



## Legal Protection of the Rights of Workers Who Have Discontinued Termination of Employment Due to the Impact of the Covid-19 Pandemic

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### **Abstract**

This study aims to examine the legal protection of the rights of workers who have experienced Termination of Employment (PHK) by employers as a result of the Covid-19 pandemic and solutions to the problem of Termination of Employment (PHK) during the Covid-19 pandemic in order to create legal protection of the rights optimum workers. The research method is normative legal research using a statutory approach. The legal materials in this study are primary legal materials and secondary legal materials. The technique of collecting legal materials in this research is the technique of literature study or document study. The law material analysis technique used in this research is the syllogism method which uses a deductive mindset. The results of the research show that the regulations issued by the government regarding termination of employment for workers are regulated in Law Number 13 of 2003 concerning Manpower, then some of the provisions were amended in Law Number 11 of 2020 concerning Job Creation and supplemented in Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment. As well as protection for workers who have experienced layoffs during a pandemic has not fully provided protection for workers who have been laid off, because there are indeed no specific rules made by the government to protect workers during a pandemic. As well as there are entrepreneurs who made layoffs during the Covid-19 pandemic which did not comply with applicable regulations. A solution to the problem of termination of employment is needed during the Covid-19 pandemic in order to optimally create legal protection for workers' rights.

**Keywords:** *Legal Protection; Layoffs; Labor; Covid-19*

### **Introduction**

In early 2020, the world was shocked by an outbreak of a new pneumonia that started in Wuhan, Hubei Province which then spread quickly to more than 190 countries and territories. This outbreak was named Coronavirus Disease 2019 (Covid-19) caused by Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2). The spread of this disease has had widespread social and economic impacts [1]. More than one month after the World Health Organization (WHO) declared Covid-19 a global pandemic, President Joko Widodo has finally declared the spread of the deadly outbreak a national disaster. This emergency status came into effect as of April 13, 2020. The determination of the spread of

this virus as a disaster is contained in Presidential Decree (Keppres) Number 12 of 2020 concerning the Stipulation of Non-Natural Disasters with the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster. One of the sectors that has been greatly affected by the corona pandemic is employment. 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 [2]. The company as a driving force for the community's economy which is no longer able to carry out the production process causes the company to carry out unilateral termination of employment carried out by the company [3]. The Covid-19 pandemic caused 15.6 percent of workers in Indonesia to be laid off, and 13.8 percent did not even receive severance pay. The majority of the laid off workers are young workers aged 15-24 years. Some of the worst-hit sectors that need special attention are the construction sector (29.3 percent), the trade, restaurant and service sector (28.9 percent), and the transportation, warehousing and communication sector (26.4 percent) [4]. Basically, companies are not allowed to arbitrarily lay off their workers/laborers in any situation, including in a public health emergency situation. As the provisions of Article 81 point 37 of Law Number 11 of 2020 concerning Job Creation (Job Creation Law) which amends Article 151 paragraph (1) of Law Number 13 of 2003 concerning Employment (Law of Employment) it has been stated that basically, employers, workers/labourers, trade unions/labor unions, and the government, must make every effort so that Termination of Employment (PHK) does not occur.

Legal protection for laid-off workers is a legal necessity as mandated by the constitution (UUD 45), because the rights of laid-off workers have the dimension of human rights because they relate to the needs of human life, so legally the burden of legal responsibility lies primarily to the state government as mandated by the constitution. More than that, employers have the main responsibility in accordance with the applicable laws and regulations in the field of employment [5]. Termination of employment by employers must be justified and have evidence as stipulated in the Manpower Act. If workers object to the layoff because they are considered unilateral and not in accordance with the law, the worker can file a lawsuit with the Industrial Relations Dispute Settlement Institute (LPPHI) and the layoff can also be canceled by law and workers can be re-employed [6]. Based on the description above, it is necessary to carry out further research regarding how legal protection is for the rights of workers who have experienced Termination of Employment (PHK) by employers due to the Covid-19 pandemic and then what is the solution to the problem of termination working relations during the Covid-19 pandemic in order to optimally create legal protection for workers' rights. This research takes a period from 2020 to 2022.

