

Legal Reconstruction of Employee Shareholder Protection through ESOP Program from Termination of Employment*

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Abstract

Article 43, paragraph 3 of Law Number 40 of 2007 concerning Limited Liability Companies allows an employee to become a shareholder of the company through the ESOP (Employee Stock Option Program). In practice, an ESOP by companies is stated in a stock option agreement that outlines the rights and obligations of employees concerning the stock options. The position of employees will certainly not be exempt from the HR management policies carried out by the company, including the Termination of Employment policy. Compensation as an employee's right when Termination of Employment occurs is Severance Pay, Long Service Award Pay, Replacement of Rights, and Separation Pay if entitled only to Separation Pay. This study aims to examine and find forms of legal protection and find weaknesses in legal protection for employee shareholders (ESOP) when laid off, and to find efforts to reconstruct legal protection for employee shareholders (ESOP) when laid off. This research is normative juridical. Using secondary data as the primary source, the research was conducted through document studies via library research, employing both statistical and conceptual approaches. The results of this study are: first, that the legal provisions regarding layoffs of employees who are also shareholders of the company through ESOPs in Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours and Rest Periods, and Termination of Employment have not been able to provide maximum legal protection for the rights of employees who are also shareholders. The current reality is that when ESOP employees are laid off, the company only relies on their employee status, the reason for the layoff, and the rights clearly stated in the legislation. Second, the research findings indicate that the reconstitution of Article 40 paragraph 4 letter (c) of Government Regulation 35 of 2021 aims to provide certainty and legal protection for ESOP employees in the event of layoffs by the company.

Keywords: ESOP Employees; Legal Protection; Layoffs

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A. INTRODUCTION

The movement of the role of workers from being just a company tool to becoming company capital, and now a step further, namely becoming a strategic partner, has also changed the company's view of the importance of the existence of workers/employees for the productivity, progress and growth of the company, so that various policies related to employees are also continuously improved by the company, including the possibility of employees becoming company shareholders with the aim, among others, to increase the sense of ownership of employees in the company.

Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Company Law or UUPT) Article 43 paragraph (3) letter (a) stipulates that "The offering as referred to in paragraph (1) shall not apply in the case of share issuance (a) intended for the company's employees." This provision is further clarified in the elucidation of Article 43, which explains that "shares intended for the company's employees include, among others, those issued under the Employee Stock Option Program (hereinafter referred to as ESOP) of the company, along with all rights and obligations attached thereto." This serves as both a legal basis and a gateway for the company's efforts: first, to enhance the position and welfare of employees by issuing new shares allocated explicitly to them; and second, to elevate employees to the status of shareholders through the ESOP program. Nevertheless, the implementation of Article 43 paragraph (3) letter (a) remains subject to the decisions of shareholders through the General Meeting of Shareholders (RUPS).

Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law or UUTK) provides detailed regulation on various aspects of employment within its provisions, including: Protection, Wages, and Welfare, which are regulated in 38 articles (Articles 67 to 101); Employment Relations, regulated in 17 articles (Articles 50 to 56); Industrial Relations, regulated in 48 articles (Articles 102 to 149); and Termination of Employment, regulated in 23 articles (Articles 150 to 172).

Termination of Employment (hereinafter referred to as PHK) is never something desired by either employees or the company. Employees are valuable assets who, whether consciously or not, have been trained at considerable cost and possess essential knowledge of the company's workflow and business processes. Nevertheless, under certain circumstances, the decision to implement termination may be unavoidable as a strategic measure to safeguard greater interests and ensure the company's long-term sustainability.

The risk of job loss due to termination policies is an unavoidable reality for employees, and it can occur at any time—even for those who hold company shares through the Employee Stock Option Program (ESOP). This situation was evident in the mass layoffs conducted by Gojek Indonesia, attributed to global macroeconomic conditions that compelled the company to implement efficiency measures, including workforce reduction and employee-shareholders. Nevertheless, Gojek's Co-CEO, Kevin Aluwi, stated that the company would continue to support affected employees through an Equity Arrangement. This includes removing the annual cliff period for employees with share ownership rights, allowing them to retain shares in the company they helped build. ([CNN Indonesia, 2020](#))

Relying solely on Article 43 of the Company Law (UUPT) is clearly insufficient, particularly when termination of employment (PHK) is carried out in a manner that violates employees' civil rights. Employees' rights as workers under the Manpower Law (UUTK), their rights as shareholders under the Company Law, and their rights arising from the Stock Option Agreement must all be treated fairly to uphold the principle of justice truly. Therefore, law enforcement in this context requires a reconstruction of legal norms and regulations that are more precise, equitable, and proportional, ensuring that no party is unfairly disadvantaged.

