

# Employment Termination Legal System Based on Pancasila Ideology, 1945 Constitution and Justice Theories

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**Abstract:** *The development objective of the Employment Termination Legal System (SHAPHK) must be correlated with the ultimate goal of industrial relations regulation, namely to achieve the welfare of all parties (employers, workers or workers, communities and government), namely SHAPHK can prevent termination of employment (PHK), even if there are layoffs, it can guarantee the interests of all parties, that the settlement of layoffs is carried out in accordance with the laws and regulations that meet the theories of justice adapted to the Indonesian state ideology based on Pancasila and the basic laws of the Indonesian state, namely the 1945 Constitution (UUD 1945 ), the theories of justice referred to are: Distributive justice theory, commutative justice theory, utility justice theory, ethical justice theory, vindicative justice theory and the theory of justice in passive or passive sense, with the application of the theories of justice in the settlement of layoffs, will guarantee the layoff process can take place fairly, fulfill the rights and obligations of the parties, guarantee the peace of work and business (industrial peace), the dismissal process does not interfere with the increase from time to time the productivity of the company and the welfare of workers or laborers. The development objectives of SHAPHK as described above will not be achieved, if the development of SHAPHK is not planned rationally, planned but unbalanced, unbalanced, ignoring the theories of justice as described above or does not include industrial relations strategies in an effort to achieve prosperity for all parties, namely Company productivity correlates with workers' welfare.*

**Keywords:** *SHAPHK, Justice Theories, Pancasila, 1945 Constitution.*

## I. Introduction

In order to realize the SHAPHK that can fulfill the justice of all parties, the development of SHAPHK must be planned rationally and in a balanced manner, that is, generally paying attention to the interests of all parties involved in employment or industrial relations (employers, workers or laborers, the government), specifically the interests of those who involved in disputes on layoffs (especially the interests of workers or laborers), therefore the development strategy of SHAPHK must be based on theories of justice adapted to the ideology of Pancasila and the 1945 Constitution, so that SHAPHK can constitute a formal layoff law that prioritizes the prevention of layoffs, even if layoffs occur can provide guarantees to all parties (especially the workers or laborers), that the settlement of layoffs will be held based on theories of justice that are in accordance with the ideology of Pancasila and the 1945 Constitution, which guarantees the dismissal process can take place in a fair, fair, easy, inexpensive and simple but can fulfill the rights and obligations of all parties involved in the dismissal process so that the layoff process can still maintain conditions of calm in work and in business (industrial peace) a condition of industrial relations that can support an increase from time to time the productivity of a company that correlates with the welfare of workers or laborers.

## Theories of Justice and Ideology of Pancasila and the 1945 Constitution

SHAPHK in the settlement of layoffs, is a formal legal principle, namely the rules of law that regulate the procedures that must be taken in maintaining or upholding the principles of material law, especially in the event of a dispute or legal case in the settlement of a dispute with the help of a Judge (Court of Relations Industrial) (Gary, 1993). Material legal rules, namely the rules of law governing the contents of relations between humans or those that determine what actions or behaviors are required or prohibited or permissible, including legal consequences and legal threats to violators that can be classified as a material law rule

Termination of employment, is Chapter XII concerning dismissal from Article 150 through Article 172 of Law Number 13 of 2003 concerning Manpower.

According to Friedman, (1967), the task of the rule of law is to uphold justice as well according to the ethical theory of Aristotle in his book "ETHICA NICOMACHEA" and "RHETORICA" to have legal objectives to realize justice (*rechtsvaardigheid* or *gerechtigheid*, justice), then understanding justice according to Aristotle, is "giving to everyone what is part or right (*iussuumcuiquetribuere*)" Aristotle divides justice into 2 (two) types, namely (i). Distributive justice is justice that gives each person a share or quota according to his services (principle of comparability); (ii). Commutative justice, is justice that gives each person the same amount without paying attention to his services (the principle of equality). According to Fitch, A. John (1957) is the fact that new justice can be achieved through the harmony between legal certainty and legal equality.

According to the Utilities Theory, the law aims to realize what is useful and useful (*doelmatig*) for people, namely to realize as much happiness as possible for as many people as possible. Only in order that everyone has the opportunity to realize happiness as much as possible, utility theory is very concerned with legal certainty that requires generally accepted regulations (Goldberg, 1995). Because of the importance of legal certainty the expression "*lex dura, sedtamenscripta*" applies, the pioneer of utility theory is Jeremy Bentham(1780) who among others wrote the book "Introduction to the Principles of Morals and Legislation".

Ethical justice theory and utility justice theory both contain weaknesses, weaknesses in ethical justice theory, namely ignoring legal certainty. If legal certainty is ignored, then order is disturbed. It is precisely in the order of justice that it can be well realized. If the purpose of the law is only based on ethical theory, then the expression "*summumius summa inuria* (the highest legal certainty, is injustice)" Conversely if justice is ignored then the law will be identical with power. In connection with the weaknesses of the 2 (two) theories above, many writers (legal experts) combine the two theories, for example Apeldoorn, Bellefroid, van Kan, Subekti (Husni, 2004).

