



The Unconstitutionality of Termination of Employment on The Grounds of An Urgent Offence

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Abstract

Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation through Government Regulation No. 35 of 2021 on Fixed-term Labor Contracts, Outsourcing, Breaks during working time and Dismissal provides for dismissal for urgent infractions that are similar in content to dismissal for serious infractions. misconduct under the Manpower Act No. 13 2003, which was repealed based on a decision of the Constitutional Court No. 012/PUU-I/2003. The legal issues that will be addressed in this study are how the constitution envisages dismissal for urgent violations, which are similar in substance to serious misconduct as grounds for dismissal. This type of research is legal research using statutory approach and is carried out by searching for positive legal norms consisting of applicable laws and court decision related to termination of employment on the grounds of urgent violations apply based on Law Number 6 of 2023, although it has similar substance with gross misconduct as a reason for termination of employment in the provisions of Article 158 of Law Number 13 of 2003 which has been declared contrary to the 1945 Constitution so that it does not apply and has binding legal force based on the Constitutional Court Decision Number 012/PUU-I/2003.

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A. Introduction

Termination of employment is frightening situation for all workers. This is certainly due to the fact that termination of employment will lead to uncertainty about the continuity of life, not only for the workers but also for the worker's family.¹ For workers, termination of employment means the beginning of unemployment which will lead to uncertainty about living properly, therefore termination of employment must be avoided and used as the last punishment for every worker.²

The guarantee of the right to work and work fairly and properly as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) is certainly motivated by the fact that the position between workers and employers is not equal and is a relationship that is limited in nature (*dienstverhouding*) where the employer has the rights to give work orders to workers.³ Based on this, the State is required to intervene to provide legal protection to workers in the form of legislation.

Labour law should be positioned as a safety net for the normative rights of workers.⁴ In addition, labour law in Indonesia can be interpreted as a set of rules in the field of employment that covers before, during, and after the employment relationship ends, both written and unwritten, which are binding not only for workers and employers, but also for the government. This is the reasons labour law should be positioned between private law because it regulates the relationship between workers and employers, and also public law because it regulates how the State regulates the protection of workers and working conditions as the basic rule that app-

ly in Indonesia.⁵ In relation to the role of the State in regulating specifically in the context of termination of employment, it must be such as to provide protection to workers as a structurally weaker party when compared to employers.

The discussion in this research will be related to current conditions, namely the validity of termination of employment on the grounds of urgent violations after the Constitutional Court Decision Number 91/PUU-XVIII/2020 regarding the examination of Law Number 11 of 2020 concerning Job Creation, 3 November 2021 (Constitutional Court Decision 91/PUU-XVIII/2020), dan Constitutional Court Decision Number 012/PUU-I/2003 regarding examination of Law Number 13 of 2003 on Manpower, 26 Oktober 2004 (Constitutional Court Decision 012/PUU-I/2003) which is one of its ruling stated that termination of employment on the grounds of gross misconduct in the provision of Article 158 of Law Number 13 of 2003 on Manpower (Law 13/03) is contrary to the 1945 Constitution and has no binding legal force.

The legal issues to be discussed in this research are how the legal validity of the provisions regarding termination of employment on the grounds of urgent offences as stipulated in Article 52 paragraph (2) of Government Regulation Number 35 of 2021 Concerning Fix-Term Employment Agreements, Outsourcing, Working Time Breaks, Termination of Employment (Government Regulation 35/21)? In addition, how does the Constitution view the termination of employment on the grounds of urgent violations that have similar substance to gross misconduct as a reason for termination of employment in Article 158 Law 13/03? This research is interesting because the aspect of legal protection of workers should be prioritized amidst the development of the global business world.

This research has novelty value to previous studies, namely discussing termination of employment on the grounds of urgent violation in relation to Constitutional Court Decision 012/PUU-I/2003 and Constitutional Court Decision 91/PUU-XVIII/2020. The

5 Didik Sufajar, "Hukum Perburuahan Dimata Kaum Buruh," *Jurnal Dinamika Hukum & Masyarakat* 3, no. 1 (2020).

1 Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia* (Bandung: Citra Aditya Bakti, 2014).

