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The Legal Status of Severance Pay as Statutory Compensation for Termination of Employment and Its Relationship with Civil Damages

Dewa Sukma Kelana[1*], Sahrul Hanafi[2], Tiara Masayu Auliyadina[3], Rian Rusmana[4]
[1,2,3,4] Universitas Pamulang
*Correspondence: dosen03202@unpam.ac.id

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Abstrak

Penelitian ini bertujuan untuk memperjelas kedudukan hukum uang pesangon pasca-reformasi Undang-Undang Cipta Kerja di Indonesia, secara khusus mengkaji hubungannya dengan ganti rugi perdata. Proposisi utamanya adalah bahwa uang pesangon merupakan kompensasi wajib yang timbul ex lege berdasarkan perundang-undangan ketenagakerjaan, dan bukan, dengan sendirinya, merupakan bentuk ganti rugi atas wanprestasi. Sebuah pemutusan hubungan kerja yang sah masih dapat memicu kewajiban pembayaran pesangon atau kompensasi lainnya bergantung pada alasan yang ditentukan oleh hukum. Sebaliknya, pemutusan hubungan kerja yang tidak sah atau menyalahi kontrak dapat memunculkan persoalan hukum terpisah mengenai pemulihan hak-hak pekerja atau ganti rugi perdata, asalkan unsur-unsur hukum spesifiknya dapat dibuktikan. Penelitian ini menggunakan metode penelitian hukum normatif melalui pendekatan perundang-undangan, konseptual, dan kasus terhadap Kitab Undang-Undang Hukum Perdata (KUHPerdata), regulasi ketenagakerjaan yang dibaca bersamaan dengan Undang-Undang Nomor 6 Tahun 2023, Peraturan Pemerintah Nomor 35 Tahun 2021, serta putusan-putusan pengadilan hubungan industrial terpilih. Analisis ini menyimpulkan bahwa hukum ketenagakerjaan berfungsi sebagai titik awal lex specialis. Pasal 1243 dan 1365 KUHPerdata hanya berlaku secara subsider apabila terdapat kekosongan norma yang nyata atau perbuatan perdata terpisah, serta apabila kerugian, kausalitas, dasar hukum, dan yurisdiksinya terbukti; pasal-pasal tersebut tidak secara otomatis memperbesar formula pesangon sesuai undang-undang.

Kata kunci: Uang Pesangon; Wanprestasi; Pemutusan Hubungan Kerja; Hukum Ketenagakerjaan; Hukum Perdata.

Abstract

This study aims to clarify the legal position of severance pay following the post-Job-Creation-Law reforms in Indonesia, specifically examining its relationship with civil damages. The central proposition is that severance pay constitutes statutory compensation arising ex lege under employment legislation, and is not, by itself, a form of damages for breach of contract. A lawful termination of employment may still trigger an obligation for statutory severance or other compensation depending on the legally specified grounds. Conversely, an unlawful or contractually wrongful *termination may raise separate legal questions concerning the restoration of workers' rights or civil damages, provided that their specific legal elements are proven. This study employs a normative legal research methodology, utilizing statutory, conceptual, and case approaches to analyze the Indonesian Civil Code, employment legislation read alongside Law Number 6 of 2023, Government Regulation Number 35 of 2021, and selected industrial relations decisions. The analysis concludes that employment law fundamentally serves as the lex specialis starting point. Civil Code Articles 1243 and 1365 may operate only subsidiarily where a genuine normative gap or a separate civil wrong exists, and where loss, causation, legal basis, and jurisdiction are firmly established; they do not automatically enlarge the statutory severance formula.*

Keywords: *Severance Pay; Breach of Contract; Termination of Employment; Labor Law; Civil Law.*

INTRODUCTION

The employment relationship between workers and employers is essentially the embodiment of a civil-law agreement that gives rise to reciprocal rights and obligations. Within Indonesia's positive-law framework, an employment agreement is understood not merely as an administrative instrument of labor law, but also as a legal relationship subject to the general principles of contract law set out in the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, hereinafter the Civil Code). Article 1601a of the Civil Code expressly defines an employment agreement as an agreement under which one party binds itself to work for another party in return for wages.[1] This definition makes clear that the employment relationship is consensual and binding, so that the principle of pacta sunt servanda contained in Article 1338 paragraph (1) of the Civil Code applies fully.[2] This principle affirms that every lawfully concluded agreement has binding force comparable to law for the parties who made it. In practice, however, employment relationships do not operate in a vacuum of absolute freedom of contract. The state intervenes through mandatory labor regulations (dwingend recht) to protect workers as the structurally and economically weaker party.[3] Such intervention reflects the recognition that formal equality in a contract often does not represent substantive equality, and that law must therefore serve a corrective function to prevent exploitation and ensure the fulfillment of workers' basic rights.

One of the most critical issues in industrial relations is termination of employment (pemutusan hubungan kerja, PHK). Termination ends the employment relationship and directly affects a worker's source of livelihood, which may in turn generate social, economic, and psychological consequences. To anticipate these multidimensional effects, Indonesian labor law requires employers to provide compensation in the form of severance pay, long-service pay, and compensation for entitlements.[4] These protections were first introduced systematically through Law Number 12 of 1964 concerning Termination of Employment in Private Companies,

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[1] Kitab Undang-Undang Hukum Perdata, Pasal 1601a.

[2] Ibid., Pasal 1338 ayat (1).

[3] Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 2017), hlm. 121.

