


## Juridical Review of the Legal Strength of Collective Agreements as a Result of Mediation in Dispute Resolution of Termination of Employment

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### Abstract

Industrial relations disputes, particularly those related to termination of employment, are a significant issue in the labor sector that require fair and just legal resolution. One of the dispute resolution methods regulated under Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes is mediation. The results of the mediation process are formalized in a joint agreement which can be registered at the Industrial Relations Court to obtain executorial legal force. However, in practice, violations of the contents of the joint agreement are still frequently found, even after the agreement has been ratified by the court. The

joint agreement resulting from mediation and registered at the Industrial Relations Court (PHI) has binding legal force and can be executed like a court ruling. Nevertheless, violations of its implementation are still encountered, especially in cases of employment termination. This article analyzes the legal consequences of non-compliance with the joint agreement as well as the available execution mechanisms. The study results show that disregarding a valid and registered joint agreement may incur legal sanctions and affect the overall effectiveness of the industrial relations dispute resolution system. Strict law enforcement, institutional strengthening, and increased legal literacy are required as strategic steps to enhance legal protection for workers.

**Keywords** *Joint Agreement, Mediation, Termination of Employment, Execution, Industrial Relations*

## I. Introduction

The provisions of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia state that every citizen has the right to work and a decent livelihood for humanity. This constitutional norm affirms that the state guarantees the right of every individual to obtain a job as a means of fulfilling the needs of life in accordance with the principles of dignity and humanity.

Thus, all citizens who are classified as workers, both permanent employees, workers/laborers, informal workers, and those who have not obtained a job, have a constitutional

right to decent work and livelihood.<sup>1</sup> The state is not only required to provide employment quantitatively, but must also ensure that any available jobs meet adequate standards of feasibility, fairness, and legal protection. This includes aspects of fair wages, social security, safe working conditions, and mechanisms for resolving disputes effectively. Therefore, the principles of work and livelihood that are decent for humanity are the ethical and juridical basis in formulating labor policies that are adaptive to industrial dynamics and the need for worker protection.

Industry plays a crucial role in driving economic growth in Indonesia. In the industrial sector, there are two main elements that are interrelated, namely workers and entrepreneurs. An employee is an individual who is involved in an employment relationship with an employer and receives a reward in the form of wages.<sup>2</sup> In carrying out their duties, workers and employers need to establish mutually beneficial relationships to achieve mutual success. Labor can philosophically be interpreted as two parties who build a working relationship and collaborate with each other to encourage industrial and economic growth. This employment relationship creates rights and obligations on the part of the worker and the employer, which is based on an employment agreement that can be oral or written and has been agreed by both parties.<sup>3</sup>

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<sup>1</sup> Asri Wijayanto, *Post-Reform Labor Law* (Jakarta: Sinar Grafika, 2017).

<sup>2</sup> Abdul R Budiono, *Labor Law* (Jakarta: Index, 2011).

<sup>3</sup> Aditya Tri Wijaya and Rahayu Subekti, "Settlement of Termination of Employment Disputes (PHK) During the Covid-19 Pandemic through Mediators," *Undiksha Civic Education Journal* 09, no. 02 (2021): 474–85.

Industrial relations are legal structures that regulate interactions between employers, workers, and the government in order to realize a fair, harmonious, and sustainable labor system. This system is inseparable from positive legal provisions that bind all parties as legal subjects within the scope of employment relations. Protection for the workforce is intended to ensure the fundamental rights of workers or laborers, as well as to guarantee equal opportunities and treatment provided without discrimination of any kind. This is done to achieve welfare for workers or laborers and their families, while still considering developments and progress in the business world.<sup>4</sup>

In the era of globalization and rapid industrial development, the dynamics of labor relations in Indonesia are increasingly complex. The increasing number of employment disputes, both in the formal and informal sectors, is a phenomenon that cannot be ignored. According to data from the Ministry of Manpower, the number of reported cases of labor disputes continues to increase every year, indicating the challenges in creating harmonious industrial relations.