2 Otti Ilham Khair, "Analisis Undang-Undang Cipta Kerja Terhadap Perlindungan Tenaga Kerja Di Indonesia," *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum* 3, no. 2 (2021): 45-63.

3 R Subekti, *Aneka Perjanjian*, 10th ed. (Bandung: PT Citra Aditya Bakti, 1995).

4 Mohammad Fandrian Hadistianto, "Eksaminasi Putusan Mahkamah Konstitusi Republik Indonesia Nomor : 37/PUU-IX/2011," *MORALITY : Jurnal Ilmu Hukum* 7, no. 2 (December 31, 2021): 166.

novelty in this research can be seen from the current context where the inclusion of the Constitutional Court Decision 91/PUU-XVIII/2020 as part of what will be discussed and related to the topic of discussion. The difference between this research and previous research is that it does not include Constitutional Court Decision 91/PUU-XVIII/2020 in the discussion, such as research conducted by Sayudi, Akbar, Rico Andrian Nahampun, dan Gusti Mauritzta with the title Settlement of Labour Disputes Due to Gross Misconduct After the Constitutional Court Decision 012/PUU-I/2003, which examines the legal impact of the gross misconduct rule as a reason for termination of employment after Constitutional Court Decision 012/PUU-I/2003.⁶

B. Method

This research is a legal research using a statute approach where the author examines the laws and regulations that are closely related to the legal issues being discussed.⁷ In conducting this legal research, the author uses primary legal materials obtained from legislation and legal theories and principles, and secondary legal materials consisting of literature sources such as books, articles in scientific works related to the topic of discussion.⁸ Based on legal materials that have been obtained, the author conducts an analysis by searching for positive legal norms consisting of applicable laws and court decisions related to termination of employment on the grounds of urgent violations.⁹

C. Result and Discussion

Legal Applicability of Government Regulation 35/21 After Constitutional

6 Akbar Sayudi, Rico Andrian Nahampun, and Gusti Mauritzta, "Penyelesaian Perselisihan Ketenagakerjaan Karena Kesalahan Berat Pasca Putusan Mahkamah Konstitusi Nomor 012/PUU-I/2003," *JURNAL HUKUM PELITA* 2, no. 2 (November 24, 2021): 59–69.

7 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2019).

8 Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1–20.

9 Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 1, 2020): 20–33.

Court Decision 91/PUU-XVIII/2020

As it is known that Government Regulation 35/21 is one of the derivative rules of the order of the labour cluster in Law Number 11 of 2020 Concerning Job Creation (Law 11/20). This Law was born as a response for Indonesia's need for investment in national development and views the prevailing labour regulations as one of the dominant factors inhibiting the entry of investment into Indonesia, therefore in general, it can be found that the substances of the general rules for protections of workers, which had previously been better regulated in Law 13/03, with the existence of Law 11/20, was degraded in such way.¹⁰

Historically, the formulation of the 11/20 Law was declared to be contrary to the 1945 Constitution and to have no conditional binding effect until construed as "no improvement has been made in the within 2 years from the effective date of this decision. declare" in the decision of the Constitutional Court 91/PUU-XVIII/2020. This decision is still a topic of discussion and debate among academics. Starting from the dualism in the interpretation of the decision on the binding force of Law 11/20. On the one hand, it states that Law 11/20 is still valid and must be enforced like positive law. This statement is at least based on the verdict number four, which basically states that Law 11/20 is still valid. On the other hand, it states the opposite, namely that Law 11/20 does not have temporarily binding legal force even though it is still in effect, because it refers to the verdicts number three, five, and six which are conditionally unconstitutional decisions with a certain deadline, and separates the understanding of the binding force and enforceability of a law. This is in line with what Maria Farida Indrati Soeprapto said, namely regarding the enactment and enforceability of law, three classifications can be found, namely regulation declared effective some time after promulgation, and regulations declared retroactive in a certain period of time before

10 Mohammad Fandrian Adhianto, "Politik Hukum Pembentukan Rancangan Undang-Undang Cipta Kerja (Studi Klaster Ketenagakerjaan)," *Pamulang Law Review* 3, no. 1 (August 15, 2020): 1.

the date of promulgation.¹¹

This opinion is also corroborated by Wicipto Setiadi who states that in the practice of enacting laws and regulations there are four ways, namely:¹²

Legislation is declared in force on the the date of promulgation, which means that the applicability and binding force of the legislation are on the same date; Legislation is declared effective some time after it is promulgated, which means tht the effectiveness of the legislation is in the date of promulgation, while its binding force is after the date of promulgation; Legislation is declared to be in force on the date of promulgation, but its enforcements is declared retroactive to a specified date, meaning that the binding force of the legislation has occurred before the date od promulgation; and Determining the moment of entry into force to other laws of the same level, if the enactment is codified, or to other lower laws if the enactment is not codified.