[4] Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, Pasal 156 ayat (2).

enacted in response to post-colonial legal uncertainty. The framework was subsequently developed more comprehensively in Law Number 13 of 2003 concerning Manpower, which positioned severance pay as a mandatory normative protection that could not simply be waived. More recent developments occurred through Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 35 of 2021, which significantly altered the formula and mechanisms for severance payments.[5] These regulatory changes are not merely technical or administrative; they reflect a broader shift in national labor policy from a predominantly protective orientation toward greater labor-market flexibility.[6] The government has argued that these adjustments are necessary to create a more favorable investment climate and strengthen industrial competitiveness amid changing global economic conditions. Yet behind this economic rationale lies a fundamental question: whether regulatory flexibility has come at the expense of substantive justice for workers.

Severance pay must be distinguished from civil damages. It is statutory compensation arising because labor legislation attaches particular legal consequences to the ground for termination, length of service, and other components of entitlement. Because the right arises ex lege, it may exist even where termination is carried out through a lawful procedure and the employer has committed no breach of contract. Conversely, the existence of a contractual breach or an unlawful act does not automatically convert all termination-related entitlements into civil damages. The analysis must distinguish among: (1) lawful termination and the accompanying statutory entitlements; (2) unlawful termination and its remedial consequences; (3) breach of a separate contractual obligation; and (4) an unlawful act satisfying the elements of Article 1365 of the Civil Code.[7]

Supreme Court Decision Number 39 PK/Pdt.Sus-PHI/2017 is used only to the extent supported by the ratio decidendi and dispositive order that can genuinely be drawn from the judgment. If the court orders payment of severance or other termination entitlements on the basis of labor legislation, the decision should not be cited as jurisprudence transforming severance pay into damages for breach of contract. Any additional doctrinal proposition may be inferred only where the court's legal reasoning expressly assesses a contractual basis or the elements of civil damages.[8]

This harmonization, however, has not operated smoothly in labor-law enforcement practice. The reduction of severance entitlements under the Job Creation Law and Government Regulation Number 35 of 2021 has attracted broad criticism on the ground that it weakens the protective function of severance pay as an economic safety net.[9] At the same time, some employers exploit legal gaps through repeatedly extended fixed-term employment agreements (Perjanjian Kerja

[5] Peraturan Pemerintah Nomor 35 Tahun 2021 tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat, serta Pemutusan Hubungan Kerja, Pasal 40.

[6] H. Santoso, *Hukum Ketenagakerjaan di Indonesia: Antara Perlindungan dan Fleksibilitas* (Jakarta: Kencana, 2020), hlm. 89.

[7] Kitab Undang-Undang Hukum Perdata, Pasal 1243.; S. Lestari, "Konsep Ganti Rugi dalam KUH Perdata dan Relevansinya pada Sengketa Ketenagakerjaan," Mimbar Hukum 31, no. 1 (2019): 92.

[8] Putusan Mahkamah Agung Nomor 39 PK/Pdt.Sus-PHI/2017.

[9] E. Kusnadi, "Pesangon dan Perlindungan Pekerja dalam UU Cipta Kerja: Analisis Kritis," Jurnal Ilmu Hukum Lex Renaissance 6, no. 2 (2021): 220.

Waktu Tertentu, PKWT), outsourcing arrangements, or even sham partnership schemes to avoid severance obligations.[10] Such practices not only undermine the protective purpose of labor law but also create legal uncertainty that further weakens workers' bargaining position vis-à-vis employers. Data from the Ministry of Manpower recorded a surge in terminations during the 2020–2022 pandemic period, during which thousands of workers did not receive severance in accordance with the applicable rules. This phenomenon illustrates a significant gap between written law (law in books) and actual practice (law in action), requiring comprehensive legal analysis to bridge the disparity between regulatory theory and implementation reality.

The urgency of this study is reinforced by the absence of a settled doctrinal or jurisprudential consensus that clearly locates severance pay within the framework of civil damages. Some scholars continue to regard severance as an exclusively labor-law entitlement that should not overlap with civil-law concepts, arguing that the principle lex specialis derogat legi generali should displace the Civil Code in termination disputes. Other views emphasize the need for harmonization so that worker protection is not fragmented and can be substantively enforced.[11] This study therefore examines in depth the legal status of severance pay from the perspective of the Civil Code, particularly whether severance can legitimately be characterized as a form of damages arising from termination of employment. The question is addressed through a normative analysis integrating statutory, conceptual, and case approaches, with the aim of contributing to legal scholarship, judicial practice, and the development of a more just and sustainable national labor policy.

RESEARCH METHOD

This study is normative legal research employing statutory, conceptual, and case approaches. The primary legal materials include the Civil Code, Law Number 13 of 2003 concerning Manpower as amended and enacted through Law Number 6 of 2023, Government Regulation Number 35 of 2021, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, and selected Industrial Relations Court/Supreme Court decisions addressing entitlements arising from termination of employment. Decisions were selected on the basis of their relevance to the ground for termination, the compensation formula, and/or allegations of breach of contract or unlawful act; no decision is used to support a proposition that does not appear in its ratio decidendi. The analysis maps the grounds for termination and their statutory consequences, compares them with the elements of Articles 1243 and 1365 of the Civil Code, and then examines when civil-law norms may operate subsidiarily without displacing labor law as lex specialis.

RESULTS AND DISCUSSION

Research Findings

[10] D. Simanjuntak, *Hukum Ketenagakerjaan: Asas, Norma, dan Praktik* (Jakarta: Rajawali Pers, 2019), hlm. 145.

[11] D. Prasetyo, "Analisis Yuridis Pesangon sebagai Bentuk Wanprestasi dalam Perjanjian Kerja," Jurnal Yustisia 12, no. 1 (2023): 38.

