

# DISCONTINUATION OF EMPLOYMENT RELATIONS BECAUSE THE EFFICIENCY IN THE ERA OF INDUSTRIAL REVOLUTION 4.0

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## Abstract

*The Industrial Revolution 4.0 has had an effect on the termination of employment for reasons of efficiency. The reason for the efficiency of Article 164 paragraph (3) of Law Number 13 of 2003 concerning Manpower has caused a polemic that impacts a large number of unemployed. The research was carried out normatively, which aims to examine labor laws that have not been able to protect the right to work in the era of the industrial revolution 4.0. Efficiency in industrial revolution 4.0 will threaten workers' lives in the future by replacing human power with robotic power. The right to work mandated by the 1945 Constitution in Articles 28A-28J is in danger of being lost with the passage of time. The government's constitutional obligation is to provide jobs for workers in the era of the industrial revolution 4.0 because work is a human right to maintain their lives.*

**Keywords:** *Termination of Employment, Industrial Revolution 4.0, Efficiency, Constitutional Rights*

## INTRODUCTION

Employment is the most important thing in human life that is obliged to be done by everyone for one's survival and to fulfill their daily needs because by working someone will get a salary. The industrial revolution 4.0 has a negative impact on the world of labor for workers by hampering labor absorption because many human jobs have been

replaced by robotic machines. In this case, changes in digital technology have resulted in a change in the way of working from manual to automation. The reason for the termination of the employment relationship for efficiency Article 164 paragraph (3) of Law Number 13 of 2003 concerning Manpower will weaken the position of workers juridically and strengthen the profits of the employer. Efficiency has an impact on mass unemployment, stagnation of workers will have a negative impact on the national economy. Given, Indonesia's economic growth is influenced by the level of public consumption.

Termination of employment for efficiency reasons without closing the company is not explicitly stated in the labor law. This makes workers often refuse to be dismissed for this reason. Efficiency can be used as an excuse for employers to arbitrarily fire workers who are deemed unable to be productive anymore. In Article 27 paragraph (2) Every citizen has the right to work and a decent living for humanity, Article 28D paragraph (2) Every person has the right to work and to receive fair and proper compensation and treatment in an employment relationship. Human rights in Indonesia are not only limited to civil rights and political rights, but also social and economic rights.<sup>1</sup>

The enactment of Article 164 paragraph (3) of Law Number 13 of 2003 concerning Manpower can provide an opportunity for employers to eliminate the right to work in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution, so that it is considered to violate the constitution. The government must think about the impact of the 4.0 industrial revolution on the threat of termination of employment for Indonesian workers with laws and regulations that have not been able to provide legal protection for both parties between employers and workers. Do not let either party feel aggrieved by the enforcement of laws and regulations. The task of the state in realizing people's welfare is in accordance with the constitutional mandate that the government must carry out to ensure the realization of the constitutional rights of citizens. Especially in terms of fulfilling

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<sup>1</sup> Bagir Manan, 2012, *Dissecting the 1945 Constitution*, First Printing, UB Press, Malang, p. 23

the living needs of workers and their families through the opportunity to work in the era of the industrial revolution 4.0.<sup>2</sup>

Termination of employment for efficiency reasons in the 4.0 industrial revolution must be faced with serious preparation for all stakeholders, especially workers. Do not let workers fall behind, instead they become nervous in facing the various challenges that arise. Meanwhile, entrepreneurs can adapt quickly to changing systems. The problem of writing is whether the dismissal of employment by companies on the basis of the efficiency of the impact of the Industrial Revolution 4.0 can be justified and what are the policies issued by the government in the labor sector in the era of the Industrial Revolution 4.0. The purpose of writing is to find out whether termination of employment by companies on the basis of the efficiency of the impact of digitalization in the era of the Industrial Revolution 4.0 can be justified and to know the policies issued by the government in the labor sector in the era of the Industrial Revolution 4.0. The normative legal research method, in which data is obtained from secondary legal materials, primary legal materials and data analysis used qualitative methods.