In practice, employees are often in a weak position when faced with a termination of employment (PHK) decision from the company, even though Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (hereinafter referred to as PP 35/2021) provides clear legal provisions. Even when termination is carried out solely for efficiency reasons to prevent company losses, employees are still entitled to severance pay equal to one time the amount stipulated in Article 40 paragraph (2), long-service compensation equal to one time the amount in Article 40 paragraph (3), and compensation for entitlements as regulated in Article 40 paragraph (4). Furthermore, Article 40 paragraph (4)(c) of PP 35/2021 specifically states that compensation for entitlements includes "other matters stipulated in the Employment Agreement (PK), Company Regulation (PP), or Collective Labor Agreement (PKB)."

However, the provision under Article 40 paragraph (4)(c) of the Manpower Law (UUTK), which strictly limits compensation entitlements to matters regulated in the Employment Agreement (PK), Company Regulation (PP), or Collective Labor Agreement (PKB), raises a critical question: what is the

legal standing of the Stock Option Agreement that serves as the basis for employees to exercise their ownership rights in the company? Should such an agreement be regarded as equivalent to the recognized instruments, or is it marginalized, thereby neglecting the rights of employees as shareholders in the context of termination? This highlights the need for a broader legal interpretation to ensure adequate protection for workers who also serve as internal investors within the company. ([Suryawati, 2022](#))

Based on the explanation above, this study aims to examine and identify the existing forms of legal protection and to uncover the weaknesses in legal safeguards for employee-shareholders under the Employee Stock Option Program (ESOP) in the event of termination of employment (PHK). Furthermore, this research seeks to propose a reconstruction of the legal protection framework that is more equitable and comprehensive for employee-shareholders (ESOP) when facing termination.

B. METHODS

This research is a normative legal study employing both the statute approach and the conceptual approach. The legal materials used as data sources include primary legal materials derived from relevant legislation related to the issues discussed in this study, as well as secondary legal materials obtained from literature, law journals, magazines, newspapers, and online sources. The collection of legal materials was carried out through documentation, review, and in-depth examination of both primary and secondary sources, followed by qualitative analysis. The results of the study are presented in a descriptive form.

C. RESULTS AND DISCUSSION

1. Rights and Obligations of Employee-Shareholders (ESOP) in the Event of Termination of Employment (PHK) by the Company

In practice, the status of employee-shareholders (ESOP) is subject to three legal frameworks: the Manpower Law (UUTK) governing their position as employees, the Company Law (UUPT) governing their position as shareholders, and the Indonesian Civil Code (KUH Perdata) regulating the stock option agreement entered into and signed with the company. This legal framework carries specific consequences in the event of termination of employment (PHK), particularly concerning the rights and obligations of employee-shareholders (ESOP) when termination is carried out by the company, as follows:

First: The Rights and Obligations of Employee-Shareholders (ESOP) under the Manpower Law

Labor regulations provide a clear framework to protect the rights and obligations of employees—including those who also hold shares through the Employee Stock Ownership Plan (ESOP)—when facing termination of employment. These provisions reaffirm their primary status as workers and ensure that the termination process is not carried out unilaterally or unjustly. Such rights are designed to guarantee legal certainty, fairness, and the opportunity for employees to defend themselves, from the initial notice stage to dispute resolution in court. The following sections will outline these key rights step by step to better understand how the legal system safeguards employees in such vulnerable positions.

First, regarding the termination notice, employees are entitled to receive a written notification from the employer no later than 14 working days before the termination is actually carried out, as stipulated in Article 37(3) of Government Regulation No. 35 of 2021. This provision allows employees time to prepare themselves, seek alternative employment, or engage in negotiation. If the termination occurs during the probation period, the notice must be given earlier—no later than 7 working days in advance—as regulated in Article 37(4) of the same regulation. Upon receiving the notice, the employee may either provide written acceptance (Article 38) or reject it if they believe the decision is unfair (Article 39(1)), thereby opening the possibility for further dialogue and resolution.

