



Juridical Review Legal Protection of Workers Affected of Termination of Employment (PHK) Due to the Covid-19 Pandemi Viewed from the Perspective of Labor Law (Act No. 13 of 2003 Concerning Labor)

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Abstract

Labor problems are a problem that is often heard. One of these problems is Termination of Employment by companies in Indonesia. Law Number 13 of 2003 concerning Manpower aims to provide protection for workers so that they are not treated arbitrarily, as well as to guarantee certainty and a peaceful life for workers. This rapid spread caused the Government of Indonesia to issue a policy in the form of Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions to Accelerate the Handling of Covid-19 (hereinafter referred to as PP Number 21 of 2020). With PP Number 21 of 2020, the Indonesian Government through the Ministry of Health implemented Large-Scale Social Restrictions (PSBB). Given the current conditions, namely the occurrence of layoffs as a result of the Covid-19 pandemic, you can then refer to SE Number M/3/HK.04/III/2020 Concerning Worker/Labor Protection and Business Continuity in the Context of Prevention and Management of Covid-19. Although basically this circular letter is only an appeal, basically in order to guarantee its implementation and provide protection for laid off workers/laborers, the emphasis is on an agreement between employers and workers/laborers. This agreement is very important because in the conditions of the Covid-19 pandemic, both employers and workers/labourers are victims. Two-way communication is needed between employers and workers/labourers. This is very important to do because the Covid-19 pandemic is very detrimental to both parties.

Keywords: *Termination of Employment; Covid-19 Pandemi; Employers; Laborers*

Introduction

In Indonesia, labor problems are a problem that is often heard. One of these problems is Termination of Employment by companies in Indonesia. the end of the employment relationship for workers can cause workers to lose their livelihood, which also means the beginning of a period of unemployment with all its consequences, so that to ensure the certainty and peace of life for workers, there should be no layoffs. Researchers also argue that layoffs are the beginning of misery for workers, because after being laid off, suffering will befall the workers themselves and their families due to loss of income.

Layoffs are a sensitive issue, employers should be wise in carrying out layoffs, because layoffs can reduce people's welfare, workers lose their jobs, even worse, layoffs can result in unemployment. The term layoffs is a scourge for workers, given the many impacts and consequences it has caused, not only for the workers themselves, but even this is like a domino effect which are interrelated with one another and penetrate into other sectors of people's lives. So, the government, employers, workers and their unions should try to prevent layoffs.

Law Number 13 of 2003 concerning Manpower aims to provide protection for workers so that they are not treated arbitrarily, as well as to guarantee certainty and a peaceful life for workers. In principle, according to Law Number 13 of 2003 concerning Manpower, layoffs must be avoided as much as possible. If all efforts have been made but layoffs are still unavoidable, the implementation must go through negotiations between the employer and the worker concerned.

Juridically in Article 5 of Law Number 13 of 2003 concerning Manpower, it provides protection for workers which includes people who have not worked, namely people who are not bound in a work relationship, and people who are currently bound in a work relationship (worker/labor). , because people who are bound in an employment relationship also have the right to get a better job or one that is preferred by workers/laborers. Whereas Article 6 of Law Number 13 of 2003 concerning Manpower is protection for workers/laborers (people who are in an employment relationship) only.

Regarding layoffs, it is regulated in Articles 150 to 170 of Law Number 13 of 2003 concerning Manpower. Termination of Employment under the provisions of Article 150 of Law Number 13 of 2003 concerning Manpower states that:

"The provisions regarding termination of employment in this law cover termination of employment that occurs in business entities that are legal entities or not, owned by individuals, owned by associations or owned by legal entities, both privately owned and state owned, as well as social enterprises and business other businesses that have managers and employ other people by paying wages or other forms of compensation."

In accordance with the provisions of Article 151 Paragraph (2) and Paragraph (3) of Law Number 13 of 2003 concerning Manpower, if layoffs cannot be avoided then the intent of said layoffs must be negotiated between the entrepreneur and the trade union/labor union or with the worker/laborer concerned if the worker/laborer concerned is not a member of a trade union/labor union. If the negotiations do not reach an agreement, then the entrepreneur can only carry out termination of employment after receiving a stipulation from the Industrial Relations Dispute Settlement Agency.