## DISCUSSION OF THE FIRST ASPECT.

The industrial revolution 4.0 gave birth to a digital system, a transformation of methods or objects from manual to digital form. The Industrial Revolution 4.0 is synonymous with the use of technology and computers and has caused digital *disruption* between workers who are able to access technology and those who are not, causing an impact on human labor unemployment.<sup>3</sup> Quoting the words of the former Minister of Manpower, “The development of technology and digitalization will make 56% of workers in the world lose their jobs in

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<sup>2</sup> Mardani Wijaya, Kurniawan, Mohammad Sood, 2019, *Citizens' Constitutional Rights to Work in the Industrial Revolution Era 4.0*, <http://jurnal.is.ac.id/ojs/index.php/jurnalIUS>, accessed October 30, 2020

<sup>3</sup> Fuat Edi Kurniawan, 2018, *Informalization of Manpower in the Digital Age*, <https://geotimes.co.id/opini/infomalisasi-tenaga-kerja-di-era-digital/>, accessed 26 November 2020

the next 10-20 years'.<sup>4</sup> This will become a serious threat in the field of employment.

Employers are choosing to reduce workers and replace them with advanced technology. Entrepreneurs who are able to transform well will survive technological developments but have the opportunity to exercise efficiency resulting in mass layoffs. On the other hand, if the entrepreneurs are not able to carry out the transformation properly, it will result in bankruptcy (bankruptcy). This of course creates a dilemma for the entrepreneur.

Industrial revolution 4.0 employers terminate employment on the basis of efficiency which is formulated in Article 164 paragraph (3) of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower which contains: *Employers can terminate employment of workers / laborers because the **company is closed not because of experiencing a loss for 2 (two) consecutive years or not due to force majeure but The company conducts efficiency** with the provision that workers / laborers are entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2), employment reward money of 1 (one) time the provisions of Article 156 paragraph (3), and compensation pay for rights in accordance with the provisions. Article 156 paragraph (4)*".

The problem that arises in the 164 paragraph (3) of Law Number 13 of 2003 concerning Manpower is that workers reject the word efficiency contained in the article. Companies often take refuge on the basis of efficiency to terminate employment in order to reduce company expenses and facilitate termination of employment for workers who are considered no longer productive. Thus, the word efficiency contained in this article cannot be interpreted as the basis for a company to terminate workers or to streamline costs.

Employers can also terminate their employment not because the company has suffered losses for 2 (two) consecutive years or not

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<sup>4</sup> CNN Indonesia, 2018, <https://www.cnnindonesia.com/ekonomi/20181119200844-92-347782/digitalization-disebut-bikin-56-persen-orang-hilang-perja>, accessed 26 November 2020

because of *force majeure*. The statement emphasizes that even though the company is in a progressive state and the company is in a stable state without any *force majeure* as contained in Article 164 paragraph (1) of the Manpower Act, the company can terminate the employment of workers only on the grounds of efficiency only.

This article contradicts the mandate of Article 151 paragraph (1) of the Manpower Act which states: Entrepreneurs, workers / laborers, trade / labor unions, and the government must make every effort to prevent termination of employment. In the era of the Industrial Revolution 4.0, termination of employment on the basis of efficiency was also used by employers to lay off workers by replacing work carried out by human workers with robotic labor which was considered to provide efficiency. This is considered not to provide legal protection to workers. The enactment of Article 164 paragraph (3) will be a threat for workers in Indonesia to face the industrial revolution 4.0 because it provides the greatest possible opportunity to eliminate the right to work, compensation and fair treatment in work relations as mandated by Article 28D paragraph (2) of the Law. The 1945 Constitution of the Republic of Indonesia which provides guarantees for employment as stated: Everyone has the right to work and to receive fair and proper remuneration and treatment in an employment relationship.

Workers in Indonesia should not only be viewed from an economic perspective alone, which is to have a purpose if they are able to contribute to company profits, but must be viewed from a human rights perspective. Workers are human beings who are different from machines and goods. Therefore, although employers can terminate the employment relationship, this right is limited by the employer's fair obligations. Employers may not arbitrarily terminate employment relations let alone eliminate constitutional rights for workers.<sup>5</sup> Workers in the era of the Industrial Revolution 4.0 must be given legal certainty

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<sup>5</sup> Betty Noer Alfina, 2019 ,*Description of Legal Protection for Employment Discharged Due to Efficiency in a Company (Case Study of Supreme Court Decision Number 182 K / PDT.SUS-PHI / 2017)*, p. 60, Downloaded 23 November 2020

and given legal protection because workers are company assets. Termination of employment must not be terminated without valid reasons. No one on earth has the right to deprive his constitutional right to work and earn a living, without ever making mistakes and having the right reasons. Article 164 paragraph (3) contradicts the purpose of the Manpower Act to protect workers.

