

Legal Protection for Unilateral Layoffs of Additional Workers at Teluk Nibung Port Following the Enactment of Government Regulation No. 35 of 2021 from a Maqashid Sharia Perspective

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Abstract

Additional Workers (TKT) at Teluk Nibung Port in Tanjung Balai City are vulnerable subjects in industrial relations in Indonesia. This study aims to analyze the legal protection for TKT who experienced unilateral termination of employment (PHK) by the port in 2023, after working since 1996, without compensation. Legally, the status of workers who worked for years with verbal agreements and the continuous nature of the work indicates an indefinite-term employment relationship (PKWTT), regardless of the formal designation "Additional." Although the Government has issued Government Regulation Number 35 of 2021 as a derivative of the Omnibus Law of the Job Creation Law, the regulation still causes ambiguity, especially regarding the status of workers who are not formally registered and the mechanism for unilateral layoffs that violate procedures. From the perspective of Maqashid sharia, protection for TKT is crucial in order to achieve the benefit (welfare) which is the main objective of sharia, especially in maintaining the soul (hifz an-nafs) through fulfilling the right to livelihood (hifz al-mal). Layoffs without proper compensation have the potential to threaten the maqashid and are a form of injustice that must be resolved through industrial relations legal channels.

INTRODUCTION

Legal protection for workers is a constitutional mandate and moral imperative within the framework of the Indonesian rule of law, aimed at realizing social justice and guaranteeing the basic authority of every Indonesian citizen as stated in the 1945 Constitution of the Republic of Indonesia Article 27 paragraph 2 states that, "Every citizen has the right to work and a decent living for humanity". This right is the basis for the state to ensure that every citizen obtains decent work and is able to support themselves according to human dignity and Article 28D paragraph 2 affirms that, "Everyone has the right to work and to receive fair and proper remuneration and treatment in employment relations". This paragraph specifically guarantees the right of every individual to receive fair wages and treatment while working, which is an essential part of labor protection. In the employment sector, fair and civilized employment relations are a prerequisite for the creation of social stability and increased national productivity (Husni, 2019).

The industrialization phase, driven by capital accumulation and economic growth, has transformed the legal landscape in Indonesia, with the regulatory framework tending to prioritize the interests of industrialists and capital flexibility. In this dynamic context, labor regulations emerged that, rather than providing certainty, have become a source of crucial problems for workers. A central issue that has emerged is termination of employment (PHK); its implementation often generates polemics and serious problems that marginalize workers, particularly through unilateral layoffs that do not follow legal procedures (Angelia 2020). The lack of clarity in determining the reasons for layoffs and granting workers' rights, both during and after

employment, directly threatens the well-being and livelihoods of workers and their families (Amri, 2021).

This problem was further exacerbated by the industry's need for flexible work arrangements, which was addressed by the enactment of Government Regulation No. 35 of 2021 (implementing regulations for the Job Creation Law), which significantly regulates Fixed-Term Employment Agreements (PKWT), Indefinite-Term Employment Agreements (PKWTT), Outsourcing, Working Hours and Rest Periods, and Termination of Employment (PHK). Although Government Regulation No. 35 of 2021 was created to accommodate the needs of industrialization, its implementation created new challenges for both parties in determining the appropriate requirements, categories, and conditions for its implementation (Marpaung, 2022).

Government Regulation (PP) Number 35 of 2021, the implementing regulation for the Job Creation Law, introduces changes and clarifications to both types of agreements. Regulations regarding PKWT (Fixed Term Work Agreements) are now outlined in Articles 4 to 17 of PP 35/2021, detailing the types of jobs that may utilize PKWT and the provisions for their extension and renewal. Meanwhile, regulations regarding PKWTT (Fixed Term Work Agreements) are specifically stated in Article 22 of PP 35/2021, which states that a probationary period for permanent workers (PKWTT) is permitted, provided it does not exceed three months. This demonstrates regulatory adjustments to provide a clearer legal framework for employment relations in Indonesia (Dalimunthe, 2023).