The Legal Status of Severance Pay from the Perspective of the Civil Code: Its Relationship with Breach of Contract and Damages Arising from Termination of Employment

1. The Nature of Employment Agreements within the Civil Code Framework of Obligations

An employment relationship is essentially a concrete manifestation of an obligation arising from the agreement of the parties. Within Indonesia's positive-law system, an employment agreement cannot be separated from the civil-law framework regulated by the Civil Code. Article 1313 of the Civil Code defines an agreement as "an act by which one or more persons bind themselves to one or more other persons."[12] Although this textual definition is broad and has often been criticized by civil-law scholars because it may encompass unilateral legal acts or gratuitous agreements, Indonesian legal doctrine has consistently understood an employment agreement as a reciprocal, consensual, and binding agreement.[13] Subekti emphasizes that an employment agreement reflects an exchange of performance in which the worker provides labor, time, and expertise, while the employer is obliged to provide wages and other normative protections.[14] The legal position of employment agreements is specifically regulated in Articles 1601a to 1601x of the Civil Code, confirming that the employment relationship is not merely a social or administrative relationship but a legal relationship governed by the general principles of obligations.

The principle of consensualism inherent in an employment agreement indicates that the legal bond arises once agreement is reached, without requiring a particular form unless otherwise prescribed by law. This accords with freedom of contract in civil law, under which the parties possess autonomy to determine the contents of their agreement so long as those terms do not conflict with mandatory rules, morality, or public order. The characteristics of an employment agreement, however, differ fundamentally from ordinary civil contracts. Whereas classical civil law places freedom of contract at the center of private autonomy, labor law significantly restricts that freedom through protective norms. These restrictions arise from recognition that employment relationships do not operate under conditions of substantive equality. Workers are structurally and economically weaker than employers, who control capital, means of production, and corporate policy. The state therefore intervenes through mandatory labor rules (dwingend recht) to prevent exploitation and ensure the fulfillment of workers' basic rights. This intervention does not eliminate the civil-law character of the employment agreement; rather, it supplements that character with a social dimension directed toward substantive justice.

Moreover, an employment agreement contains an element of trust (fiduciary element) and an obligation of proper cooperation (cooperation obligation). In modern law-of-obligations doctrine, these duties are not merely negative, in the sense of refraining from harming the other party, but

[12] Kitab Undang-Undang Hukum Perdata, Pasal 1313.
[13] R. Setiawan, Pokok-Pokok Hukum Perikatan (Bandung: Binacipta, 2018), hlm. 22.
[14] Subekti, Hukum Perjanjian (Jakarta: Intermasa, 2014), hlm. 15.

also positive, including the obligation to create a safe, healthy, and productivity-supporting workplace. Employment relationships operate not only in a transactional sphere but also in a relational sphere requiring mutual respect, transparency, and social responsibility. If an employer disregards these obligations or unilaterally terminates employment without a lawful ground, such conduct not only violates labor norms but also denies the substance of the employment agreement as a reciprocal obligation. In this context, severance pay can no longer be understood solely as an administrative obligation or social allowance, but also as a legal consequence arising from a violation of the agreed contractual bond. A deeper understanding of employment agreements under the Civil Code therefore becomes a crucial foundation for placing severance pay within a broader perspective—beyond a purely administrative normative obligation and toward a compensatory function aligned with the basic principles of the law of obligations.[15]

1. The Construction of Breach of Contract in Employment Relationships and Its Relevance to Termination of Employment

Breach of contract (wanprestasi) is a central concept in the law of obligations governing the legal consequences of a party's failure to comply with an agreed obligation. Article 1243 of the Civil Code expressly provides that "compensation for costs, losses, and interest due to non-performance of an obligation becomes payable when the debtor, even after having been declared in default, continues to fail to perform that obligation." This provision confirms that breach is not limited to intentional non-performance but may also encompass inability to perform, delay, or performance inconsistent with the terms of the agreement. In Indonesian civil-law doctrine, breach of contract is commonly classified into four principal forms: (1) failure to perform what was promised; (2) performance that does not conform to what was promised; (3) delayed performance; and (4) doing something that the agreement prohibits.[16] This classification provides a comprehensive analytical framework for identifying breaches of obligations across different legal relationships, including employment relationships.

In employment relationships, breach of contract may arise when either party fails to perform obligations inherent in the employment agreement. A worker may be in breach by being absent without lawful justification, damaging work equipment, or violating company confidentiality. Conversely, an employer may be considered in breach by failing to pay agreed wages, failing to provide a safe working environment, or unilaterally terminating employment without lawful grounds and without providing the normative entitlements prescribed by law. A unilateral termination carried out without complying with legal procedures or without providing severance pay may be viewed as a manifestation of breach because the employer fails to perform obligations arising from both the employment agreement and legislation. Within this framework, severance pay is understood not merely as a social

[15] D. Prasetyo, "Analisis Yuridis Pesangon sebagai Bentuk Wanprestasi dalam Perjanjian Kerja," Jurnal Yustisia 12, no. 1 (2023): 38.

[16] Setiawan, Pokok-Pokok Hukum Perikatan, hlm. 46.

benefit or reward for service but as a legal consequence associated with the employer's breach. This compensatory dimension corresponds with a core objective of the law of obligations: restoring the balance disturbed by non-performance and providing legal certainty to the injured party.[17]

The jurisprudence of the Industrial Relations Court (Pengadilan Hubungan Industrial, PHI) and the Supreme Court has gradually begun to recognize the relevance of breach-of-contract theory in termination disputes. In Supreme Court Decision Number 39 PK/Pdt.Sus-PHI/2017, the judges stated that unilateral termination without lawful grounds violated the principle of good faith and caused actual loss to the worker, so that the obligation to pay severance was not merely normative but also compensatory.[18] The decision indicates a shift from formalistic interpretation toward a more substantive approach in which judges consider not only administrative compliance but also principles of civil justice.[19] The judges in that decision implicitly recognized unlawful termination as a form of breach of the employment agreement, requiring the employer to provide adequate compensation to restore the worker's loss. Similar approaches are said to appear in several PHI decisions that begin to adopt the principle of restitutio in integrum, under which courts not only order severance payments under normative rules but may also award compensation for non-material losses such as psychological stress, harm to career reputation, or loss of social-security protection. This approach is consistent with modern civil-law doctrine, which regards damages not only as a means of economic restoration but also as an instrument of justice recognizing the human dimension of employment relationships.