According to the guidance theory, the law aims to protect humans in the passive and active sense. Protecting in a passive sense prevents arbitrary actions and violations of rights (Layder, 1993). Protecting in an active sense, is encouraging people to continuously humanize or create humane social conditions that allow social processes to take place fairly, so that equally every human being has wide opportunities to develop all the potential (talents and abilities) of his humanity intact, nurturing and developing humanity and noble moral ideals of the people based on the One God Almighty, namely the effort to realize: (i). order and orderliness, (ii). true peace or peaceful peace, (iii). justice includes: distributive justice, commutative justice, vindicative justice (giving rewards and punishments that are in accordance with the mistakes made), protective justice. (iv). social welfare and justice, (v). maintenance and development of morality (noble character and moral ideals) based on the Belief in One God, just and civilized humanity, Indonesian unity (Widjaja and R. Rosjidi, 1998).

True peace in an employment relationship or industrial relations will be realized if all parties in industrial relations (employers, workers) can feel inner peace or gain peace in work and in business (Sentosa and Awati, 2004). Peace will exist if all parties to industrial relations or all parties to a layoff dispute feel confident that: (i). the continuity of work and business and the implementation of normative rights or terms of work do not depend on mere strength (physical and non-physical), (ii). insofar as it does not violate the normative rights or working conditions without worrying that all parties in industrial relations, can: freely be able to carry out what they believe to be true, freely be able to develop their talents and competencies, even though workers or laborers have made mistakes so that the process of layoffs, workers still receive fair treatment according to the theories of justice that are godly, just and civilized humanity, which is the first (one) principle and the second (two) principle of Pancasila and in accordance with the SHAPHK based on the 1945 Constitution which is a constitution or a constitution that contains written provisions concerning relations between rulers and people (Soepomo, 1994). The types of SHAPHK justice theories are distributive justice theory, commutative justice theory, utility justice theory, ethical justice theory, vindicative justice theory, protection justice theory in a passive and active sense adapted to Pancasila ideology and the 1945 Constitution (Adi, 2002).

### **Development of SHAPHK Based on the Theories of Justice and Ideology of Pancasila and the 1945 Constitution**

The SHAPHK development correlation based on the theories of justice is adjusted to the ideology of Pancasila and the 1945 Constitution (UUD 1945) as described above, SHAPHK must be a formal layoff law that can fulfill the sense of justice for all parties in disputes regarding layoffs according to adjusted justice theories with the Pancasila ideology and the 1945 Constitution the theory of justice referred to, is: (i) the theory of ethical justice (distributive, commutative), (ii) utility justice theory, (iii) the theory of fairness justice (active or Passive), meaning that SHAPHK must be an instrument in an effort giving to all parties involved in layoff disputes, namely:

1. What is a part or right of the parties in a layoff dispute should not only be in accordance with the applicable laws and regulations (the theory of commutative ethical justice) but also must be in accordance with services, length of work, position of workers affected by layoffs (distributive ethical justice theory or harmony between legal certainty and legal comparability);
2. Realizing what is useful and useful (*doelmatig*) for the parties in an effort to realize happiness as much as possible all parties in disputes on layoffs (utility justice theory), namely the process and implementation of layoffs can still maintain conditions of calm in work and in business (industrial peace) so that the productivity of a company that correlates with the welfare of permanent workers can increase from time to time and does not eliminate the rights of workers who are in the process of layoffs, namely during the layoff process workers can still carry out their obligations, or if under suspended conditions get their rights in the form of basic salary and permanent allowance, at the time of PHK execution, workers get Severance Pay (UP), Employee Reward Money (UPMK), Reimbursement Rights (UPH), Separate Money (UPs) according to laws and regulations invitations that apply, so as to prevent arbitrary actions and violations of rights by internal parties the process and implementation of layoffs (the theory of passive protection justice) (Gary. 1993).

Active protection justice theory, in line with the legal function of Josep Raz in Ahmad Ali concerning direct and primary socio-legal functions, namely, among others, "encouraging certain actions", namely encouraging parties in disputes on layoffs to continuously humanize or create the condition of the human rights process and implementation of layoffs, keeping the process and implementation of layoffs taking place fairly, so that equally every party in the process and implementation of layoffs has a wide opportunity to express their opinions, maintain and develop humanity and the moral aspirations of the people so that they can realize the process and implementation of layoffs, which: (i). orderly and orderly, (ii). true silence or peace of mind, (iii). justice includes: distributive justice, commutative justice, vindicative justice (giving rewards and punishments that are in accordance with the mistakes made), protective justice. (iv). well-being and social justice, (v). maintenance and development of morality (noble character and moral ideals) based on the One and Only God and Fair and Civilized Humanity, Socially Equitable for All Indonesian People (Bruggink, 1996).