In the national labor system, the employment relationship between employers and workers is based on agreement and is based on the principles of balance, justice, and proportionate legal protection. However, in practice, this relationship often causes disputes, especially when it comes to Termination of Employment (PHK). Layoffs that are not carried out procedurally or without a valid reason often trigger

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<sup>4</sup> Ujang Charda, "A Juridical Review of Termination of Employment Dispute Resolution," *Ijd- International JOurnal of Demos* 4, no. 3 (2022): 1112–24, <https://doi.org/10.37950/ijd.v4i3.328>.

disputes between workers and employers.<sup>5</sup>

These disputes often lead to prolonged conflicts and layoffs that are not only detrimental to workers, but also to employers and the stability of the industry as a whole. According to Law No. 13 of 2003 Article 1 number 25, the termination of an employment relationship (PHK) is explained as the end of a relationship that is functioned for a certain reason that triggers the end of rights and commitments to workers/workers and employers.<sup>6</sup> In this context, effective dispute resolution is crucial to maintain the welfare of workers and business continuity.<sup>7</sup>

Termination of employment is not only an economic problem for workers, but also has serious legal implications. Layoff disputes often involve differences in interpretation of workers' normative rights such as severance pay, award money, or return to a job position. For this reason, legal settlement is needed so that every decision related to layoffs has a basis and legal justice that can be accounted for.<sup>8</sup>

According to Law Number 2 of 2004, disputes are divided into 4 types, namely:

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<sup>5</sup> Jovanka Indriasari and Nurjanti Takarini, "Analysis of the Mediation Process for Industrial Relations Dispute Resolution in the Achievement of Collective Agreement in Surabaya," *INNOVATIVE: Journal Of Social Science Research* Volume 4, no. 6 (2024): 3264–76.

<sup>6</sup> Simpen, I Ketut, and Indiyah Wismani Herry, "Industrial Relations Dispute Settlement According to the Labor Law.," *Raad Kertha Scientific Journal* 2, no. 2 (2020): 82–97, <https://doi.org/10.47532/jirk.v2i2.164>.

<sup>7</sup> "Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower" (n.d.).

<sup>8</sup> Nabila Putri Ariqa and Fatma Ulfatun Najicha, "Settlement of Industrial Relations Disputes Related to Termination of Employment Relations for Workers/Laborers," *Journal of Employment Development* 2, no. 1 (2024): 83–93.

1. A dispute of rights is a dispute that arises due to the non-fulfillment of rights, due to differences in the implementation or interpretation of the provisions of laws and regulations, employment agreements, company regulations, or collective bargaining agreements,

2. A dispute of interest is a dispute that arises in an employment relationship due to the absence of agreement regarding the creation, and/or change of the terms of employment stipulated in the employment agreement, or company regulations, or collective bargaining agreements,

3. A dispute for termination of employment is a dispute that arises due to the lack of agreement regarding the termination of employment by one of the parties,

4. Disputes between trade unions/trade unions in a company are disputes between trade unions/trade unions and other trade unions/trade unions in only one company, because there is no agreement on the membership, implementation of rights and obligations of trade unions.<sup>9</sup>

Dispute resolution in industrial relations according to the Industrial Relations Dispute Settlement Law can be carried out in two ways, namely through the industrial relations court (litigation) and outside the court (non-litigation). Non-litigation methods include bipartisan settlement, mediation, conciliation, or arbitration. All disputes in industrial relations, including those related to termination of employment (PHK), must first be resolved through bipartite negotiations. This negotiation was carried

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<sup>9</sup> Nuryansyah Irawan, "Normative Juridical Study of the Implementation of Industrial Relations Dispute Regulations," *Employment Journal* 18, no. 1 (2022): 47–63, <https://doi.org/10.47198/jnaker.v18i1.147>.

out through deliberation between workers and employers. If no agreement is reached in the negotiations, one or both parties can report the dispute to the authorized agency in the field of employment. The Manpower Office will then provide an offer in the form of settlement options through conciliation or mediation for layoff dispute cases.<sup>10</sup>

Of the many methods, mediation is seen as an efficient and peace-oriented non-litigation method. Industrial relations mediation is regulated in Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI Law). Conflict resolution through mediation is one alternative method that involves a neutral mediator, who is not on one side. This mediator plays a role in helping various parties who are in dispute to be able to reach a mutual agreement without pressure.<sup>11</sup>

The successful mediation process is marked by the birth of a collective agreement, which is a written agreement between the parties to the dispute. Collective agreements are binding because there is an agreement between the two parties that use the deliberation method, resulting in a win-win solution, where all parties benefit without anyone losing or winning. Normatively, Article 7 of the PPHI Law states that the collective agreement can be registered with the Industrial Relations Court to obtain legal force equivalent to a court decision.