Next, regarding financial compensation, employees are entitled to receive severance pay, long service pay, and compensation for entitlements as stipulated in Article 40 of Government Regulation No. 35 of 2021. In addition, employees are entitled to full wages during the termination process until a final and binding court decision is reached, in accordance with Article 157A of Law No. 6 of 2023 on Job Creation (amendments to labor regulations). This compensation aims to ease the burden on employees who suddenly lose their jobs and to ensure a fair and humane transition process.

In the event of a dispute, employees have the right to resolve it through a fair and structured process. The resolution begins with bipartite negotiations based on mutual deliberation and consensus, as stipulated in Article 3 of Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes. If no agreement is reached, the employee may register the dispute with the labor authority (Article 4 paragraph (1) of Law No. 2/2004) and proceed through mediation or conciliation (Article 4 paragraphs (3) and (4) of Law No. 2/2004).

Furthermore, employees have the right to reject a written recommendation from either the mediator (Article 14 paragraph (1) of Law No. 2/2004) or the conciliator (Article 24 paragraph (1) of Law No. 2/2004) if the proposal does not align with their interests. ([Suryawati, 2022](#))

Suppose the dispute proceeds to the judicial stage. In that case, the employee has the right to file a lawsuit with the Industrial Relations Court (PHI) as stipulated in Article 82 of Law No. 2 of 2004 and may withdraw the lawsuit at any time if necessary (Article 85 paragraph (1) of Law No. 2/2004). Employees may also authorize a labor union to represent them during the court proceedings (Article 87 of Law No. 2/2004). During the process, if the employer fails to pay wages, the employee has the right to request an interim decision from the judge (Article 96 paragraph (1) of Law No. 2/2004). Once a verdict is issued, the employee is entitled to receive an official copy of the decision (Article 107 of Law No. 2/2004) and may file an appeal to the Supreme Court if dissatisfied with the outcome (Article 111 paragraph (1) of Law No. 2/2004). Through these protections, labor law not only safeguards ESOP employees as workers but also promotes a balance of power between employees and employers, ensuring that termination processes are conducted transparently and fairly. In addition to the rights granted to them, employee-shareholders under the Employee Stock Ownership Plan (ESOP) also bear several significant obligations that reflect their dual role as both workers and shareholders. These obligations ensure fairness, transparency, and procedural integrity throughout the employment termination process.

First, when facing dismissal, an employee must submit a written objection accompanied by clear reasons within seven working days after receiving the termination notice, as stipulated in Government Regulation No. 35 of 2021. Before escalating a dispute, employees are required to engage in bipartite negotiations with the employer to seek mutual agreement and record the discussion in formal minutes. If a resolution is achieved—either in bipartite negotiations or mediation—the employee must sign a joint agreement as proof of settlement. Moreover, employees are obliged to respond to any written recommendation issued by a mediator and to attach the mediation report when filing a case with the Industrial Relations Court. Once the dispute reaches the court, employees must attend the hearings and comply with all courtroom procedures in accordance with Law No. 2 of 2004. Through these obligations, the law not only ensures procedural justice but also encourages employees to act responsibly and in good faith during the settlement of industrial disputes.

Second: The Rights and Obligations of Employee-Shareholders (ESOP) under the Limited Liability Company Law (UUPT)

The Limited Liability Company Law (UUPT) does not differentiate between types of shareholders, as it defines a shareholder as any individual or legal entity that owns shares in the company, regardless of the number of shares held. Therefore, even if an employee who is also a shareholder has their employment terminated, their status as a shareholder remains valid as long as their shares are not transferred, unless otherwise stipulated in the Share Option Agreement between the employee and the company.

This means that, in the absence of a specific agreement stating otherwise, an employee-shareholder who has been dismissed (terminated) continues to enjoy all shareholder rights guaranteed under the UUPT, including: a) the right to attend and vote in the General Meeting of Shareholders (GMS); b) the right to receive dividends and the remaining assets from liquidation; c) the right to file a lawsuit with the District Court if harmed by decisions of the board of directors or board of commissioners; d) the right to access company information; e) the right to fair treatment in profit distribution; and f) the right to legal protection.