Moreover, applying breach-of-contract theory in termination disputes also strengthens the position of severance pay as an instrument with both repressive and preventive functions. The repressive dimension is reflected in the employer's obligation to compensate for loss caused by non-performance, while the preventive dimension lies in encouraging employers to consider the legal consequences before terminating employment. By placing severance pay within the framework of breach of contract, law serves not only a regulatory function but also a corrective function consistent with substantive justice. The theoretical implication is a harmonization between labor law as special law and civil law as general law, ultimately strengthening legal protection for workers while providing certainty for employers. Accordingly, breach-of-contract theory is presented not merely as an academic concept but also as a practical legal instrument capable of strengthening workers' position in the face of unfair termination.[20]

2. Severance Pay as an Instrument of Damages (Schadevergoeding) within the Civil Code Framework

[17] S. Lestari, "Konsep Ganti Rugi dalam KUH Perdata dan Relevansinya pada Sengketa Ketenagakerjaan," Mimbar Hukum 31, no. 1 (2019): 92.

[18] Putusan Mahkamah Agung Nomor 39 PK/Pdt.Sus-PHI/2017.

[19] Lestari & A. Ramadhan, "Relevansi Fungsi Kompensatoris Pesangon Pasca UU Cipta Kerja," Jurnal Hukum dan Pembangunan 53, no. 2 (2023): 218.

[20] Lestari & Ramadhan, "Relevansi Fungsi Kompensatoris," hlm. 222.

Damages are a civil-law remedy intended to restore the injured party, as far as possible, to the position that existed before the breach occurred. Under the Civil Code, damages are comprehensively regulated in Articles 1243 to 1252 and encompass actual loss (damnum emergens), lost profit (lucrum cessans), and interest or penalties for delay.[21] The basic elements that must be satisfied in a claim for damages include: (1) breach of contract or an unlawful act; (2) actual and measurable loss; (3) a causal relationship between the violation and the loss; and (4) the absence of force majeure relieving the debtor of liability. These requirements provide a strict analytical framework to ensure that damages claims are not speculative but are grounded in legally relevant facts and accountable evidence.

In the employment context, actual losses suffered by workers following termination may include loss of regular income, health benefits, pension protection, and other normative entitlements that would otherwise have been received during the employment relationship. Lost profits (lucrum cessans) may include career opportunities, promotion prospects, annual bonuses, or additional income disrupted by unilateral termination. Although calculating lucrum cessans in termination disputes may often be speculative, courts may consider performance history, length of service, and industry standards in assessing proportionate compensation. In practice, severance pay is sometimes understood as a normative representation of damnum emergens and lucrum cessans, enabling workers to claim entitlements without having to prove each item of loss in detail. If severance is understood solely as a statutory obligation, however, its compensatory dimension may be limited because the prescribed amount does not always reflect the worker's actual loss. On this view, locating severance within the framework of civil damages would allow courts to adjust compensation to the actual degree of loss so that substantive justice may be achieved.

The mechanism for claiming damages in civil law requires strict proof. A claimant must demonstrate that the loss suffered is a direct consequence of the breach of obligation rather than the result of external factors or the claimant's own fault. In termination disputes, workers may use decisions of the Industrial Relations Court or the Supreme Court as evidence supporting a damages claim. If placed within this framework, severance pay functions not only as normative compensation but also as a remedial instrument with repressive and preventive dimensions. The repressive dimension lies in requiring the employer to pay for losses caused, while the preventive dimension lies in encouraging employers to consider legal consequences before terminating employment. This approach is consistent with the doctrine of restitutio in integrum, under which the injured party is entitled to restoration to the position existing before the breach. In the context of termination, restitutio in integrum does not necessarily mean compelling the employer to re-employ the worker, but rather providing adequate compensation to restore the disturbed economic balance.[22]

[21] KUH Perdata, Pasal 1243–1252; Setiawan, Pokok-Pokok Hukum Perikatan, hlm. 52.
[22] Anindya, "Pesangon dan Perlindungan Hukum," hlm. 624.

Juridical Implications of Reduced Severance Entitlements under the Job Creation Law and Government Regulation Number 35 of 2021 for the Compensatory and Protective Functions of Severance Pay

1. Paradigm Shift: From Protection to Flexibility

   The history of Indonesian labor law reflects a long and dynamic development from the exploitative paradigm of the colonial period to a protective post-independence paradigm, followed by a renewed shift toward labor-market flexibility in the era of globalization and economic deregulation. During Dutch colonial rule, employment relations were regulated only partially and on a highly unequal basis through the Burgerlijk Wetboek (BW), which was applied in the Dutch East Indies from 1848. At that time, the BW did not specifically regulate severance pay, social security, or protection against unilateral termination; it contained only general rules on employment agreements that were largely governed by freedom of contract. Indigenous workers, particularly in plantations, mining, and infrastructure, occupied a highly vulnerable position characterized by low wages, long working hours, inhumane working conditions, and little social security or meaningful legal protection. The forced-labor system (cultuurstelsel) and coolie ordinances further intensified structural injustice by treating labor as a commodity that could be exploited with limited legal consequences for employers.

   These conditions triggered waves of labor resistance and demands for legal reform, culminating in the issuance of the Arbeidsreglement of 1908 and labor legislation in the 1930s, which began to introduce working-time rules, prohibitions on forced labor, and written-contract requirements for certain workers.[23] Although these rules remained limited and were more concerned with colonial order than worker protection, they marked the beginning of state intervention in employment relations. After independence, Indonesia developed labor law oriented toward social justice and worker dignity, as reflected in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution, which guarantee the right to work and to a livelihood worthy of human dignity. This constitutional foundation became the philosophical basis for state intervention through rules designed to protect workers as the structurally and economically weaker party.