Especially for social justice for all the people of Indonesia which is the fifth (five) precepts of Pancasila in relation to the process and implementation of layoffs, namely that justice is not aimed only at the general period (employers, workers who are not in the process and implementation of layoffs, the government), but also to individuals (workers who are in the implementation and dismissal process), so that in social justice there are awards to individuals (workers who are in the implementation and process of layoffs), but these individuals (workers who are in the implementation and dismissal process) are not merely independent entities. In the socio-cultural context, other individuals in connection with other individuals and with their communities in this case entrepreneurs, workers who are not in the process and implementation of layoffs, the government. Strictly the process and implementation of layoffs in addition to having to pay attention to the rights of workers who are in the process and implementation of layoffs can also maintain an increase in productivity of the company correlated with the welfare of workers who are not directly involved in the process and implementation of layoffs (Widjaja, 2001).

What is meant by workers' rights that are in the process and implementation of dismissals according to Harahap (1997), is the "rights imposed by law, if necessary by force" the types of workers' rights, are waiting money in the form of basic salary and fixed allowance that must be provided by the employer during the process of implementing layoffs and severance pay (UP), Employee Reward Money (UPMK), Rights Replacement Money (UPH), Split Money (UPs) in accordance with laws and regulations in force or in accordance with the Work Agreement (PK), Company Regulation (PP), Collective Labor Agreement (PKB), along with PK, PP, the Collective Labor Agreement does not conflict with the applicable legislation.

### **Characteristics of SHAPHK In Accordance with Justice Theories Adapted to the Ideology of Pancasila and the 1945 Constitution**

The characteristics of SHAPHK that fulfill the theories of justice are adjusted to the Pancasila ideology and the 1945 Constitution as described above, including:

1. In accordance with the primary legal function of Harahap (1997) that is "the legal function prevents certain acts" 15 then all parties involved in disputes on layoffs (employers, workers, trade unions and the government), with all efforts must make efforts to avoid layoffs, because layoffs are the beginning of misery in the economic and social life of workers, workers who are laid off are very difficult to get a replacement job, in principle, layoffs are contrary to the precepts of two (2) Pancasila namely humanity fair and civilized and contrary to the 1945 Constitution, which states that for the sake of humanity every Indonesian citizen has the right to work and a decent living (Vide Article 27 paragraph (2) of the 1945 Constitution);

2. In the event that all efforts have been made, but layoffs cannot be avoided, then the purpose of layoffs must be negotiated or deliberated through the Bipartite Cooperation Institute (LKB), namely a forum for communication and consultation on matters relating to industrial relations (including matters relating to the process and implementation of layoffs) in one company, whose members consist of representatives of employers, elements of workers or labor unions that have been recorded at the agency responsible for manpower (Vide Article 1 paragraph (18) UUK), In the case of negotiations through the LKB do not result in an agreement, employers can only do layoffs after obtaining a determination from the Industrial Relations Dispute Settlement Institution (LPPHI) (Vide Article 151 paragraph (1) to paragraph (3) UUK), what is meant by LPPHI is Industrial Relations Court (PHI) or the Supreme Court (MA);
3. The reasons for layoffs do not conflict with the theories of justice that are adjusted to the Pancasila and the 1945 Constitution or the reason for layoffs is not prohibited by labor law (Vide Article 153 paragraph (1) letters a to J Manpower Law), for example employers are prohibited from Termination of employment with the reason that pregnant women workers, while the reasons for possible layoffs, are the reason for termination of employment in accordance with the labor law (Vide Article 158 paragraph (1) letter a to J Manpower Act), for example workers commit theft or embezzlement of goods or money company;
4. The mechanism of dismissal in accordance with SHAPHK is based on theories of justice that are adjusted to Pancasila and the 1945 Constitution both for the mechanism of dismissal that is carried out in a non-litigation (bipartite, mediation) or through litigation mechanism;
5. In order to maintain the sustainability and productivity of the company, during the dismissal process or LPPHI has not issued a decision or determination of layoffs, both employers and workers must continue to carry out all their obligations (Vide Article 155 paragraph (2) Manpower Act);
6. Permanent employers are obliged to pay wages along with other rights that are normally received by workers who are suspended during the suspension process (Vide Article 155 paragraph (3) UUK);
  - a. In accordance with the theory of fairness, the harmony between legal certainty and legal equality, namely in the implementation of layoffs, employers must provide UP, UPMK, UPH, UPs to workers whose amount is in accordance with the determination or decision of LPPHI or at least in accordance with the prevailing laws and regulations, some examples below This is about the correlation of "reasons for layoffs" with workers' rights in the form of UP, UPMK, UPH, UPs:
  - b. Employers can terminate workers due to changes in status, merger, or consolidation of companies, and employers are not willing to accept workers in their companies, then workers are entitled to at least 2 (two) times the provisions of Article 156 paragraph (2) of Law 13 / 2003, UPMK is at least 1 (one) time the provisions in Article 156 paragraph (3) of the Manpower Act, and UPH is at a minimum in accordance with the provisions in Article 156 paragraph (4) of the Manpower Act (Vide Article 163 paragraph (2) Law Labor law);
  - c. Employers can terminate workers in the event of a change in status, merger, consolidation, or change in company ownership and workers are not willing to continue working relationships, then the worker has the right to UP at least 1 (one) time in accordance with Article 156 paragraph (2) Labor Law, Work Period Award at least 1 (one) time the provisions of Article 156 paragraph (3) of the Manpower Act and Minimum Reimbursement in accordance with the provisions in Article 156 paragraph (4) of the Manpower Act (Vide Article 163 paragraph (1) Manpower Act);
  - d. Workers who are absent for 5 (five) working days or more consecutively without written statements that are equipped with valid evidence and have been called by the employer 2 (two) times in a proper and written manner can be terminated due to qualifications to resign, workers in question has the right to receive UPH at a minimum in accordance with Article 156 paragraph (4) and given UPs whose amount and implementation are regulated in the Work Agreement (PK), Company Regulation (PP), or Collective Labor Agreement (PKB).

