
ISLAMIC LEGAL REVIEW OF TERMINATION OF EMPLOYMENT FROM A
SHARIA ECONOMIC PERSPECTIVE: A COMPARATIVE STUDY WITH
INDONESIAN POSITIVE LAW

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ABSTRAK

Pemutusan Hubungan Kerja (PHK) merupakan isu krusial dalam hubungan industrial yang berdampak signifikan terhadap kesejahteraan pekerja dan stabilitas sosial ekonomi. Penelitian ini dilatarbelakangi oleh meningkatnya praktik PHK sepihak yang bertentangan dengan prinsip keadilan yang dijunjung oleh hukum positif Indonesia maupun ajaran Islam. Tujuan dari penelitian ini adalah untuk menganalisis dan membandingkan ketentuan hukum Islam dan hukum positif Indonesia terkait PHK, serta menilai sejauh mana peraturan nasional mencerminkan nilai-nilai keadilan dalam Islam. Penelitian ini menggunakan pendekatan kualitatif melalui studi kepustakaan dan analisis deskriptif-komparatif terhadap sumber-sumber hukum Islam—seperti Al-Qur'an, hadits, dan fikih muamalah—serta peraturan perundang-undangan ketenagakerjaan Indonesia. Hasil penelitian menunjukkan bahwa baik hukum Islam maupun hukum positif Indonesia sama-sama menekankan prinsip keadilan, melarang PHK secara sewenang-wenang, dan menganjurkan penyelesaian sengketa secara damai. Namun, kedua sistem hukum ini memiliki perbedaan dalam pendekatan normatif dan filosofisnya: hukum Islam menekankan nilai spiritual dan etika melalui konsep *ijarah* (akad kerja), sedangkan hukum Indonesia cenderung menggunakan pendekatan hukum formal. Penelitian ini menyimpulkan bahwa integrasi nilai-nilai Islam ke dalam praktik hukum ketenagakerjaan Indonesia berpotensi menciptakan sistem PHK yang lebih adil, bermartabat, dan berorientasi pada kesejahteraan.

Kata Kunci: Pemutusan Hubungan Kerja; Hukum Islam; Hukum Positif Indonesia; Akad Ijarah; Keadilan Industrial

ABSTRACT

Termination of Employment (PHK) is a crucial issue in industrial relations, with significant implications for workers' welfare and socio-economic stability. This study is motivated by the increasing prevalence of unilateral termination practices that contradict the principles of justice upheld by both Indonesian positive law and Islamic teachings. The objective of this research is to analyze and compare the legal provisions of Islamic law and Indonesian positive law regarding employment termination, and to assess the extent to which national regulations reflect the Islamic values of justice. This study adopts a qualitative approach through library research and employs a descriptive-comparative analysis of Islamic legal sources, such as the Qur'an, hadith, and fiqh muamalah, as well as Indonesian labor legislation. The findings indicate that both Islamic law and Indonesian

positive law emphasize justice, prohibit arbitrary termination, and advocate for the use of dispute resolution procedures. However, the two legal systems differ in their normative and philosophical approaches: Islamic law promotes spiritual and ethical values through the concept of ijarah (employment contract), while Indonesian law takes a formal legal approach. The study concludes that incorporating Islamic values into Indonesia's labor law practices can potentially foster a more equitable, dignified, and welfare-oriented system of employment termination.

Keywords: Termination of Employment; Islamic Law; Indonesian Positive Law; Ijarah Contract; Industrial Justice

A. INTRODUCTION

One of the problems that frequently arises in the employment world, particularly after a special agreement is made between workers and employers, is unilateral termination of employment, which often triggers conflict (Iskandar et al., 2024). The current prevalence of termination of employment is in stark contrast to Islamic principles. Islam values employment relationships and emphasizes fairness and responsibility between the parties involved (Laili, 2022). However, termination of employment (PHK) has a significant impact on workers and the national economy, including increasing unemployment, poverty, and crime rates, ultimately worsening the per capita financial situation. Therefore, layoffs are a serious issue that companies must pay close attention to, and their implementation must be carried out wisely because they directly impact community welfare (Hasibuan et al., 2023).