## ***Discussion***

In connection with the impact of Termination of Employment (PHK) which is very complex and tends to give rise to disputes, the mechanism for the Termination of Employment is regulated in such a way that workers/laborers will receive proper protection and obtain their rights in accordance with the provisions. The purpose and objective of labor protection or worker protection is so that workers can be protected from extortion/injustice by employers. The government is very concerned about the problem of protecting workers/laborers because in general the position of workers is still weak, so that job protection and work safety will be able to realize the maintenance of the welfare, health and discipline of workers who are under the leadership of employers. Concerning the protection of the rights of workers/labourers, this is whether the severance pay provided by the employer is adequate or not. If severance pay is in accordance with applicable laws and regulations, then there is no problem. But when viewed from the condition of the worker, when the worker in question experiences termination of employment (PHK), then in the future the worker will no longer receive income. So here it can be seen that severance pay is not the main thing, but security at work, which means that when a worker is working, the worker does not need to worry that at any time he will get laid off. This is where the role of the law is very important,

namely as protection for workers [7]. Regulations that have been issued by the government regarding termination of employment for workers/laborers are comprehensively regulated in Law Number 13 of 2003 concerning Manpower, which later amended several provisions in Law Number 11 of 2020 concerning Job Creation and further supplemented in Regulations Government of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. In the three regulations governing layoffs, it is clear that in principle, layoffs are being tried not to occur. However, if this is unavoidable, then this regulation regulates procedures for layoffs in order to provide protection for workers and for employers [8].

Regarding the call for employers to try their best to prevent termination of employment, it has been regulated in Law Number 13 of 2003 concerning Manpower Article 151 which stipulates that: (1) Entrepreneurs, workers/labourers, trade unions/labor unions, and the government, with every effort must be made to ensure that there is no termination of employment; (2) In the event that all efforts have been made, but termination of employment cannot be avoided, then the intention of terminating employment relations must be negotiated by the entrepreneur and the trade union/labor union or with the worker/laborer if the worker/laborer concerned is not a member of the union, workers/labor unions; (3) In the event that the negotiations as referred to in paragraph (2) do not result in an agreement, the entrepreneur can only terminate the employment relationship with the worker/laborer after obtaining a stipulation from the industrial relations dispute settlement institution. Then with the enactment of Law Number 11 of 2020 concerning Job Creation, Article 151 was changed to: (1) Entrepreneurs, workers/laborers, trade unions/labor unions, and the Government must strive to prevent termination of employment; (2) In the event that the termination of employment is unavoidable, the purpose and reasons for the termination of employment are notified by the entrepreneur to the workers/laborers and/or trade unions/labor unions; (3) If the worker/laborer has been notified and refuses to terminate the employment relationship, the settlement of the termination of employment must be carried out through bipartite negotiations between the entrepreneur and the worker/laborer and/or the trade/labor union; (4) In the event that the bipartite negotiations as referred to in paragraph (3) do not obtain an agreement, the termination of employment relations is carried out through the next stage in accordance with the industrial relations dispute resolution mechanism [9].