At the beginning of 2020, the world was shocked by the outbreak of a new virus, namely a new type of corona virus (Sars-Cov) and the disease is called Corona Virus Disease 2019 (Covid-19). Meanwhile, in Indonesia, the corona virus began to be detected when two Indonesian citizens (WNI) tested positive for the corona virus on March 1, 2020. The two Indonesian citizens had previously been in contact with a foreign national (foreigner) from Japan who lived in Malaysia at an event in Jakarta . Based on data up to Friday, June 4 2021: There are 1,843,612 Positive Covid-19, 1,697,543 Recovered, 51,296 Died. Covid-19 is a disease whose transmission is fairly fast, that is, only by liquid droplets of people who are infected with Covid-19.

This rapid spread caused the Government of Indonesia to issue a policy in the form of Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions to Accelerate the Handling of Covid-19 (hereinafter referred to as PP Number 21 of 2020). With PP Number 21 of 2020, the Indonesian Government through the Ministry of Health implemented Large-Scale Social Restrictions (PSBB).

Article 1 PP Number 21 of 2020, PSBB is a restriction on certain activities of residents in an area suspected of being infected with Covid-19 in the hope that the transmission rate of this disease can be

reduced. The forms of PSBB are carried out accordingly with Article 4 PP Number 21 of 2020 is the closure of schools and workplaces, restrictions on religious activities, and/or restrictions on activities in public places or facilities. These PSBB provisions certainly have an impact on many people in various circles. It does not only affect the lower middle class but also those in the upper middle class.¹

One of the most pronounced impacts is in the economic sector and also the employment sector in Indonesia. The widespread spread of the corona virus in almost all regions of Indonesia greatly affects the performance, productivity, company finances and the obligations of employers to meet operational costs, one of which is paying workers' normative rights such as wages. Besides that, the existence of activity restrictions and calls for work from home (work from home) creates a new problem for companies considering that not all types of work can be done by workers at home. Some companies that are experiencing financial difficulties then encourage employers to issue several policies that are detrimental to workers/labor, including the practice of Unpaid Leave (leaving workers, but not paid),

Research Methods

Research is a principal tool in the development of science and technology. This is because research aims to reveal the truth in a systematic, methodological, and consistent manner. Through the research process analysis and construction of the data that has been collected is carried out. The research method used in this legal research is normative juridical research, which is carried out by examining library materials which are secondary data and is also called library research.

Data Collections

The Ministry of Manpower (Kemenaker) noted that 10,765 workers had been terminated (PHK) as of September 2022. The Minister of Manpower (Menaker) Ida Fauziyah said, this figure was still lower than the layoff cases in the previous 2 years. Especially the comparison at the start of the Covid-19 pandemic. "If we look at the cases of termination of employment from 2019 to September 2022, layoffs were quite high in 2020 when we were experiencing the Covid-19 pandemic. This data as of September had inputted a total of 10,765 (layoff cases),"

There were 18,911 layoffs in 2019. Then it jumped to 386,877 cases in 2020. Then, it decreased to 127,085 cases of layoffs in 2021. The figure dropped again to 10,765 cases as of September 2022. The Ministry of Manpower has coordinated with various ministries/agencies, employment agencies and related partners to monitor developments in the issue of layoffs in Indonesia. From the results of the coordination, it was found that there had been layoffs in a number of sectors, even though all parties had tried to avoid layoffs and sought layoffs as a last resort for an industrial relations problem.²

¹Termination Of Employment As An Economic Impact In Indonesia Due To The Covid-19 Pandemic Is Reviewed From The Perspective Of Employment Law, Proceedings of the 2nd Asia Pacific International Conference on Industrial Engineering and Operations Management Surakarta, Indonesia, September 14-16, 2021, Mustika Mega Wijaya, Dinalara D Butarbutar, **ID 666, ISSN:2169-8767** (US Library of Congress), <http://ieomsociety.org/indonesia2021/proceedings/>.

²This article was published on Kompas.com with the title "As of September 2022, the Number of Laid-off Workers Reaches 10,765 People", Click to read: <https://money.kompas.com/read/2022/11/08/133458826/per-september-2022-nomor-pekerja-kena-phk-menreach-10765-orang>. Accessed: December 20, 2022, at 22.10 WIB.