The Indonesian Company Law (UUPT) also stipulates that every legal action undertaken by a company must take into account the interests of minority shareholders, including corporate actions such as takeovers (acquisitions), mergers, and consolidations. Due to the limited number of shares available for employees to purchase, employee-shareholders are typically categorized as minority shareholders in practice.

The UUPT provides detailed protection for minority shareholders as stipulated in Articles 54(1), 55, 66(2), 67, 110(3), and 117(1)(b). The rights of minority shareholders under the Company Law, apart from the right to attend General Meetings of Shareholders (GMS) and to file a lawsuit representing at least one-tenth (1/10) of the total shares with voting rights, also include the right to request a share buyback, to obtain a fair settlement, to submit an inquiry (angket), and to seek legal assistance.

In addition to these rights, the UUPT also imposes several obligations on shareholders, including: a) Complying with company regulations; b) Refraining from acts detrimental to the company; c) Supervising the company's performance; d) Paying the share price and dividend taxes in accordance with applicable laws; e) Providing financial support; f) Approving financial statements within their authority; and g) Attending and participating in the General Meeting of Shareholders (GMS).

The Indonesian Company Law (UUPT) limits the liability of shareholders to the value of the shares they own. Accordingly, shareholders are not personally liable for the company's obligations or losses beyond the value of their shareholdings. However, exceptions apply if a shareholder is proven to have acted in bad faith by using the company for personal gain, to have participated in unlawful acts committed by the company, or to have concurrently served as the company's director.

Third: Rights and Obligations of Employee-Shareholders (ESOP Participants) under the Share Option Agreement

The Share Option Agreement serves as the legal basis for employees to exercise their option rights to purchase shares and become shareholders of the company. The number, value, and possible classification of shares—if the company has multiple classes—are available or allocated to employees, along with the procedures and implementation details, as stipulated in the Share Option Agreement.

In common practice under Share Option Agreements, when an employee is terminated, the following provisions generally apply. The vesting period refers to the length of time an employee must serve before gaining full rights to certain benefits or assets, such as company shares or pension contributions. Once this period is fulfilled, an employee whose employment has ended retains the right to exercise their option, provided that the termination was not due to a criminal act against the company and no minimum service requirement applies. Some Share Option Agreements stipulate a minimum period of employment—such as three years, five years, or as determined by company policy.

After the vesting period has ended, the employee acquires full ownership rights over the vested assets or option shares. Accordingly, the employee is entitled to purchase company shares at the predetermined price stated in the agreement. For example, if the employee holds an option to buy shares at a specified price, they may exercise that option and purchase the shares at that price, even if the current market value is higher.

Termination of employment (PHK) may occur under various circumstances, each carrying distinct implications for employees' rights, particularly those related to stock ownership under the Employee Stock Ownership Plan (ESOP). These provisions are designed to balance corporate interests with the protection of employee rights, ensuring a fair, transparent, and equitable process. To understand this more deeply, let us explore how different

types of termination affect these rights under the Share Option Agreement.

First, when employment ends due to retirement, the employee is entitled to the pension contribution benefits that have accumulated. At this stage, the employee gains complete control over the vested (matured) pension contributions and may utilize these funds in accordance with applicable regulations. This provision serves as a form of appreciation for long-term loyalty and dedication, offering post-retirement financial security while honoring the employee's commitment to the company. Second, in a more unfortunate circumstance, if employment terminates due to the employee's death, the employee's heirs are entitled to continue and exercise the share option rights as stipulated in the Share Option Agreement. This ensures that the employee's financial legacy is preserved and transferred to their family, providing support and upholding fairness in managing the company assets promised to the employee. However, not all terminations yield positive outcomes. If termination occurs due to actions that materially harm the company's business—such as gross misconduct or criminal offenses—all share options, whether already granted or not yet exercisable, shall immediately terminate and become null and void. This serves as a protective mechanism for the company, preventing further losses from individuals deemed misaligned with corporate values—though such measures must be legally proven to avoid potential misuse.

In conclusion, these provisions establish a crucial balance between protecting loyal employees and maintaining corporate integrity. It is therefore essential for employees to fully understand the details of their ESOP agreements so they can navigate such situations with awareness and prudence.