However, at the practical level, the legal effectiveness of such collective agreements is often questioned. There are many

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<sup>10</sup> Khakim Abdul, *Introduction to Indonesian Employment Law* (Bandung: Citra Aditya Bakti, 2014).

<sup>11</sup> Indriasari and Takarini, "Analysis of the Mediation Process for Industrial Relations Dispute Resolution in the Achievement of Collective Agreement in Surabaya."

cases where the content of the agreement is not implemented even though it has gone through a formal mediation process. This creates legal uncertainty, especially when there are no firm sanctions or clear enforcement mechanisms for violations of the content of the collective agreement. This non-compliance not only causes legal uncertainty for workers, but also reduces trust in the existing dispute resolution system. Workers often feel that they are not getting the justice they deserve, which can lead to more serious tensions and conflicts in the work environment.<sup>12</sup>

Juridical problems arise at the normative level, especially regarding whether a collective agreement that is not registered with the court still has binding legal force, what its legal status is in the civil and labor law system, and how the principle of *pacta sunt servanda* (agreement applies as law to the parties) is applied in the context of the mediation agreement.

Furthermore, there is ambiguity in the application of the provisions of Articles 7 to 13 of the PPHI Law, especially related to the executory power of the collective agreement. On the one hand, the law allows the parties to resolve disputes by their own agreement; On the other hand, the implementation and enforcement of the law on the outcome of mediation depends on administrative procedures such as registration and verification of judges.

Within the framework of normative legal research, it is important to conduct an in-depth study of the legal construction of collective agreements, both textually (based on laws and regulations) and contextually (through legal

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<sup>12</sup> Irdan Marudi, Yandri Radhi Anadi, and Abid Zamzami, "Legal Review of Conflict Resolution of Termination of Employment through the Mediation Process," *Dynamics* 30, no. 2 (2024): 10777–800.



principles and theories). This includes a systematic and grammatical interpretation of the provisions in the PPHI Law, the Civil Code (KUHPer), and other implementing regulations.

The urgency of this research is very high considering the increasing number of layoffs, especially in the post-pandemic economic situation and the digitalization era that is changing the work structure. Without a guarantee of legal certainty over the outcome of mediation, workers will lose confidence in non-litigation dispute resolution mechanisms, and this can lead to social tensions and instability in industrial relations.

Theoretically, this research is based on the study of legal certainty theory (Gustav Radbruch), which states that law must be able to provide clarity of norms and protection of the rights of legal subjects. In addition, the theory of legal effectiveness (Soerjono Soekanto) is also a reference to assess the extent to which legal norms can be effectively enforced in society.

With this background, this study will normatively examine the legal force of collective agreements as a result of mediation in an effort to resolve termination disputes, examine their conformity with labor law principles, and provide juridical arguments against the weaknesses and strengthening of norms that govern collective agreements in the Indonesian labor law system. The formulation of the problems found reviewed from the background presentation, including: 1. What is the legal force of collective agreements as a result of mediation in resolving termination disputes according to the employment law system in Indonesia? 2. What are the legal consequences of non-compliance with the mediation collective agreement in a case of termination of

employment that has been registered in the industrial relations court?

## II. Methods

This research is included in the normative juridical research category,<sup>13</sup> with the approach used including a statutory approach and a conceptual approach.<sup>14</sup> The sources of legal materials used include primary, secondary, and tertiary legal materials. Furthermore, an analysis of legal materials is carried out by systematizing and reviewing the legal materials, through steps related to theories and research topics.<sup>15</sup> In the process of searching for theories, the researcher tries to collect as much information as possible from various relevant literature in order to answer the legal problems that are the focus of this research, then end with the drawing of conclusions.

## III. Result and Discussion

### *A. The Legal Strength of Collective Agreements as a Result of Mediation in Dispute Resolution of Termination of Employment According to the Employment Law System in Indonesia*

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<sup>13</sup> H. Ishaq, *Legal Research Methods and Writing Thesis, Thesis, and Dissertation* (Bandung: Alfabeta, 2017).

<sup>14</sup> Joenedi Efendi and Ibrahim Jhonny, *Normative and Empirical Legal Research Methods* (Depok: Pernadamedia Group, 2018).