The impact of termination of employment on workers / labor by employers due to efficiency has been described in the Constitutional Court Decision Number 19 / PUU-IX / 2011:

1. Workers / laborers no longer have a job. This has resulted in a loss of trust from neighbors, relatives and other institutions.
2. Workers / laborers no longer have an income that can be received from their monthly wages.
3. Workers / laborers no longer have social security such as health for workers / laborers and their families if they experience illness.
4. Workers / laborers no longer have the ability to pay installments on houses or private vehicles. As a result, it does not rule out the possibility of workers / laborers' private homes and vehicles being confiscated by banks and dealers.
5. It is increasingly difficult for workers / laborers to find new jobs because they have entered middle age and are not working so that it is very difficult to compete with younger workers.

## **DISCUSSION OF THE SECOND ASPECT**

Indonesia recognizes the right of citizens to get a job, in fact the state wants to decide unemployment by requiring the government to eliminate unemployment in Indonesia and must do all it can to ensure that every citizen gets a decent job to live on.<sup>6</sup> As long as not contrary to the laws and regulations applicable state guarantees every citizen

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<sup>6</sup> Agusmidah, 2011, *The Dilemmas of Employment Law Political Review of Law*, Cet. 1, PT.Sofmedia, Jakarta, p. 208

negarnya to maintain own life in any way, because the right to life is a fundamental right / fundamental (*first order intraction*) to ensure the sustainability (sustainability).<sup>7</sup> Therefore, the state has the responsibility to guarantee the rights of citizens and to fulfill basic needs and improve the quality of life and welfare by means of working.

The *right to work* requires the government to make every effort so that workers are not unemployed, because working is a basic right for everyone to obtain *welfare* for himself and his family members by getting wages for his work. Therefore, the state must fulfill its obligations through the government, government policies must reduce unemployment and improve decent working conditions.<sup>8</sup>

Sulianti Rachmat stated that the State of the Republic of Indonesia is obliged to protect the entire Indonesian nation which includes workers / laborers by forming a statutory regulation that protects the right to work.<sup>9</sup> The state must be able to formulate labor laws and regulations to deal with the *disruption of* workers in the 4.0 industrial revolution. The responsibilities stipulated by the constitution make the state have the responsibility to protect human rights, maintain jobs and life by working, and achieve legal goals that can bring the greatest happiness to the people. As said by Jeremy Bentham, who is known as a school of *utilitarianism*, laws and regulations must try to achieve 4 (four) objectives, namely *provide substance, to provide abundance, to provide and security to attain equality*.<sup>10</sup>

The government's obligation to promote public welfare is a concept of a welfare state and it is hoped that the government will play an active role in people's lives. Almost all aspects of community life or

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<sup>7</sup> Hayyanul Haq, 20 April 2019, *Coherence of Legal Development*, Discussion on Metajuridika Park, Faculty of Law, University of Mataram, Downloaded December 5, 2020

<sup>8</sup> Agusmidah, 2011, *The Dilemmas of Employment Law Political Review of Law*, Cet. 1, PT. Sofmedia, Jakarta, p. 214-215

<sup>9</sup> Sulianti Rachmat, 1996, *Efforts to Improve Worker Legal Protection in Private Industrial Companies*, Dissertation, Postgraduate Program, University of Indonesia, Jakarta, p. 10

<sup>10</sup> Mahdi Bin Achmad Mahfud and Vinaricha Sucika, 2014, *Labor Law and Its Development*, R..A.DE. Rozaeri, Member of IKAPI, Surabaya, p. 17

workers intersect with the government.<sup>11</sup> One of the characteristics of the concept of the welfare state is that the government is obliged to work hard to realize the welfare of society or workers as a whole. The concept of the welfare state in Dutch is called *bestuurszorg*. According to Utrecht, the existence of *bestuurszorg* this is a sign of a *welfare state*.<sup>12</sup> The state's position in realizing people's welfare is a constitutional mandate that must be implemented and the protection of the right to work opportunities to work in the Industrial Revolution 4.0