Despite the controversy between the two opinions, in fact, the government published on December 21, 2021 the Minister of Home Affairs Instruction No. 68, 2021 on continuing to implement the decision of the Constitutional Court. Law 91/PUU-XVIII/2020 (Instruction Minister 68/21), which then on 30 December 2022 Issued Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation (Government Regulation in Lieu of Law 2/22) as a form of follow-up and fulfilment fo the Constitutional Court Decision 91/PUU-XVIII/2020. In Chapter XV of the Closing Provision of Government Regulation in Lieu of Law 2/22, at least two things are stated, namely that Law 11/20 is revoked and has no effect and all implementing regulations from Law 11/20 are still valid as long as they do not conflict with Government Regulation in Lieu of Law 2/22. Government Regulation in Lieu of Law 2/22 has been passed by the House of Re-

11 Maria Farida Indrati, *Ilmu Perundang-Undangan, Dasar-Dasar Dan Pembentukannya: (Bagian Pertama Dari Ilmu Pengetahuan Perundang-Undangan)* (Jakarta: Sekretariat Konsorsium Ilmu Hukum, Universitas Indonesia, 1996).

12 Wicipto Setiadi, *Ilmu & Pembentukan Peraturan Perundang-Undangan* (Jakarta: Damera Press, 2022).

presentative and has been promulgated by Law Number 6 of 2023 Concerning The Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 Concerning Job Creation into Law (Law 6/23). Therefore, it can be concluded that the rules for termination of employment on the grounds of urgent violation in Government Regulation 35/21 remain valid and binding after the enactment of Law 6/23.

Termination of Employment on The Grounds of Urgent Violation in Constitutional Perspective

Discussing termination of employment should be understood and applied as a form of last resort in terms of sanctioning workers. This is at least reflected in various labour laws that have been and are currently in force. Starting from the provisions of Articles 1 and 2 Law Number 12 of 1964 Concerning Termination of Employment in Private Companies (Law 12/64). The law has been regulated in such a way and expressly stated that employers are required to prevent termination of employment, and when all efforts to terminate employment have been made and cannot be avoided, the intention to terminate employment must be negotiated by the employer to the trade union or the worker concerned if he is not a member of trade union.

The same substance of preventing termination of employment can also be found in Article 85 of Law Number 25 of 1997 on Manpower (Law 25/97), with a slight differences in that it is not only employers who are obliged to prevent termination of employment, but also workers, and/or trade unions. Article 151 of Law 13/2003 substantially prevents termination of employment, but what is different is that employers, workers, trade unions, and the government as industrial relationship stakeholders are obliged to avoid termination of employment. From explanations above, there is an obligation to negotiate the intention to terminate employment with trade unions or workers concerned if they are not members of trade unions prior to termination of employment, but this has changed based on Article 151 od Law 11/20 and Government Regulation in Lieu of Law

2/22 where the intention to terminate employment is no longer negotiated in advance but termination of employment is immediately notified to trade unions or workers concerned if they are not members of trade unions.