In the midst of efforts to enforce labor laws, the case of Additional Workers (TKT) at Teluk Nibung Port, Tanjung Balai City is a clear illustration of this vulnerability. The presence of TKT has existed since 1996 when the export and import activities of marine and agricultural products increased at Teluk Nibung Port, Tanjung Balai City. The Loading and Unloading Workers (TKBM) who are permanent workers are in a condition that is unable to keep up with the increasing workload, both warehouses 01 and 02 require work members with the increasing volume of goods. The Additional Workers (TKT) was officially established on July 22, 2005 starting from the urgent need for Loading and Unloading Workers at warehouse 02, which was facilitated through an oral agreement between the Additional Workers (TKT), the Loading and Unloading Workers (TKBM) as permanent workers, and the parties at Teluk Nibung Port, Tanjung Balai City.

Additional Workers (TKT) use verbal work agreements with the status of casual laborers/daily workers. Law number 13 of 2003 concerning employment, article 51 paragraph 1: "employment agreements are made in writing or verbally." Verbal agreements essentially still have binding legal force, but their status becomes ambiguous and limited when TKT has officially written Articles of Association and Bylaws (AD/ART). AD/ART functions as the highest constitution in an organization that which contains the basic rules and guidelines for implementing the organization's activities internally, binds all members and administrators, and regulates the rights, obligations, structure, mechanisms and objectives of the organization, but it must also be in line with not violating the legal hierarchy that applies in Indonesia. **The law guarantees that lower rules do not conflict with higher rules (the principle of lex superior derogat legi inferiori).** (Warjiyati, 2024). Therefore, to ensure clear legal provisions and avoid future disputes, every point of the verbal agreement should ideally be immediately put into written form or through an amendment to the Articles of Association/Bylaws to establish a strong operational foundation and be recognized organizationally.

The problem culminated in 2023, when the Port Authority unilaterally terminated the employment of the TKT. This action, coupled with the Port Authority's refusal to officially

acknowledge the TKT's existence, resulted in the workers' rights to dismissal being nullified. This situation gave rise to a serious legal conflict regarding legal protection for workers bound by verbal agreements, which in many cases made it difficult to prove the employment relationship and claim their rights in the event of a dispute (Flora & Sitanggang, 2023). This unilateral dismissal without severance pay or compensation is inconsistent with the values of benefit and justice, the procedures for which are regulated in Government Regulation Number 35 of 2021, which regulates termination procedures in accordance with current laws.

This research focuses on crucial issues, analyzing the legal status of Additional Workers at Teluk Nibung Port following unilateral layoffs, particularly in light of Government Regulation Number 35 of 2021, taking into account the verbal nature of employment agreements and decades-long neglect of formalities. It also examines the legal protection of Additional Workers, both from a positive legal perspective and Islamic law (Maqashid Syariah), as an effort to ensure objectivity for Additional Workers who are unilaterally laid off.

An empirical legal approach will be used by integrating positive legal analysis (PP No. 35 of 2021 and related regulations) and philosophical-theological analysis through the Maqashid Sharia framework (the objectives of Islamic law). Maqashid Sharia in the employment context seeks to realize the welfare (*maṣlahah Ah*), especially in property protection (*hifzal-māl*), soul (*hifzal-nafs*), and survival (Rosyadi, et al., 2024). The application of this concept is expected to provide a deeper dimension of justice, going beyond the formalities of positive law, in order to create the fulfillment of workers' fundamental rights as an effort to maintain human dignity. The results of this study are projected to contribute as review material for labor protection instruments. In addition, this study is intended to strengthen references for formulating more inclusive protection instruments for workers in the informal sector or workers with ambiguous employment status.

METHOD

The method applied in this study is empirical juridical, where the analysis is conducted through an approach through formal legal instruments (statute approach) (Permata, 2019) and an approach through legal thought (conceptual approach). in analyzing industrial relations with the concept of Maqashid Syariah, namely to achieve Mashlahah (benefit) through a balance between fulfilling the rights of employers and the welfare of workers in order to avoid harm in the economic sector. The data sources for this research are Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment, as well as the results of interviews related to the Issue of Additional Workers at Teluk Nibung Port, Tanjung Balai City in the field. Secondary data include legal literature, books, scientific journals, and articles relevant to employment issues, legal protection for workers, contract law, and the perspective of Islamic law (Maqashid Syariah). Data collection was conducted through library research, interviews with relevant parties, and direct field observation. Using a qualitative descriptive approach, this research aims to construct a comprehensive picture of social reality. This is achieved by analyzing the perspectives of community leaders and synchronizing them with laws and regulations. This research aims to analyze the forms of legal protection for TKT who are unilaterally laid off.

