resolution forums, and effective and proportionate compensation.

Based on the perspective of international labor law, there are three main standards that can be used to assess the illegal layoff arrangement in Indonesia. First, layoffs must be based on legitimate, objective, and provable reasons. Second, workers must obtain fair procedures, including notice, the opportunity to defend themselves, and access to dispute resolution

mechanisms. Third, if the layoffs are carried out illegally, workers must obtain effective recovery, either in the form of restoration of employment relationships or adequate compensation. These three standards show that unlawful layoffs should be understood as a violation that demands special legal consequences, not just a variation of ordinary layoffs. The following table can be used to clarify the relationship between international labor law standards and Indonesia's law enforcement needs.

Table 2. International Labour Law Standards on Protection Against Unlawful Termination

International Standard	Main Principle	Relevance to Unlawful Termination	Implication for Indonesian Labour Law
ILO Convention No. 158	Termination must be based on a valid reason	Layoffs should not be carried out without objective reasons related to capacity, behavior, or operational needs	An explicit definition of unlawful layoffs and standards for proving the reasons for layoffs is needed
Procedural fairness in termination	Workers must have an opportunity to respond and challenge dismissal	Layoffs without notice, self-defense, or objection mechanism are contrary to the principles of procedural fairness	Notification, bipartite, and dispute resolution procedures should be strengthened as a condition for the validity of layoffs
Human rights-based approach to dismissal	Protection against unjustified dismissal relates to dignity and livelihood	Unlawful layoffs have an impact on the dignity, income, and sustainability of workers' lives	Rehabilitation should go beyond ordinary severance pay and reflect the nature of the violation
European Social Charter and EU labour law development	Protection against unjustified dismissal requires adequate remedies	Compensation must be effective and have a preventive function	Need for special compensation standards for unlawful layoffs
International labour rights discourse	Labour rights are part of justice in the international legal order	Worker protection must not be defeated by the flexibility of the labour market	National law must balance the interests of businesses and workers' fairness

Source: Processed by the author, 2026

The table shows that international labor law standards can be used as a comparative framework to strengthen Indonesian law. International standards should not be understood as a substitute for national law, but as a normative source that helps explain the direction of a fairer arrangement. In the context of unlawful layoffs, international standards emphasize the importance of legitimate cause, fair procedures, and effective remedies. These three aspects are in line with Indonesia's legal needs to address the normative vacuum regarding the definition of unlawful layoffs, evidentiary standards, and special compensation for aggrieved workers.

Thus, the perspective of international labor law strengthens the argument that unlawful layoffs must be constructed as a legal category that has its own consequences. Indonesian law is not enough to regulate the reasons for layoffs and the rights resulting from layoffs in general, but it is necessary to clearly distinguish between legal layoffs, procedurally defective layoffs, layoffs that do not have substantive reasons, and layoffs that are contrary to legal prohibitions. Worker protection from an international perspective requires that any layoffs be based on valid reasons, pursued through fair procedures, and followed by effective redress in the event of a violation.

Based on this analysis, this subchapter finds that international labor law provides a strong normative basis for the reform of the unlawful layoff arrangement in Indonesia. The principles of *valid reason*, procedural fairness, human dignity, and effective remedy need to be integrated into the construction of national law so that workers/laborers obtain more certain and equitable protection. Such integration does not mean ignoring the interests of entrepreneurs, but ensures that business flexibility does not turn into legitimacy for arbitrary layoffs. Thus, the perspective of international labor law is an important basis for building a fair construction of workers' rights to unlawful layoffs in Indonesian law.

Construction of Justice of Workers' Rights on Unlawful Termination of Employment

The justice of workers' rights to unlawful termination of employment cannot be placed only on the payment of compensation as usual layoffs. Unlawful layoffs have a different character because they contain violations of the legal basis, procedures, or prohibitions that should limit the authority of entrepreneurs. In such circumstances, workers/laborers not only lose their jobs, but are also harmed by the act of terminating the employment relationship that does not meet legal standards from the beginning. Therefore, the construction of justice in unlawful layoffs must be built through a recovery that is able to correct violations, restore workers' rights, and provide a preventive effect so that similar actions do not recur.

From an employment law perspective, the protection of workers who have been unlawfully laid off is closely related to the right to work, human dignity, and access to justice. Collins explained that *the unfair dismissal law* does not always provide adequate protection for workers' rights if the legal mechanism only assesses the termination of the employment relationship as an ordinary contractual issue, not as an action that can have an impact on workers' fundamental rights (Collins, 2018). This view is important because illegal layoffs are not only a problem of the end of a work agreement, but also a problem of loss of livelihood and the social position of workers undeservedly.