Data On Development Of Covid-19 In Indonesia By Province³

Province	Treated	Confirmed	Healed	Die
DKI Jakarta	7,330	1,141,024	1,121,197	12,497
West Java	5.170	944,335	926,290	12,875
Central Java	1280	510,662	482,541	26,841
East Java	714	483,527	457,363	25,450
Banten	1.316	269,180	265,513	2,351
Special Region of Yogyakarta	530	179,894	174,606	4,758
East Kalimantan	245	167,437	162,570	4,622
Bali	242	133,691	129,647	3,802
North Sumatra	346	127,325	124,366	2,613
Riau	123	122,378	118,672	3,583
South Sulawesi	195	115,909	113,736	1978
West Sumatra	164	83,866	81,784	1918
East Nusa Tenggara	209	75,847	74,435	1.203
South Kalimantan	59	70,308	68,196	2053
South Sumatra	208	65,963	63,008	2,747
Lampung	159	60,631	57,117	3,355
Riau islands	80	56,500	54,911	1,509
Bangka Belitung Islands	91	53,006	51,617	1,298
West Kalimantan	115	52,689	51,679	895
Central Sulawesi	138	49,076	47,545	1,393
Central Kalimantan	36	46,734	45,457	1,241
North Sulawesi	337	42,658	41,352	969
Papuan	168	40.138	39,514	456
North Kalimantan	24	36,336	35,638	674
aceh	98	35,338	33,440	1,800
Jambi	60	31,003	30,231	712
West Nusa Tenggara	21	29,087	28,331	735
West Papua	105	25,913	25,501	307
Bengkulu	48	23,445	22,968	429
Southeast Sulawesi	61	20,645	20.134	450
Maluku	21	14,895	14,626	248
West Sulawesi	18	12,443	12,094	331

³ Data on the Development of Covid-19 in Indonesia, <https://www.antaraneews.com/covid-19>, accessed: 20 December 2022, 22.10 Wib.

Province	Treated	Confirmed	Healed	Die
North Maluku	13	11,713	11,419	281
Gorontalo	37	11,230	10,791	402
South Sumatra	5	11	6	0
B`	1	1	0	0
Province Of Central Java	0	1	1	0
Central Lampung	1	1	0	0

The dynamics of our life as human's experience changes every time to follow the development of the existing era. To be able to meet all kinds of needs both clothing, food and shelter, humans must work. Work itself can be interpreted in three (3) terms, namely:

- a. Individual Aspect Viewed from an individual perspective, work can be interpreted as the movement of the human body itself to be able to produce goods and/services that aim to meet their own needs;
- b. From the perspective of society, work can be interpreted as an effort to produce goods and/or services that aim not only to meet their own needs but also to meet the needs of others;
- c. Spiritual Aspect Viewed from a spiritual perspective, work can be interpreted as a vertical relationship to Allah in which Allah Himself commands His servants to work according to Allah's word in Surah Al Qashash [28]: 73

"And because of His mercy He made for you the night and the day, so that you may rest that night and that you may seek some of His bounty during the day and that you may give thanks to Him."

Starting from the three meanings of work mentioned above, if someone does work for another person which is then based on a work agreement, a work relationship will be created. Work agreements can be found in Dutch, namely *arbeidsovereenkomst*. The work agreement in Article 1601 a of the Civil Code defines it as an agreement in which the 1st (one) party/worker or worker binds himself/herself to under the orders of another party, the employer for a certain time to do work and receive wages. Meanwhile, the work agreement accommodated in Article 1 point 14 of Law Number 13 of 2003 concerning Manpower can be interpreted as an agreement between the worker/laborer and the entrepreneur or employer which contains work conditions, rights and obligations of both parties.

- a. There is an element of work / work;
- b. There is an element of command
- c. There is an element of wages / pay
- d. There is an element of time / time

While the requirements for the validity of work agreements as stipulated in Article 52 paragraph (1) of Law Number 13 of 2003 concerning Manpower which states that work agreements are made on the basis of:

- a. Both side agreement
- b. Ability or ability to carry out legal actions
- c. There is an agreed job
- d. The object of the work agreed upon shall not conflict with public order, decency and the provisions of the applicable laws and regulations.⁴

⁴Lalu Husni, Introduction to Indonesian Labor Law, PT Raja Grafindo Persada, Jakarta, 2003, p. 57

These four conditions can be classified into subjective and objective. Subjective requirements consist of letters a and b which, if not fulfilled, the agreement can be canceled by submitting an annulment mechanism to the judge so that the agreement has legal force as long as it has not been canceled by the judge.⁵ Meanwhile, the objective conditions consist of letters c and d which, if not fulfilled, the agreement becomes null and void.