Prevention of termination of employment is an obligation that is prioritised because, as stated by Iman Soepomo, termination of employment for workers is the beginning of the end, the beginning of the end of having a job, the beginning of the end of the ability to finance the daily needs of life for him and his family, the beginning of the end of the ability to send children to school and so on.¹³ In addition, job loss can also mean that the worker concerned will lose his salary and career path in order to fulfil the needs of a better life.¹⁴

This is evidenced by the fact that the dominant cause of unemployment is the termination of employment, followed by the difficulty in finding a job, resignation, and expiration of the contract.¹⁵ Based on this, termination of employment needs to be regulated by Indonesia as a country that adheres to the welfare state system. Intervention by the State through the government is done to protect workers as the weaker party.¹⁶

Every stakeholder in employment must be aware that the position and role of workers is very important in the production process and in the process of national development, therefore a comprehensive policy to ensure the realisation of job security in the form of a common understanding that termination of employment must be placed as a step or last

resort.¹⁷

In assessing the constitutionality of termination of employment on the grounds of urgent violations in the provisions of Article 52 paragraph (3) of Government Regulation 35/21, it must be interpreted as evidence that explains the true intent of Law 6/23. Assessing the constitutionality of an article in a law based on its implementing regulations is at least a familiar practice in examinations at the Constitutional Court, and can also be found at Constitutional Court Decision Number 85/PUU-XI/2013 regarding the Examination of Law Number 7 of 2004 concerning Water Resources, 18 February 2015 (Constitutional Court Decision 85/PUU-XI/2013) which basically states Government Regulation as implementing regulation of the Act is the evidence that explains the true intent of the Act being tested for constitutionality before the Constitutional Court.

Furthermore, by referring to the legal considerations of the above decision, the same thing is also found in the Dissenting Opinion submitted by Constitutional Judge Arief Hidayat and Constitutional Judge Anwar Usman in Constitutional Court Decision Number 103/PUU-XVIII/2020 regarding the Examination of the Law Number 11 of 2020 Concerning Job Creation, 3 November 2021 (Constitution Court Decision 103/PUU-XVIII/2020), which basically states the constitutionality of the Job Creation Act can depend on its Government Regulation as the implementer of the provisions in question, and if the content material of the Government Regulation is contrary to the 1945 Constitution, then the content material of the Job Creation Act is automatically contrary to the 1945 Constitution.

Furthermore, this study will discuss the similarity between the substance of termination of employment on the grounds of urgent violation in Article 52 paragraph (2) Government Regulation 35/21 and termination of employment on the grounds of gross misconduct in Article 158 of Law 13/03. The description of the further elaboration of urgent offences can be found in the Explanation

¹⁷ Khair, "Analisis Undang-Undang Cipta Kerja Terhadap Perlindungan Tenaga Kerja Di Indonesia."

¹³ Iman Supomo, *Hukum Perburuhan Bidang Pelaksanaan Hubungan Kerja* (Jakarta: Djambatan, 1983).

¹⁴ Indi Nuroini, "Konsekuensi Pemutusan Hubungan Kerja Berdasarkan Peraturan Pemerintah Nomor 35 Tahun 2021," *Jurnal Hukum, Politik Dan Ilmu Sosial* 1, no. 3 (September 28, 2022): 178–183.

¹⁵ Safitri Wulandari and Atih Rohaeti Dariah, "Analisis Pengangguran Perkotaan," *Bandung Conference Series: Economics Studies* 2, no. 2 (July 25, 2022), accessed January 5, 2023, <https://proceedings.unisba.ac.id/index.php/BCSES/article/view/2912>.

¹⁶ Nindry Sulistya Widiastiani, "Justifikasi Pemutusan Hubungan Kerja Karena Efisiensi Masa Pandemi Covid-19 Dan Relevansinya Dengan Putusan Mahkamah Konstitusi Nomor 19/PUU-IX/2011," *Jurnal Konstitusi* 18, no. 2 (November 15, 2021): 413.

section and not in the body. The substantial similarities in the two grounds for termination of employment can be seen in the Table 1.

The Table 1 proves that there are similarities in the substance of termination of employment on the grounds of urgency with termination of employment on the grounds of gross misconduct, therefore it is appropriate to first discuss Constitutional Court Decision 012/PUU-I/2003 which, in its judgment, stated that dismissal for serious misconduct as provided for in article 158 of Law 13/03 was contrary to the 1945 Constitution and had no binding legal effect. In its argument, the Constitutional Court stated that Article 158 of Law 13/03 grants employers the right to terminate their employment on the grounds that the worker has committed serious misconduct without due process through an independent and impartial judicial decision.