   An important milestone in the evolution of national labor law was the enactment of Law Number 12 of 1964 concerning Termination of Employment in Private Companies.[24] This legislation was the first legal instrument systematically to regulate an employer's obligation to provide severance pay to terminated workers, although both the amount and the mechanism remained limited. Law Number 12 of 1964 was enacted in response to post-colonial legal uncertainty and sought to protect workers against arbitrary termination by private employers. Further developments occurred through Law Number 14 of 1969 concerning Basic Provisions on Manpower, which expanded the scope of worker protection and introduced a tripartite system for industrial-dispute settlement. Law Number 21 of 1954 concerning Collective Labor Agreements and Law Number 22 of 1957 concerning the Settlement of Labor Disputes

[23] Santoso, Hukum Ketenagakerjaan, hlm. 52

[24] UU 12/1964 tentang Pemutusan Hubungan Kerja di Perusahaan Swasta.

subsequently further strengthened a labor-law framework oriented toward social dialogue and industrial justice.

Law Number 13 of 2003 established the structure of severance pay, long-service pay, and compensation for entitlements. From the outset, however, the actual amount could not be reduced to a single "maximum" figure applicable to every termination because the applicable multiplier depended on the ground for termination and other specific rules. Historical comparison must therefore distinguish the basic formula from the multipliers applicable to particular termination grounds.

The post-Job Creation regime must be assessed by reference to the law currently in force, particularly Law Number 6 of 2023 and Government Regulation Number 35 of 2021. Government Regulation Number 35 of 2021 retains the general component structure but changes the multiplier applicable to different grounds for termination. The statement that severance simply changed from "32 times to 25 times monthly wages" oversimplifies the system because the final amount depends on length of service, long-service pay, compensation for entitlements, and the legal ground for termination. This article therefore employs a matrix of termination grounds and entitlements rather than a single aggregate figure.[25]

Table 1. Distinguishing Statutory Severance from Civil Damages

Issue	Statutory employment-law consequence	Civil-law consequence	Analytical rule
Lawful termination	Severance/long-service/compensation according to ground and formula	None merely because termination occurs	Statutory right may arise ex lege without breach
Unlawful termination/procedural defect	Remedies under employment/industrial-relations law	Possible separate claim only if legal basis exists	Start with lex specialis and requested remedy
Breach of employment-contract obligation	Statutory rights remain separately calculated	Article 1243 may apply if obligation, default, loss and causation are proved	No automatic conversion of severance into damages
Independent unlawful act	Statutory rights remain separately calculated	Article 1365 requires unlawfulness, fault, loss and causation	Avoid concurrence/double recovery; explain jurisdiction

Criticism of these regulatory changes has been broad and multidimensional. Kusnadi (2021) argues that the Job Creation Law was drafted in a manner more favorable to investor interests under the justification of job creation, while worker-protection aspects were significantly reduced.[26] In his

[25] UU 11/2020 tentang Cipta Kerja; PP 35/2021 tentang PKWT, Alih Daya, Waktu Kerja dan Waktu Istirahat, serta PHK.

[26] Kusnadi, "Pesangon dan Perlindungan Pekerja," hlm. 218.

view, reducing severance entitlements may worsen economic insecurity for workers and their families after job loss and increase the risks of structural poverty and social vulnerability. Handayani (2022) adds that this shift reflects the classic dilemma between investment certainty and worker protection: the government argues that rationalizing severance levels is necessary to prevent excessive burdens on companies and thereby encourage a more favorable investment climate and national economic growth.[27] From a labor-law perspective, however, such a compromise must continue to prioritize substantive justice and must not sacrifice workers' basic constitutional rights.

The evolution of Indonesian labor law after the Job Creation Law also reflects expanded flexibility in the use of fixed-term employment agreements (PKWT) and outsourcing. Government Regulation Number 35 of 2021 broadens the categories of work that may be performed under fixed-term agreements, relaxes certain restrictions on contract extensions, and facilitates the outsourcing of work. These changes are considered capable of increasing industrial competitiveness and labor-market adaptability, but they also create risks of employment insecurity for workers who previously enjoyed permanent status. Repeated fixed-term contracts and sham outsourcing arrangements are often used by employers to avoid normative obligations such as severance pay, social security, and leave entitlements, thereby creating legal uncertainty and weakening workers' bargaining position. Ministry of Manpower data recorded a surge in terminations during 2020–2022 as a consequence of the pandemic, with thousands of workers not receiving severance in accordance with applicable rules, while many termination cases were resolved through non-transparent agreements or waiver clauses.[28] This phenomenon illustrates a significant gap between law in books and law in action, requiring comprehensive legal analysis to bridge the disparity between regulatory theory and implementation reality.

This shift reflects the complex dynamics of Indonesian labor law, in which normative protection is continually tested by demands for economic efficiency, globalization, and investment competition. The government argues that the Job Creation Law responds to post-pandemic economic challenges and the need to create a more adaptive labor ecosystem.[29] Many scholars and trade unions, however, contend that excessive flexibility without strong protective mechanisms may instead deepen structural injustice in industrial relations.[30] These developments show that Indonesian labor law is seeking a balance between two major interests: protecting workers as a vulnerable party while creating rules that remain workable for employers and investors. On one hand, normative protections such as severance pay should not be disregarded because they concern workers' basic entitlement to socio-economic security. On the other hand, a degree of flexibility for employers is also necessary so that

[27] Handayani, Hukum Ketenagakerjaan, hlm. 95.

[28] Kementerian Ketenagakerjaan RI, Laporan Tahunan Ketenagakerjaan 2022 (Jakarta: Kemnaker, 2023), hlm. 45.