2. Legal Reconstruction to Provide Protection for Employee-Shareholders (ESOP Participants) in Cases of Employment Termination (PHK)

The protection of employee-shareholders (ESOP participants) in cases of employment termination (PHK), as regulated under the Labor Law (UUTK), aims to guarantee workers' fundamental rights and ensure equal treatment in the workplace. This protection seeks to promote the welfare of employees and their families. Accordingly, the UUTK provides several forms of protection, including workers' fundamental rights, women workers' rights, employees' rights in cases of termination, and occupational safety and health.

To ensure that these protections provide maximum legal certainty and security for workers, the Manpower Law (UUTK) explicitly stipulates employees' rights within its provisions. These rights include: The right to receive

a decent wage; The right to social security benefits; The right to occupational safety and health protection; The right to moral and ethical protection; The right to be treated with respect and human dignity; The right to join a labor union; The right to enter into an employment agreement; and the right to protection from unfair termination of employment. Employment termination (PHK) disputes often become prolonged and ultimately harm both parties—the employer/company and the employee—through time, cost, and effort. The Manpower Law (UU TK) and its implementing regulations clearly define the rights and obligations of both employers and employees, covering all stages of the termination process: before, during, and after the employment termination.

Law enforcement is an empirical reality that reflects how the law operates within society (law in action). According to Satjipto Rahardjo, law enforcement is a process of transforming the ideals and provisions of the law into reality. ([Rahardjo, 2009, p. 24](#)) Article 27, paragraph (1) of the 1945 Constitution affirms that all citizens are equal before the law. The principle of equality before the law is found in almost every national constitution. This norm serves as a safeguard for the fundamental rights of citizens. When such a principle is enshrined in the constitution, it becomes the duty of the government and law enforcement authorities to implement and realize it in the life of the state. The rights of employees as company shareholders through the Employee Stock Ownership Plan (ESOP) in the event of termination of employment (layoff) are not specifically regulated or explicitly mentioned in the Manpower Law. The main distinction between an employee-shareholder and a regular employee (non-shareholder) lies in the entitlement to benefits, profits, or rights as stipulated in the Stock Option Agreement.

Similarly, the Limited Liability Company Law (Company Law) does not clearly or comprehensively regulate the legal standing of employees who become shareholders through ESOP—whether they are to be treated as ordinary shareholders, thereby entitled to: Attend and vote at the General Meeting of Shareholders (GMS); Receive dividends and remaining assets upon liquidation; File a lawsuit in the District Court if they suffer losses; Request a buyback of their shares at a fair price if they disagree with a detrimental corporate action; Receive a portion of company profits in proportion to their shareholding; Elect members of the board of directors and commissioners; Obtain access to corporate information; and Enjoy fair treatment in the distribution of profits. Alternatively, their position may be considered merely as minority shareholders, whose rights can only be exercised after the vesting period stipulated in the Stock Option Agreement has been fulfilled. Although the rights of employees are regulated and protected under the Manpower Law (UUTK), particularly in cases where a

company violates workers' rights, the law explicitly stipulates that employees' entitlements—including wages—are considered debts with preferential payment priority. Consequently, employees have a legal basis to file for the company's bankruptcy. This is stated in Article 95 paragraph (4) of the Manpower Law, which provides that: "If a company is declared bankrupt or liquidated in accordance with the prevailing laws and regulations, the wages and other entitlements of workers shall constitute debts whose payment takes precedence."

This provision is further reinforced by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which in Article 2 states that: "A debtor who has two or more creditors and fails to pay at least one due and collectible debt fully may be declared bankrupt by a court decision, either upon its own petition or upon the petition of one or more of its creditors."

The fifth principle of Pancasila, "Social Justice for All the People of Indonesia," aims to ensure equal welfare for all Indonesian citizens, including both workers and employers. The realization of Pancasila's values can be seen through several key aspects, such as: treating workers fairly and without discrimination, respecting their dignity and worth, improving the welfare of workers and their families, fostering harmonious relations between workers and employers, and creating an inclusive, just, and sustainable work culture.

