

## Making Human Rights Law Work in Dismissal Cases: Insights from the *Martinus Masa Dorita v. PT Musim Mas* Case

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**Abstract.** The nature of private law is strongly embedded in dismissal cases. For this reason, human rights standards are rarely applied in the settlement of such cases in court. However, the *Martinus Masa Dorita v. PT Musim Mas* case demonstrated a different practice. Particularly in the court of first instance, the judges explicitly considered human rights law, resulting in a judgment that contrasted with the parties' claims. In spite of the fact that the Supreme Court annulled the decision of the court of first instance, the presence of human rights argumentation in the journey of the case remains important to explore. By analyzing judges' reasoning in the court decisions for the case, this doctrinal legal research developed a legal methodology for the application of human rights standards in dismissal cases. We found that the judges have made human rights standards work by reinterpreting pre-existing employment law provisions that govern employee-employer relations using an impact-oriented reasoning method. This work contributes to a greater understanding of how judges can put human rights law to work when developing their reasoning for dismissal cases. Based on the case, human rights-based reasoning enables judges to provide vigorous protection of workers' human rights and deliver substantive justice. We argue that human rights considerations enable courts to create equilibrium in unequal employee-employer relations.

**Keywords:** Dismissal cases, human rights, impact-oriented reasoning, workers.

**Abstrak.** Hakikat hukum perdata sangat melekat dalam kasus-kasus pemutusan hubungan kerja (PHK). Karena alasan inilah, standar hak asasi manusia jarang diterapkan dalam penyelesaian kasus-kasus semacamnya di pengadilan. Namun, kasus *Martinus Masa Dorita v. PT Musim Mas* menunjukkan praktik yang berbeda. Khususnya di pengadilan tingkat pertama, para hakim secara eksplisit mempertimbangkan hukum hak asasi manusia, sehingga menghasilkan putusan yang berbeda dari tuntutan para pihak. Meskipun Mahkamah Agung telah membatalkan putusan pengadilan tingkat pertama, keberadaan argumentasi hak asasi manusia dalam perjalanan kasus ini tetap penting untuk dikaji. Dengan menganalisis penalaran hakim dalam putusan pengadilan untuk kasus tersebut, penelitian hukum doktrinal ini mengembangkan metodologi hukum untuk penerapan standar hak asasi manusia dalam kasus-kasus PHK. Kami menemukan bahwa para hakim telah menerapkan standar hak asasi manusia dengan menafsirkan ulang ketentuan hukum ketenagakerjaan yang telah ada sebelumnya yang mengatur hubungan pekerja-pemberi kerja menggunakan metode penalaran berorientasi dampak. Penelitian ini berkontribusi pada pemahaman yang lebih baik tentang bagaimana hakim menerapkan hukum hak asasi manusia ketika mengembangkan penalaran mereka untuk kasus-kasus PHK. Berdasarkan kasus ini, penalaran berbasis hak asasi manusia memungkinkan hakim untuk memberikan perlindungan yang kuat terhadap hak asasi pekerja dan memberikan keadilan substantif. Kami berpendapat bahwa pertimbangan hak asasi manusia memungkinkan pengadilan untuk menciptakan keseimbangan dalam hubungan pekerja-pemberi kerja yang tidak setara.

**Kata kunci:** Pemutusan hubungan kerja, hak asasi manusia, penalaran berorientasi dampak, pekerja.

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## INTRODUCTION

Chandralika had been a permanent employee at PT Musi Hutan Persada for 26 years. In 2020, she was dismissed after the company claimed she had been moonlighting for another company, PT Kreasi Wana Lestari (KWL). The company argues that the dismissal was based on the prohibition on moonlighting in the new Collective Labour Agreement that was only implemented last year. However, there is a fact that KWL was established by the employee cooperative of PT Musi Hutan Persada, and Chandralika performed no actual work and received no salary from KWL. By determining that the dismissal was unfair, she filed a lawsuit against the company. She implored the judges to make an order for PT Musi Hutan Persada to reinstate her.<sup>1</sup> In adjudicating this case, the court upheld the dismissal and focus solely on the formal contractual breach without considering Chandralika's position, right to work, freedom of choice, and to be free from unfair dismissal,<sup>2</sup> as protected under Article 28E(1) of the Indonesian Constitution, Article 38(1) of the Human Rights Law, and Article 6(1) of the International Covenant on Economic, Social and Cultural Rights.

The above case illustrates an instance of how Indonesian courts adjudicated unfair dismissal. The worker's human rights aspect is clear enough here, as the dismissal infringed her right to work and freedom to choose employment.<sup>3</sup> Unfortunately, the court decision simply strengthened the unfair dismissal and failed to provide a remedy for the right to work. In reaching this decision, the judges did not consider the human rights aspect, nor did they refer to any human rights law. This judiciary practice confirms that Indonesian courts rarely incorporate human rights standards into private parties' litigation,<sup>4</sup> including dismissal cases.<sup>5</sup>

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<sup>1</sup> "Ir. Chandralika v. PT Musi Hutan Persada," Putusan Nomor 127/Pdt.Sus-PHI/2020/PN.Plg., 2020, 2.

<sup>2</sup> "PT Musi Hutan Persada v. Ir. Chandralika," Putusan Nomor 969K/Pdt.Sus-PHI/2020, 2021.

<sup>3</sup> "CESCR General Comment No.18: The Right to Work," *UN.Doc. E/C.12/GC/18*, 2006.

<sup>4</sup> Adriaan Beder, "Epilogue," in *International Human Rights and Local Courts. Human Rights Interpretation in Indonesia*, ed. Aksel Tømte and Eko Riyadi (Oxon & New York: Routledge, 2024), 156–71, 163; Shidarta Shidarta, Stijn Cornelis van Huis, and Eko Riyadi, "How Do Indonesian Judges Approach Human Rights in Private Law Cases? A Comparative Exploration," *Journal of East Asia & International Law* 15, no. 2 (2022): 293–313, <https://doi.org/10.14330/jeil.2022.15.2.04>.

<sup>5</sup> Sahid Hadi and Vania Lutfi Safira Erlangga, "Why Do Domestic Court Judges Disregard Human Rights Law in Dismissal Cases? A Discourse Analysis of Indonesian Judges' Attitudes," 2025.