The workforce is a crucial element in the development process, so the state needs to pay serious attention to this issue. Therefore, firm and clear regulations are needed for its implementation. Considering that employment issues are a shared responsibility between the government and all industrial relations actors, both employers and workers, their resolution must be based on law. As a nation governed by the rule of law, Indonesia should resolve all issues, including termination of employment, through applicable legal mechanisms, so that every action taken by both authorities and the public has a clear legal basis (Siti Zulaichah, 2019).

Termination of Employment (PHK) is a crucial aspect of industrial relations that frequently raises legal and social issues. Although Indonesian law regulates the procedures and requirements for termination of employment through Law Number 13 of 2003 concerning Manpower and its amendment in Law Number 11 of 2020 concerning Job Creation, practice still demonstrates an imbalance between employer interests and worker

protections. Unilateral layoffs, minimal compensation, and workers' weak bargaining power are recurring issues.

In the termination of employment process, consultation should take place between workers and the management of the company where they work. This aligns with the provisions of the Manpower Law, which require companies to prioritize resolving industrial relations disputes through dialogue and avoid layoffs whenever possible. If layoffs are necessary, companies are required to comply with applicable legal procedures to ensure that each stage is conducted in a legally valid manner and does not result in any legal violations.

The issue of termination of employment as it occurs is contrary to the principles of Islamic teachings. Islam places a high value on ethics in work relations and emphasizes the importance of treating workers. This is reflected in a hadith that emphasizes, "Wages for workers should be given before their sweat dries" (HR Ibn Majah & Imam Thabrani), as a symbol of appreciation for workers' hard work and rights. In the muamalah fiqh perspective, the relationship between employee and employer is categorized as an ijarah contract (rental of services), which contains reciprocal rights and obligations. Therefore, termination of employment in Islam cannot be carried out unilaterally and arbitrarily, but must take into account the collective benefit and not harm any party, especially workers whose economic position is often weaker than that of the employer.

In this context, Islamic law offers a normative approach that emphasizes the values of justice, deliberation, and the prohibition of unjust acts in work relationships. The principles of Islamic jurisprudence (fiqh) in muamalah (Islamic business law) position the relationship between employee and employer as a form of ijarah contract that upholds the rights and obligations of both parties, including those related to the termination of employment.

A comparative study of Islamic law and Indonesian positive law is essential to evaluate the alignment of national regulations with the principles of justice taught in Islam. This study aims to analyze how both legal systems view and regulate layoffs, and to assess their relevance in efforts to create just, sustainable, and humanitarian industrial relations.

Through this research, the author aims to examine and compare how Islamic law and Indonesian positive law regulate layoffs. This comparative study aims to explore the common ground and differences between the two legal systems and to assess whether national regulations reflect the values of justice taught in Islam. Therefore, the results of this

study are expected to contribute to the improvement of employment policy in Indonesia, particularly regarding the termination of employment, which is more just, dignified, and oriented towards the common good.

B. LITERATURE REVIEW

The research conducted naturally utilized several previous studies (state of the art) as reference material and to identify research gaps. The following are some of the state-of-the-art studies used in this study. According to Nurul Pratiwi, Kurniati, and Ashabul Kahpi (2021), whose research entitled "A Review of Islamic Law on Termination of Employment Amidst the Covid-19 Pandemic," in their study, they stated that in Islamic law, although there are no specific regulations regarding layoffs during the pandemic, the principles of *ijtihad*, deliberation, and *maqasid al-sharia* provide solutions based on the interests and justice of both workers and employers. In a study by Karina Prameswari and Emi Puasa Handayani (2020), entitled "Regulation of Termination of Employment between Employees and Companies," their research concluded that the legal consequences of the imbalance in layoff regulations are increased demonstrations and worker demands for welfare. Employers also feel burdened by the mismatch between company turnover and worker demands (Prameswari & Handayani, 2020). Meanwhile, a study entitled *Legal Protection of Workers Due to Termination of Employment Due to Resignation* states that the formulation of legal protection in Article 156 paragraph (4) letter c of Law No. 13 of 2003 concerning reimbursement of housing and medical expenses is still incomplete and creates legal uncertainty (Mofea, 2022).