The decision of the Constitutional Court 012/PUU-I/2003 declaring the provision of article 158 of law 13/03 to be contrary to the 1945 Constitution and therefore not legally binding, and since then, the decision This becomes final so that the employee cannot be terminated for serious misconduct without going through due process through an independent and objective decision of the court.¹⁸ The decision of the Constitutional Court is a declarative judicial decision, that is, a decision in which the judge declares there is no legal situation and/or creates a new legal situation.¹⁹ By referring to Article 24C paragraph (1) of the 1945 Constitution, it can be found that the final nature of every decision of the Constitutional Court must be interpreted that the decision is immediately legally binding and has legal consequences not only for the parties in the case, but also for anyone without exception (*erga omnes*), and against the decision there is no legal re-

medy.²⁰

The Government followed up by issuing Letter of the Minister of Manpower and Transmigration 18 Number SE-13/MEN/SJH-K/I/2005 (Letter of Manpower Minister 13/05) which basically states that Employers who will terminate employment on the grounds that the worker has committed serious misconduct (ex Article 158 paragraph (1) of Law 13/03), then the termination of employment can only be carried out after there is a criminal judge's decision that has permanent legal force. If the court that examines the alleged criminal offence allegedly committed by the worker has obtained binding legal force, then the worker concerned can only be terminated based on the provisions of ex Article 158 of Law 13/03.²¹

Due process of law must be understood as an inner attitude of respect for the rights of citizens, even though they are perpetrators of crimes, and cannot be limited to the literal application of the applicable criminal procedural law.²² In understanding due process of law, we must refer to two main principles, namely equal treatment before the law and the presumption of innocence. The principle of equal treatment before the law must mean that everyone, including suspects and/or defendants, must be given the same opportunity to exercise all the rights guaranteed by laws and regulations, while the principle of presumption of innocence must mean that every suspect and/or defendant must be consid-

18 Septina Lia Triastuti, "Perlindungan Hak Konstitusional Oleh Mahkamah Konstitusi: Pembatalan Larangan Pernikahan Pegawai Satu Atap," *Masalah-Masalah Hukum* 47, no. 4 (2018), <https://ejournal.undip.ac.id/index.php/mmh/article/view/17993>.

19 Denny Indrayani and Zainal Arifin Mochtar, "Komparasi Sifat Mengikat Putusan Judicial Review Mahkamah Konstitusi Dan Pengadilan Tata Usaha Negara," *Mimbar Hukum* 19, no. 3 (2007): 437-454.

20 Fadzlan Budi Sulisty Nugroho, "Sifat Keberlakuan Asas *Erga Omnes* Dan Implementasi Putusan Mahkamah Konstitusi," *Gorontalo Law Review* 2, no. 2 (October 30, 2019): 95.

21 Ahmad Fahmi U. Z and Nugroho Arinto, "Analisis Yuridis Pemutusan Hubungan Kerja Karena Pelanggaran Bersifat Mendesak Yang Terkualifikasi Perbuatan Pidana Tanpa Pemberitahuan," *Novum: Jurnal Hukum* (2022): 11-27.

22 Abdul Latif, "Jaminan UUD 1945 Dalam Proses Hukum Yang Adil," *Jurnal Konstitusi* 7, no. 1 (May 20, 2016): 049. legal guarantee, legal protection, fair legal assurance and equality before the law cannot be separated from the principle of "presumption of innocence". Both had becoming the absolute condition and its existences are acknowledged, protected, and guaranteed within the rule of law system in Indonesia. However, in a matter of fact there are numbers of regulations which are in contradiction with the 1945 Constitution. One regulation, which is the main discussion of this note, is the Article 32 (1