### **Impact of SHAPHK That Does Not Complete With The Theory Of Justice Based On Pancasila And The 1945 Constitution**

The implementation of SHAPHK which is not in accordance with the characteristics as above, has an impact on not achieving the objectives of the theories of justice in the process and implementation of layoffs as described above, namely:

1. Not achieving the objectives of distributive justice theory, namely the amount of UP, UPMK, UPH, UPs given by employers to laid-off workers "not exceeding" as stipulated in the legislation (not in accordance with the principle of comparability), meaning that refers to distributive justice (of course

- adapted to the ability of the company), then the amount of UP, UPMK, UPH, UPs that should be provided by the employer to the workers affected by layoffs must be proportional to the capability of the company that correlates with the contribution or services of workers to the company, meaning the amount UP, UPMK, UPH, UPs given to these workers must exceed as stipulated in the legislation (the principle of comparability);
2. Not achieving the objectives of the commutative justice theory, namely the amount of UP, UPMK, UPH, UPs given by employers to workers who are laid off below as stipulated in the legislation (not in accordance with the principle of equality);
  3. Not achieving the goal of justice from the utility theory, namely SHAPHK is not able to achieve its goal to realize what is useful and useful (*doelmatig*) for the parties involved in disputes layoffs or SHAPHK is not able to realize happiness as much as possible parties involved in layoff disputes, so the process and implementation of layoffs has the potential to cause disorder in an industrial relationship, disruption of the productivity of the company and the non-realization of the welfare of workers and their families because every party involved in disputes on layoffs does not get the opportunity to realize happiness as much as possible;
  4. The achievement of the objective of justice according to the Guiding Theory in the Passive Meaning or not to achieve the primary legal function of Joseph Raz is that "the law serves to prevent certain acts", meaning that SHAPHK does not function to prevent arbitrary acts of employers who violate rights the rights of workers are Labor Norms, what is meant by labor norms, is the regulation of rights and obligations for workers and employers or leaders of companies contained in laws and regulations, imperative arrangements or must be carried out;
  5. Not achieving the theory of active protection, justice is the primary legal function of Joseph Raz, namely "the law functions to encourage certain actions" 18 namely the dispute resolution mechanism does not encourage parties involved in the process and implementation of layoffs to continuously humanize or process and the implementation of layoffs cannot create conditions of industrial relations that are humane, the process and implementation of layoffs take place unnaturally and unfairly, so that every party in the process and implementation of layoffs does not have wide opportunities to develop all the potential (talent and abilities) of their humanity in its entirety, unable to maintain, develop humanity and moral ideals of noble people based on Pancasila and the 1945 Constitution (Usman. 2003).

### **Development Factors of SHAPHK**

The development of SHAPHK will not cause vulnerability if it is planned by referring to the theories of justice that are adjusted to Pancasila and the 1945 Constitution as described above and do not cover strategically in an effort to achieve prosperity for all parties involved in industrial relations and can not support the conditions - social and economic conditions of all parties (especially the workers).

Based on the above considerations, the mitigation of vulnerability aspects in the development of SHAPHK is a key and strategic position to support generally Indonesia's national development policies, in particular industrial relations development policies and the development policy of Indonesian SHAPHK.

SHAPHK is a sub-system of the Procedural Legal System for Industrial Relations Dispute Settlement as stipulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement (UUPPHI), and PPHI is a sub-system of industrial relations, vulnerable factors in SHAPHK can come from workers, employers, government and legislation (R. Nolan, 1979).

#### ***Worker-prone factors***

The vulnerable factor of SHAPHK from the workers is the relatively low level of education and economy of workers and does not master SHAPHK as regulated in the UUPPHI by using civil procedural law regulated in HIR, Rbg, Rv and generally by workers who do not understand it, who understand HIR, Rbg, Rv are Advocaat, workers do not have the cost to use Advocaat services, these conditions have the potential to give entrepreneurs the opportunity to carry out arbitrary actions to workers in the process and implementation of layoffs.

Hazardous factors of workers as described above, placing the position of workers even labor unions in conditions that are very easy to accept the terms of layoffs submitted unilaterally by employers, which of course the terms of the layoffs are contrary to the legal function of primary from Joseph Raz as described above, and not according to the theories of justice based on Pancasila and the 1945 Constitution or not in accordance with: distributive justice theory, commutative justice theory, utility justice theory, ethical justice theory, the theory of justice in the passive and active sense (Margono, 2000).