The case of *Martinus Masa Dorita v. PT Musim Mas*, however, demonstrated a different practice. Right before the judgment, the court of first instance explicitly considered human rights law and generated a decision in contrast to the parties' claims.<sup>6</sup> In spite of the fact that the Supreme Court annulled the decision through cassation,<sup>7</sup> it remains valuable to explore the presence of human rights argumentation, since incorporating human rights standards into private law cases can be considered uncommon in Indonesian courts.

Scholars have explored the practice of applying human rights standards in private law cases.<sup>8</sup> Studies commonly promoted the so-called horizontal effect of human rights<sup>9</sup> or transformative private law.<sup>10</sup> In cases involving private parties, judges may justifiably apply human rights standards directly or indirectly.<sup>11</sup> However, the legal methodology by which judges incorporate the standards into their reasoning remains underexplored, particularly in dismissal cases. As Lundmark puts it, legal method encompasses "methods of thinking" that justify decisions and lead to the correct outcome.<sup>12</sup>

Based on this gap, this article focuses on exploring the judges' reasoning in the case of *Martinus Masa Dorita v. PT Musim Mas*. The objective of doing so is to define a legal methodology for bringing human rights standards to life in court decisions and lay a

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<sup>6</sup> "Martinus Masa Dorita v. PT Musim Mas," Putusan Nomor 53/Pdt.Sus-PHI/2018/PN.Pbr., 2024, 25.

<sup>7</sup> "PT Musim Mas v. Martinus Masa Dorita," Putusan Nomor 1008K/Pdt.Sus-PHI/2020, 2020, 8.

<sup>8</sup> Aharon Barak, "Constitutional Human Rights and Private Law," *Review of Constitutional Studies* 3 (1996): 218–81; Aharon Barak, "Constitutional Human Rights and Private Law," in *Human Rights in Private Law*, ed. Daniel Friedman and Daphne Barak-Erez (Portland: Hart Publishing, 2001); Olha O Cherednychenko, "Fundamental Rights and Private Law: A Relationship of Subordination or Complementarity?," *Utrecht Law Review* 3, no. 2 (2007): 1–25, <https://doi.org/DOI:10.18352/ulr.45>; N.E. Varuhas, *Damages and Human Rights* (Oxford: Hart Publishing, 2016); Olha O Cherednychenko, "Fundamental Rights, Contract Law, and the Protection of the Weaker Party. A Comparative Analysis of the Constitutionalisation of Contract Law, with Emphasis on Risky Financial Transaction" (Ph.D. Thesis, Utrecht University, 2007); Cătălin-Gabriel Stănescu and Asress Adimi Gikay, eds., *Discrimination, Vulnerable Consumers, and Financial Inclusion. Fair Access to Financial Services and the Law* (London & New York: Routledge, 2021).

<sup>9</sup> Fjoralba Caka and Nada Dollani, "Horizontal Application of Fundamental Rights and General Principles in Private Disputes: An Albanian Perspective," in *The European Convention on Human Rights and Private Law. Comparative Perspective from South-Eastern Europe*, ed. Mateja Durovic and Cristina Poncibò (Oxford: Hart Publishing, 2024), 91–113; Verica Trstenjak, "General Report: The Influence of Human Rights and Basic Rights in Private Law," in *The Influence of Human Rights and Basic Rights in Private Law*, ed. Verica Trstenjak and Petra Weingerl (Springer, 2016); David Hoffman, ed., *The Impact of the UK Human Rights Act on Private Law* (Cambridge University Press, 2011), <https://doi.org/10.1017/CBO9780511920844>.

<sup>10</sup> Emile Zitzke, "A Decolonial Critique of Private Law and Human Rights," *South African Journal on Human Rights* 34, no. 3 (September 2, 2018): 492–516, 500–3, <https://doi.org/10.1080/02587203.2018.1543836>.

<sup>11</sup> David Hoffman, "Conclusion," in *The Impact of the UK Human Rights Act on Private Law*, ed. David Hoffman (Cambridge University Press, 2011), 379–81, 379.

<sup>12</sup> Thomas Lundmark, *Universal of Legal Reasoning by Judges. A Plea for Condour in Decision-Making* (Oxford: Oxford University Press, 2024), 17.

foundation for the question of why judges should apply human rights in adjudicating dismissal cases.

Drawing from the court decisions, we found that the case has demonstrated an indirect horizontal effect. To incorporate human rights standards into their reasoning, judges apply an impact-oriented reasoning method to reinterpret pre-existing employment law provisions governing employee-employer relations. Compared to the decision that lacks human rights considerations, this way of thinking yields stronger protection for workers' human rights. Therefore, we argue that making human rights standards work in adjudicating dismissal cases promotes an equilibrium in the inequal nature of employee-employer relations.

This article begins with a literature review on the horizontal effect of human rights, followed by defining a legal methodology for the application of human rights based on the judges' reasoning in the case of *Martinus Masa Dorita v. PT Musim Mas*. The following section examines the impact of applying human rights standards on the fulfilment of the judiciary's duty to protect workers' human rights from abusive and unfair dismissal. To conclude, this article affirms that, in dismissal cases, judges bear the primary obligation to provide substantive redress for human rights abuses and to prevent future recurrences.

## METHODOLOGY

This doctrinal legal research applied a case study method. We selected the case of *Martinus Masa Dorita v. PT Musim Mas* due to the explicit human rights considerations in the court decision. The extent of gravity of the case was also high since the adjudication process did not conclude at the court of first instance but continued to the Supreme Court. In understanding the legal method, this study engaged with a discourse analysis. We initially analyzed the judges' reasoning with the horizontal effect of human rights theoretical framework. This framework explains the likelihood of the extent to which human rights can be applied in private law cases. We then scrutinized how judges approach human rights through their reasoning. In the end, we analyzed the impact of the use of human rights standards on the judiciary's duty

to protect workers' human rights, especially from abusive and unfair dismissal. In doing so, the decisions of the court of first instance and the Supreme Court for the case were compared due to a significant difference between the two decisions. While the court of first instance explicitly featured human rights standards, the Supreme Court decision had none.