Based on the results of previous studies, it can be seen that from an Islamic legal perspective, unilateral termination of employment (PHK) without a justifiable reason according to *sharia* is an unjustified action, because it contradicts the principles of justice (*'adl*), deliberation (*shura*), and protection of workers' rights (*al-huqûq al-'âmilah*) which are the main foundations of employment ethics (Kholid, 2018). Even in various *muamalah fiqh* literature, employment relationships are viewed as mutually beneficial *ijarah* contracts, so that termination of such relationships may not be carried out arbitrarily without an apparent reason and a civilized resolution process.

C. REASERCH METHODOLOGY

This study employs a qualitative approach, utilizing library research. The aim is to examine and compare the provisions of Islamic law and Indonesian positive law regarding termination of employment (PHK). The qualitative approach was chosen because of the normative and interpretive nature of this research, emphasizing the content analysis of legal texts and Islamic literature, such as the Qur'an and Hadith as the primary foundations of Islamic law, and Law Number 13 of 2003 concerning Manpower and Government Regulation Number 35 of 2021 as the basis for Indonesian positive law regarding layoffs.

The analysis was conducted using a descriptive-comparative approach, describing and comparing the principles and procedures for layoffs in Islamic law and Indonesian positive law. This study also used normative analysis to assess the compatibility or inconsistency between Islamic values and labor law practices in Indonesia, particularly in the context of layoffs. Data were collected through documentation studies, as well as reviewing legal materials and related literature. The author identified legal concepts related to layoffs from both legal systems and examined labor practices in Indonesia.

D. RESULTS AND DISCUSSION

1. Termination of Employment (PHK)

According to the Big Indonesian Dictionary (KBBI), termination of employment (PHK) refers to the termination or dissolution of an employment relationship. This term is synonymous with the English word 'separation', which means separation (Nirmala et al., 2003).

According to Article 1 of Law Number 13 of 2003 concerning Manpower, termination of employment (PHK) is defined as the termination of an employment relationship for a specific reason, resulting in the termination of the rights and obligations between the employee and the employer. In general, the term PHK is often associated with unilateral actions by employers, such as dismissal due to employee misconduct, thereby creating the impression that the employee is always the one who suffers the consequences. However, in reality, layoffs are not always caused by employee misconduct. They can also occur due to various other factors, including voluntary resignation by the employee, as explained in the statutory provisions (Law of the Republic of Indonesia No. 13, 2003).

According to the SHRM Knowledge Center, termination of employment is defined as a form of termination that can occur for various reasons, both voluntary and involuntary, such as voluntary resignation, temporary or permanent layoff, retirement, or dismissal due to certain violations (Marwansyah, 2010).

Therefore, termination of employment can be interpreted as the end of the employment relationship between a company and its employees, either at the initiative of the company or the employee themselves, which is generally based on certain conditions that render the employment relationship no longer productive and mutually beneficial.

2. Islamic Law's View on Termination of Employment (PHK)

In Islamic law, the employment relationship between an employer (mu'jir) and an employee (ajîr) is part of the ijarah contract. This contract regulates compensation for work performed within a specified timeframe. This contract embodies the principles of mutual consent, justice, and mutual agreement (Mohammad et al., 2022). Islam itself is flexible in addressing various issues, including employment, allowing Islamic law to adapt to current developments and societal needs. Therefore, termination of employment (PHK) cannot be carried out unilaterally and arbitrarily without clear reasons and regard for the worker's rights (Nur Aksin, 2018).

Islam generally prohibits all forms of injustice (zûlm), including in employment relationships. Unilateral termination of employment by an employer without consultation or a justifiable reason according to Sharia is considered unjust. This is contrary to the central values in Islam, namely justice ('adl), deliberation (shura), and ihsan (doing good to fellow human beings).

a. Normative Basis

This view is supported by the hadith of the Prophet Muhammad (peace be upon him): "Give the worker his wages before his sweat dries." (Narrated by Ibn Majah, no. 2443). This hadith highlights the importance of promptly and fairly addressing workers' rights. In the context of layoffs, this means that workers must not suffer material or moral harm, and their rights must be fully fulfilled, including the payment of unpaid wages and the provision of adequate compensation. In Islamic jurisprudence, if an employment relationship is terminated before the agreed time, the employer is obligated to provide compensation to the worker unless there is a serious violation on the part of the worker that can be legally proven.

