

***EFFECTIVENESS OF TERMINATION OF EMPLOYMENT FOR  
EFFICIENCY REASONS***

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**ABSTRAK**

Hubungan kerja antara pekerja dan pemberi kerja menciptakan perlindungan ketenagakerjaan yang bertujuan menjamin keseimbangan tanpa tekanan dari pihak yang lebih kuat. Namun, pemutusan hubungan kerja (PHK) dengan alasan efisiensi sering menjadi polemik. Penelitian ini bertujuan untuk mengkaji efektivitas PHK dengan alasan efisiensi serta pemenuhan hak pekerja yang terkena dampaknya. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan peraturan perundang-undangan. Hasil penelitian menunjukkan bahwa PHK untuk efisiensi diatur dalam UU Ketenagakerjaan, namun tidak secara eksplisit menjelaskan definisi efisiensi. Perubahan dalam UU Cipta Kerja memperbolehkan PHK tanpa penutupan perusahaan, yang menimbulkan protes dari pekerja. Dalam praktiknya, efisiensi sering disalahgunakan oleh perusahaan untuk memutuskan hubungan kerja secara sepihak. Pekerja yang terkena PHK berhak atas pesangon, uang penghargaan masa kerja, dan uang penggantian hak, sesuai dengan ketentuan hukum yang berlaku. Analisis ini menyoroti pentingnya bukti audit keuangan perusahaan untuk mendukung alasan efisiensi dan perlunya transparansi dari pemberi kerja. Penelitian ini menyimpulkan bahwa meskipun PHK efisiensi dapat efektif bagi perusahaan, pelaksanaannya harus memperhatikan keseimbangan antara kepentingan pekerja dan keberlanjutan perusahaan guna mencegah ketidakadilan.

**Kata Kunci: Alasan Efisiensi, Pekerja, Pemutusan Hubungan Kerja Sepihak**

**ABSTRACT**

*The employment relationship between workers and employers establishes labor protection aimed at ensuring balance without pressure from the stronger party. However, termination of employment for efficiency reasons often becomes controversial. This study aims to assess the effectiveness of termination of employment due to efficiency and the fulfillment of affected workers' rights. The research method employed is normative juridical with a statutory approach. The results indicate that ToE for efficiency is regulated under the Manpower Law but lacks a clear definition of efficiency. Amendments in the Job Creation Law permit termination of employment without company closure, sparking protests from workers. In practice, efficiency is often misused by companies to unilaterally terminate employment. Workers affected by termination of employment are entitled to severance pay, long service awards, and compensation for rights in accordance with applicable regulations. This analysis highlights the need for company financial audits to substantiate efficiency claims and the importance of transparency from employers. The study concludes that while efficiency-based termination of employment can be effective for companies, its implementation must balance worker interests and corporate sustainability to prevent injustices..*

**Keywords: Reasons for Efficiency, Unilateral Termination of Employment, Workers**

## **A. INTRODUCTION**

### **1. Background**

According to employment law, an employment relationship is a relationship between a worker and an employer after an employment agreement has been made by both parties, the contents of which are that the first party, namely the worker, is willing to bind himself to another party, namely the employer, to do a job in return for wages and the employer states that the employer is able to employ the worker. <sup>1</sup>The existence of an employment relationship between workers and employers creates employment protection which aims to ensure the establishment of an employment relationship without pressure from the party in a stronger position to the weaker party. <sup>2</sup>

Employment protection is divided into 3, namely:<sup>3</sup>

- a. Workforce protection, namely protection provided in the form of a decent income, if the worker is unable to work against his/her will;
- b. Social protection, namely protection in the form of guarantees of freedom of association, protection of the right to organize, and occupational health guarantees;
- c. NK Technical protection, namely protection in the form of security and safety at work.