RESULTS AND DISCUSSION

A. Scope of Additional Workforce at Teluk Nibung Port, Tanjung Balai City Following the Enactment of Government Regulation Number 35 of 2021

Law Number 13 of 2003 states Labor is any person who is able to do work to produce goods and/or services either to meet their own needs or for the community. Additional Labor (TKT) is

included in the type of casual daily laborers regulated in PP No. 35/2021. Government Regulation Number 35 of 2021 states that additional labor (TKT) is included in the category of fixed-term employment agreements (PKWT) Article 2 which reads: 1) employment relationships occur due to an employment agreement between the employer and the worker/laborer; 2) employment agreements are made in writing and verbally; 3) employment agreements are made in writing and implemented in accordance with the provisions of the Laws and Regulations; 4) employment agreements are made for a specific time or for an indefinite time. Fixed-Term Employment Agreements (PKWT) in TKT are implemented with a variable work system in terms of working hours and work volume and work wages based on attendance (daily wages) in accordance with the provisions of Article 7 paragraph (1) letters a, b; Article 7 paragraph (3); and Article 10 paragraph (1).

Government Regulation (PP) Number 35 of 2021 brings several new provisions that can affect Additional Workers (TKT) at Teluk Nibung Port, Tanjung Balai City, including those related to the term of the Fixed Term Employment Agreement (PKWT) referring to the norms regulated in Article 10 paragraph (3), it can be understood that casual daily work relationships have a duration limitation, namely below the threshold of 21 working days in one month. Additional Workers (TKT) at Teluk Nibung Port, Tanjung Balai City, have worked continuously for approximately 19 years until 2023, they were unilaterally laid off by Teluk Nibung Port, Tanjung Balai City, even though initially they had the status of casual daily workers/laborers, legally the status of Additional Workers (TKT) should have changed from a Fixed Term Work Agreement (PKWT) to an Indefinite Term Work Agreement (PKWTT) which is null and void by law, referring to the provisions of Article 10 paragraph (4) of PP No. 35 of 2021, the status of daily work relationships automatically changes to PKWTT by law, if workers have carried out a work period of at least 21 days within a period of 3 consecutive months.

Teluk Nibung Port, Tanjung Balai City must fulfill the rights of Additional Workers (TKT) during work as stated in Article 11 paragraph (1), (2), (3) with Employers who employ Workers/Laborers in the work making a daily Work Agreement in writing with Workers/Laborers containing at least: a) name/address of the Company or employer; b) name/address of Workers/Laborers; c) type of work performed; and d) amount of Wages, and workers have the right to receive protection through full social security. Referring to the provisions of Article 14 paragraph (1) and (2), employers are required to register Additional Workers (TKT) who are bound by PKWT through the electronic system of the relevant ministry. This online reporting process has a deadline of three working days after the contract is signed. However, if the digital infrastructure cannot be accessed, registration can be done manually through the Manpower Office at the Regency/City level with a maximum deadline of seven working days from the official agreement.

Compensation money is provided for PKWT workers/laborers upon the end of the work agreement period in Article 15, Article 16, Article 17 of PP No. 35 of 2021. Specifically, although PP 35/2021 does not explicitly mention the term "Additional Workers (TKT)", their initial employment status will be accommodated through provisions regarding PKWT, especially for the type and nature or work activities that are seasonal, temporary, and daily. Implementers in the field, such as Loading and Unloading Workers (TKBM), are required to adjust their work agreements and workers' rights, including TKT, in accordance with these new norms. The role of the TKBM workers' union as one of the parties that approves the existence of TKT workers that

has been agreed upon with the parties of the Teluk Nibung port of Tanjung Balai City. (Rangkuti, et al., 2023).