Table 1. Substance Similarity

Government Regulation 35/21	Law 13/03
Violations of an urgent nature that can be regulated in a Work Agreement, Company Regulation, or Collective Bargaining Agreement so that the Employer can immediately terminate the employment relation	Employers may terminate the employment of a worker on the grounds that the worker has committed gross misconduct as follows:
Conducting fraud, theft, or theft of goods and/or money belonging to the Company;	Conducting fraud, theft, or theft of goods and/or money belonging to the Company;
Provide inaccurate or false information to harm the company;	Provide inaccurate or false information to harm the company;
Drinking alcohol, drinking intoxicating liquor, using and/or distributing psychotropic substances, narcotics, and other addictive substances at work;	Drinking alcohol, drinking intoxicating liquor, using and/or distributing psychotropic substances, narcotics, and other addictive substances at work;
Engage in unethical or gambling behavior in the work environment;	Engage in unethical or gambling behavior in the work environment;
Assault, abuse, threaten or intimidate a co-worker or Employer in the work environment;	Assault, abuse, threaten or intimidate a co-worker or Employer in the work environment;
Persuading colleagues or employers to commit illegal acts;	Persuading colleagues or employers to commit illegal acts;
Accidentally or intentionally damaging or endangering Company property, resulting in loss to the Company;	Accidentally or intentionally damaging or endangering Company property, resulting in loss to the Company;
Accidentally or intentionally putting co-workers or employers in danger at work;	Accidentally or intentionally putting co-workers or employers in danger at work;
Disclosure of company secrets that should be kept confidential except in the public interest; or	Disclosure of company secrets that should be kept confidential except in the public interest; or
Performing other acts within the Company that are punishable by imprisonment of 5 (five) years or more.	Performing other acts within the Company that are punishable by imprisonment of 5 (five) years or more.

red innocent until their guilt is proven based on a court decision that has permanent legal force.²³

23 Mahrus Ali, "Pengawasan Peredaran Barang Cetak, Due Process Of Law Dan Hak Atas Kebebasan Mengeluarkan Pendapat," *Jurnal Konstitusi* 8, no. 4 (May 20, 2016): 521. the authority of attorney general to control the circulations of printed goods is accordance with the principle of due process of law, equality before the law, and the right of freedom of expression as stipulated in the constitution 1945. Interpreting these principles has close relationship with the basic principle of human right in Indonesia, rechtsidee, values, and world view containing in the five basic pillars of Pancasila that stresses more to the balance of right and obligation. In the context of

This provision on termination of employment on the grounds of urgent violation also shows different and discriminatory treatment when compared to Article 54 Government Regulation 35/21 which determines differently for workers who are detained by the authorities for allegedly committing a criminal offence but not at the complaint of the employer, treated in accordance with the principle of presumption of innocence who until the sixth month still obtain some of their rights as workers, and if the court declares the

judicial review of an article 30 (3)

worker concerned innocent, the employer is obliged to reinstate the worker.

With the existence of rules regarding termination of employment on the grounds of urgent violations that have the same substance as termination of employment on the grounds of gross misconduct as has been cancelled through Constitutional Court Decision 012/PUU-I/2003, it is not an exaggeration to say that the legislators have committed constitution disobedience which is a form of non-compliance and defiance of the Constitutional Court's decision. This constitutional disobedience is interpreted by the Constitutional Court as can be found in the legal considerations of the Constitutional Court Decision Number 98/PUU-XVI/2018 regarding the Examination of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, 30 January 2019 (Constitutional Court Decision 98/PUU-XVI/2018) which basically states constitution disobedience is an actions that ignore the decision of the Constitutional Court, in the sense of continuing to use a law or an article, paragraph, and/or part of a law that the Court has declared contrary to the 1945 Constitution and has no binding legal force.

At the implementation level, the principle of emergency dismissal is used by the Industrial Relations Court and the Supreme Court to hear industrial relations dispute cases. This can at least be seen in the Decision of the Industrial Relations Court at the Samarinda District Court Number 53/Pdt.Sus-PHI/2022/PN. Smr., regarding Termination of Employment on the Ground of Urgent Violation, the case of PT Harmoni Panca Utama (PT.HPU) against Muhammad, et al (7 people), 27 December 2022 (Industrial Relations Court Decision 53/Pdt.Sus-PHI/2022/PN. Smr.), and Supreme Court Decision Number 1256 K/Pdt.SusPHI/2022, regarding Cassation, the case of Yasona Lase against PT Wilmar Nabati Indonesia, 11 August 2022 (Supreme Court Decision 1256 K/Pdt.SusPHI/2022).