The large number of workers in Indonesia results in an imbalance with the number of available jobs. The imbalance in the number of jobs has an impact on the community in terms of the difficulty of finding work. This makes employers able to act arbitrarily towards their workers. The government is obliged to provide jobs which are the rights of its people. The availability of jobs requires economic stability. However, in reality,

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<sup>1</sup> Suratman, *Pengantar Hukum Ketenagakerjaan Indonesia*, Rajawali Press, Depok, 2019, p.60.

<sup>2</sup> Endeh Suhartini, dkk, *Hukum Ketenagakerjaan dan Kebijakan Upah*, Rajawali Pers, Depok, 2020, p.81.

<sup>3</sup> Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia*, PT Citra Aditya, Bandung, 2003, p.61.

the existing jobs are still not balanced with the number of people who need jobs. On the contrary, what happens is just Termination of Employment.

Termination of Employment or commonly referred to as PHK is not a foreign thing in the world of employment. Layoffs often occur because there is no longer a good relationship between workers and the company. Based on data from the Ministry of Manpower of the Republic of Indonesia, from January to July 2024 there were around 42,863 workers who were laid off and the largest number was in Central Java Province.<sup>4</sup> Layoffs are something that is not expected to happen because of course it can harm one of the parties. Layoffs result in the loss of employees' livelihoods to meet their own needs and those of their families. In addition, layoffs have an impact on increasing the number of unemployed and can reduce job opportunities.<sup>5</sup> Layoffs can also have psychological and economic impacts on workers and their families.<sup>6</sup> The increasing number of unemployed due to layoffs has another effect on increasing the crime of theft.<sup>7</sup>

In order to continue to protect the rights of workers who are laid off, the government has made various regulations so that employers can carry out layoffs in accordance with applicable procedures and still pay attention to the rights of workers. Law Number 13 of 2003 concerning Manpower emphasizes that employers and workers must try to prevent layoffs. However, if it turns out that there are no efforts that can be taken, then layoffs are the last resort. Layoffs themselves are regulated in the Manpower Law in Chapter XII. The existence of regulations regarding

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<sup>4</sup> Kementerian Ketenagakerjaan Republik Indonesia, *Jumlah Tenaga Kerja yang Ter-PHK Menurut Provinsi Periode Januari s.d. Juli Tahun 2024*, diakses dari [https://satudata.kemnaker.go.id/data/kumpulan-data/1896#:~:text=Layers%20Off%2DPHK%2C%20Juli%20Tahun%202024&text=Pada%20periode%20Januari%2DJuli%202024,PHK%20\(Termination%20of%20Employment%20Relationship\)](https://satudata.kemnaker.go.id/data/kumpulan-data/1896#:~:text=Layers%20Off%2DPHK%2C%20Juli%20Tahun%202024&text=Pada%20periode%20Januari%2DJuli%202024,PHK%20(Termination%20of%20Employment%20Relationship)), diakses pada 21 November 2024.

<sup>5</sup> Masrifatun Mahmudah dan Dwi Pratiwi Markus, *Pengaturan PHK Efisiensi dalam Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan dan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja*, JUSTISI, Vol.8, No.3 (2022), p.149.

<sup>6</sup> Irva Mayuni dan Elok Hikmawati, *Akibat Hukum Terhadap Pemutusan Hubungan Kerja dengan Alasan Efisiensi*, Scientific Forum, Vol.17, No.1 (January, 2020), p.123.

<sup>7</sup> Vira Mayuni, dkk, *Analisis Hukum Terhadap Pemutusan Hubungan Kerja Secara Sepihak dengan Alasan Efisiensi Perusahaan*, Lex Veritatis, Vol.2, No.3, (November 2023), p.35.

layoffs provides evidence that the government is also involved in protecting its people who are often in a weak position.<sup>8</sup>

In the Employment Law, it has been regulated regarding the reasons for allowing layoffs. One of the reasons often used by employers to lay off their workers refers to Article 164 paragraph (3) of the Employment Law regarding layoffs due to company efficiency. Although the Employment Law states that companies may lay off workers due to efficiency, the Law does not clearly regulate efficiency. Although layoffs for reasons of efficiency are permitted in the Employment Law, it turns out that this still often causes protests from workers who are laid off. Workers who are laid off often feel that the layoffs carried out by the company due to efficiency are just a trick. The protests from workers raise questions about the effectiveness of the layoffs.