The data for this research, including the court decisions for the case; laws and regulations such as the Indonesian Constitution, Manpower Law, and Persons with Disabilities Law; and books and peer-reviewed journals, were gathered by documenting publicly accessible sources through the Google search engine. They included the sites <https://putusan3.mahkamahagung.go.id> and <https://peraturan.bpk.go.id>, as well as databases for national and international journals.

## RESULT AND DISCUSSIONS

### **Application of Human Rights in Private Law: A Developing Practice in the Global Context**

There has been a growing number of studies on the application of human rights in private law. Barak outlined four models: (i) direct application, where human rights standards directly influence private parties legal relations and private law standards; (ii) non-application, where such standards can only be put to work on public-related affairs and laws; (iii) indirect application, where human rights standards do not bring any direct influence on private parties legal relations and, therefore, have no direct impact on private law standards; and (iv) application to the judiciary, that based on the judiciary's role in fulfilling human rights obligations of states.<sup>13</sup>

Based on the judiciary practices in the United Kingdom, the Netherlands, and Germany, Cherednychenko identified two types of relationships between human rights and private law: subordination and complementarity.<sup>14</sup> The subordination

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<sup>13</sup> Barak, "Constitutional Human Rights and Private Law," 1996; Barak, "Constitutional Human Rights and Private Law," 2001.

<sup>14</sup> Cherednychenko, "Fundamental Rights and Private Law: A Relationship of Subordination or Complementarity?"; Cherednychenko, "Fundamental Rights, Contract Law, and the Protection of the Weaker Party. A Comparative Analysis of the Constitutionalisation of Contract Law, with Emphasis on Risky Financial Transaction."

relationship treats human rights standards as directly applicable to the legal relations of private parties and places the standards hierarchically above private law. In contrast, the complementarity relationship applies human rights in a limited way through the interpretation and reconstruction of private law principles and laws. In the latter relationship, private law maintains its autonomy and determines the extent to which human rights standards are incorporated.

Bukspan and Kasher supported the direct application model or subordination relationship. They argued that the moral values inherent in democratic governance constitute the foundation of direct protection of human rights, regardless of whether the rights-infringing entity is a government, corporation, or individual.<sup>15</sup> A report from Italy reinforced this view by documenting court decisions that directly annul contractual clauses conflicting with human rights.<sup>16</sup> In Indonesia, the tort case of *Dwi Ariyani v. Etihad Airlines* also reflects the direct application. The court held that Etihad's decision to remove Ariyani from the aircraft, based on a one-sided assessment related to her disability condition, contravened human rights protections for persons with disabilities.<sup>17</sup> Anisah and Hadi's work on the right to a fair trial in competition law enforcement procedures also put an add to this model.<sup>18</sup>

In contrast, Bagshaw strengthened the indirect application model or complementary relationship. He argued that applying human rights standards directly may undermine the effective resolution of private litigations.<sup>19</sup> Caka and Dollani supported this model by highlighting a decision of the Albanian Supreme Court, which awarded compensation in a car accident case by interpreting private law provisions through a

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<sup>15</sup> Eli Bukspan and Asa Kasher, "Human Rights in the Private Sphere: Corporation First," *University of Pennsylvania Journal of International Law* 40, no. 2 (2019): 419–64, <https://scholarship.law.upenn.edu/jil/vol40/iss2/3>.

<sup>16</sup> Emanuela Navarretta and Elena Bargelli, "The Influence of Human Rights and Basic Rights in Italian Private Law: Strategies of 'Constitutionalisation' in the Courts Practice," in *The Influence of Human Rights and Basic Rights in Private Law*, ed. Verica Trstenjak and Petra Weingerl (Springer, 2011).

<sup>17</sup> "Dwi Ariyani v. Perusahaan Maskapai Etihad Airways Cq General Manager Etihad Airways Indonesia, PT Jasa Angkasa Semesta, Dan Kementerian Perhubungan RI Cq Direktorat Jenderal Perhubungan Udara," Putusan Nomor 846/Pdt.G/2016/PN Jkt.Sel, 2016, 199-200.

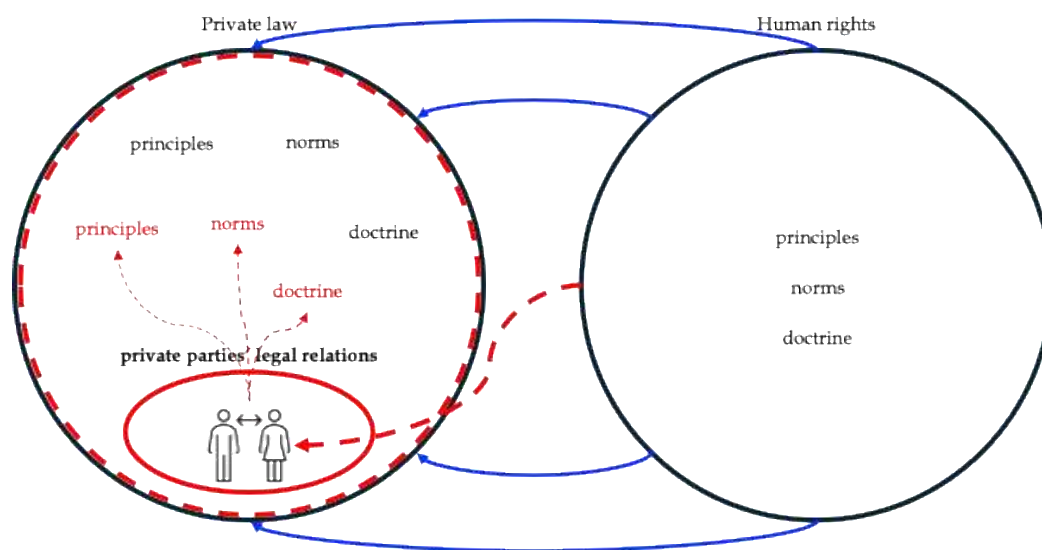
<sup>18</sup> Siti Anisah and Sahid Hadi, "The Human Right to a Fair Trial in Competition Law Enforcement Procedures: A Rising Issue in Indonesian Experiences," *Laws* 12, no. 3 (June 1, 2023), <https://doi.org/10.3390/laws12030055>.