The reality in the field is that Additional Workers (TKT) who have worked beyond the maximum period for a Fixed-Term Employment Agreement (PKWT) are implemented for a maximum of 5 (five) years (PP No. 35 of 2021 article 6). If the status changes to an Indefinite-Term Employment Agreement (PKWTT), then the provisions regarding PKWT compensation money do not apply because the employment relationship becomes a PKWTT and does not end. As a PKWTT worker, the rights that apply in the event of contract termination or Termination of Employment (PHK), then the compensation that must be fulfilled includes severance funds, awards for duration of service (UPMK), and replacement of certain rights (UPH). This provision also functions as an economic protection instrument for workers who lose their jobs.

Therefore, the action of the Teluk Nibung Port in Tanjung Balai City in 2023, which "did not recognize the existence of this TKT and then unilaterally dismissed it as not being a permanent member" is a form of layoff that is procedurally and substantively invalid because this TKT should have PKWTT status. Worker status is recognized by law if the work meets the PKWTT criteria based on Government Regulation No. 35 of 2021, even though there is no written agreement in the employment contract explicitly stating them as permanent workers. Laws and regulations have protected workers from unilateral layoffs, and government regulations provide provisions requiring employers to provide severance pay, a form of legal consequence of layoffs.

B. Legal Protection for Additional Workers (TKT) at Teluk Nibung Port in Tanjung Balai City who were unilaterally laid off after the enactment of Government Regulation Number 35 of 2021

Additional Workers (TKT) which was originally a Fixed Term Employment Agreement (PKWT) has been changed to an Indefinite Term Employment Agreement (PKWTT) by law due to violations of the provisions of PKWT regulated by PP No. 35 of 2021, namely: violating the provisions of PKWT made in writing and registered by the Manpower Office 3 working days online maximum 7 working days, type of work, working period of 21 days in 1 month with a maximum work contract extension of 5 years.

According to Indonesian labor law, unilateral termination of employment (PHK) without a valid reason and without following proper procedures is prohibited. (Makadolang, 2024). The mechanism for termination of employment must be carried out in accordance with the legal corridors established in Article 36, Article 37, Article 38, and Article 39 of PP No. 35 of 2021. Clear legal basis and procedural procedures that must be followed in the Termination of Employment (PHK) process. Article 36 fully outlines the legitimate reasons for layoffs, which include the condition of the company (efficiency, losses, bankruptcy), employer actions that are detrimental to workers, and the conditions and actions of workers (resignation, absence, violations, illness, or retirement). Then, Article 37 requires employers to strive to prevent layoffs from occurring and if unavoidable, employers are required to provide written notification of the intention and background to the termination of employment to the employee or the relevant labor union. This notification must be made with a deadline of at least 14 working days before the effective date of the previous termination. If the employee does not refuse, the employer is required to report the layoff (Article 38). Conversely, if the employee refuses the layoff, the employee is required to submit a letter of rejection within 7 working days, and dispute resolution must be carried out first

through bipartite negotiations, which if failed, will be continued through the industrial relations dispute resolution mechanism (Article 39).

If Additional Workers (TKT) feel disadvantaged by unilateral layoffs by Teluk Nibung Port in Tanjung Balai City, workers have the right to pursue legal action. This mechanism is regulated by Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (PPHI). The stages that must be taken are bipartite negotiations (between workers and employers), mediation/conciliation at the Manpower Office, and the Industrial Relations Court (PHI). The procedures and rights are strengthened by Government Regulation Number 35 of 2021 as the implementing regulation of Law Number 11 of 2020 concerning Job Creation.

Unilateral termination of employment (PHK) without notice and without reason or without following legal procedures is considered unlawful. Unilateral termination of employment (PHK) without notice and without reason or without following legal procedures can be considered unlawful. Workers who have served for 19 years are considered to have a very long service period, so they are entitled to stronger protection regarding their rights. Layoffs must be avoided through negotiation. If unavoidable, employers are required to provide notice of layoffs and fulfill workers' financial rights according to regulations, including Severance Pay (UP), Long Service Award Pay (UPMK), and Rights Replacement Pay (UPH). (Maulandari, et al., 2025).