This constitutional disobedience will have a legal impact on the attainment of legal certainty and delay the constitutional rights spelled out in the Constitutional Court de-

cision.²⁴ Non-compliance with a decision of the Constitutional Court, otherwise known as disobedience to a court order, is theoretically based on the final and binding nature of the Constitutional Court's decision requiring compliance and compliance, so the actions of the government and the legislative that disobedient are contemptible for having gone against the law's orders in the decision.²⁵ The concept of disobeying court orders, as stated by experts, is as follows:

"Disobedience contempt' is contempt by disobedience to judgments and other orders of the court including undertakings given by a party to the court (which at law have the same effect as court orders). It arises in both civil and criminal contexts, where a person (usually, but not always, a party to proceedings in a court) does not obey a court order."²⁶

This proves that at least the effectiveness of the execution of the Constitutional Court's decision is highly dependent on the compliance of the addresat of the decision itself, especially the lawmaking body to make changes to the law that is the object of judicial review, and the Supreme Court and all judicial bodies under it that are tasked with enforcing statutory regulations. If looked at more deeply, there are also several other factors that cause the implementation of the Constitutional Court's decision to be unable to be implemented consequently, namely, the Constitutional Court which is naturally a negative legislature, the absence of speci-

24 Elma Saida Rahma Sari, "Implikasi Yuridis Pembangkangan Konstitusi (Constitutional Disobedience) Terhadap Putusan Mahkamah Konstitusi" (2021), <https://Fh.Unram.Ac.Id/Wp-Content/Uploads/2021/08/Elma-Saida-R-D1a017089.Pdf>.

25 Freidelino Paixao Ramos Alves De Sousa, "Non-Compliance with Constitutional Court Decisions as an Act of Contempt of Court," *Indonesian State Law Review (ISLRev)* 4, no. 2 (November 20, 2022): 52–66.

26 RL Simmond, ID Petersen, and AG Braddock, "Discussion Paper On Contempt By Disobedience To The Orders Of The Court" (Presented at the Contempt By Disobedience To The Orders Of The Court, Australia: Law Reform Commission of Western Australia, 2002), <https://www.wa.gov.au/system/files/2021-04/LRC-Project-093-3-Discussion-Paper.pdf>.

al enforcement agencies, the absence of a grace period for the implementation of the decision, and the absence of consequences for ignoring the decision of the Constitutional Court.²⁷

In various reviews, it is found that the parties who have a tendency to ignore, fight or even oppose the decision of the Constitutional Court, are more carried out by the executive and legislative institutions as law-makers, and followed by the Supreme Court as a judicial institution. Legally, various forms of opposition, neglect, and even defiance of the Constitutional Court's decision that has declared a provision of both the article and the law as a whole null and void, can be qualified as an unlawful act, and if in the future there is a loss for these actions, it can give birth to personal liability.²⁸

If the above discussion is applied to the main topic of discussion in this paper, namely termination of employment on the grounds of urgent violations, it can be concluded that the lawmaking body has revived the provision of termination of employment which was previously declared by the Constitutional Court to be contrary to the 1945 Constitution, and therefore must be declared to have no binding legal force. At the level of implementation, the provision of termination of employment on the grounds of urgent violations will certainly be very detrimental to workers, because it has eliminated the right to work and work fairly and properly as guaranteed in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution. The constitutional rights of workers as stated in the two articles mentioned above are the guarantee for every citizen to receive fair and decent treatment in labour relations, as well as the right to work and a decent livelihood.²⁹ The guarantee of decent work and livelihood for workers is part of the right to

welfare which can be found in the provisions of Article 10 and Article 38 of Law Number 39 of 1999 on Human Rights (Law 39/99) and is also in line with Article 6 paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights which has been ratified by Law Number 11 of 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights (Law 11/05).³⁰

The rule of termination of employment on the grounds of urgent violations can also be said to be very contradictory to Indonesia as a State of Law (*rechtsstaat*) as stated in Article 1 Paragraph (3) of the 1945 Constitution.³¹ Of course, the discourse on the concept of the rule of law is also attached to the form of respect, guarantee and fulfilment of human rights by, including the constitutional rights of workers.³² As a state of law, of course, the realisation of efforts to protect human rights should be put forward, in addition to the separation or division of powers, the implementation of popular sovereignty, the ad-