<sup>15</sup> Hamdi, *Qualitative Research Methods* (Malang: UMM Press, 2005).

In the realm of labor relations, also known as industrial relations, Indonesia has regulated various regulations and laws that cover various aspects of employment. The regulation regulates the legal relationship between workers and employers, aspects of occupational safety and health, labor supervision, and the mechanism for resolving industrial relations disputes, among other things. In order to provide legal certainty in the settlement of industrial relations disputes, the Indonesian government has stipulated Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes.

Disputes in industrial relations are a frequent occurrence in the world of work. When the relationship between workers and employers experiences tension or misunderstandings, conflicts usually arise that need to be resolved. Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes expands the definition of industrial relations as differences in perceptions that cause conflicts between employers or combinations of employers and workers or trade unions.<sup>16</sup> This conflict can occur due to disputes regarding rights, interests, termination of employment, or disputes between labor unions in one company. In the legislation, the scope of industrial relations disputes is not only limited to disputes of rights and interests, but also includes disputes related to termination of employment and disputes between workers within the same company.<sup>17</sup>

Termination of Employment Dispute is interpreted as a conflict that arises due to disagreement between related parties

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<sup>16</sup> Mohd. Syaufi Syamsuddin, *Procedural Law for Industrial Relations Dispute Settlement* (Jakarta: Sarana Bhakti Persada, 2010).

<sup>17</sup> Ihin Muslihin, Irma Garwan, and Muhamad Abas, "Juridical Review of Unilateral Termination of Employment Dispute Resolution (PHK) Reviewed from Law Number 13...", *Journal of Legal Rechtscientia* 1, no. 2 (2021): 20–42, <https://journal.ubpkarawang.ac.id/mahasiswa/index.php/RECHTSCIENTIA/article/view/743%0Ahttps://journal.ubpkarawang.ac.id/mahasiswa/index.php/RECHTSCIENTIA/article/download/743/575>.

regarding the termination of employment which is given only from the parties.<sup>18</sup> In Article 1 number 25 of Law Number 13 of 2003 concerning Manpower, employment relations are defined as the termination of an employment relationship triggered by certain things that result in the termination of rights and obligations of workers and employers. Layoffs often occur because the end of the period that has been agreed upon in the employment agreement usually does not trigger problems for both parties, because both parties have agreed on when the employment relationship will end. However, it is different from layoffs caused by disputes, because this type of layoff will have an impact on both parties. Workers will certainly feel this impact more because their position tends to be weaker than that of employers.

Mediation is a form of out-of-court dispute resolution that is carried out through a peaceful negotiation process in order to reach an agreement between the parties, with the help of a third party who has the role of mediator. In mediation, the position of both parties is equal, so that neither party benefits or is disadvantaged. Mediation is regulated in Article 8 of Law Number 2 of 2004 concerning Industrial Relations Dispute Resolution states that "Dispute resolution through mediation is carried out by a mediator located in each agency office responsible for the employment of the Regency/City."<sup>19</sup>

The mediation process relies on the values embraced by each party, such as legal, religious, moral, ethical, and justice values, which are used to analyze the facts in order to reach an agreement.

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<sup>18</sup> Moch Anshori, Anas Lutfi, and Syafrizal Syafrizal, "Collective Agreement in Industrial Relations Dispute Resolution," *Journal of Master of Law* 6, no. 1 (2021): 30–42.

<sup>19</sup> Mangaraja Manurung et al., "Mediation as an Alternative to Industrial Relations Dispute Resolution," *Humanities (Law and Civil Society)* 14, no. 1 (2024): 123–32, <https://journals.usm.ac.id/index.php/humani/article/view/8272>.

The role of the mediator in mediation is to help the parties reach a consensus, as essentially the final decision is determined by the parties themselves, not by the mediator.

In the context of resolving layoff disputes, mediation is a stage that must be taken after bipartite negotiations fail. Mediation is carried out by a neutral mediator and aims to reach a peaceful agreement outlined in the collective agreement. This agreement not only regulates the termination of employment relationships, but also workers' rights such as severance pay and other compensation. The agreement reached through mediation shows that both parties can accept and agree on layoffs and their consequences voluntarily. Therefore, collective agreements have a very crucial role as a tool to resolve these disputes.

In Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI Law), a collective agreement is the result of an agreement between workers/laborers and employers that is reached through a mediation, conciliation, or arbitration process, and is stated in a written document. Article 13 paragraph (1) of the PPHI Law states that "In the event that an agreement is reached to resolve industrial relations disputes through mediation, a Collective Agreement is made which is signed by the parties and witnessed by the mediator and registered at the Industrial Relations Court in the District Court in the jurisdiction of the parties to enter into a Collective Agreement to obtain a deed of proof of registration."<sup>20</sup>

By registering a collective agreement with the Industrial Relations Court, the collective agreement acquires binding legal force and can be used as a basis for execution and execution if one of the parties does not fulfill the content of the agreement.<sup>21</sup> This

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<sup>20</sup> "Law of the Republic of Indonesia No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes" (n.d.).

<sup>21</sup> Rifa Zulkarnain and Henry Aspan, "Legal Force Of Collective Agreements Reviewed From Law No. 2 Of 2004 Concerning Settlement Of

mechanism ensures equal legal certainty and protection for workers and employers without having to go through a lengthy litigation process and at a high cost. However, this legal force is conditional. If the collective agreement is not registered, then the legal status is only binding privately between the parties, like an ordinary civil contract. Consequently, in the event of a violation, the aggrieved party cannot immediately apply for execution to the court, but must first sue the content of the agreement, thereby reducing the effectiveness and initial purpose of a quick and efficient mediation. Therefore, the formality aspect in the form of registration to PHI is an absolute requirement to provide executory power to the collective agreement.

Actually, even without registration, a collective agreement is still a valid agreement according to civil law because it meets the legal requirements of the agreement as stipulated in Article 1338 of the Civil Code which reads:

- "(1) All consents made lawfully, shall apply as Law to those who make them;  
(2) Such consents may not be withdrawn except by the agreement of both parties, or for reasons declared by law to be sufficient for it;  
(3) The approval must be carried out in good faith."

It is important to understand that not all collective agreements resulting from the mediation process as well as being registered with the Industrial Relations Court automatically acquire absolute force of law. In labor practice, the substance of collective agreements is often a compromise space between two parties who have an unequal position, namely between workers and employers. This inequality can result in the substance of an agreement that formally appears to be legitimate, but materially contradicts legal norms, principles of justice, and the normative rights of workers.

In the context of civil law, the principle of freedom of contract does provide flexibility for the parties to regulate their legal relations independently. However, the principle is not without limits. Based on Article 1320 and Article 1337 of the Civil Code, an agreement can be declared null and void if it is made on the basis of coercion, fraud, or contains content that is contrary to laws and regulations, public order, or morality. Therefore, if the content of the collective agreement contains clauses that unfairly harm workers, such as reducing normative rights such as minimum wage, working hours, or the right to severance pay, then the worker as the aggrieved party has the right to file a cancellation lawsuit with the court.

This condition shows that the legal validity of a collective agreement is determined not only by the fulfillment of formal conditions such as signing and registration, but also by the integrity of the substance in accordance with legal norms and the principles of social justice. In industrial relations, mediation as a dispute resolution mechanism should ideally be carried out based on the principle of restorative justice, not simply a compromise that benefits one party.

Therefore, the role of the mediator is very important to ensure that the mediation process runs impartially and transparently, and that the outcome of the agreement reflects the equality of position of the parties. Mediators not only function as technical facilitators, but also as guardians of legal values so that the agreements produced do not conflict with laws and regulations and the principles of protection of workers' rights.

In addition, workers need to have access to adequate legal assistance during the mediation process. Legal ignorance is often used by more dominant parties to draft adverse agreements. For this reason, there needs to be a regulation that regulates the obligations of the state or trade unions in providing legal assistance at every stage of resolving industrial relations disputes.

In other words, the validity and enforceability of collective agreements depend heavily on the quality of the process of its formation, equality of substance, and adequate external supervision. Without such guarantees, collective agreements have the potential to become a formal legitimacy tool of the practice of structural injustice in industrial relations.

Four conditions for the validity of the agreement according to Article 1320 of the Civil Code, including:

- a. the agreement of those who bind him;
- b. the ability to make an alliance;
- c. a certain subject matter; and
- d. a cause that is not forbidden.