<sup>19</sup> Roderick Bahshaw, "Tort Design and Human Rights Thinking," in *The Impact of the UK Human Rights Act on Private Law*, ed. David Hoffman (Cambridge University Press, 2011), 128.

human rights lens.<sup>20</sup> From the Indonesian perspective, Shidarta, van Huis, and Riyadi's study concerning the application of human rights in private law cases,<sup>21</sup> and Shidarta's prescriptions concerning the precise approach to incorporate human rights in private cases<sup>22</sup> also support this model.

Discussions regarding the practical development of the application of human rights in private law cases have culminated in, among other things, the so-called horizontal effect of human rights. Going beyond the markers of human rights in the framework of the state *vis-à-vis* the individual,<sup>23</sup> this effect tries to describe how human rights standards work in the relations between individuals.<sup>24</sup> Drawing on various studies on the horizontal effect, Trstenjak carefully points out that the effect may manifest either directly or indirectly.<sup>25</sup>

**Figure 1.** Horizontal effect of human rights



Source: prepared by the authors

<sup>20</sup> Caka and Dollani, "Horizontal Application of Fundamental Rights and General Principles in Private Disputes: An Albanian Perspective", 109-112.

<sup>21</sup> Shidarta, van Huis, and Riyadi, "How Do Indonesian Judges Approach Human Rights in Private Law Cases? A Comparative Exploration."

<sup>22</sup> Shidarta, "Human Rights Legal Reasoning in Private Cases," in *International Human Rights and Local Courts. Human Rights Interpretation in Indonesia*, ed. Aksel Tømte and Eko Riyadi (Oxon & New York: Routledge, 2024).

<sup>23</sup> Anumeha Mishra, "State-Centric Approach to Human Rights: Exploring Human Rights Obligations," *Revue Quebecoise de Droit International* 39, no. December Special Issue (December 1, 2019): 49–66, 51-2, <https://doi.org/10.7202/1068731AR>; Vincenzo Ferrone, "The Rights of History: Enlightenment and Human Rights," *Human Rights Quarterly* 39, no. 1 (2017): 130–41, 139.

<sup>24</sup> Alison L. Young, "Mapping Horizontal Effect," in *The Impact of the UK Human Rights Act on Private Law*, ed. David Hoffman (Cambridge University Press, 2011), 16–47, 18.

<sup>25</sup> Trstenjak, "General Report: The Influence of Human Rights and Basic Rights in Private Law", 8-9.

Figure 1 illustrates how human rights interact with private law based on the horizontal effect framework. The red dotted line represents the direct horizontal effect, where human rights standards penetrate the boundaries of private law and directly reshape the legal relations between private parties,<sup>26</sup> subordinating private law to human rights.<sup>27</sup> The blue line represents the indirect horizontal effect, where private law remains autonomous.<sup>28</sup> Human rights influence occurs solely through the reinterpretation of pre-existing private law standards.<sup>29</sup>

Regarding the application model to the judiciary in Barak's doctrine, we argue that this model falls within the realm of direct or indirect horizontal effect. In line with Klare, human rights standards, commonly embedded in constitutions, are always relevant and should guide judges in private law adjudication.<sup>30</sup> Thus, it is the courts' choice to apply human rights directly or indirectly in private law cases, including dismissal cases.

## Human Rights-Based Reasoning in Dismissal Cases: How Do Indonesian Judges Make the Laws Work?

### 1. The Fact of *Martinus Masa Dorita v. PT Musim Mas* Case

The case of *Martinus Masa Dorita v. PT Musim Mas* concerns the dismissal imposed by PT Musim Mas, a palm oil company,<sup>31</sup> on Dorita, a worker with physical and sensory disabilities. Back in 2018, the dispute arose from the fact that the company's management mutated Dorita from the nursery-care division to the fertilization division.<sup>32</sup> However, Dorita objected to the policy as his left eye had suffered 40%

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<sup>26</sup> Trstenjak, 8; Eric Engle, "Third Party Effect of Fundamental Rights (Drittwirkung)," *Hanse Law Review* 5, no. 2 (2009): 165–73, 165–6.

<sup>27</sup> Aurelia Colombi Ciacchi, "European Fundamental Rights, Private Law, and Judicial Governance," in *Constitutionalization of European Private Law: XII/2*, ed. Hans Micklitz, Online edition (Oxford: Oxford Academic, 2014), 102–36, 104.

<sup>28</sup> Trstenjak, "General Report: The Influence of Human Rights and Basic Rights in Private Law"; Young, "Mapping Horizontal Effect", 25.

<sup>29</sup> Cherednychenko, "Fundamental Rights, Contract Law, and the Protection of the Weaker Party. A Comparative Analysis of the Constitutionalisation of Contract Law, with Emphasis on Risky Financial Transaction", 63–79.

<sup>30</sup> Karl E. Klare, "Legal Culture and Transformative Constitutionalism," *South African Journal on Human Rights* 14, no. 1 (1997): 146–88, 153, [https://doi.org/https://doi.org/10.1080/02587203.1998.11834974](https://doi.org/10.1080/02587203.1998.11834974); Karl Klare and M. Davis, "Transformative Constitutionalism and the Common and Customary Law," *South African Journal on Human Rights* 26, no. 3 (2010): 403–509.

<sup>31</sup> "Tentang Musim Mas," accessed January 12, 2025, <https://www.musimmas.com/about-us/?lang=id>.