30 Muhammad Reza Winata and Intan Permata Putri, "Penegakan Putusan Mahkamah Konstitusi Nomor 13/PUU-XV/2017 Mengenai Hak Mendapatkan Pekerjaan Dan Hak Membentuk Keluarga," *Jurnal Konstitusi* 15, no. 4 (January 15, 2019): 858. peraturan Perusahaan, atau perjanjian kerja bersama" bertentangan dengan UUD 1945. Artikel ini hendak menjawab kekuatan mengikat dan akibat hukum putusan, sekaligus Penegakan putusan dengan memetakan penyelesaian terkait peraturan perundang-undangan dan perjanjian kerja yang tidak tidak sesuai dengan putusan dan bertentangan dengan prinsip kebebasan berkontrak. Penelitian ini didasarkan pada penelitian kualitatif, dimana sumber analisis yakni Putusan MK terkait permasalahan yang diangkat, peraturan perundang-undangan, buku dan artikel ilmiah. Artikel ini hendak memetakan penyelesaian yang sesuai terkait kepada perjanjian kerja yang tidak menjamin hak pekerja yang dijamin dalam konstitusi, serta bertentangan dengan prinsip kebebasan berkontrak. yakni: pertama, penyalarsan peraturan perundang undangan di bawah Undang-undang judicial review di Mahkamah Agung, kedua, penyelesaian perselisihan hak melalui Pengadilan Hubungan Industri yang akan menguji penegakan putusan dalam perjanjian kerja, peraturan perusahaan, atau perjanjian kerja bersama. The constitutional guarantee regarding constitutional rights to obtain employment in Article 28 D paragraph (2)

31 Saldi Isra, "Peran Mahkamah Konstitusi Dalam Penguatan Hak Asasi Manusia Di Indonesia," *Jurnal Konstitusi* 11, no. 3 (May 20, 2016): 409.

32 Fikri Hadi, "Negara Hukum Dan Hak Asasi Manusia Di Indonesia," *Wijaya Putra Law Review* 1, no. 2 (October 21, 2022): 170–188.

27 Mohammad Agus Maulidi, "Problematika Hukum Implementasi Putusan Final Dan Mengikat Mahkamah Konstitusi Perspektif Negara Hukum," *Jurnal Hukum lus Quia lustum* 24, no. 4 (October 2017): 535–557.

28 Fajar Laksono Soeroso, "'Pembangkangan' Terhadap Putusan Mahkamah Konstitusi," *Jurnal Yudisial* 6, no. 3 (2013): 227–249.

29 Agusmidah, *Dilematika Hukum Ketenagakerjaan Tinjauan Politik Hukum* (Medan: PT Softmedia, 2011).

ministration of government based on applicable laws and regulations and the existence of administrative justice.³³

The state is a party that has power and therefore in relation to human rights the state is required not to abuse its power (abuse of power), therefore it is an obligation for the State to protect, to ensure, and to fulfil human rights in various sectors of the life of the nation and state.³⁴ Of course, the human rights in question include the right to work and work fairly and properly. Based on the discussion above, the author can state that in order to realise the principle of the rule of law in Indonesia, the rules regarding termination of employment on the grounds of urgent violations are contrary to the 1945 Constitution and should be revoked by the legislator.

D. Conclusion

The provision on termination of employment on the grounds of urgent misconduct in the provisions of Article 52 paragraph (2) of Government Regulation 35/21 is still valid based on Law 6/23, although it has similar substance with gross misconduct as a reason for termination of employment in the provisions of Article 158 of Law 13/03 which has been declared contrary to the 1945 Constitution so that it does not apply and have binding legal force by Constitutional Court Decision 012/PUU-I/2003. Therefore, termination of employment on the grounds of urgent misconduct is clearly contrary to the 1945 Constitution, and in order to realise the principle of the rule of law, the regulation on termination of employment on the grounds of urgent misconduct should be revoked.

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³³ Haposan Siallagan, "Penerapan Prinsip Negara Hukum Di Indonesia," *Sosiohumaniora* 18, no. 2 (October 26, 2016), accessed January 7, 2023, <http://jurnal.unpad.ac.id/sosiohumaniora/article/view/9947>.

³⁴ Mukmin Muhammad, "Hak Asasi Manusia Dalam Hukum Positif Dengan Konsep *Constitutional Importance*," *Meraja journal* 1, no. 3 (2018): 31–38.

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