Based on Article 1338 of the Civil Code, all legally created agreements are enforced into law for the parties who drafted them. This means that the collective agreement produced through mediation has legally binding power, insofar as it fulfills the elements of consensus, legal prowess, certain objects, and halal causes.<sup>22</sup> In the employment law system, the position of collective agreements is stronger than informal agreements because:

- a. It is formed through a mediation process facilitated by an official mediator.
- b. It is explicitly recognized in the PPHI Law.
- c. An execution can be requested through the Industrial Relations Court if registered.

However, in practice, this binding force becomes weak if:

- a. The agreement is not registered in the courts (so it has no executory power).
- b. There is no strict supervision or sanction mechanism if one of the parties does not implement the content of the agreement.

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<sup>22</sup> Ika Rihana Rahmawati, "Settlement of Industrial Relations Disputes through Mediation According to Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes," *Journal of the State and Justice* 11, no. 1 (2022): 137–48.



Collective agreements that have been registered with the Industrial Relations Court acquire legal force equivalent to a court decision (Article 7 paragraph (2) of the PPHI Law). This means that if there is a violation of the content of the agreement, the aggrieved party can apply for execution to the court without having to re-sue the subject matter. According to Sudikno Mertokusumo, executive power is the ability to carry out the content of decisions by force using state apparatus or apparatus.<sup>23</sup> However, if the agreement is not registered, then even if it remains legally valid, its execution must go through the usual (civil or industrial) lawsuit mechanism, which takes longer. This is one of the practical weaknesses in the system for implementing mediation results.

In the context of layoffs, collective agreements often include agreements regarding severance pay, award money, and other forms of compensation. If the employer does not carry out the content of the agreement, the employee has the right to demand the implementation of the agreement through the court. However, problems that often occur include:

- a. Workers do not understand their rights legally.
- b. Not all agreements are registered due to administrative factors or ignorance.
- c. Mediators do not always provide sufficient assistance in assessing the fairness of the content of the agreement.

From a juridical point of view, a collective agreement as a result of mediation has legal force and is binding based on the provisions of laws and civil law principles. However, the effectiveness of its legal force depends on two things, namely whether the agreement is registered in court and whether there is an enforcement mechanism or sanction if the content of the agreement is not implemented. Thus, although collective agreements are normatively strong, their

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<sup>23</sup> Sudikno Mertokusumo, *Indonesian Civil Procedure Law* (Yogyakarta: Liberty, 1979).

strength is practically weak if not supported by institutional strengthening, administrative oversight, and firm law enforcement.

In practical terms, mediation agreements are an effective instrument to avoid lengthy and expensive litigation processes. With a collective agreement registered, the settlement of layoff disputes can proceed faster and provide clear legal certainty for both parties. Further, in the context of industrial relations, collective agreements not only serve as a dispute resolution tool, but also reflect the principles of restorative justice and social dialogue between workers and employers. When agreements are built on the principles of equality, transparency, and protection of rights, then the legal product can be an effective and sustainable alternative in resolving labor disputes, including layoffs that are often fraught with emotional and social conflicts.

In practice, the biggest challenge in the effectiveness of collective agreements is the low level of legal literacy, especially among workers, and the lack of legal assistance during the mediation process. As a result, many agreements are made without adequate legal considerations, or even only in the benefit of one party. Therefore, the state needs to be actively present through labor supervisors and official mediators to ensure that the content of the collective agreement is in accordance with laws and regulations and reflects the balance of interests.

Thus, the legal force of the collective agreement is highly dependent on compliance with formal procedures (registration with PHI), legal substance, and the good faith and equality of position of the parties. When these three aspects are met, a collective agreement can be a means of resolving layoff disputes that are effective, efficient, and uphold the values of industrial justice.

### ***B. Legal Consequences of Non-Compliance with Collective Agreements Mediation Results in Cases of***

## ***Termination of Employment That Have Been Registered in the Industrial Relations Court***

In the industrial relations dispute settlement system in Indonesia, one of the mechanisms used is mediation, as stipulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (PPHI Law). If there is an agreement in the mediation process, the parties will sign a Collective Agreement (PB), which can be registered in the Industrial Relations Court in order to obtain legal force equivalent to the court decision.<sup>24</sup>

However, in employment practice, there is a phenomenon where one of the parties does not carry out the contents of the PB as a result of mediation, even though it has been registered. This problem raises questions about the legal consequences and how the law enforcement mechanism is.