3. Legal Balance

The Indonesian Civil Code (KUH Perdata) and the Criminal Code (KUH Pidana) explicitly provide a foundational basis for the importance of Legal Balance. This principle can be observed in Articles 1320 to 1337 of the Civil Code, as well as in Law of the Republic of Indonesia Number 1 of 2023 on the Criminal Code, particularly in the preamble, section (c). In relation to this, Yahya Harahap further explains that the Principle of Balance (Asas Keseimbangan) requires the exchange of rights and obligations between the parties to an agreement to be carried out proportionally. In the context of law enforcement, this principle signifies a harmonious balance between the protection of human dignity and the preservation of public order and societal interests. This balance is clearly reflected in the preamble, section (c), which emphasizes the importance of maintaining equilibrium between two essential aspects of justice enforcement — the protection of human rights and the maintenance of public order. Furthermore, a closer examination of Articles 1320 to 1337 of the Indonesian Civil Code reveals that these provisions strongly advocate for balance — balance of intent, capacity, and information — among the contracting parties. ([Harahap, 2009](#))

The principle of balance must serve as a guiding foundation in legal decision-making, ensuring that all relevant and potentially conflicting factors are carefully considered. On the other hand, the law must also protect the public interest and maintain social order as a whole. Therefore, law enforcers must act decisively to preserve order, prevent crime, and respond firmly to violations of the law. This approach creates harmony between these two essential aspects, ensuring the protection of individual rights without sacrificing societal interests and order, and vice versa.

Justice serves as the core value and fundamental foundation of the principle of balance. Therefore, justice within the context of this principle must encompass several key considerations: First, the concept of justice demands fair and equal treatment for all individuals, regardless of their social, economic, or political background. Second, the principle of balance requires law enforcers to consider various interests present in each legal situation—both the interests of individuals directly involved in a case and those of society as a whole. Third, the principle emphasizes the equality of treatment before the law, meaning that every individual must be treated equally without discrimination or unfair treatment based on gender, race, religion, or social status. Fourth, the principle demands that law enforcement be proportional, ensuring that legal actions are balanced with the objectives sought and do not exceed what is necessary to achieve justice. Fifth, the principle upholds transparency and accountability at every stage of the legal process—from the drafting of regulations to the implementation of judicial decisions. This ensures that every legal decision is made based on clear, reasoned, and measurable considerations. Law enforcers must be ready to explain and justify the rationale behind their choices, taking into account available evidence, relevant legal principles, and the interests of all parties involved. Finally, legal decision-making must remain flexible and adaptive, allowing the law to adjust to changing circumstances and societal developments, thereby ensuring that the law remains relevant, fair, and responsive to the dynamics of justice in an evolving world.

4. Civil Rights of Employees (Workers)

Every human being is born with civil rights, which regulate relationships between individuals, property, and other private legal rights. Civil rights are fundamental rights inherent to every individual. In fact, as stipulated in Article 2 of the Indonesian Civil Code (KUH Perdata), a child conceived in the womb is considered born whenever it is in the child's interest. This principle is further clarified in Article 3, which states that no punishment may result in civil death or

the loss of citizenship rights, even for a convicted person. (Subekti, 2003)

Civil rights in private law refer to the rights to freely enjoy the use and benefits of property, which are generally classified into absolute rights and relative rights. Absolute rights are those that can be enforced against anyone, including personal rights, family rights, and property rights. Meanwhile, relative rights are rights that can only be exercised against one or more specific individuals who are obligated to fulfill those rights—for example, certain family rights and all property-related rights that are not categorized as absolute.

Article 3 of the Indonesian Civil Code (KUH Perdata) should be understood to mean that a person's capacity to hold rights and obligations only ceases upon their death. When this principle is correlated with the rights of employees who are also shareholders (ESOP participants) affected by termination of employment (PHK), it implies that their rights—whether granted under the Manpower Law (UUTK), the Company Law (UUPT), or the Stock Option Agreement—remain valid and inherent to the employee. Therefore, the government's role as a regulator in safeguarding the civil rights of employees is crucial. The government must continually update and refine all regulations related to order, legal certainty, and social harmony, especially those concerning citizens' rights and obligations, including their civil rights as workers and shareholders.

5. Weaknesses in Implementation

From the company's perspective, compensation owed to employees upon termination (PHK) is often viewed through a normative lens, meaning it is limited to provisions explicitly stated in formal regulations. The compensation entitlements for employees generally include severance pay, service appreciation pay, compensation for permanent employees who are terminated, and separation pay for those who voluntarily resign. Government Regulation No. 35 of 2021, under Article 40 paragraph (4), specifies that compensation for entitlements includes unused and non-expired annual leave, travel or return costs for the employee and their family to their place of origin, and other items as stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement (CLA). However, a critical question arises regarding the legal position of Stock Option Agreements (ESOP) or other agreements established between the company and the employee, particularly since not all of these contractual arrangements are formally accommodated within government regulations or collective labor agreements. This creates a regulatory gap that may affect the recognition and enforcement of employees' rights arising from such

contracts.