[29] Pemerintah RI, Naskah Akademik UU Cipta Kerja (Jakarta: Sekretariat Negara, 2020), hlm. 32.

[30] Kusnadi, "Pesangon dan Perlindungan Pekerja," hlm. 225.

regulation does not become a disincentive to national economic growth and job creation.

2. Normative Analysis of the Change in the Severance Formula (32x → 25x)

The change in the severance formula from a maximum of 32 times monthly wages to a maximum of 25 times monthly wages under the Job Creation Law and Government Regulation Number 35 of 2021 has been one of the most controversial amendments in the history of Indonesian labor regulation. Normatively, the change is based on the economic consideration that excessively high severance burdens may inhibit business growth, reduce industrial competitiveness, and create disincentives to job creation. The government argues that rationalizing severance levels is necessary to balance workers' interests with business continuity, particularly amid global economic pressures and digital transformation that are changing the structure of the national labor market. From the perspectives of labor law and civil law, however, this change has significant juridical implications for the function of severance pay as an instrument of compensation and worker protection.

Within the framework of the Civil Code, severance pay understood as damages should satisfy principles of proportionality and compensatory justice. A normative reduction in severance may weaken that compensatory function because the prescribed amount may no longer reflect the worker's actual loss arising from termination. In many cases, termination not only removes regular income but also disrupts household economic stability, interrupts access to social-security protection, and weakens the worker's bargaining position in the labor market. Where severance is significantly reduced, the dimension of restitutio in integrum associated with civil damages becomes more difficult to achieve. Workers may be unable to meet basic needs during the transition to new employment, increasing dependence on public assistance or forcing acceptance of lower-paid work. This is in tension with distributive-justice principles requiring compensation adequate to restore an economic balance disrupted by a breach of obligation.

Furthermore, changes to the severance formula may create legal uncertainty in dispute-settlement practice. Judges of the Industrial Relations Court and the Supreme Court may face a dilemma between applying the new statutory rules and considering substantive-justice principles drawn from earlier provisions or general civil-law principles. In several decisions, judges are described as adopting a teleological interpretation focused on worker protection and granting severance claims exceeding the purported maximum of 25 times monthly wages on the basis of actual loss, length of service, and employer good faith. This approach is presented as consistent with civil-law doctrine that treats damages as a flexible remedial instrument responsive to the reality of loss. Inconsistent interpretation among courts, however, creates uncertainty for both workers and employers in predicting the juridical consequences of termination.[31]

From a law-and-economics perspective, a reduction in severance may be viewed as lowering the extent to which employers internalize the external costs of termination. In economic theory of law, severance operates as a mechanism

[31] Anindya, "Pesangon dan Perlindungan Hukum," hlm. 626.

requiring employers to consider the social costs of termination before making a decision.[32] If severance amounts are reduced, the incentive for employers to approach termination cautiously and responsibly may also decline. This could increase the frequency of unilateral termination, particularly in sectors vulnerable to market fluctuations or efficiency pressures. Although regulatory flexibility may improve short-term industrial competitiveness, its long-term effects may include instability in industrial relations, declining productivity due to high turnover, and increased social costs for the state in addressing structural unemployment. Normative evaluation of changes to the severance formula must therefore be multidimensional, encompassing legal, economic, social, and constitutional considerations.

The constitutional implications of this change also warrant consideration. Article 28D paragraph (2) of the 1945 Constitution guarantees everyone the right to work and to receive fair and proper treatment in employment, while the constitutional framework more broadly protects the right to a livelihood worthy of human dignity. These guarantees are not merely programmatic; they impose obligations on the state to develop rules that protect workers from exploitation and economic insecurity. A reduction in severance unaccompanied by adequate alternative protection may therefore be viewed as weakening the state's responsibility to safeguard decent living conditions following termination. In several decisions concerning the Job Creation Law, the Constitutional Court has also emphasized that regulatory flexibility must not sacrifice workers' constitutional rights, so the interpretation of labor norms should continue to take account of substantive justice and protection of the weaker party. The change in the severance formula is therefore not simply a technical amendment but a policy shift requiring careful evaluation of its effects on social justice and legal certainty.

3. Impact on the Compensatory Function of Severance Pay and Worker Protection

The reduction of severance entitlements under the Job Creation Law and Government Regulation Number 35 of 2021 has significant implications for the compensatory function of severance pay as an instrument of damages and worker protection. Theoretically, severance serves as an economic safety net enabling workers to meet basic needs while transitioning to new employment. In an Indonesian economy still characterized by structural unemployment and a high degree of informality, severance also functions as a social stabilizer by reducing the state's burden in addressing poverty following termination. When severance is reduced from a purported maximum of 32 times monthly wages to 25 times monthly wages, however, its compensatory capacity may decline materially. The impact is not limited to the nominal amount received by the worker but extends to purchasing power, the ability to meet family education and health needs, and medium-term economic resilience.[33]

From a civil-law perspective, the compensatory function of severance is closely connected with the principle of restitutio in integrum, under which an injured party is entitled to be restored to the position existing before the violation or, at minimum, to receive adequate compensation to restore the

[32] Lestari & Ramadhan, "Relevansi Fungsi Kompensatoris," hlm. 224.
[33] Hidayat, "Implikasi UU Cipta Kerja," hlm. 48.

disturbed economic balance. If severance is understood only as a rigid administrative obligation, its dimension of substantive justice may be neglected. Conversely, if severance is treated as damages for breach of contract or as compensation for an unlawful act under Article 1365 of the Civil Code, workers obtain a stronger legal basis for seeking restoration proportionate to the loss suffered. This perspective is also aligned with restitutio in integrum, under which the injured party is entitled to restoration to the pre-violation position. By locating severance within a civil-damages framework, law is presented as serving not only regulatory but also corrective and distributive functions consistent with Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution concerning the right to work and to a decent livelihood.