<sup>32</sup> "Martinus Masa Dorita v. PT Musim Mas", 21.



damage to its function due to a work accident,<sup>33</sup> making him unable to work at the division.<sup>34</sup>

The management kept the mutation unchanged. However, Dorita persistently refused and continued working at the nursery division on a daily basis. Consequently, the company considered that Dorita did not attend the workplace, after all, he was supposed to work in another division. Thus, the company concluded that Dorita had been consecutively absent from work, and this was classified as a resignation. This conclusion constituted the rationale for the company to terminate Dorita's employment.<sup>35</sup>

Dorita subsequently challenged the dismissal to court, with inaccessible working conditions as the primary rationale. He argued that the company should assign him a position that met the type and degree of his disability and provided reasonable protection.<sup>36</sup>

The court of first instance granted Dorita's claim by declaring that the dismissal was null and void, as well as ordering PT Musim Mas to reinstate him at the nursery division and to compensate the wages during the dismissal dispute process.<sup>37</sup> However, PT Musim Mas objected to the decision and filed for cassation to the Supreme Court. In its request, PT Musim Mas asked the Supreme Court to dismiss Dorita's claim entirely, declare the termination of the employment relation between the company and Dorita, and annul the payment of wages during the dispute process. In the end, the Supreme Court ruled that the employment relation was terminated and ordered the company to pay a certain amount of dismissal compensation to Dorita.<sup>38</sup>

## **2. Human Rights in the Judges' Reasoning: Evidence for Indirect Horizontal Effect**

Human rights considerations were traceable in the decision of the court of first instance. The presence of this consideration laid the roots of the judges' order for PT

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<sup>33</sup> "Martinus Masa Dorita v. PT Musim Mas", 2, 4, 6, 9, 11, and 12.

<sup>34</sup> "Martinus Masa Dorita v. PT Musim Mas", 4.

<sup>35</sup> "Martinus Masa Dorita v. PT Musim Mas", 14-15.

<sup>36</sup> "Martinus Masa Dorita v. PT Musim Mas", 4-5.

<sup>37</sup> "Martinus Masa Dorita v. PT Musim Mas", 25.

<sup>38</sup> "PT Musim Mas v. Martinus Masa Dorita", 8.

Musim Mas to reinstate Dorita at the nursery division.<sup>39</sup> This order was consequential to the court's ruling that PT Musim Mas' dismissal was null and void. To better understand how judges brought human rights standards to life in their reasoning, it is necessary to initially understand the reasoning that led them to the null and void ruling.

In deciding that the company's dismissal was null and void, the judges put their attention on the validity of the company's management policy to mutate Dorita. The judges appeared to see mutation as the discretion of employers to fulfil the company's needs to maintain the continuity of business activities. The judges argued that the justification for requiring workers to comply with a mutation order should align with the company's need for the specific competency of the transferred workers and that no other employee is able to replace him/her, which may jeopardize the company's continuity. With this in mind, the judges found that PT Musim Mas was unable to demonstrate the company's need for a specific competency in the fertilization division and that Dorita was the only worker who possessed that competency. Therefore, the judges concluded that the mutation policy was unjustified, so the dismissal was null and void.<sup>40</sup>

The judges ordered PT Musim Mas to reinstate Dorita as a consequence. In reaching this decision, the judges initially emphasized that the court, under Article 151 sections (1) and (3) of the Indonesian Manpower Law, must strive to ensure that dismissals do not occur. The judges then considered the fact of Dorita's sensory and physical disabilities caused by work accidents during his employment at the company. The judges' emphasis was that Dorita would experience significant difficulty in securing another job, even with the potential to be permanently unemployed, if the court terminated his employment status. The judges argued that such experiences infringed upon the guarantee and protection of workers' rights to work, as specified in Article 27 (2) of the 1945 Constitution of the Republic of Indonesia and the consideration of the Indonesian Manpower Law that the establishment of the Law is intended to

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<sup>39</sup> "Martinus Masa Dorita v. PT Musim Mas", 23.

<sup>40</sup> "Martinus Masa Dorita v. PT Musim Mas", 22-23.

protect workers' human rights and to ensure equal opportunities and non-discriminatory treatment.<sup>41</sup>

The above legal reasoning signifies an indirect horizontal effect. There is a fact that the legal provision governing the dismissal, the Indonesian Manpower Law, continues to work autonomously with its principles and rules. The judges clearly did not use human rights standards to directly assess the validity of the mutation and dismissal in this case. Instead, the judges put the mandate of the Indonesian Manpower Law on the court as the foundation for bringing in human rights standards. The mandate in question concerns the obligation of the court to prevent dismissal at any cost. The judges also pointed to the prohibition for the employers to dismiss the employees due to their disability as specified in Article 153 (1) (j) of the Indonesian Manpower Law. After initiating their legal reasoning with the normativity of the court's obligation to prevent the dismissal and the prohibition under the Indonesian Manpower Law, human rights standards were then raised as a complementary element in reaching the judgment.

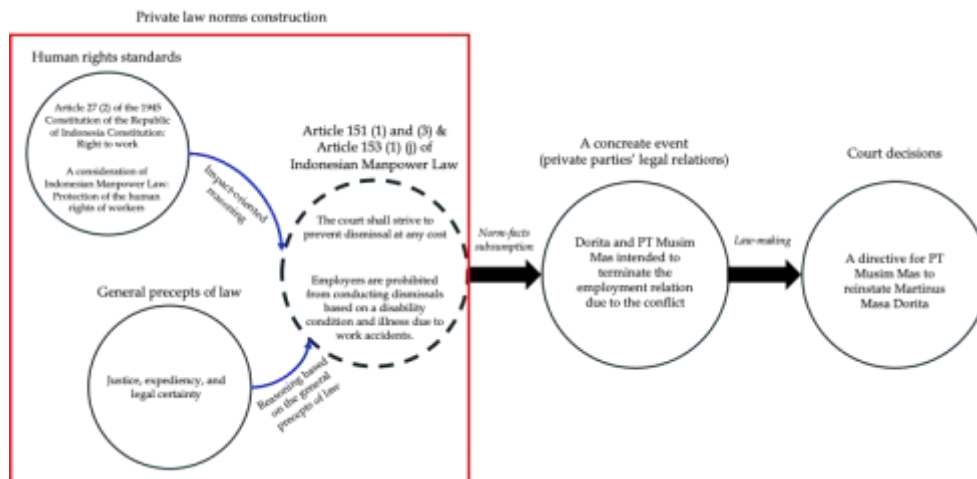
### **3. Putting Human Rights to Work in Norm Construction**

Before the judges decided that PT Musim Mas had to reinstate Dorita, they first made a normative interpretation of the existing provisions that regulate the relation between private parties, specifically Article 151 (1) and (3) and Article 153 (1) (j) of the Indonesian Manpower Law. This stage is referred to as the process of norm construction.

The defined norms were then applied to a particular private party's relationship, where Dorita and PT Musim Mas intended to terminate their employment relation due to the conflict. This stage is referred to as the process of norms and fact subsumption. Ultimately, the judges attempted to make a decision based on the convergence of the norm and the particular event. This stage is called the process of law-making by the judge.