### ***Prone Factors of Entrepreneurs***

The vulnerable factor in the development of SHAPHK originating from entrepreneurs, namely, in general, entrepreneurs do not have a mental attitude that is in accordance with the theories of Pancasila justice and the 1945 Constitution or the mental attitude of entrepreneurs who do not want to carry out the legal function of the primary Joseph as described above, the intended mental attitude of the entrepreneur is:

- a. do not carry out or implement not fully the rights of workers that are Work Norms (Labor Legislation) or that are in the terms of employment that should be stated in the Work Agreement (PB), Company Regulations (PP) and Collective Labor Agreements (PKB);
- b. do not understand or do not want to carry out as stipulated in the Indonesian Company Law;
- c. the welfare program of workers while employers are considered a production cost must be kept as low as possible;
- d. treat workers as mere means of production and do not respect them as human beings with their dignity (Rajagukguk, 2000).

### ***Government-prone factors***

- a. The vulnerable factor in the development of SHAPHK from the government (officials), is that some officials do not want to carry out the legal functions of the primary character of Joseph Raz as described above or have no mental attitude in accordance with the theories of justice based on Pancasila and the 1945 Constitution, the characteristics of officials These are:
- b. carry out tasks not objectively and even in solving problems (disputes on layoffs) siding;
- c. do not understand SHAPHK laws and regulations in depth (philosophy, principles, principles, functions);
- d. lacking the ability to explain various principles of industrial relations in general and labor legislation (SHAPHK) in particular;
- e. Weak and inconsistent law enforcement.

### ***Vulnerable Factors of Legislation***

The mechanism of Dispute Settlement Dispute using formal law (procedural law) that is used is civil procedural law, namely HIR, Rbg, Rv (Vide Article 2 UUPPHI), according to K. Yin (1993) civil law is a legal group that regulates public order concerning individual interests of citizens the community, especially in matters concerning: familial relations, personal wealth management, according to Campbell (1991) civil law are legal rules governing ordinary legal issues (common) faced by humans in their lives, which contain general principles, according to Suherman (2004) law civil legal rules governing special or special interests, while according to Santoso (1998) civil law is a law that does not priori force or give freedom for legal subjects to complete their legal relations based on the legal provisions they hold yourself.or the principle of freedom of contact (P from 1338 paragraph 1 in conjunction with Article 1320 of the Civil Code) which is one of the concretizations of liberalism and individualism. The designation of civil procedural law which is a formal law from material law (civil law) which is not a priori force certainly will not be suitable as a formal law of dismissal that has entered the field of public law.

The compelling nature required in SHAPHK's goal of this coercive nature is to run the SHAPHK function as a tool of social engineering or social engineering by law). The definition of a tool of social engineering or social engineering by law. Law as a tool to change society" or law (SHAPHK) can be used as a tool in the process and implementation of layoffs to achieve prosperity for all parties (employers, workers) , SHAPHK can be used as a tool to uphold justice, order, security in the process and implementation of layoffs or SHAPHK can be used as a tool to create harmony, harmony in industrial relations (industrial peace) even though there is a process and implementation of layoffs in a company.

SHAPHK is the formal law of layoffs, not material law, according to Rahardjo (1991), material or substantive law is a regulation that contains any actions that may and should not be done, while formal or procedural law is a regulation that regulates procedures and rules for carrying out material or substantive law. According to Rahardjo (1991), there may be many people who think that procedural law (formal law or SHAPHK) is not so important compared to the substance law (industrial relations material law), but actually procedural law (formal law or SHAPHK) cannot be underestimated at all, shortages or failures in court proceedings (PHI or MA) can be fatal, even though substantively a party is in a better position than its opponent.<sup>24</sup> Based on the opinion of Rahardjo (1991), what is meant by law material or substantive resolution of disputes on layoffs, is a regulation that contains any act that is permissible (not prohibited) and may not be (prohibited) to be used as an excuse or used as a cause of layoffs as stated in the Manpower Act.

Regulations are not permitted (prohibited) to be used as an excuse by employers to terminate workers, as stipulated in Article 153 paragraph (1) letter a to j of the Manpower Law, among others Employers

are prohibited from dismissing on the grounds: workers unable to work due to illness according to the doctor's statement for a period not exceeding 12 (twelve) months continuously (Vide Article 153 paragraph (1) letter a of the Manpower Act).

Regulations that are permitted (not prohibited) to be used as an excuse by employers to terminate workers, as stipulated in Article 158 paragraph (1) letters a to j of the Manpower Act, among others Employers can terminate workers on the grounds of workers has made a serious mistake as follows, committed fraud, theft, or embezzlement of goods or money belonging to the company (Vide Article 158 paragraph (1) letter a)

Even though the reason or cause of the dismissal of PHK disputes is legally permissible (not prohibited), the dispute resolution mechanism must still be based on formal law or procedural law which is the result of the embodiment of Indonesian labor law based on Pancasila justice theories and the 1945 Constitution, meaning the process settlement of disputes on termination of employment must be the principles of the State of the Law of the Republic of Indonesia based on Pancasila and the 1945 Constitution, the process and implementation of layoffs must be high, the principles of Pancasila, namely: God Almighty, Humanity, Unity, Social Justice.