The function of the state as a *protector* is a very important function in the national government system, namely providing legal protection for workers in the Industrial Revolution. 4.0. According to M. Hadjon Phillipus legal<sup>13</sup> protection, legal protection of the public or workers / laborers are government behavior preemptive (*preventive*) and repression (*resprensif*). Protection of law *preventive* aims to prevent disputes vulnerable, through the protection of this government is obliged to protect the constitutional rights of workers, namely the right to employment opportunities in the era of the Industrial Revolution 4.0 and that direct the actions of the government to be cautious in making decisions based on discretion as well as the nature protection action (*resprensif*). Regulations (*regulators*), the state has the right to formulate policies that can provide benefits to its people, such as the Manpower Law, which is obliged to realize benefits in welfare through equal employment opportunities between citizens.

Indonesia as a modern legal state means that in a material sense it adheres to the notion of a *welfare state*.<sup>14</sup> In running the government, the government often needs a policy. Policies or so-called *freies ermessen* are principles that aim or complement the legality principle so that the

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<sup>11</sup> Gusti Ayu Ratih Damayati, *Journal of Freies Ermessen in the Concept of a Welfare State*, p. 42, Downloaded 7 December 2020

<sup>12</sup> E. Utrecht, 1998, *Introduction to Indonesian State Administrative Law*, Pustaka Tinta Mas, Surabaya, p. 30

<sup>13</sup> Satjipto Raharjo, 2000, *Law Science*, Bandung: PT. Citra Aditya Bakti, p. 54

<sup>14</sup> H. Abdul Rasyid Thalib, Rahmat Bakri, *Journal of Juridical Analysis of the Principles of Freies Ermessen in Carrying Out Tax Functions*, p. 1, Downloaded December 7, 2020



ideals of a welfare law state can be realized because this principle provides freedom to act for the government, to carry out its duties without being related to law. The principle of *freies ermessen* or the principle of discretion is a principle that was born due to the inability of the legality principle, in this case the Manpower Act, to fulfill the demands of the idea of a material state law to create public welfare. In this connection, in the form of protection for workers, the principle of *freies ermessen* is applied to fill the shortcomings of the Manpower Act by making a policy issued by the Ministry of Manpower.

In the development of the Industrial Revolution 4.0, the government must respond to the development of the world of work by creating a policy that can accommodate so that it is not eliminated by the digital system, so that the existence of digitalization will not eliminate jobs for workers. *Freies ermessen* is here to be a substitute for the shortcomings and weaknesses of the application of the legality principle (*wetmatigheid van bestuur*). For the welfare state, the legality principle alone is not sufficient to play a maximum role in serving the interests of a rapidly developing society based on the development of science and technology. Even though the principle *legality* contains weaknesses, this principle is the main principle of every rule of law. Every state and government administration must have legitimacy, namely the power granted by law.

Quoting Philippe Nonet and Philip Selznick, the law must respond to the rapid development of human life which is always changing, or which can be implemented through Indonesian labor regulations, commonly known as responsive law. Through the Ministry of Manpower, it has prepared 3 (three) strategies for the industry in facing the Industrial Revolution 4.0, namely *industry transformation strategy*, *future jobs*, and *manpower planning*. As the type of work changes, the skills required also change, so it is necessary to address which skills are needed and which are not. The strategy is to increase the *link and match between the supply and demand* of human resources (HR), the classification of job training and professional certification as well as job-based

apprenticeships.<sup>15</sup> Moreover, the era of the Industrial Revolution 4.0 currently prioritizes the use of technology and online.

The Ministry of Manpower carries out its responsibility by implementing a policy *triple skilling* in response to the Industrial Revolution 4.0, namely to ensure that the competitiveness of workers / laborers in Indonesia is better implemented in the form of job training conducted by the Job Training Agency. *Triple Skilling* consists of:

1. Skilling, training aimed at a young workforce who just want to get their skills. For the workforce who do not have competence, they will get renewal and increase their competence to suit the needs of the labor market, so that they have the capital to be ready to work.
2. Up-skilling, training provided to workers who want to improve their skills or their careers so that they can continue to take part in the development of the world of labor
3. Re-skilling, training for workers who have terminated or stopped working and are willing to start working in other fields and provide the ability to acquire new skills that are useful for workers.<sup>16</sup>

The policy above was issued by the Ministry of Manpower which covers skills formation in the form of vocational training for people who do not have skills so that workers / laborers can enter the labor market or entrepreneurship, with the aim of improving skills so that they remain relevant to the needs of the times and the policy can be accessed. through training at the Job Training Agency. Optimizing the apprenticeship process to enhance work experience. Increasing *soft skills* and work productivity, redesigning curriculum and approach *human digital skills* methods and methods *blended training*.