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<sup>41</sup> "Martinus Masa Dorita v. PT Musim Mas", 23.

**Figure 2.** The practice of indirect horizontal effect

Source: prepared by the authors

Within these stages, Figure 2 shows that the application of human rights standards in the case of *Martinus Masa Dorita v. PT Musim Mas* occurred in the stage of norm construction. Article 151 (1) and (3) and Article 153 (1) (j) of the Indonesian Manpower Law are the norms that the judges reinterpreted. The former article constitutes a mandate for the court to prevent dismissal from occurring at any cost. The latter prohibits employers from conducting dismissals based on a worker's disability. At this point, the authoritative explanation of the Indonesian Manpower Law does not provide an elaboration of these provisions. It means that these articles are clear enough to apply. However, when these articles are to be subsumed under a concrete event, the judges incorporated external elements into their interpretative scheme to construct the normativity of the mandates and prohibitions.

In the process of norm construction, Möllers' modern legal methodology expounds that in addition to using Savigny's four canons of interpretation,<sup>42</sup> judges can use other rules, such as impact-oriented reasoning. Möllers argues that, in the process of reconstructing a norm signification, judges must first determine the consequences of their decision on the conflicting parties, carefully consider such impact, and assess the

<sup>42</sup> Lundmark, Universal of Legal Reasoning by Judges. A Plea for Condour in Decision-Making, 48-54; Ralf Vogler, "Rules of Interpretation – Qualitative Research in Tourism by Incorporating Legal Science Canons," Current Issues in Tourism 26, no. 8 (2023): 1214–23, <https://doi.org/10.1080/13683500.2022.2122783>.

compatibility of the impact with their obligations under the law,<sup>43</sup> including human rights law.

The judges of the court of first instance, interestingly, appeared to make human rights standards work by weighing the impact that Dorita would experience as a consequence of the dismissal. It clearly indicates that the judges had practiced an impact-oriented reasoning.

Impact-oriented reasoning is seen from the following two components. First, the judges made the point that if the court terminated the employment relation, then the plaintiff, Dorita, would experience difficulties in securing another employment due to his disability.<sup>44</sup> Second, the judges argued that the plaintiff would potentially lose his job permanently if the court terminated the employment relation.<sup>45</sup> Within this reasoning, the judges strove to consider the impact that would arise if the court terminated Dorita's employment. The judges argued that experiencing difficulty in securing a job or losing a job permanently is incompatible with the enjoyment of the right to work. In addition, the judges stated that a court decision that enabled such an impact to occur is contradictory to the protection of workers' human rights. This impact-based rationale then encouraged the judges to bring in the standard of the right to work and the protection of workers' human rights in their reasoning.

Parallel to the human rights considerations, the judges also considered the so-called general precepts of law, namely justice, expediency, and legal certainty,<sup>46</sup> in the judgment that ordered PT Musim Mas to reinstate Dorita.<sup>47</sup> In this reasoning, the judges believed that court decisions should fulfil justice, expediency, and legal certainty, as Radbruch put it.<sup>48</sup> These goals, according to the judges, would not be attainable if the court decision terminated Dorita's employment with PT Musim Mas.

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<sup>43</sup> Thomas M.J. Möllers, *Legal Methods. How to Work With Legal Arguments*, English Translation (Oxford: Hart Publishing, 2020), 178-9.

<sup>44</sup> "Martinus Masa Dorita v. PT Musim Mas", 23.

<sup>45</sup> "Martinus Masa Dorita v. PT Musim Mas."

<sup>46</sup> Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher," *Washington University Journal of Law & Policy* 2, no. 1 (2000): 489-515.

<sup>47</sup> "Martinus Masa Dorita v. PT Musim Mas."

<sup>48</sup> Gustav Radbruch, *The Legal Philosophies of Lask, Radbruch, and Dabin*, ed. Kurt Wilk, English translation (Harvard University Press, 2013), <https://doi.org/10.4159/harvard.9780674493025>.

The judges regarded Article 151 (1) and (3) and Article 153 (1) j as flexible private law norms, so external elements could be incorporated into the interpretative scheme that influenced the signification of the norm. Oliver labels such a norm position as “pre-existing legal provisions...that are capable of being influenced.”<sup>49</sup> In the case of *Martinus Masa Dorita v. PT Musim Mas*, the judges applied human rights law as their interpretative element to shape the signification of a norm in the Indonesian Manpower Law. The human rights law and the Indonesian Manpower Law provisions are treated as having equal value and, therefore, work in a systemic framework. Such a nexus constituted a complementary relationship.

### **The Impact of Human Rights-Based Reasoning on the Implementation of Judiciary Duties**

The case of *Martinus Masa Dorita v. PT Musim Mas* illustrates how business practices can infringe upon the workers’ human rights. As a worker with sensory and physical disabilities, Dorita has the right to engage in employment that is accessible and accommodates his specific needs. International and national human rights instruments affirm this specific right.<sup>50</sup>

The recognition of the right has significant implications for business activities. Regardless of its size, sector, location, ownership, or corporate structure, every business actor bears the responsibility to respect the right, as outlined in the United Nations Guiding Principles on Business and Human Rights.<sup>51</sup> At the domestic level, the Presidential Regulation on the National Strategy for Business and Human Rights in Indonesia affirms this responsibility, stating that business actors are also

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<sup>49</sup> Hazel Oliver, “Employment Law,” in *The Impact of the UK Human Rights Act on Private Law*, ed. David Hoffman (Cambridge University Press, 2011), 347.

<sup>50</sup> “CESCR General Comment No.5: Persons with Disabilities,” *UN.Doc. E/1995/22*, 1994; “CESCR General Comment No.18: The Right to Work”; “Convention on the Rights of Persons with Disabilities,” *UN.Doc.A/RES/61/106 §* (2006); “CESCR General Comment No.23: The Right to Just and Favorable Conditions of Work”; “Undang-Undang Dasar Negara Republik Indonesia Tahun 1945” (2002); Central Government Indonesia, “Law No.8 of 2016 on Persons With Disabilities” (2016); Central Government Indonesia, “Government Regulation No. 60 of 2020 on Disability Service Units in the Employment Sector” (2020); Ministry of Manpower Indonesia, “Minister of Manpower Regulation No. 21 of 2020 on Guidelines for the Implementation of Disability Service Units in the Employment Sector” (2020).