The juridical implication of this view is the need to harmonize labor-law and civil-law rules so that severance is understood not merely as a normative obligation that can be negotiated or reduced, but also as a substantive and just compensatory instrument consistent with the basic principles of the law of obligations. The Industrial Relations Court could adopt a more flexible approach when assessing severance, considering not only length of service but also job level, worker contribution, the company's economic circumstances, and the social effects of termination. Alternative dispute-resolution mechanisms such as mediation, conciliation, and arbitration could also be strengthened to reduce the burden on courts and accelerate restoration of workers' rights. In the long term, harmonization between national regulation and international standards may increase legal certainty, reduce investment uncertainty, and strengthen the protection of workers' human rights in accordance with Indonesia's constitutional and international commitments.

From a social perspective, reduced severance may also aggravate economic inequality and social vulnerability. Workers terminated without adequate compensation may become trapped in cycles of poverty, lose access to basic services, and experience significant psychological pressure. In many cases, workers' families are indirectly affected through declining educational quality for children, reduced access to health care, and increased risks of school dropout. This phenomenon again demonstrates a significant gap between law in books and law in action, requiring comprehensive legal analysis to bridge the disparity between regulatory theory and implementation reality. Examining the legal status of severance both as a normative entitlement and as a possible form of damages under the Civil Code is therefore important for assessing the extent to which worker protection is actually realized in Indonesian employment practice.

The evolution of labor law from the colonial period to the omnibus-law era demonstrates that labor regulation is not static but responds to political, economic, and social dynamics. Such responsiveness, however, must not disregard substantive justice, worker dignity, or the state's obligation to protect constitutional rights to work and a decent livelihood. The juridical implication is the need to harmonize regulatory flexibility with normative protection so that severance is not understood merely as an administrative obligation that may be negotiated or reduced, but also as a substantive and equitable compensatory instrument consistent with the basic principles of the law of obligations.

Harmonizing Labor Law and Civil Law to Strengthen the Legal Position of Severance Pay as an Effective and Equitable Form of Compensation

1. Reconstructing the Relationship between Lex Specialis and Lex Generalis

   The principle lex specialis derogat legi generali is frequently used in legal interpretation to determine priority between specific and general rules. In employment relations, labor law is often regarded as lex specialis that displaces the Civil Code as lex generalis. This approach rests on the assumption that labor law comprehensively regulates the parties' rights and obligations, making additional reliance on civil law unnecessary. In the context of severance and termination, however, the lex specialis principle should not always be applied rigidly. The employment relationship is fundamentally contractual in character, so the Civil Code continues to operate as a general legal foundation supplementing specific labor-law provisions.

   Harmonization between the two legal regimes may be achieved through complementary interpretation, under which labor-law norms as special rules are supplemented by civil-law principles concerning breach of contract, good faith, and damages. This approach strengthens workers' position without undermining legal certainty for employers. Where labor legislation does not regulate in detail the civil consequences of unlawful termination, Civil Code principles may operate subsidiarily to fill a genuine legal gap. This is consistent with the doctrine of systematische interpretatie, which understands law as an integrated system of mutually complementary rules rather than as isolated norms that negate one another.

   Harmonization is also necessary to avoid fragmentation in law enforcement. If the Industrial Relations Court relies only on administrative labor norms without reference to relevant civil-law principles, judicial interpretation may become unduly narrow and risk overlooking substantive justice. Conversely, if judges disregard labor legislation and rely solely on the Civil Code, legal uncertainty may result from ignoring the more specific and relevant legal framework. An integrative approach balancing lex specialis and lex generalis is therefore presented as the most appropriate means of simultaneously safeguarding justice, certainty, and legal utility.
2. Complementary and Integrative Methods of Interpretation

   Complementary and integrative interpretation provides a methodological tool enabling judges and other legal actors to harmonize labor-law and civil-law rules in disputes concerning severance and termination. Grammatical, systematic, teleological, historical, and sociological methods may be used together to ensure that judicial decisions are not only faithful to statutory text but also responsive to the reality of industrial relations. In the context of severance, teleological interpretation emphasizes that a primary objective of labor regulation is to protect workers as the weaker party, so interpretation should account for substantive justice. Systematic interpretation allows judges to locate severance rules within the broader legal framework, including Civil Code principles concerning breach of contract and damages.

   Integrative interpretation is also needed to overcome the perceived dichotomy between lex specialis and lex generalis. In practice, many judges continue to separate the two systems, with civil damages claims sometimes rejected on the ground that the matter has already been specifically regulated by labor legislation. A complementary approach, however, emphasizes that labor law and civil law are not mutually exclusive but may supplement each other in providing legal protection. Where labor legislation does not comprehensively regulate the civil consequences of unlawful termination, Civil Code principles may operate subsidiarily to fill a genuine legal gap. This approach again reflects systematische interpretatie, under which law is understood as an integrated whole of complementary rather than mutually negating rules.

A practical implication of integrative interpretation is the need for clearer judicial guidance on applying principles of breach of contract, good faith, and damages in termination disputes. The Supreme Court could issue a circular or judicial guideline addressing standards of proof for loss, methods for calculating lucrum cessans, adjustments to severance based on proportionality, and the complementary relationship between lex specialis and lex generalis. Such guidance could increase legal certainty and reduce inconsistent decisions among courts, which currently make it more difficult for workers to enforce their rights consistently. Continuing education for Industrial Relations Court judges on the interaction between civil law and labor law is also necessary so that legal interpretation is not merely formalistic but substantive and responsive to industrial-relations realities.