## **2. Research Problems**

Based on the background described above, there is a problem formulation:

- a. How effective are layoffs for efficiency reasons?
- b. What are the rights of employees who are laid off for reasons of efficiency?

## **3. RESEARCH METHODS**

This research is a research that is included in the type of research with a normative legal method. Every research in the field of law is always normative.<sup>9</sup> The normative legal method is an approach method that emphasizes research referring to library data or secondary data consisting of primary, secondary, and tertiary legal materials.<sup>10</sup> The primary legal materials used in this study are Law No. 13 of 2003 concerning Manpower, Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation,

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<sup>8</sup> Nindry Sulistya Widiastiani, *Justifikasi Pemutusan Hubungan Kerja karena Efisiensi Masa Pandemi Covid-19 dan Relevansinya dengan Putusan Mahkamah Konstitusi Nomor 19/PUU-IX/2011*, Jurnal Konstitusi, Vol.18, No.2, (June, 2021), p.415.

<sup>9</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, Kencana, Jakarta, 2013.

<sup>10</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Cetakan Ke-11, Rajawali Pers, Jakarta, 2009.

and Government Regulation (PP) No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment. The secondary legal materials used come from books, journals, and articles that are relevant to this research. Finally, the author uses tertiary materials whose sources are from dictionaries, legal dictionaries, and encyclopedias. The approach used in this study is the statutory approach with the technique of collecting legal materials which is carried out by conducting searches, researching, and reviewing them using qualitative analysis.

## **B. RESULT AND DISCUSSIONS**

### **1. Effectiveness of Layoffs for Efficiency Reasons**

PHK is a situation where workers stop working for an employer because of a certain reason.<sup>11</sup> In Law No. 13 of 2003 concerning Manpower, various reasons and prohibitions are mentioned for carrying out PHK. One of the reasons for PHK regulated in the Manpower Law is regulated in Article 164 paragraph (3) which states that companies can carry out PHK for reasons of efficiency. In this article, it can be concluded that employers have the right to carry out PHK to their workers if they are proven to have carried out efficiency. Although the law allows for PHK for reasons of efficiency, it does not explain further regarding efficiency.<sup>12</sup>

Efficiency is one way for a company to manage financial resources, processes, equipment, labor and materials. The Manpower Law states that if a company wants to lay off employees for reasons of efficiency, it must be followed by a company closure. However, as time goes by, the Manpower Law has changed. In 2020, the government made a new regulation, namely Law No. 11 of 2020 concerning Job Creation which changed some of the contents of Law No. 13 of 2003 concerning

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<sup>11</sup> Asri Wijayanti, *Post-Reform Employment Law*, Sinar Grafika, Jakarta, 2009, p.158.

<sup>12</sup> Andika Pramana Putra, *Kajian Hukum Terhadap Putusan Mahkamah Agung Atas Perkara No. 825k/Pdt. Sus-Phi/2015 Tentang Pemutusan Hubungan Kerja Karena Alasan Efisiensi*, Jurnal Hukum Adigama, Vol.1, No.1 (2018), p.762.

Manpower.<sup>13</sup> One of the provisions that was changed was regarding efficiency provisions. The Job Creation Law states that companies may lay off employees for reasons of efficiency without being followed by a company closure. Legally, workers and employers have the same status. However, in the working relationship between workers and employers, there is a relationship that is superimposed so that it often triggers conflict where when the employer issues a policy, workers often feel they have different views.<sup>14</sup>

Efficiency is a comparison between the profits obtained and the limited resources used.<sup>15</sup> According to labor law, efficiency layoffs are divided into 2, namely because the company is experiencing losses and to prevent losses. Layoffs for reasons of efficiency can be carried out followed by the closure of the company or not followed by the closure of the company. Layoffs for reasons of efficiency are often polemic<sup>16</sup> because workers who are laid off often consider that it is unfair and there is an attitude from the company that uses this reason arbitrarily.<sup>17</sup> One example is layoffs carried out by employers to workers who are considered to be against and endanger the company or workers who are no longer productive.