An employment agreement has contents which as a whole constitute the subject matter which may not conflict with laws, decency, public order existing in society so that the contents of the employment agreement give rise to rights and obligations for each party. The employment relationship itself is interpreted as a relationship between the worker/labourer and the employer after a work agreement has been made. The work agreement itself is an agreement in which the first party (worker/laborer) binds himself to another party (employer/employer) by getting a wage and the employer/employer states his willingness to employ the worker/labourer by paying a certain amount of money.

The employment relationship, which is also stated in Article 1 point 15 of Law Number 13 of 2003 concerning Manpower, states that the employment relationship is the relationship between the employer and the worker/labourer based on a work agreement which has elements of work, wages and orders, thus it is clear that the employment relationship occurs because of the existence of a work agreement between employers and workers or laborers. Therefore, with the existence of a working relationship, the rights and obligations of each party arise, namely the workers/employees and the employer. The great hope of forming a good and harmonious working relationship is in fact not always going well. Developments in the scope of work relations also vary, which in the end can lead to the condition of workers/labourers experiencing "stayed home" conditions and even termination of employment (PHK) which is basically strictly avoided both from the employer's side and the worker/labourer's side. Although in practice, employers rarely take a stance on laying off their workers and tend to choose to immediately terminate their employment (PHK) for their workers/labourers.

Legal protection in English is called legal protection, while in Dutch it is called rechtsbecherming. Harjono tries to provide an understanding related to legal protection as a protection by using legal means or protection provided by law, aimed at protecting certain interests, namely by make the interests that need to be protected in a legal right.⁶ Legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case those owned by humans as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have rights and obligations to take legal action. 11 While legal protection, according to Setiono, aims to protect society from arbitrary acts by authorities that are not in accordance with existing legal rules, to create order and tranquility so as to enable humans to enjoy their dignity as human beings.⁷

The existence of the Covid-19 pandemic has not only had an impact on health from the human side but also on various sectors including employment. How could it not be, the entry of Covid-19 into Indonesia had a very extraordinary impact. The implementation of the term "stayed at home" during the Covid-19 pandemic became a dilemma because neither the employers nor the workers/labourers wanted this to happen, even the presence of the Covid-19 pandemic could be said to be a very shocking thing. Immediately this pandemic arrived and at the same time was accompanied by a wave of workers/labourers who became victims of being laid off until they were laid off.

Making the decision to lay off workers/labourers is the last resort that can be taken, including during the current Covid-19 pandemic. This is also clearly regulated in Article 150 of Law Number 13 of

⁵Ibid., p. 59

⁶Harjono, 2008, Constitution as Home of the Nation, Secretariat General and Registrar Office of the Constitutional Court, p. 357.

⁷Setiono. Rule of Law (Rule of Law). (Surakarta. Master of Law in the Graduate Program of Sebelas Maret University, 2004), p.

2003 concerning Manpower. The Minister of Manpower, Ida Fauziyah, stated that what is needed now is cooperation that prioritizes social dialogue to find the best solution and avoid layoffs. The Ministry of Manpower has issued **SCircular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Worker/Labor Protection and Business Continuity in the Context of Prevention and Management of COVID-19** (SEMA No. M/3/HK.04/III/2020). This can be seen one of them in point II.4 which contains:

"Then changes in the amount and payment of workers/laborers' wages are carried out in accordance with the agreement between the entrepreneur and the worker/laborer".

This provision has the potential for employers to set wages unilaterally without involving workers/workers with the aim of benefiting the company.

In Article 61A Law Number 11 of 2020 concerning Job Creation (Employment Cluster) states that if a specified time worker (PKWT) ends based on the expiration of the period in the work agreement and the completion of a certain job in accordance with the initial agreement, then the employer is obliged to pay money compensation to the worker/laborer. The need for protection for workers/laborers, one of which is to avoid the possibility of arbitrary employer actions.

Based on article 156 paragraph (1) of the Manpower Law No. 13 of 2003, employees have the right to severance pay, gratuity pay, and compensation pay if there is termination of employment. Severance pay is the right of workers affected by layoffs in the form of money given by the company to its employees for terminating employment. In Article 156 paragraph (2) Law no. 13 of 2003 concerning Manpower explains that severance pay differs, based on the length of time the employee has worked. The reward for long hours of work is a symbol of employee loyalty to the company. stipulations, it is mandatory to work for at least 3 years in the company. This calculation is based on Article 156 paragraph (3) of Law no. 13 of 2003. Compensation for the rights of workers affected by termination of employment is compensation for employee rights that have not been used. This right is in article 156 of Law no. 13 of 2003.