The Collective Agreement as a result of mediation is a form of compromise reached by the parties in mediation facilitated by a mediator from the Manpower Office. Article 13 paragraph (1) of the PPHI Law states that "In the event that an agreement is reached to resolve industrial relations disputes through mediation, a Collective Agreement is made which is signed by the parties and witnessed by the mediator and registered at the Industrial Relations Court in the District Court in the jurisdiction of the parties to enter into a Collective Agreement to obtain a certificate of proof of registration."

The legal consequences of non-compliance with the mediation collective agreement that have been registered with the Industrial Relations Court (PHI) in the case of layoffs have serious

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<sup>24</sup> Zaeni Asyhadie, Rahmawati Kusuma, and L Hadi Adha, "The Effectiveness of Mediating Industrial Relations Disputes," *Unizar Law Review* 5, no. 2 (2022): 236–45, <https://doi.org/10.36679/ulr.v5i2.7>.

consequences and can be directly enforced legally. Collective agreements that are born from the mediation process and have been registered with PHI have legal status equivalent to a court decision that has permanent legal force (*res judicata*) and has executory power.

So, if one of the parties, usually an employer, does not comply with the content of the agreement, the aggrieved party, usually a worker, has the right to apply for execution directly to PHI without having to go through a retrial process. This provides legal certainty and strong protection for the rights of workers that have been agreed in the collective agreement.

Non-compliance with the collective agreement that has been registered has legal consequences in the form of the ability to execute through a court determination as stipulated in Article 13 paragraph (3) letters b and c of the PPHI Law.<sup>25</sup> This execution mechanism is carried out by submitting an application to the head of PHI, who then issues an implementation determination. Refusal or denial of the implementation of the content of the agreement can be qualified as an unlawful act (*onrechtmatige daad*), and opens up the possibility for the aggrieved party to claim compensation or other sanctions in accordance with the applicable civil or administrative provisions.

Execution is a legal mechanism that is officially carried out to implement court decisions under the authority of the Chief Justice of the District Court. In the case of a Collective Agreement as a result of the settlement of industrial relations disputes, execution is carried out on the basis of an application from the applicant to the Industrial Relations Court. The Chief Justice then issued an order to the respondent to carry out the contents of the Collective

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<sup>25</sup> Ari Yuliasuti and Emi Syarif, "Industrial Relations Dispute Settlement Using *Acte Van Dading*," *Employment Journal* 16, no. 2 (2021): 88–102, <https://doi.org/10.47198/naker.v16i2.107>.

Agreement that had been previously agreed upon through bipartite, mediation, or conciliation stages

Non-compliance with the collective agreement that has been registered not only harms the workers materially and psychologically, but also has legal implications in the form of forced action that can be imposed by the court. The court may issue an execution determination to compel the implementation of the content of the agreement, including the obligation of the employer to pay compensation, severance pay, or other rights that have been agreed. Thus, non-compliance with collective agreements that already have legal force can lead to strict legal sanctions and can interfere with the reputation and business continuity of entrepreneurs.

In addition, non-compliance with collective agreements can create a bad precedent in industrial relations practices. When one party feels that they can violate an agreement without meaningful consequences, this can encourage similar behavior among other employers. As a result, trust between workers and employers can be disrupted, which in turn can reduce the effectiveness of mediation as a dispute resolution method. In the long run, this can lead to an increasing number of unresolved disputes, which can strain the justice system and create instability in the labor market.

In addition, this non-compliance can also prolong industrial relations disputes that should have been resolved peacefully through mediation. This is contrary to the purpose of mediation as a fast, cheap, and effective dispute resolution mechanism. Non-compliance with collective agreements also has the potential to undermine workers' trust in the legal system and the mediation process itself, leading to social tensions and wider conflicts in the work environment.

From a procedural point of view, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes strictly

stipulates that the collective agreement resulting from mediation must be registered with PHI in order to obtain binding and enforceable legal force. If the collective agreement is not registered, then the legal force it has is only limited to an ordinary agreement according to the Civil Code, which is difficult to enforce by force. Therefore, the registration of a collective agreement is a crucial step to ensure the effectiveness of dispute resolution.

More than that, non-compliance with collective agreements reflects a lack of respect for the principles of legal certainty and the principle of good faith in employment relationships. If violations are committed by employers, this has the potential to worsen industrial relations and reduce workers' confidence in the non-litigation settlement system which has been expected to reduce the burden on the courts. In some cases, employers who do not carry out the contents of the collective agreement are subject to an execution order to pay compensation according to the previous agreement.