<sup>51</sup> “United Nations Guiding Principles on Business and Human Rights. Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” *UN.Doc.HR/PUB/11/04*, 2011, point 11-24; “CESCR General Comment No.24: State Obligations under the International Covenant on Economic, Social, and Cultural Rights in the Context of Business Activities,” *UN.Doc.E/C.12/GC/24*, 2017.

responsible for respecting and remedying workers' human rights.<sup>52</sup> Simultaneously, the state bears a duty to protect workers with disabilities from exploitative business practices.<sup>53</sup> This duty extends to the judiciary's role in adjudicating dismissal cases.

The state duty to protect workers' rights gives rise to an obligation of conduct.<sup>54</sup> It implies that the state duty is not merely reactive. Instead, it must take proactive and adequate measures to prevent infringements, investigate alleged abuses, as well as impose fair and effective remedies. This duty necessitates reasonably calculated actions to ensure effective implementation.<sup>55</sup> In this regard, the judiciary plays a pivotal role in ensuring that the protection of workers' rights is not just formalities but is meaningfully enforced in practice.<sup>56</sup>

The court holds a specific duty through its decision. First, court decisions must remedy any rights infringement. This imperative is principled in international law through the so-called *restitutio in integrum*, which mandates the restoration of the situation to its original state prior to the occurrence of a violation.<sup>57</sup> The duty to provide remedy not only concludes with the availability of procedural access to justice but also ensures the fulfilment of substantive redress, in which the courts hold the affirmative responsibility to provide tangible and effective remedies for the infringements that have occurred.<sup>58</sup> Substantive redress encompasses various forms of remedies, with restitution as the primary and preferred option.<sup>59</sup> The core objective of restitution is to restore the victim's rights, which may include reinstating employment status and revoking administrative actions that unlawfully infringe upon an individual's rights.

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<sup>52</sup> "Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights" (n.d.).

<sup>53</sup> "United Nations Guiding Principles on Business and Human Rights. Implementing the United Nations 'Protect, Respect and Remedy' Framework", point 1-10.

<sup>54</sup> John Gerard Ruggie, *Just Business. Multinational Corporations and Human Rights* (W.W. Norton & Company, 2013), 84; Lottie Lane, "The Horizontal Effect of International Human Rights Law in Practice," *European Journal of Comparative Law and Governance* 5, no. 1 (2018): 5–88, 30, <https://doi.org/10.1163/22134514-00501001>.

<sup>55</sup> Lane, "The Horizontal Effect of International Human Rights Law in Practice."

<sup>56</sup> "United Nations Guiding Principles on Business and Human Rights. Implementing the United Nations 'Protect, Respect and Remedy' Framework", point 26.

<sup>57</sup> Dinah Shelton, *Remedies in International Human Rights Law*, Third (Oxford: Oxford University Press, 2015), 278.

<sup>58</sup> Shelton., 14-15.

<sup>59</sup> Shelton., 19.

Second, court decisions must also function as a guiding precedent for future business practices in respecting workers' human rights. A firm judicial stance against human rights abuses by business entities must carry a deterrent effect,<sup>60</sup> discouraging other private actors from committing similar infractions. Thus, court decisions send a powerful signal to the business actors that labour exploitation, discrimination, or any other form of rights abuses will not be tolerated.

As Lord Hewart emphasizes, "justice must not only be done but must also be seen to be done,"<sup>61</sup> which means that the protection of human rights must be visibly demonstrated in the judges' reasoning. Transparent judgements grounded in the principles of fairness not only provide legal certainty for victims but also foster public confidence in the judicial system.<sup>62</sup> In the business context, companies are more likely to adopt stricter operational standards for respecting workers' rights when they witness courts actively and decisively address human rights abuses. Therefore, court decisions must function not only as repressive instruments but also as educational and preventive tools.

The case of *Martinus Masa Dorita v. PT Musim Mas* illustrates how the application of the indirect horizontal effect of human rights, through an impact-oriented reasoning method in judicial decisions-making, can significantly shape the outcomes of dismissal cases. Dorita's claim was well-founded because his job mutation, which served as the basis for his dismissal, was executed without justification. Recognizing this, the court of first instance annulled the dismissal and ordered the company to reinstate him in a role that was accessible and suitable for his disability. This decision represented a concrete form of rights restoration, ensuring that Dorita's right to work in an inclusive environment was upheld. Conversely, the Supreme Court's decision created a dangerous precedent for future business practices, potentially exposing workers with disabilities to systemic employment insecurity.

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<sup>60</sup> Nigel Biggar, ed., *Burying the Past: Making Peace and Doing Justice After Civil Conflict* (Georgetown University Press, 2003), 69.

<sup>61</sup> *R v Sussex Justices, ex parte McCarthy* (1924), 256-9.

<sup>62</sup> Jason John Bosland and Ashleigh Bagnall, "An Empirical Analysis of Suppression Orders in the Victorian Courts: 2008-12," *Sydney Law Review* 35 (2013): 671-702, 674.



The Supreme Court's decision disregarded human rights considerations and upheld Dorita's dismissal based solely on the clauses of the Collective Labour Agreement. If such a decision were to be widely followed, business actors could circumvent legal protections by deliberately mutating workers with disabilities to inaccessible work environments, subsequently using the workers' poor performance as a reason for dismissal. This loophole threatens to erode protections of workers' rights, undermining the right to accessible employment and reinforcing discriminatory employment practices against persons with disabilities.