A company must have been in a condition where its economy is declining and in a difficult situation. Therefore, the company needs the right and strategic steps in order to maintain the survival of its company.<sup>18</sup> Before laying off employees for reasons of efficiency, it is better if the company first informs the workers about the efficiency carried out by the

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<sup>13</sup> Satria Hadi Wibowo dan Juan Matheus, *Tinjauan Yuridis Pemberian Uang Pesangon Kepada Karyawan Yang Di-PHK Pasca Pengesahan Perppu Cipta Kerja*, NUSANTARA: Jurnal Ilmu Pengetahuan Sosial, Vol.10, No.5 (2023), p.2560–2565.

<sup>14</sup> Vincensia Anindya Cahyaningtyas, *Perlindungan Hukum Pekerja Yang Mengalami Pemutusan Hubungan Kerja (PHK) Karena Perusahaan Melakukan Relokasi Untuk Efisiensi*, MORALITY: Jurnal Ilmu Hukum, Vol.8, No.1 (2022), p.24.

<sup>15</sup> Malayu S.P. Hasibuan, *Manajemen Sumber Daya Manusia*, Bumi Aksara, Jakarta, 2012, p.46.

<sup>16</sup> Masrifatun Mahmudah dan Dwi P. Markus, *Op.Cit.*, p.155.

<sup>17</sup> Budi Santoso, *Justifikasi Efisiensi Sebagai Alasan Pemutusan Hubungan Kerja*, Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada, Vol.25, No.3 (2013), p.402.

<sup>18</sup> Masrifatun Mahmudah dan Dwi P. Markus, *Op.Cit.*, p.157.

company. In addition, the company needs to make efficiency efforts. It is also necessary to pay attention to the financial condition of the company that is making efficiency efforts as evidenced by the results of the company's audit for 2 consecutive years. If the company has made various efforts but has not reduced losses, then the last resort that can be taken is to reduce the number of existing workers. That way it can also reduce the costs incurred by the company for workers' wages.

The purpose of reducing workers is to reduce waste of resources in order to maintain the survival of the company.<sup>19</sup> If the company continues to maintain a large number of workers but its financial condition continues to decline, then this will actually be dangerous for the company itself because of concerns that the company will not be able to continue to provide the rights it should have, namely wages to workers. However, if it turns out that the company has not experienced significant losses for 2 consecutive years and continues to lay off workers on the grounds that there is company efficiency, then this will cause injustice to the workers, where workers who should still be able to do their jobs to get their rights, will actually lose them without any clear evidence from the company to carry out the layoffs.

## **2. Rights of Employees Who Are Laid Off for Efficiency Reasons**

The end of the employment relationship between the company and its employees, then all rights and obligations of each party end. Every employee who experiences a layoff has rights that must be obtained before resigning from a company. Likewise, the company must provide what has become the employee's rights, both when laying off employees and when employees resign from the company.

Indonesia is a country that adheres to the ILO Convention on wages. Wages or what can also be called Protection of Wage are rewards given by companies to workers for services they have performed. Wages are the

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<sup>19</sup> Erik Iriyanto dan Arinto Nugroho, *Analisis Yuridis Terkait Pemutusan Hubungan Kerja karena Efisiensi Tidak Diikuti dengan Penutupan Perusahaan yang Disebabkan Perusahaan Mengalami Kerugian*, Novum: Jurnal Hukum, (2022), p.33.

rights of every employee that must be given.<sup>20</sup> Rights are something that must be obtained by someone after they have carried out their obligations. While obligations are tasks that must be carried out in accordance with what has been determined in order to get their rights. In this case, workers must get their rights after carrying out their work which has previously been determined by the company and agreed upon by both parties. Agreements regarding the type of work to be provided by the company must be stated in writing. The Manpower Law states that agreements between workers and the company can be made in writing or verbally. However, to ensure legal certainty in the future, the agreement should be made in writing, considering that currently many companies still violate their obligations to provide their employees' rights.