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<sup>15</sup> Manpower Regulation Must Adopt the Development of the Industrial Revolution 4.0, <https://www.hukumonline.com/berita/baca/lt5c6c17ad21d53/regulasi-ketenagakerjaan-mesti-adopt-perkembangan-revolusi->, accessed December 5, 2020

<sup>16</sup> Industri-40/Vina Anggita, January 21, 2020, Vocational Ministry of Manpower, Runs Triple Skilling Training, Kementerian-ketanagakerjaan

In the era of the Industrial Revolution 4.0, protecting workers' rights must be the government's top priority. Where the legal protection given to workers / laborers is very important because legal protection is aimed at people who are in a weak position, people in a weak position, which is meant for workers / laborers who are in a weak position than employers both economically and in terms of juridical aspects. So, through policies at the Ministry of Manpower, it is hoped that they will be able to provide protection for the welfare of workers by providing workers / hunting can work and get a job in the era of the Industrial Revolution 4.0. To achieve this goal, a labor law system that can compete with the development of the digital world and automation is needed. The fulfillment of workers' constitutional rights to work in the Industrial Revolution 4.0 can realize the welfare of the people as the goal of a *welfare state*.

## CONCLUSION

Reasons for Efficiency in the Industrial Revolution 4.0 in Article 164 paragraph (3) of Law Number. 13 of 2003 concerning Manpower to terminate employment can not be justified. This article creates a polemic among workers who are deemed not to provide legal certainty. This article is a threat to workers because it opens up as much opportunity as possible for employers to eliminate their right to work. Employers should not arbitrarily terminate employment based on efficiency alone, replace them with robotic sophistication. This of course will eliminate workers' constitutional rights. Article 164 paragraph (3) is considered contrary to the 1945 Constitution Article 27 paragraph (2) which guarantees every citizen's right to obtain a job. The government's obligation to provide jobs, especially in the era of the Industrial Revolution 4.0, because work is part of human rights in defending their lives. The government responds to developments in the world of workforce by creating policies that are expected to be able to accommodate problems. The Ministry of Manpower has prepared a strategy to face the Industrial Revolution 4.0, namely *Industry*

*transformation strategy, future jobs, manpower planning, job training massification, professional certification and job-based apprenticeships.* The policy also issued by the Ministry of Manpower by implementing a policy *triple skilling*, for the competitiveness of workers / laborers in Indonesia with job training conducted by the Vocational Training Center. *Triple skilling* consists of: Skilling, Up-skilling and Re-skilling. The legal protection issued aims to improve soft skills and work productivity.

Law of the Republic of Indonesia No. 13 of 2003 concerning Manpower should not contradict the 1945 Constitution, so the authors provide advice to state administrators in this case the executive and legislative branches, namely the President and (DPR) the Manpower Act through Article 164 paragraph (3) of Law no. 13 of 2003 concerning Manpower received a renewal regarding termination of employment for the reasons of efficiency of the impact of the Industrial Revolution 4.0. The development of the digital world must also be followed by the development of governing laws, the regulations currently in effect are no longer relevant to answer every polemic and do not provide legal certainty and legal protection for workers to be able to continue working in the era of the Industrial Revolution 4.0. The government must issue a special regulation regarding digital regulation in the field of manpower, because currently workers / laborers have a very high risk of losing their jobs.

With policies that have been issued by the Ministry of Manpower through guidance, training and supervision to improve the quality of workers and to boost the quality of workers in Indonesia. However, it is not enough for the government to stop there, but the government must pay attention and provide distribution and job opportunities to workers in the Industrial Revolution 4.0. The government should pay attention to workers who have been terminated due to efficiency by channeling them to other companies / projects. Do not let human labor be replaced by robots, then it will affect workers who find it difficult to find a place to work. Thus, the state's goal,

namely to prosper its citizens, especially for workers, can be realized if the government seeks to issue policies or regulations that open up job opportunities in the Industrial Revolution 4.0.

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