The decision of the court of first instance better aligns with human rights protection standards. This decision also sets a positive precedent for future business practices, particularly in the context of employer-employee private relations. By upholding this principle, businesses are encouraged to prioritize workplace accessibility and respect workforce diversity. Moreover, the ruling reinforces the legal understanding that job mutations and dismissals that fail to support disability inclusion may be deemed null and void.<sup>63</sup> In stark contrast, the Supreme Court's decision failed to restore the rights of workers with disabilities. The Supreme Court not only failed to protect workers from abusive business practices but also weakened the bargaining position of employees in industrial relations disputes. This decision potentially normalizes workplace discrimination by allowing businesses to evade their responsibilities under human rights and labour law.<sup>64</sup>

The human rights consideration by judges has a profound impact on the implementation of judiciary duties in protecting workers in vulnerable positions. A judge who integrates human rights standards into their reasoning not only fulfils a procedural judicial function but also ensures that substantive justice is genuinely realized. This means that law enforcement and law-making in courts have considered social interactions and the concrete realities faced by the parties involved.<sup>65</sup> Through this approach, judges can ensure that court decisions reflect real-life implications and

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<sup>63</sup> "Martinus Masa Dorita v. PT Musim Mas", 25.

<sup>64</sup> Nicole Busby and Morag McDermont, "Fighting with the Wind: Claimants' Experiences and Perceptions of the Employment Tribunal," *Industrial Law Journal* 49, no. 2 (2020): 159–98, <https://doi.org/10.1093/indlaw/dwz018>.

<sup>65</sup> Nancy Ehrenreich, "Foreword: Conceptualizing Substantive Justice," *The Journal of Gender, Race & Justice* 13, no. 3 (2010): 533–74.

their impact on individuals in a weaker position. In the case of *Martinus Masa Dorita v. PT Musim Mas*, the decision of the court of first instance serves as an example of how the judiciary can play an active role in restoring the rights of workers with disabilities by incorporating human rights law.

To fully grasp the critical importance of human rights considerations in judicial decisions, it is essential to examine two key aspects of workers' human rights protection. First, court decisions must be capable of restoring the worker's enjoyment of their rights. This means that a judicial ruling not only settles a dispute but also rectifies the damage suffered by the worker due to non-inclusive corporate policies. In this case, the decision of the court of first instance met this standard by ordering Dorita's reinstatement in a position that was accessible and suitable for his disability. Second, judicial decisions must have a preventive effect against future human rights abuses by business entities. The decision of the court of first instance also fulfilled this preventive function by affirming the employer's responsibility to accommodate the specific needs of workers with disabilities, thereby discouraging similar discriminatory practices in future business conduct.

Reflecting on the case examined, the decision of the court of first instance stands out as legally superior for explicitly protecting the workers' human rights and reinforcing the corporate responsibility to ensure an inclusive work environment. By emphasizing workplace accessibility, the decision helps correct the structural imbalance in employee-employer private relations, where workers often occupy a weaker position. The decision contributes to restoring equilibrium in industrial relations and compels businesses to integrate human rights as a core component of employment practices. In addition to redressing individual harm, it establishes a progressive legal standard that aligns employment policies with broader human rights principles and norms.

Conversely, the Supreme Court's decision reinforces power asymmetries by legitimizing non-inclusive job mutations as grounds for dismissal. This approach potentially enables businesses to bypass protections for workers with disabilities, which could erode equilibrium and perpetuate structural injustice in employment

relations.<sup>66</sup> At its core, the decision undermines fundamental values of fairness, inclusion, and human rights.

Judicial reasoning that incorporates human rights standards plays a vital role in maintaining equilibrium within the inherent inequality in employee-employer relations. The journey of the Martinus Masa Dorita case demonstrates that human rights considerations in judicial decisions are not optional add-ons but essential elements in maintaining equilibrium in the labour sector. The fact that the court of first instance applied human rights indirectly has allowed the outcomes to have an immediate impact on the plaintiff and broader implications for corporate accountability. Human rights-based reasoning not only delivers justice but also shapes higher legal and ethical standards in business. The judiciary must, therefore, continue to incorporate human rights standards in the settlement of industrial relations disputes to ensure a more inclusive, fair, and balanced employment landscape.

However, drawing on the application of human rights and the specific facts of the Martinus Masa Dorita case, this study argues that in settling dismissal cases, judges indeed have room to apply human rights within both the direct and indirect horizontal effect framework. Relying solely on the indirect horizontal effect, as occurred in the Martinus Masa Dorita case, still leaves space for human rights abuses to arise on the basis of contractual relations, such as employment contracts or collective labour agreements. The specific facts of the Martinus Masa Dorita case, particularly regarding job transfer and the existence of the Collective Labour Agreement, provide clear evidence for directly applying human rights standards in adjudicating dismissal cases. The direct horizontal effect framework may be applied, among other things, to assess the validity of job transfer and the compatibility of collective labour agreements with human rights standards. Accordingly, the invalidity of job transfers, as argued by the judge, stems not only from technical grounds but also from their incompatibility with the enjoyment of workers' human rights. Furthermore, it is highly possible to encounter collective labour agreements whose substance conflict with human rights guarantees.

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<sup>66</sup> Virginia Mantouvalou, *Structural Injustice and Workers' Rights* (Oxford: Oxford University Press, 2023).

## CONCLUSION

This article demonstrates that the application of human rights in dismissal cases is not entirely alien to court practices in Indonesia. The case of *Martinus Masa Dorita v. PT Musim Mas* illustrates that judges can activate the horizontal effect by reinterpreting pre-existing employment law norms that govern employee-employer relations through an impact-oriented reasoning method. In doing so, this study found that judges who incorporate human rights standards into their reasoning not only ensure procedural and formal legal protections for workers but also provide legal solutions that restore balance in employment relations.

The incorporation of human rights standards enables judges to deliver substantive justice in dismissal cases. It can create equilibrium in industrial relations disputes, where workers typically hold a structurally weaker bargaining position relative to employers. Conversely, omitting human rights considerations risks perpetuating power asymmetry in employee-employer relations, exacerbating the marginalization of vulnerable groups within the labour system.

Compared to court decisions that lack human rights considerations, this study confirms that court decisions containing human rights-based reasoning are more likely to align with the judiciary's duty to protect workers' human rights. It is justifiable and highly encouraged, particularly for judges and other actors who may do so in appropriate circumstances, to make human rights standards work in dismissal cases. Although this analysis provides an extensive rationale for judges to operationalize human rights in the adjudication of dismissal cases, some areas could be explored further. Future research is needed to dive deeper into the specific workers' human rights, i.e., the right to a favourable workplace, freedom of expression of workers, and the right to freedom of association, to uncover the reality of enjoyment of such rights.

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