Therefore, the author proposes a reconstruction of Article 40 paragraph (4) letter (c) by adding the phrase “Stock Option Agreements and/or other agreements made by and between the Company and the Employee”. With this addition, Article 40 paragraph (4) letter (c) would read as follows: “Other matters as stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement, Stock Option Agreements, and/or other agreements made by and between the Company and the Employee.” This amendment aims to ensure that all contractual rights arising from agreements between companies and employees—beyond those explicitly regulated in statutory provisions—are duly recognized and protected under the law. Thus, this reconstruction encompasses: a) Value Reconstruction, which focuses on fulfilling the rights of Employees, particularly Employee-Shareholders of the Company (ESOP); b) Reconstruction of the formulation of Government Regulation No. 35 of 2021 (PP 35/2021) and the Company Law (UU PT), specifically reconstructing Article 40 paragraph (4) letter (c) of PP 35/2021, as outlined in the matrix below.

Table 1 Legal Reconstruction of PP 35 of 2021

Regulation	Chapter	Problem	Reconstruction
Government Regulation No. 35 of 2021	Article 40, paragraph 4, letter c The compensation money that should be received as referred to in paragraph (1) includes: a. ... b. ... c. other matters stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.	The legal basis for employees to become shareholders through ESOP is a stock option agreement and/or other agreements agreed upon by the company and employees (workers).	Article 40, paragraph 4, letter c Compensation for rights that should be received as referred to in paragraph (1) includes: a. ... b. ... c. other matters stipulated in the Employment Agreement, Company Regulations or Collective Labor Agreement, Stock Option Agreement and/or other Agreements and other Agreements made by and between the Company and the Worker (Employee).

Ridwan HR explains that for legal relationships between legal subjects to function harmoniously, balanced, and fairly—meaning that each legal subject receives their entitled rights and fulfills the obligations imposed upon them—law must act as the governing framework for regulating these relationships. In this context, “Law is created as a means or instrument to regulate the rights and obligations of legal subjects.” ([Ridwan, 2002, p. 210](#))

Understanding the meaning of justice is indeed not easy, especially when it comes to measuring it, because what is fair to one party may not be fair to another. Van Apeldoorn defines the word justice as derived from the word "adil," which means objectively acceptable. ([Apeldoorn, 1990](#)) The characteristics of justice in John Rawls's Theory of Justice state that justice must be understood as equality. Humans, as social beings, must enjoy equality under the law and equality in access to justice. Rawls's view posits the existence of equality among individuals in society. There is no distinction of status, position, or superiority between one party and another, which allows for a balanced agreement.

In line with Rawls's view, Plato's teachings on using law as a means of justice stem from his idealism of an "ideal state" where everyone has the opportunity to enjoy justice, meaning everyone has an equal right to justice, including Employee Shareholders (ESOPs) who are laid off. As the concept of law enforcement in a state is based on principles and oriented towards the purpose for which the law was created, failure to adhere to the principles of authority (competence) and legality (*rechtmategheid*) will be disastrous for the legal system. Therefore, a state based on the rule of law requires the supremacy of law and the absence of arbitrary action without clear rules.

D. CONCLUSION

Based on the research findings and discussion, it can be concluded that the legal protection regarding termination of employment (PHK) for employees who are also shareholders of the company through an ESOP, as regulated in Government Regulation No. 35 of 2021, has not yet provided optimal legal protection for the rights of these employee-shareholders. In practice, when an ESOP employee is terminated, the company typically only considers the employee's status, the reason for termination, and the rights explicitly stated in the applicable laws and regulations.

The legal reconstruction to protect employee-shareholders (ESOP participants) from the termination of employment (PHK) by the company involves amending Article 40, paragraph 4, letter (c) of Government Regulation No. 35 of 2021. As a result, Article 40 paragraph 4 letter (c) would read: "Other matters stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement, the Stock Option Agreement and/or other agreements, and any agreements made by and between the Company and the Employee."

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