In practice, non-compliance with a collective agreement that has been registered often requires decisive legal intervention from the courts to enforce workers' rights. This shows the importance of consistent supervision and law enforcement so that collective agreements are not only formal documents, but actually an effective instrument in resolving industrial relations disputes, especially in the case of layoffs.

Overall, the legal consequences of non-compliance with the collective agreement resulting from mediation that have been registered in PHI are coercive legal consequences, in the form of execution by the courts, aimed at protecting workers' rights and enforcing legal certainty in industrial relations. This non-compliance can also have a wide negative impact, both for industrial relations and for the image and sustainability of entrepreneurs' businesses. Therefore, compliance with the

collective agreement is the main key in maintaining the harmony of employment relations and ensuring a fair and equitable settlement of disputes.

If one of the parties feels aggrieved because the content of the Collective Agreement (PB) that has been agreed upon is not implemented, then that party can apply for an execution determination to the Industrial Relations Court in the jurisdiction where the agreement was made. In this case, the worker becomes the aggrieved party because the company does not comply with the provisions of the Collective Agreement (PB), so the worker takes the step of submitting an application for an execution determination.

It should be understood that in order for an execution to be enforced, the agreement must have executory force and be condemnatory, where both of these conditions must be fulfilled simultaneously. If only one of the conditions is met, then the contents of the Collective Agreement (PB) cannot be implemented or executed. A condemning decision is a decision that contains elements of "punishment". On the other hand, a judgment that is not binding or does not contain elements of punishment cannot be enforced (non-enforceable).<sup>26</sup>

The implications of these findings suggest that law enforcement of collective agreements requires not only an adequate regulatory toolkit, but also effective institutional support, particularly from labor supervisors, mediators, and industrial relations judges. Strengthening the capacity of industrial relations institutions is crucial to ensure that valid and binding agreements can be implemented fairly and efficiently.

Thus, non-compliance with the collective agreement that has been registered not only causes losses for certain parties, both

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<sup>26</sup> Subekti, *Treaty Law*, Ed. 1 (Jakarta: Intermasa, 2005).

workers and employers, but also threatens the functioning of the labor dispute resolution system as a whole. When the agreed and registered mediation results are not implemented, trust in alternative dispute resolution mechanisms (non-litigation) such as bipartite and mediation is reduced. This has the potential to encourage the escalation of conflicts to the litigation stage, which is not only time-consuming and costly, but also contrary to the main purpose of the PPHI Law, which is to create a fast, precise, and inexpensive settlement.

The state, in this case the government and the industrial relations tribunal, has a constitutional and juridical responsibility to ensure that any collective agreement born out of the mediation process and has been legally registered in the Industrial Relations Court (PHI) has real enforcement force. The certainty of this implementation is a form of legal protection as well as the fulfillment of the principle of justice for the parties. Without an effective and responsive enforcement mechanism to violations, the existence of a collective agreement is only an administrative document with no operational value.

Finally, to prevent non-compliance with the collective agreement, it is important for all parties to understand and respect the agreed terms. Education about the rights and obligations in the collective agreement must be carried out periodically, both to workers and employers. By raising awareness of the importance of complying with agreements, it is hoped that industrial relations can be well maintained, and mediation can serve as an effective tool in resolving disputes. This will not only benefit both parties, but also contribute to the creation of a harmonious and productive work environment.



## IV. Conclusion

A joint agreement resulting from mediation that has been registered at the Industrial Relations Court has legal force equivalent to a court decision that has permanent legal force. Non-compliance with this agreement is not only a moral violation, but also has legal consequences in the form of an application for execution through the courts. When the agreement is not executed, the aggrieved party can apply for an execution determination to the court, which will issue a forced order for its execution. Thus, the Indonesian labor law system has actually provided a strong enough legal tool to uphold certainty and justice for the parties, especially workers who are often in a weak position.

However, the effectiveness of collective agreements as a dispute resolution instrument is highly dependent on compliance with formal procedures, legal awareness of the parties, and the functioning of supervisory institutions and industrial relations tribunals. Non-compliance with collective agreements has the potential to undermine confidence in mediation mechanisms as a fast, cheap, and fair dispute resolution. Therefore, strengthening the capacity of industrial relations institutions and improving legal literacy is very urgent.

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