3. The Role of the Industrial Relations Court in Applying Civil-Law Principles

The Industrial Relations Court plays a central role in applying civil-law principles in disputes involving termination and severance. Although the Court's jurisdiction expressly focuses on industrial-relations matters, its judges are not prohibited from referring to Civil Code principles where doing so does not conflict with the applicable special rules. In practice, some Industrial Relations Court judges are described as adopting an integrative approach by referring to Articles 1243 and 1365 of the Civil Code as a basis for awarding damages beyond standard severance. This approach is presented as consistent with the function of lex generalis in supplementing lex specialis where the specific framework does not comprehensively regulate the issue.

Structural challenges remain in the application of civil-law principles in the Industrial Relations Court. Limited judicial resources, insufficient integrative training, and unclear evidentiary procedures for non-material loss may hinder the effectiveness of damages claims. Inconsistent decisions among courts also create legal uncertainty that makes it more difficult for workers to assert their rights consistently. Jurisprudential harmonization, clearer judicial guidance, and comprehensive interpretation are therefore needed if civil-damages concepts are to be integrated coherently with labor-law rules without sacrificing legal certainty and proportionality.

Advocates and trade unions also play an important role in encouraging the proper use of civil-law principles in the Industrial Relations Court. Advocates who understand civil-law doctrine can formulate claims not only on the basis of labor norms but also, where legally appropriate, by integrating principles of breach of contract, good faith, and damages. Trade unions can provide legal assistance, policy advocacy, and monitoring of judgment implementation to ensure that workers' rights are effectively protected. Collaboration among judges, advocates, trade unions, and academics can help create a judicial ecosystem more responsive to substantive justice and the protection of workers' rights.

4. Policy Recommendations and Judicial Guidance

Based on the juridical, doctrinal, and jurisprudential analysis above, several policy recommendations and forms of judicial guidance may be considered to strengthen the legal position of severance pay as an effective and equitable form of compensation.

First, the Supreme Court should consider issuing judicial guidelines or a circular providing clear direction on the application of breach-of-contract principles, good faith, and damages in termination disputes. Such guidance should address standards of proof for loss, methods for calculating lucrum cessans, adjustment of severance based on proportionality, and complementary interpretation between lex specialis and lex generalis.

Second, the government should re-evaluate the severance formula under the Job Creation Law and Government Regulation Number 35 of 2021 by considering substantive justice, workers' purchasing power, and the social consequences of termination. Such evaluation need not mechanically restore a 32-times-wage formula, but should ensure that the severance mechanism remains responsive to the reality of loss and to compensatory principles.

Third, continuing education for Industrial Relations Court judges on the integration of civil law and labor law should be strengthened through certification programs, workshops, and exchanges of experience with international legal practitioners.

Fourth, alternative dispute-resolution mechanisms such as mediation, conciliation, and arbitration should be strengthened to reduce the burden on courts and accelerate the restoration of workers' rights.

Fifth, collaboration among academics, legal practitioners, trade unions, and employers' associations should be expanded to create constructive dialogue on labor-law reform that is just and sustainable. The long-term implication of these recommendations would be a more harmonious industrial-relations system in which worker protection and business certainty can operate together without sacrificing substantive justice.

5. Long-Term Implications for Indonesia's Industrial Relations System

Harmonization between labor law and civil law in the context of severance and termination has significant long-term implications for Indonesia's industrial-relations system.

a. Positioning severance pay as a substantive compensatory instrument may increase legal certainty and reduce practices by which employers seek to avoid their obligations.
b. An integrative approach may strengthen workers' position in termination disputes, reduce bargaining-power imbalances, and contribute to more equitable industrial relations.
c. Regulatory harmonization may enhance the competitiveness of Indonesian industry in global markets by creating a labor ecosystem that

is fair, transparent, and oriented toward sustainable development. In addition, complementary interpretation between lex specialis and lex generalis may reduce inconsistency in judicial decisions and thereby strengthen public confidence in the national justice system.

In the long term, integrating civil law and labor law may not only strengthen protection of workers' rights but also foster a stronger culture of corporate responsibility. Employers who understand the legal consequences of termination may act more cautiously when making termination decisions, thereby reducing arbitrary dismissals and improving industrial-relations stability. Regulatory harmonization may also encourage innovation in human-resource management, with companies focusing not only on short-term efficiency but also on long-term sustainability through worker development and the creation of healthy workplaces. These implications are consistent with sustainable-development principles that seek balance among economic, social, and environmental considerations.

Accordingly, harmonizing labor law and civil law is not an attempt to displace the authority of lex specialis but rather to supplement and strengthen worker protection through general principles of obligations that have been developed in doctrine and jurisprudence. In practical terms, this requires appropriate evidentiary methods, clearer guidance on the calculation of damages, and judicial interpretation responsive to industrial-relations realities so that severance can function as an instrument of substantive justice rather than merely as an administrative formality.

CONCLUSION

Severance pay is primarily statutory compensation arising ex lege, not damages for breach of contract. The entitlement may arise from a lawful termination according to the applicable ground and the formula established by Law Number 6 of 2023 and Government Regulation Number 35 of 2021. Accordingly, an analysis that directly equates severance pay with damnum emergens or lucrum cessans is not appropriate without an independent legal basis and proof of loss.

Civil law nevertheless retains a subsidiary function. Breach of contract may be relevant where a separate contractual obligation has been violated, while an unlawful-act claim requires proof of the elements of Article 1365. Lex generalis should not be used to negate or automatically enlarge rights already regulated by labor law as lex specialis. Any additional claim must avoid double recovery and must take account of the jurisdiction of the Industrial Relations Court.

This study is limited to normative analysis and decisions selected for their relevance; it does not establish a nationwide pattern showing that judges consistently award damages beyond statutory termination entitlements. Future research should conduct a broader study of decisions to determine when, if ever, Articles 1243 or 1365 are applied consistently alongside statutory termination rights.

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