

# How long must an employer pay an employee when there is a labour dispute between them?

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The Constitutional Court (the Court) recently decided that the meaning of Article 155 paragraph 2 of Law No. 13 of 2003 Regarding Manpower (March 25, 2003) (the Manpower Law) is that an employer must pay the salary and other benefits of an employee whom does not accept his/her termination until there is a legal binding court decision.

## Background

The Case was brought by three individuals: Drg. Ugan Gandar (the President of PT Pertamina’s Union Worker), Ir. Eko Wahyu (the Secretary General of PT Pertamina’s Union Worker), and Ir. Rommel Antonius Ginting (former employee of PT Total Indonesia) (the Petitioners). The latter Petitioner was terminated by his employer and brought his termination case all the way to the Supreme Court. The Supreme Court declared that his monthly salaries must be paid until the decision was legally binding. However, there was a different interpretation on when the decision was legally binding. The employer interpreted that the decision was binding when it was decided by the industrial labour court, whereas the employee interpreted that the decision was binding when it was decided by the Supreme Court.

The Petitioners then requested the Court to clarify the meaning of Article 155 paragraph 2 of the Manpower Law which stipulates that: “Until a decision has been made by the industrial relations dispute settlement institution, both employer and employee must continue to perform all their obligations.” In their petition, the Petitioners argued that the interpretation of Article 155 paragraph 2 of the Manpower Law causes legal uncertainty to the fate of employees whom are terminated by their employers and therefore, violates Article 28D paragraph 1 of the 1945 Indonesian Constitution (the Constitution).

Under Article 28D of the Constitution, everyone has the right to fair legal certainty.

The Petitioners also brought other interpretations that are written in several Industrial Labor Courts. Under those decisions, the courts instructed the employers to pay salaries to employees whom are terminated for only six months after the termination date. The court based this interpretation on the Minister of Manpower Decision No. 150 of 2000, which was issued prior to the Manpower Law and has a lower hierarchy.

## The Court consideration and judgment

Under the Court’s Decision No. 37/PUU-I/2011, which was rendered on September 11, 2011, the Court agreed with the Petitioners that there is a need for an interpretation of the phrase “until a decision has been made” inside Article 155 paragraph 2 of the Manpower Law. The Court’s rationale is that employees can obtain legal certainty with regard to their rights entitlements in the event that there are disputes regarding industrial labour. Considering that, the Court decided that the phrase “until a decision has been made” shall not be interpreted as “until a legal binding court decision has been made”.

## Conclusion

After the pronouncement of this decision, in the event that there are disputes between employers and their employees, the employers must pay the salaries and other benefits of its employees until a legally binding court decision has been made. This means that in the event one of the parties’ appeals to the Supreme Court, the employer must keep paying the employee until the Supreme Court renders its decision.

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