Legal protection for TKT who experience unilateral termination of employment (PHK) is regulated in Article 151 of Law Number 11 of 2020 concerning Job Creation (which replaces most of the provisions of the previous Law Number 13 of 2003 concerning Manpower) and Government Regulation Number 35 of 2021. These two regulations emphasize the collective obligation of employers, workers, labor organizations, and government authorities to maximally prevent termination of employment. However, in conditions where termination is unavoidable, the company bears the responsibility to explain the purpose and background of the dismissal to the employee or labor union concerned (Naufal, 2011). Although Article 81 number 45 of the Job Creation Law amends the provisions of Article 156 of the Manpower Law regarding the calculation of severance pay, the principle of providing compensation remains. If TKT is considered a PKWTT, then the termination must fulfill a legitimate reason and go through the correct procedure. Violations of procedures (e.g., without notification or bipartite negotiations) render the termination of employment null and void, and the employer is required to reinstate the worker or pay higher compensation if the worker does not wish to return to work. (Nagusthan & Nuroini, 2022).

The financial rights of Additional Workers (TKT) with 19 years of service entitle them to substantial severance pay. Based on Article 40 of the appendix to Government Regulation Number 35 of 2021, the rights required to be paid due to severance pay include:

- 1) Severance Pay (UP): For 19 years of service, workers are entitled to severance pay equal to 9 months' wages (for 8 years or more of service, this is calculated as 9 months' wages). This amount can be doubled (to 18 months' wages) depending on the reason for the termination.
- 2) Long Service Award Money (UPMK): For a service period of 19 years or more but less than 21 years, workers are entitled to UPMK amounting to 7 months' wages.
- 3) Compensation for Rights (UPH): Workers who are entitled to UPH will receive compensation that includes the remaining annual leave that has not been taken, travel expenses to return to their place of origin when accepted for work, as well as other matters specifically regulated in the Collective Labor Agreement (PKB) or other work agreement instruments.

The law focuses on the nature of the employment relationship rather than the designation of the status. Permanently Retained Workers (PKWT) have the strongest protection against termination. If their employment is a PKWT that should be renewed, but they continue working without a break for 19 years, then by law, their status can be considered to have changed to a PKWT, which is obligated to receive full termination rights as outlined above. This protection ensures that workers are not disadvantaged simply by their employment designation.

C. Legal Protection for Additional Workers (TKT) at Teluk Nibung Port, Tanjung Balai City who were unilaterally laid off from the perspective of Maqashid Syariah

Ar-Risuni In his book, Maqashid Sharia emphasizes that employment policies must prioritize worker welfare and ensure justice in every decision taken by the company or related institution is the goal of sharia related to the khitob sharia which requires mukallaf people to walk and reach that goal. Meanwhile, according to As-Syatibi, Maqashid Sharia is the benefit of mankind both in this world and in the hereafter. So what is meant by Maqashid Sharia is the main goal that Islamic law wants to achieve to realize benefit and prevent harm in human life. There are five main elements in Maqashid Sharia, each of which has an important role in maintaining social and economic balance including Hifdzu din (maintaining religion), Hifdzu nafs (maintaining soul), Hifdzu nasl (maintaining offspring), Hifdzu aql (maintaining reason), Hifdzul mal (maintaining wealth) (Ramadhan, 2019).

In addition, in the context of termination of employment (PHK), there are two important aspects that must be considered, namely hifdz al mal (protection of property) and hifdz al nafs (protection of life) (Aufa & Lubis, 2025). The five main elements in Maqashid sharia include: First, Hifdz al Din (Protecting Religion) refers to efforts to protect and develop Islamic teachings, as well as ensuring that Muslims can practice their religion freely and safely. Protection of religion includes freedom to practice worship, maintaining morality in social life, and upholding Islamic values in various aspects of life (Syatibi, 2017).