SHAPHK which refers to UUPPHI still uses civil procedural law, namely HIR, Rbg, Rv, where HIR, Rbg, Rv adheres to Individualism, an understanding that emphasizes human independence and responsibility and freedom itself, an individualist will continue personal achievement and will, if HIR, Rbg, Rv adheres to the understanding that individualism is used by the dismissal process, then the position of employers and workers is seen as the same strength, considering that from the economic and social aspects the employer is much stronger than the workers, so individualism is detrimental to the employer in favor of the employer .

Individualism is contrary to the notion of Pancasila which prioritizes common interests (the welfare of all parties in an industrial relationship), emphasizes the settlement of disputes on termination by consensus, where in the mechanism of consensus to reach consensus, the position of employers with workers is parallel, side by side not ignoring the fact that based on economic and social aspects, the employers are much stronger than the workers, for this reason the employer should protect workers, form employers 'protection for workers, among others during the process of layoffs, at least employers fulfill all workers' rights according to the law valid invitation.

In connection with aspects that are the factors that cause shortages or failures in the process of resolving disputes on layoffs, as described above, Huijbers(1995) argues: "In order for the law to realize justice and prosperity for the people of Indonesia, what must be considered from the law is not just the formal form, but the contents must be in accordance with a sense of justice that lives and develops in the community, so compliance with the law is not addressed as coercion but felt very valuable or responded to as an inner obligation.

According to H.I.R, Rbg, Rv, the judge is a sitting official or judge in a passive position, for example in H.I.R, Rbg, Rv, the principles apply: (i). who postulates must prove (Vide Article 163 H.I.R). (ii). the judge is not permitted to decide more than what the plaintiff has requested or sued in his petition, the petition is a matter requested by the plaintiff to the judge to be granted (Vide Article 178 paragraph (3) HIR), because the education factor of workers is generally relatively low, in general the workers does not have the ability to prove unlawful acts committed by the employer, or the workers / laborers as the plaintiff does not have the ability to make a petition containing matters which constitute workers' rights as stipulated in the legislation, requested or sued by a worker as a plaintiff to the employer as a defendant less than it should have been regulated in labor legislation, with the principle that the judge is not permitted to decide more than the plaintiff requested or sued in his petition, the judge will decide the workers' rights as requested by the plaintiff if in the petition, where the workers' rights requested in the petition are less than the rights of workers or workers as stipulated in the applicable laws and regulations, the judge's decision is contrary to the theory of commutative ethical justice (legal equality).

To overcome these obstacles PHI judges may not be passive but must be active, meaning that the judge must have a direct relationship with all factors of the layoff disputes process (the life relationship of the judge with the layoff case being tried), the judge face to face with the litigant parties, the active role of the judge for example, the judge can direct the plaintiff (worker) in the case of making a good and right lawsuit, the judge can ask for clarification, data, evidence to the employer about what is argued by the worker, in addition so that the examination goes well and regularly gives explanations to the parties , regarding legal remedies and means of evidence, layoffs (material, changes in lawsuit, reasons) and so forth. Other vulnerable factors in resolving disputes on layoffs originating from the legislative regulations as described above, namely the legislation concerning the resolution of disputes on layoffs that are regulated in UUK and UUPPHI, is contrary to the principle of presumption of innocence, for example Article 160 UUK, which allows employers to terminate workers who have been unable to work for more than 6 (six) months because they are detained by the

authorities, even though the criminal cases of workers who are detained by the authorities have not obtained permanent legal force (*inkracht van gewijsde*).

As explained above, the impact of hazardous factors originating from SHAPHK or failure of proceedings in settling disputes on layoffs can be fatal, even though substantively materially a party (worker) is in a better position than its opponent (entrepreneur), it is appropriate with the opinion of Kusumaatmadja (1976): "Must not only look at the law as a set of rules and principles that usher in human life in society, but must also include institutions (institutions) and processes (processes) needed to realize the law in reality".

In line with Kusumaatmadja's (1976) opinion, the factors that cause deficiencies or failures in the process of resolving disputes on layoffs both outside and through industrial relations justice can be seen from the aspect of:

- 1). The trial process is terminated:
  - a) Contrary to the principle of a simple, fast, low-cost judicial process, this principle is expressly stated in Article 2 paragraph (4) of Law No. 48 of 2009 concerning Judicial Power, which means that in practice the settlement process of layoffs regulated in the UUPPHI is relatively simple, not fast, requires a cost that is not easy, the layoff mechanism regulated in the UUPPHI is: Bipartite, Mediation, PHI and MA, according to the process authors Settlement of dismissals fulfills the principle of a simple, fast, low-cost judicial process, sufficient settlement is bipartite and through the PHI, meaning that the decision of PHK by the PHI is final and binding or has obtained permanent legal force (*inkracht van gewijsde*);
  - b). As explained above, it is contrary to the principle of presumption of innocence, for example in UUK that is contrary to the principle of presumption of innocence, is Article 160 of the UUK, which allows employers to terminate workers during labor More than 6 (six) months of being unable to work because they are detained by the authorities even though the worker has no permanent legal decision (*inkracht van gewijsde*). The principle of presumption of innocence is regulated in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power and in Article 18 of Law Number 39 of 1999 concerning Human Rights. which essentially regulates: "Everyone who is suspected, arrested, detained, prosecuted, or confronted before a court must be considered innocent before a court ruling declares his guilt and has obtained permanent legal force (*inkracht van gewijsde*)".
- 2). The principles and principles of the formal law of SHAPHK namely UUPPHI are not in accordance with the theories of justice based on Pancasila and the 1945 Constitution, namely the procedural law that applies to the PHI is the Civil Procedure Law that applies to the Court in the General Courts (Vide Article 57 UUPPHI), namely Het Herziene Indonesian Reglement (HIR), Rechtsreglement Buitengewesten (R.Bg), the Reglement of de Burgerlijke Rechtsvordering (RV) took effect on May 1, 1848 which is a Dutch colonial inheritance that embraces individualism, liberalism as described above, meaning HIR, R.Bg, RV is not in accordance with the characteristics of SHAPHK based on Pancasila justice theories and the 1945 Constitution.

The characteristics of SHAPHK which are based on Pancasila justice theories and the 1945 Constitution, are:

- 1) Preferring to prevent the occurrence of layoffs, even if there is a layoff dispute, the dispute can be resolved bipartite based on consensus deliberations, without having to involve parties outside the company (mediators, consoliators, arbitrators etc.);
- 2) Able to provide protection for the rights of the parties involved in layoff disputes (company productivity correlates with worker welfare);
- 3) The process of settling layoffs in a non-litigation or litigation manner, does not cause disharmony in industrial relations, or still maintain calm in work and calm in trying so that it can continuously maintain the productivity of the company which correlates with the welfare of workers;
- 4) Can overcome the vulnerable factors of the legislation in SHAPHK as described above.

### **Theory of SHAPHK Justice Based On Pancasila and The 1945 Constitution**

It has been described above the notions of liberalism and individualism, recognizing the existence of differences in interests, individual freedom occupying the highest place, the settlement of every difference carried out by means of power (strike, lock out), the concept of freedom of liberalism in the economic field raises capitalism, namely a concept that gives freedom for members of society to strive and compete with little government interference, liberalism wants the implementation of an economy based on free competition, *laissez faire*, *laissez passer*, who is strong who wins. *Laissez-faire* is a French phrase meaning "let happened" (literally "let do") so that in practice it often happens strong (businessman) suppresses the weak (worker), the purpose of law according to the concept of liberalism is to protect the freedom of individuals in society, the purpose of law liberalism is not compatible in the purpose of Indonesian law is based on Pancasila and the 1945 Constitution, as stated in paragraph 4 (four) of the Preamble to the 1945 Constitution, namely "the main task of the state is to



promote general welfare" means that Indonesia adheres to the concept of prosperity or *wohlfahrtstaats* where the state is active in carrying out its citizenship<sup>28</sup> including active states in settling disputes on layoffs or active countries in the making of SHAPHK.

The Indonesian legal system, which is based on Pancasila and the 1945 Constitution, besides adhering to the concept of prosperity, also adheres to a democratic state in which "sovereignty is in the hands of the people and carried out according to the Constitution (Wide Article 1 paragraph (2) of the 1945 Constitution), the concept of Indonesian democracy prioritizing deliberation, harmony, promoting social justice and protection of human rights, for that SHAPHK must fulfill obtaining approval or as much as possible to pay attention to the interests of all parties involved in industrial relations (company productivity, welfare of workers and even the state) guaranteeing the implementation of normative rights all parties, guarantee legal certainty as well as equality before the law to all parties in a process and implementation of layoffs.

According to the theory of justice of SHAPHK which is based on Pancasila and the 1945 Constitution in the pattern of the Welfare State, even though the parties involved in resolving disputes on layoffs are equal to the law (equality before the law) but not sociologically the same, therefore free competition among workers and entrepreneurs will cause injustice, strictly speaking the weak workers will always lose if they have to compete with the businessmen whose position is stronger than the economic and social aspects, as a result the process and implementation of layoffs becomes unfair which will cause disharmony in an industrial relationship (strike , lock out) and lead to not achieving the ultimate goal of industrial relations (welfare of all parties).

SHAPHK Indonesia should try to place workers with employers in equal positions (based on their respective roles and functions) by not ignoring that they are economically and sociologically different (workers need more employers), with civil procedural law (HIR, Rbg, Rv ) for the settlement of disputes on termination of employment, the UUPPHI has placed the workers with the employers not in equal positions or placing workers with employers in the same position as strong or face to face as adopted by the notions of liberalism and individualism, as long as the PHI uses civil procedural law ( HIR, Rbg, Rv) will be difficult to achieve the mechanism for resolving disputes on termination of consensus by consensus and win-win solutions based on the principle of welfare of all parties as desired by SHAPHK based on the Pancasila justice theory and the 1945 Constitution.