Even though the company lays off employees for reasons of efficiency, either because they have suffered losses or to prevent losses, the company must still provide employee rights as stipulated in the law. Company losses are not an obstacle to the fulfillment of employee rights. Providing severance pay to employees who are laid off is a form of appreciation for the work that has been done by the employee. The provision of severance pay to employees who are laid off due to efficiency or other reasons is regulated differently in the Manpower Law. This means that under any conditions, the Manpower Law still requires the company to fulfill the rights of its employees even though their employment has ended.

The rights that workers will receive when they are laid off for reasons of efficiency are regulated in Law No. 13 of 2003 concerning Manpower and PP No. 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Hours, and Termination of Employment in the form of severance pay, service award money, and compensation for rights.

**a. Severance pay**

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<sup>20</sup> Yoga Aditya Prasetya dan I Gusti Ngurah Adnyana, *Tuntutan Uang Pesangon, Uang Penghargaan dan Uang Penggantian Hak Melalui Pengadilan Hubungan Industrial Atas Pemutusan Hubungan Kerja Secara Sepihak*, *Bhirawa Law Journal*, Vol.3, No.2 (November 2022) p.150.

Severance pay is compensation given by the company to employees who have stopped working, either because they have been laid off or because they have resigned. The severance pay given to the employee is determined based on the employee's length of service and last salary. The provision of employee severance pay is also determined based on the reason for the termination of employment used. Although the provision of severance pay is mandatory, if before being laid off the employee committed a serious violation, the employee is not entitled to severance pay but is still entitled to receive compensation money. Regarding the calculation of employee severance pay, it is regulated in Article 156 paragraph (2) of Law No. 13 of 2003 concerning Manpower, namely:

<b>Years of service</b>	<b>Severance Pay Amount</b>
< 1 year	1 month wages
1 year or more, < 2 years	2 months wages
2 years or more, < 3 years	3 months wages
3 years or more, < 4 years	4 months wages
4 years or more, < 5 years	5 months wages
5 years or more, < 6 years	6 months wages
6 years or more, < 7 years	7 months wages
7 years or more, < 8 years	8 months wages
8 years or more	9 months wages

**b. Long Service Bonus**

Long service bonus is money given by the company to employees as a reward for their length of service. The provision of long service bonus is also given based on the length of service of the employee and aims to honor employees who are laid off because they have worked for a company for a long period of time. The calculation of long service bonus is regulated in Article 156 paragraph (3) of Law No. 13 of 2003 concerning Manpower, namely:

<b>Years of service</b>	<b>Amount of Long Service Award Money</b>
3 years or more, < 6 years	2 months wages
6 years or more, < 9 years	3 months wages
9 years or more, < 12 years	4 months wages
12 years or more, < 15 years	5 months wages
15 years or more, < 18 years	6 months wages
18 years or older, < 21 years	7 months wages

21 years or older, < 24 years	8 months wages
24 years or older	10 months wages

**c. Replacement Money for Rights**

Replacement money is compensation given by the company to employees as a form of replacement for rights that have not been taken by the workers while they are still working at the company. Replacement money was originally regulated in Article 156 paragraph (4) of the Manpower Law in the form of annual leave that has not been used by employees while still working, costs or expenses for employees and their families to return to the place where the employee was accepted to work, replacement money for housing, medical treatment, and care is set at 15% of severance pay and/or service award money, as well as matters that have been determined by the company with employees in company regulations, work agreements, or joint work agreements.