The construction of justice in unlawful layoffs must start from the recognition that the employment relationship is an unbalanced relationship. Employers have managerial power, organizational control, and the ability to determine the sustainability of employment relationships. Workers/laborers are in a more vulnerable position because they depend on wages and do not have balanced bargaining power when faced with layoff decisions. This imbalance causes the restoration of workers' rights to be left to the agreement of the parties or to the discretion of judges without clear standards. The law needs to provide strict normative guidelines so that workers who experience unlawful layoffs receive definite and proportionate protection.

The main problem in Indonesia's positive law lies in the lack of a specific standard regarding the legal consequences of unlawful layoffs. The law has regulated the reasons for layoffs, layoff procedures, the prohibition of layoffs, and the rights of workers due to layoffs, but it has not explicitly regulated the specific consequences when layoffs are declared invalid. As a result, in judicial practice, judges often use different legal bases to determine compensation. Layoffs whose reasons are not proven can be equated with layoffs due to efficiency, layoffs without error, or layoffs that are equated with early retirement. This pattern shows that workers who experience unlawful layoffs have not always received recovery that reflects the nature of the violations committed by employers.

This disparity can be seen in the research paper, especially when the court decision states that layoffs cannot be justified, but the employment relationship is still declared terminated because it is considered no longer tenable. In one of the decisions analyzed, there was a difference in the amount of compensation between the PHI decision and the Supreme Court, even though both acknowledged that the workers were innocent and the layoffs were not justified. This shows that the main problem is not only the recognition that layoffs are

illegal, but also in the lack of a definite standard regarding the form and size of workers' rights restoration.

Justice for workers/laborers in unlawful layoffs needs to be built through three layers of recovery. First, procedural redress, which is the recognition that workers have the right to be notified, clear reasons, opportunities to refuse, negotiations, and dispute resolution through industrial relations mechanisms. Second, substantive recovery, which is an assessment of whether the reason for the layoff is really legal, relevant, objective, and proven. Third, remedial recovery, which is the provision of legal consequences that reflect the violations that occurred, both in the form of rehiring workers and proportionate compensation if the employment relationship is not possible.

The choice between rehiring workers and compensating must be placed carefully. Normatively, when a layoff is declared invalid, the restoration of employment relationships can be seen as the closest form of recovery to the previous situation. However, in practice, damaged employment relationships are often difficult to restore due to the loss of trust between workers and employers. Eguchi pointed out that in the case of *unjust dismissal*, there is a difference in function between recovery in the form of *reinstatement* and *damages*. *Reinstatement* can strengthen the bargaining position of workers, while compensation can be an alternative when the employment relationship is not possible to continue effectively (Eguchi, 2008). Thus, the law is not enough to simply choose one form of recovery rigidly, but it needs to provide a clear framework of choices.

In the Indonesian context, rehiring workers can be implemented if the layoffs are carried out in a tangible way against the legal prohibition and the employment relationship is still possible to be restored. However, if the employment relationship has become disharmonious and the restoration of the employment relationship is no longer effective, compensation must be given with a stronger standard than ordinary layoff compensation. This is because workers not only experience job loss, but also become victims of the actions of employers who violate the law. Therefore, compensation in unlawful layoffs should not only consist of severance pay, service award money, and compensation money, but also take into account process wages and additional elements of recovery for procedural or substantive violations that occur.

The need for specific compensation standards is also related to legal certainty. Auray et al. explain that severance pay in employment relations not only serves as a final payment, but also as an instrument influenced by legal mandates, negotiations, and worker protection in the face of the risk of losing their jobs (Auray et al., 2020). In the context of unlawful layoffs, the severance pay function needs to be expanded as an instrument of recovery for violations

of the law. Thus, compensation should not simply be a normal fee that the employer must pay when terminating the employment relationship, but must reflect the unlawful nature of the layoff.

Access to dispute resolution mechanisms is also an important element in the construction of justice. Ford emphasized that access to employment tribunals is not only important for the individual interests of workers, but also has a public function in ensuring the systemic implementation of employment rights (Ford, 2018). Busby and McDermont also point out that workers' experiences in accessing tribunals often face procedural, psychological, and structural barriers that make enforcement not always easy to enforce (Busby & McDermont, 2020). In the Indonesian context, this is relevant because workers who experience unlawful layoffs have to bear the burden of time, cost, and uncertainty during the dispute resolution process.

Based on this description, the construction of justice of workers' rights to unlawful layoffs needs to be placed in a model that combines normative certainty, proof of reasons, procedural protection, substantive remediation, and effectiveness of access to justice. This model can be described as follows.