b. Ethics and Moral Principles

Islam also considers work to be part of worship (ibādah) and a means of fulfilling the halal needs of life. Therefore, when an employment relationship must be terminated, the termination process must be carried out with good ethics, open communication, and deliberation between both parties. Islam does not encourage sudden dismissal without warning, as this can harm human dignity (karāmah al-insān). In the Qur'an, the principle of justice is emphasized in many verses, including: "Indeed, Allah commands you to bestow trusts upon those entitled to them, and when judging between people, you should judge with justice." (Qur'an, An-Nisa: 58). This verse serves as the basis for all decisions, including the decision to terminate an employment relationship, to be made fairly, transparently, and based on ethical social responsibility.

c. Termination of Employment in Emergency Situations

An agreement can be terminated when the agreed-upon term has expired or the contract is cancelled, which in Islamic jurisprudence is known as fasakh. Termination of a contract, or fasakh al-'aqd, refers to the act of terminating an agreement before it can be executed or before its completion is achieved. This termination of a contract differs from the concept of the end of a contract, which means all obligations and rights of both parties have been fulfilled, thus achieving the whole purpose of the agreement. Meanwhile, termination of a contract reflects a condition where the parties cancel an agreement for specific reasons that prevent its full implementation (Anwar, 2010). In the context of termination of employment (PHK), the relevant Islamic legal term to describe the termination of an employment contract is fasakh al-'aqd (Mohammad et al., 2022).

Islam provides leniency under certain circumstances, such as when a company is in an economic emergency or there is an urgent Sharia requirement. However, layoff decisions must still consider the principles of maslahat (the common good) and dharurat (urgent circumstances) without causing excessive harm to workers. In situations like this, Islam encourages employers to provide transitional assistance or adequate compensation as a form of social responsibility.

3. **The provisions and procedures for termination of employment are regulated in Indonesian positive law**

Termination of employment (PHK) is a complex and often complicated issue for both employers and employees. For companies, layoffs are considered a regular part of their operational dynamics. However, for workers, layoffs have a significant impact, not only on their circumstances, but also on their family life (Olivia Cantik Nur Annisa, 2023).

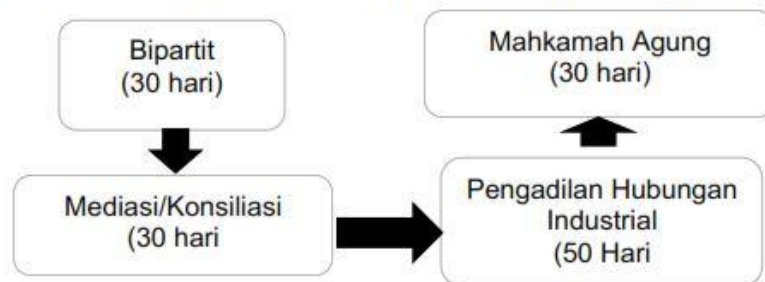
Under Indonesian positive law, regulations regarding termination of employment (PHK) are stipulated in Law Number 13 of 2003 concerning Manpower, which was later partially amended by Law Number 11 of 2020 concerning Job Creation and its implementing regulations, such as Government Regulation Number 35 of 2021. According to Article 151 paragraph (1) of Law No. 13 of 2003, employers, to the extent possible, are prohibited from carrying out layoffs and must first seek prevention through bipartite dialogue, deliberation, or mediation. If layoffs are unavoidable, they must be carried out by applicable legal procedures, as follows (Law of the Republic of Indonesia, No. 2 of 2004):

- a. Bipartite settlement efforts, namely direct dialogue between employers and workers to address labor conditions (Pratiwi et al., 2021).
- b. If bipartite negotiations fail, mediation or conciliation through the Manpower Office is pursued. Development in the labor sector, as stipulated in Article 4 of Law Number 13 of 2003 concerning Manpower, aims to empower the workforce optimally and humanely. This goal is realized through equal employment opportunities tailored to national development needs. Furthermore, labor development must also consider aspects of labor protection, as an effort to create and improve the welfare of workers and their families (Podungge et al., 2021).
- c. If an agreement cannot be reached, the case can be submitted to the Industrial Relations Court (PHI). Termination of employment (PHK) is a common occurrence in the workplace, especially in corporate environments. Layoffs often lead to conflict between workers, unions, and companies, as the decision is not always perceived as fair by all parties involved. One cause of conflict is when companies fail to provide workers with their due rights, such as severance

pay, long-service bonuses, or other forms of compensation. Layoffs also carry legal consequences for companies. If the employment relationship ends, the company is obliged to provide compensation to the laid-off workers. However, not all layoffs require compensation. For example, layoffs that occur during the probationary period or after the employment contract has expired do not require the company to provide compensation. Therefore, companies and workers need to understand the applicable legal regulations to avoid misunderstandings and future conflicts (Dwihardiani et al., 2023).