In SE Menaker M/3/HK.04/III/2020, the Minister of Manpower asked governors to implement wage protection for workers/laborers related to the COVID-19 pandemic, as follows:

1. For workers/laborers who are categorized as People Under Monitoring (ODP) COVID-19 based on a doctor's statement so that they cannot come to work for a maximum of 14 days or according to Ministry of Health standards, the wages are paid in full.
2. For workers/laborers who are categorized as suspected cases of COVID-19 and are quarantined/isolated according to a doctor's statement, their wages are paid in full during the quarantine/isolation period.
3. For workers/laborers who are absent from work because they are sick with COVID-19 and it is proven by a doctor's statement, their wages are paid in accordance with statutory regulations.
4. For companies that carry out restrictions on business activities due to government policies in their respective regions to prevent and control COVID-19, causing some or all of their workers/laborers to be absent from work, taking into account business continuity, changes in the amount and method of payment of workers/laborers' wages are made. in accordance with the agreement between the entrepreneur and the worker/labourer.

Another protection that already existed for the fate of workers/laborers who were laid off and related to seeing the condition of the employers who experienced difficulties during the Covid-19 pandemic, namely through the Circular of the Minister of Manpower Number SE-05/M/BW/1998 of 1998 regarding the wages of workers who are sent home not towards termination of employment (SE Menaker 5/1998) with wage provisions namely:

1. Employers continue to pay full wages, namely in the form of basic wages and fixed benefits as long as workers are laid off, unless otherwise stipulated in work agreements, company regulations, or collective bargaining agreements.
2. If the employer is not going to pay the worker's wages in full, it is necessary to negotiate with the union and/or the workers regarding the amount of wages during the layoffs and the length of the layoffs.
3. If the negotiations through the services of an intermediary employee do not reach an agreement, a recommendation letter should be issued immediately. If the suggestion is rejected by one or both of the disputing parties, then the problem should be immediately transferred to the Regional P4, or to the Central P4 for mass layoffs.

Based on the circular letter to avoid layoffs, employers can make major changes regarding the payment method for workers/laborers who are temporarily laid off due to the COVID-19 outbreak, based on the agreement of the parties. As well as workers/laborers who are suspected of being positive for COVID-19 are entitled to wages. Thus, layoffs are not recommended to be carried out. By continuing to employ workers/laborers is an alternative effort to maintain the continuity of business activities.

If the termination of employment cannot be avoided by the employer, then the efforts made by the government is one way to do this is to provide guidance on elements and activities related to employment, such as involving employers' organizations, trade unions/labor unions, and related professional organizations and implemented in an integrated and coordinated manner. In the context of manpower development, the government, employers' organizations, trade unions/labor unions and related professional organizations can carry out international cooperation in the field of manpower in accordance with applicable laws and regulations. The government can give awards to people or institutions that have contributed to manpower development in the form of a charter, money, and/or other forms.

The role of the Government is one of the important keys in many matters related to employment. In the context of manpower development, the government stipulates policies and prepares manpower planning on an ongoing basis which includes macro manpower planning and micro manpower planning and is prepared on the basis of manpower information which includes among others:

1. population and workforce.
2. employment Opportunity.
3. job training including work competence.
4. labor productivity.
5. industrial relations
6. working environment conditions
7. wages and labor welfare and labor social security.

Conclusion

Legal protection in Law Number 13 of 2003 concerning Manpower in the form of guaranteed wages that can still be implemented can still be accommodated. Given the current conditions, namely the occurrence of layoffs as a result of the Covid-19 pandemic, you can then refer to SE Number M/3/HK.04/III/2020 Concerning Worker/Labor Protection and Business Continuity in the Context of Prevention and Management of Covid-19. Although basically this circular letter is only an appeal, basically in order to guarantee its implementation and provide protection for laid off workers/laborers, the emphasis is on an agreement between employers and workers/laborers. This agreement is very important because in the conditions of the Covid-19 pandemic, both employers and workers/labourers are victims. Two-way communication is needed between employers and workers/labourers. This is very important to do because the Covid-19 pandemic is very detrimental to both parties. If employers and workers want to sit together to carry out two-way communication, then it is certain that there will be no conflict in the future because they feel that there are parties who are harmed and become victims of the Covid-19 pandemic.

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Etc

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