Table 3. The Construction Model of Justice for Workers/Laborers' Rights to Unlawful Layoffs

The Dimension of Justice	Problems in Practice	Construction Offered	Expected Legal Consequences
Procedural fairness	Layoffs are carried out without notice, consultation, or dispute resolution mechanisms	Layoffs are mandatory through written notice, clear reasons, bipartite negotiations, and industrial relations mechanisms	Procedurally defective layoffs declared invalid and give rise to the right of redress
Substantive justice	The reason for the layoffs is not proven, is not objective, or is only used as a pretext	The reason for the layoff must be legal, relevant, proportionate, and provable	Layoffs without valid reasons give rise to stronger recovery obligations

Remedial justice	Unlawful layoffs often lead to termination of employment without special compensation standards	Recovery can be in the form of reinstatement or proportional compensation if the employment relationship cannot be continued	Employees obtain remedies that reflect the nature of the violation
Certainty of compensation	The amount of compensation in a judgment varies for similar cases	Need for specific standards for unlawful layoffs, including severance pay, merits, reimbursement, process wages, and additional remedies	Verdicts become more consistent and predictable
Access to justice	Workers face cost, time, and bargaining barriers in suing layoffs	The settlement mechanism should be accessible, fast, and effective	Legal protection does not stop at the norm, but works in practice
Preventive effects	Employers may consider unlawful layoffs as a common cost risk	The consequences of unlawful layoffs should be stricter than regular layoffs	Employers are encouraged to comply with the reasons and procedures for layoffs

Source: Processed by the author based on Indonesia (2004, 2021, 2023)

The table shows that the fairness of workers' rights to unlawful layoffs must be formulated more comprehensively. Procedural fairness ensures that workers are not terminated without due process. Substantive justice ensures that the reasons for layoffs are not one-sided, subjective, or manipulative. Remedial justice ensures that if a violation has occurred, the worker obtains a recovery that is commensurate with the nature of the loss. The

certainty of compensation ensures that workers in the same conditions do not receive unreasonably different legal treatment.

The construction also avoids two extreme weaknesses. On the one hand, the law should not force the restoration of employment relations in all cases, since a damaged employment relationship can create new conflicts and is not always effective for workers. On the other hand, the law should also not make compensation an ordinary way out that removes the unlawful character of unlawful layoffs. Compensation must be distinguished from ordinary layoff compensation because unlawful layoffs contain additional violations, both of procedures, reasons, and the right of workers to be treated fairly.

Thus, the standard of justice for workers/laborers for illegal layoffs must contain at least four elements. First, explicit recognition that layoffs are unlawful is a different legal category than ordinary layoffs. Second, the determination of clear parameters regarding layoffs is not valid, both from a procedural and substantive perspective. Third, the regulation of a tiered form of recovery, starting from rehiring workers to providing proportional compensation. Fourth, the establishment of special compensation standards that are able to provide legal certainty and prevent employers from laying off without a legitimate basis.

The main finding of this subchapter is that the fairness of workers' rights over unlawful layoffs must be constructed as restorative justice. Such justice is not enough to be realized with minimum severance payments, but must include recovery for job loss, procedural violations, the absence of legitimate reasons, and the uncertainty experienced by workers during the dispute process. Therefore, Indonesia's labor law needs to strengthen regulations regarding the definition of unlawful layoffs, standards of proof of reasons for layoffs, and more consistent and proportionate compensation standards so that worker protection is not only formal, but truly fair.

CONCLUSION

An unauthorized termination of employment cannot be understood only as an administrative violation in industrial relations, but as a legal action that contains procedural defects, substantive defects, or violations of legal prohibitions that have a direct impact on the rights, dignity, and survival of workers/laborers. The meaning of unlawful layoffs in Indonesian labor law needs to be built through more emphatic measures, namely the existence of legitimate reasons, the fulfillment of notification and negotiation procedures, the existence of objective proof, and compliance with the industrial relations dispute resolution mechanism.

The unclear regulation regarding the definition of unlawful layoffs and their compensation standards has led to differences in court decisions, especially when layoffs that do not have a proven reason still lead to the termination of employment relationships with varying compensation bases. Therefore, justice for workers/laborers for unlawful layoffs must be constructed as remedial justice that includes procedural protections, substantive assessments of the reasons for layoffs, certainty of compensation, and access to effective dispute resolution. The recovery can be in the form of re-hiring workers if the employment relationship is still possible, or proportionate compensation if the employment relationship can no longer be maintained. Thus, Indonesian labor law needs to explicitly formulate the category of unlawful layoffs along with their legal consequences, so that worker protection is not only formal, but is truly able to realize legal certainty, justice, and balance in industrial relations.

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