- d. During the dispute resolution process, employers may not unilaterally terminate employees. While the dispute resolution process between workers and employers is ongoing, employers may not unilaterally terminate employment (PHK) without prior notice. This is regulated in Article 155 paragraph (1) of Law Number 13 of 2003, which states that termination of employment without a decision from a dispute resolution institution is considered null and void. This means that if a dispute regarding termination of employment is still ongoing (whether through mediation, conciliation, or the Industrial Relations Court), the employer must wait until an official decision is made. This prohibition aims to protect workers' rights from arbitrary dismissal.

Gambar 1. Diagram Mekanisme penyelesaian perselisihan Hubungan Kerja



(Makkuasa et al., 2024)

4. Similarities and Differences Between Islamic Law and Indonesian Positive Law in Regulating Layoffs

In the employment context, termination of employment (PHK) is a complex issue because it involves the fundamental rights of workers and the continuity of a company's business operations. Both Islamic law and Indonesian positive law have their foundations and mechanisms for regulating the termination process, ensuring that neither party is disadvantaged. Islamic law emphasizes the values of justice, deliberation, and protection of

workers' rights based on the principle of ijarah. In contrast, Indonesian positive law provides a normative framework through laws and government regulations. To provide a clearer picture, the following table compares the similarities and differences between the two legal systems, as well as the relevance of Islamic values to employment practices in Indonesia.

Aspects	Islamic Law	Positive Indonesian Law
Legal Basis	Quran, Hadith, Consensus, and Qiyas	Law No. 13 of 2003 and Government Regulation No. 35 of 2021
Employment Relationship Concept	Ijarah (labor hire) contract – based on trust and worship	Employment agreements between workers and employers are legally contractual
Worker Protection	Emphasizes justice, fair wages, and the prohibition of oppression	Determine workers' rights such as severance pay, wages, and compensation in accordance with regulations
Prohibition of Unilateral Dismissal	Not permitted without a sharia-compliant reason and deliberation	Prohibited without going through bipartite procedures, mediation, and court decisions
Dispute Resolution	Through deliberation (shura) and the principle of justice	Through bipartite mechanisms, mediation, arbitration, and industrial relations courts
Approach	Moral, spiritual, and social	Formal and administrative juridical
Sanctions/Termination of Employment	Must be accompanied by a valid reason and still guarantee workers' rights, such as wages and compensation	Must go through legal procedures and be accompanied by payment of severance pay and other rights in accordance with Article 156 of the Manpower Law
Flexibility	Adapts to the current context, while maintaining sharia and ethical values	Limited to what is regulated in written law

E. CONCLUSION

Islamic law views termination of employment (PHK) as part of the ijarah contract, which has legal consequences. Islam emphasizes the principles of justice, deliberation (shura), and the protection of workers' rights, including the obligation to provide timely wages and the prohibition of unjust terminations without cause. In Islam, terminations can only be carried out if there is a sharia-compliant reason and through a just and humane process. Indonesian positive law, through Law Number 13 of 2003 concerning Manpower and its derivative regulations, such as Government Regulation Number 35 of 2021, regulates

in detail the procedures and legitimate reasons for termination. Positive law also requires bipartite or tripartite dispute resolution before termination occurs and regulates workers' rights, including severance pay, reward pay, and compensation. There are similarities between the two legal systems in upholding justice and protecting workers. However, there are also differences in their approaches and philosophical underpinnings. Islamic law is based on moral and spiritual values, while positive law is based on the national legal system. Nevertheless, Islamic values are highly relevant as a reference in employment practices in Indonesia, particularly in realizing justice, work ethics, and respect for workers' rights and dignity during the layoff process.

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