The contents of the article have changed due to changes to Law No. 13 of 2003 concerning Manpower by Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. From the changes to the contents of the article, the replacement money for rights is only divided into 3, namely money from annual leave that has not been used by employees, costs or expenses for employees and their families to return to the place where the employee was accepted to work, and matters that have been determined by the company with employees in company regulations, work agreements, or collective work agreements.

Based on the calculation provisions above, long service award money is given by the company to employees who have worked for more than 3 years. The longer an employee works for a company, the greater the severance pay and award money he will receive. <sup>21</sup>This proves that the Employment Law appreciates employees for their dedication to their work so far. If the company carries out layoffs for reasons of efficiency, then the calculation of severance pay to employees is given differently from the provisions above. In addition, the calculation of severance pay for layoffs due to efficiency is also given differently according to the reasons for the efficiency layoffs used, whether it is due to losses or to prevent losses.

If the company carries out layoffs on the grounds of company efficiency, then employees are only entitled to severance pay of 0.5 times the provisions of Article 156 paragraph (2), length of service award money of 1 time the provisions of Article 156 paragraph (3), and replacement money in accordance with the provisions of Article 156 paragraph (4) of the Manpower Law as amended by Article 81 Paragraph (47) of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Meanwhile, if the company carries out efficiency on the grounds of preventing losses, then the rules for calculating severance pay are also different. If employees are laid off because the company is efficient to prevent losses, then they are entitled to severance pay of 1 time the provisions of Article 156 paragraph (2), length of service award money of 1 time the provisions of Article 156 paragraph (3), and replacement money in accordance with the provisions of Article 156 paragraph (4) of the Manpower Law as amended by Article 81 Paragraph (47) of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

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<sup>21</sup> Raditya Pratomo, dkk, *Perlindungan Hukum Bagi Pekerja yang Uang Pesangon dan atau Penghargaan Masa Kerja Tidak Dibayar oleh Pengusaha*, Mutiara: Multidisciplinary Scientific Journal, Vol.2, No.1, (January 2024), p.811.

There are differences in the provisions for providing severance pay and long service award money to employees who are laid off for reasons of efficiency due to losses and to prevent losses due to financial factors of the company. Efficiency layoffs by the company for reasons of losses have clearly shown a decrease in profits or losses that can be proven by the results of internal audits or external audits. The law provides relief to companies to pay half of the severance pay to employees who are laid off for reasons of efficiency due to losses in order to maintain a balance between the protection of workers' rights and the sustainability of the company. Meanwhile, for efficiency layoffs to prevent losses, the company still pays the employee's severance pay in full in accordance with the provisions of the law, because the company has not suffered any losses so it is considered still able to pay the severance pay in full

### **C. PENUTUP**

Layoffs for reasons of efficiency can be said to be effective for the company if there has been evidence of a decrease in profits that have an impact on the company's operations and a decrease in the company's productivity, so that it is no longer possible for the company to spend more because the company's income is less. Even though there is a decrease in the profits of companies that carry out layoffs for reasons of efficiency, the company must still pay a sum of money to workers who are laid off in the form of severance pay, long service awards, and compensation for rights in accordance with applicable laws and regulations.

Even though there has been a decrease in profits or losses, the company must still pay severance pay, service award money, and replacement money for rights, the payment of the amount of money is only half of the provisions of Article 156 paragraph (2), service award money of 1 time the provisions of Article 156 paragraph (3), and replacement money for rights in accordance with the provisions of Article

156 paragraph (4) of the Manpower Law as amended by Article 81 Paragraph (47) of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Meanwhile, if the company carries out efficiency to prevent losses, then the payment of the amount of severance pay for its workers is entitled to severance pay of 1 time the provisions of Article 156 paragraph (2), service award money of 1 time the provisions of Article 156 paragraph (3), and replacement money for rights in accordance with the provisions of Article 156 paragraph (4) of the Manpower Law as amended by Article 81 Paragraph (47) of Law No. 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

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