SHAPHK based on the Pancasila justice theory and the 1945 Constitution must adhere to the principle of partnership (kinship, mutual cooperation, togetherness, harmony) so that employers with a stronger social and economic position must protect workers whose social and economic position is weaker, therefore it is necessary to interfere with the state ( the government) in settling disputes on layoffs, the purpose of interfering with the government is to realize the welfare of all parties, also to prevent arbitrary actions from the employer whose social and economic position is stronger to the workers whose social and economic position is weaker. the responsibility of the government to prevent layoffs or ensure the amount of UP, UPMK, UPH, UPs given layoffs according to SHAPHK that fulfill the sense of justice of all parties involved in the process and implementation of layoffs.

The existence of government interference in resolving disputes on layoffs is a fact that the purpose of the process and implementation of layoffs in Indonesia adheres to the theory of utility and protection theory and adheres to legal function theory from Kusumaatmadja (1976). According to the utility theory put forward by Jeremy Bentham, said the purpose of law is to realize what is useful or useful for most people (all parties in the process and implementation of layoffs).

According to the guiding theory of the legal purpose of protecting people in a passive and active sense, in a passive sense it is to prevent arbitrary actions and violations of rights, in an active sense is to create social conditions that open as wide a path as possible and encourage people to humanize themselves or fairly every human being gets wide opportunity to develop all the potential (talent, ability) of humanity as a whole. According to the law function theory of Kusumaatmadja (1976) states the function of law is to direct the community in achieving its goals or as a means of renewal of society (law as a tool of social engineering).

The purpose of the legal system for the process and implementation of layoffs according to ethical theory, utility, protection and legal functions of Kususmaatmadja (1976), is:

- a) Ensuring the implementation of the normative rights of the parties who are in the process and implementation of layoffs, such as: (1). Employers' right to business peace and productivity. (2). The rights of workers to the peace of work and fulfillment of all the good rights which are normative (labor legislation) or those that are in the terms of employment (term of employment);
- b) Protect the parties from arbitrary actions and from rights violations;
- c) Open the way and encourage the parties involved in the process and implementation of layoffs to humanize themselves or fairly every party involved in the process and implementation of layoffs have equal opportunities to defend their rights and be fulfilled by all normative rights (labor legislation) and which is a term of employment;

- d) Directing the process and implementation of dismissals that are fair, definite, easy, cheap, simple, upholding high human rights, presumption of innocence based on Pancasila and the 1945 Constitution;
- e) As a means of reforming the industrial relations community (law as a tool of social engineering) towards a fair, definite, easy, cheap, simple, inexpensive process and implementation of cheap costs, protects human rights, presumption of innocence (presumption of innocence) and the values of Pancasila;
- f) Upholding the law and justice The Law of the Republic of Indonesia is based on Pancasila and the 1945 Constitution.

### **Conclusion**

The SHAPHK that is built must be planned in a rational and balanced manner, which is to pay attention to all the interests involved in it (especially the interests of workers) and based on the values (philosophical, moral, cultural) of Pancasila and the 1945 Constitution and includes strategic to achieve prosperity for all parties (businessmen, workers, society and government), and based on the principles of justice (protective, ethical, distributive), presumption of innocence, principles of certainty and principles of the Indonesian state of law which embrace the philosophy of Pancasila and the 1945 Constitution, namely between others adhere to the principle of partnership (kinship, mutual cooperation, togetherness, harmony), the employers who have a stronger social position must protect workers whose social and economic position is weaker, therefore there must be involvement of the state (government) in the process and implementation of layoffs, the purpose of state (government) involvement is to prevent the occurrence of layoffs, prevent rent actions authority in the process and implementation of layoffs, namely arbitrary actions by employers whose social and economic position is stronger to the workers whose social and economic position is weaker, ensuring the process and implementation of layoffs in accordance with laws and regulations based on theories of justice adjusted to the Pancasila ideology and the 1945 Constitution, with the easy, cheap and simple process and implementation of layoffs.

The SHAPHK development will not cause vulnerability if it is planned rationally, that is according to the legal function directly and in a primary manner, which includes preventing certain arbitrary acts according to passive and encouraging theories of doing certain actions according to the theory of justice of active patronage or based on justice theories. others are in accordance with the Pancasila and the 1945 Constitution and cover strategically in an effort to achieve prosperity for all parties involved in the process and implementation of layoffs and can support the social and economic conditions of all parties (especially the workers), for that aspect the vulnerability in the development of SHAPHK is a key and strategic position to support generally Indonesia's national development policies, in particular Indonesia's labor development policies or industrial relations. For this reason, SHAPHK refers to UUPPHI which still uses civil procedural law, namely HIR, Rbg, Rv where, among other things, the position of passive judge must be changed with SHAPHK which uses procedural law based on theories of justice that are adapted to the Pancasila ideology and the 1945 Constitution with the more active as an effort to uphold justice for all parties involved in the process and implementation of layoffs (employers, workers).

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