Second, Hifdz an Nafs (Protecting the Soul) aims to protect the human soul from all forms of threats and dangers that can disrupt the quality of life. In the context of layoffs, this aspect is very important because layoff decisions that do not comply with procedures can threaten the stability of workers' lives. By protecting workers' quality of life, the state and companies play a role in ensuring their physical safety, health, security, and economic well-being. When workers' rights are violated through unilateral layoffs, this can lead to psychological and social instability that contradicts the principles of Maqashid sharia. Hifdz an Nafs aims to protect human life from dangers and conditions that can threaten their existence and quality of life. Layoffs carried out without legal procedures can result in the loss of workers' main source of income, which directly impacts their family life, basic needs, health, and emotional stability. Thus, layoffs that do not comply with procedures contradict the principle of hifz an-nafs because they ignore workers' rights to a decent and prosperous life.

Third, *Hifdz al Aql* (Guarding Intellect) aims to preserve and protect the human mind so that it can think, learn, and develop its intellectual abilities. In the workplace, this aspect includes workers' rights to education, training, and opportunities to develop their skills. Unlawful termination of employment can hinder a person's intellectual development, as job loss can limit access to further education and training.

Fourth, *Hifdz al Mal* (Protecting Property) serves to ensure that individual economic rights remain protected as part of the welfare of the community. Layoffs carried out without fair

procedures violate this principle because they cause workers to lose their primary source of income without clarity regarding adequate compensation or replacement. Protection of property in Islam includes fairness in economic transactions, the avoidance of fraud and exploitation, and the equitable distribution of wealth through instruments such as zakat, sadaqah, and inheritance. Therefore, unfair layoffs can lead to economic instability for individuals and society at large. The results of the study indicate that in addition to the hifdz al mal aspect related to economic losses due to the lack of adequate compensation, the hifdz an nafs aspect is also highly relevant. Unilateral and unprocedural layoffs directly impact workers' livelihoods. Many workers who lose their livelihoods experience psychological stress, health problems, and difficulty meeting their families' basic needs. This indicates that violations of layoff procedures not only impact material aspects but also threaten workers' livelihoods and mental stability (Amri, 2021). Therefore, the implementation of layoffs must consider not only the positive legal aspects, but also the values of the maqashid sharia as a whole, especially in terms of protection of life (hifdz an nafs) and protection of property (hifdz al mal).

In the view of Maqashid Sharia, the layoffs carried out on the TKT of Teluk Nibung Port, Tanjung Balai City fundamentally contrary to the objectives of the Shari'a, especially in preserving the soul (hifdz an nafs) and preserving property (hifdz al mal). Because it is carried out without fair and transparent procedures, it not only harms individuals but also has the potential to create social and economic instability. Because workers who are unilaterally laid off at the TKT Teluk Nibung port in Tanjung Balai City do not receive individual rights in the form of being dismissed without notification and valid reasons. Then, after the layoff, the work is not provided with severance pay as a guarantee to meet daily needs after the layoff. Therefore, the principle of balance between the rights of workers and employers must be maintained to create mutual benefit. If layoffs are carried out unilaterally without following fair procedures, this not only violates workers' rights but also has a greater detrimental impact than the benefits obtained. Termination of employment (PHK) is mentioned in Al-Muwafaqat by Al-Syatibi, Maqashid sharia emphasizes that employment policies must prioritize worker welfare and ensure justice in every decision taken by the company or related institution.

CONCLUSION

Additional Workers (TKT) at Teluk Nibung Port, Tanjung Balai City, who have worked since 1996 with verbal agreements have been legally converted into Workers with Indefinite Term Employment Agreements (PKWTI). The unilateral termination of employment (PHK) in 2023 without granting workers' rights is a violation of Government Regulation Number 35 of 2021, in which employers are required to provide severance pay, long-service awards, and compensation for rights according to length of service. The Maqashid Sharia view on the unilateral layoffs that occurred to Teluk Nibung port workers in Tanjung Balai City is fundamentally contrary to the objectives of Sharia, especially in preserving the soul (hifdz an nafs) and preserving property (hifdz al mal). Because Layoffs carried out without fair and transparent procedures not only harm individuals, but also have the potential to create social and economic instability.. The failure of employers to fulfill the basic rights of workers threatens the survival (nafkah) and well-being of their families, which is the primary objective of establishing Islamic law.

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