Minister of Manpower Circular Letter Number M/3/HK.04/III/2020 of 2020 concerning Worker/Labor Protection and Business Continuity in the Context of Prevention and Control of Covid-19 (SE Menaker 3/2020), which regulates worker protection and business continuity for the sake of implementing the Covid-19 countermeasures and also Article 86 paragraph (2) of the Law The Labor Law concerning safety and health measures at work and Government Regulation Number 78 of 2015 concerning Employee Wages Deduction Regulations. However, in reality, which is currently ongoing, there are still many companies that do not follow the rules that have been given in accordance with the Circular of the Minister of Manpower and do not follow the references in the Labor Law Number 13 of 2003 regarding wages. The company still only enforces a unilateral change in regulations without involving workers [10]. If termination of employment (PHK) occurs, the rights and obligations of each party will occur, a company is justified in terminating employees/labor if it is in accordance with the reasons and procedures in accordance with the Labor Law, but if a company terminates employees/labor unilaterally or does not carry out the dismissal in accordance with the procedure, then the act cannot be justified. The issue of termination of employment is very sensitive, because it involves both parties, both employees/laborers and the company. In Indonesia, if this happens, the company must provide severance pay to the dismissed employee/laborer, if he meets the conditions specified by the Manpower Act. In addition to severance pay, the company must also issue a statement stating that the employee/labor has worked for the company. And of course the company needs other people/new employees to replace the employees/laborers it has just laid off, this will definitely make the company spend funds to recruit new employees. If the termination of employment occurs, it does not mean that the rights and obligations between the worker and the employer are broken, but it creates an obligation for the employer to provide

obligations such as award money, certificates, money severance pay, and other obligations regulated by law. However, it is often heard that layoffs carried out by employers only terminate the employment relationship without giving the obligations that must be given to the former worker [11].

This is where the purpose of legal protection is to provide fulfillment of workers' rights after the end of the legal relationship. Legal protection in termination of employment, the most important of which concerns the correctness of the worker's status in the employment relationship and the correctness of the reason for the layoff. From the legal rules governing layoffs, giving rise to workers' rights related to layoffs [12]. M. Isnaeni argues that basically the issue of "legal protection in terms of its source can be divided into two (2) types, namely "external" legal protection and "internal" legal protection [13]. The nature of internal legal protection, basically the legal protection referred to is packaged by the parties themselves when making an agreement, thus when packing the contract clauses both parties want their interests to be accommodated on the basis of an agreement. Likewise, all types of risks can be prevented through filing through clauses that are packaged on the basis of an agreement as well, so that with these clauses the parties will receive balanced legal protection with their mutual agreement. With regard to such internal legal protection, it can only be realized by the parties, when their legal position is relatively equal in the sense that the parties have relatively balanced bargaining power, based on the principle of freedom of contract, each partner in the agreement has the freedom to express his will according to interests. "This pattern is used as the basis when the parties assemble the clauses of the agreement they are working on, thus the legal protection of each party can be realized in a straightforward manner on their initiative". External legal protection created by the authorities through regulations for the interests of weak parties, "according to the nature of laws that cannot be one-sided and impartial, proportionally it is also mandatory to provide balanced legal protection as early as possible to other parties".

Internal legal protection can be provided in this case regarding the working relationship between the parties involved in the work agreement to be able to receive their rights according to their portion. In the protection agreement regarding workers' rights can be seen in the collective work agreement or also known as the labor agreement, because what is meant by labor is an agreement regarding labor conditions held by labor unions (workers) that have been registered with the Ministry of Manpower with employers. , business associations, which are legal entities, which in general. External legal protection for workers who do not agree with the proposed layoffs by employers The government provides protection as stipulated in its regulations regarding the settlement of Termination of Employment which must be carried out through bipartite negotiations between employers and workers and/or labor unions, if this cannot be resolved then efforts can be made through mediation or conciliation and continue the settlement in accordance with the industrial relations dispute resolution mechanism.

In addition to protection in regulating dispute resolution procedures, the government also realizes this protection by obliging employers to pay for the rights of laid-off workers. This form of protection is as stated in Article 81 of the Job Creation Law, which reads "In the event of termination of employment, the entrepreneur is obliged to pay severance pay and/or long service pay and compensation money that should have been received". The amount of severance pay, gratuity and replacement of rights is regulated in the provisions of Article 40 of Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Termination of Employment. In this rule, the government also regulates the amount of entitlements that workers will receive based on the reasons for the layoffs of workers [14].

The enactment of provisions regarding employment clusters in Law Number 11 of 2020 concerning Job Creation and Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Break Time, and Termination of Employment is a renewal of labor law that changes several labor regulations in the case of Termination of Employment. In particular, until now there have been no specific regulations made by the government in order to provide protection for workers who were laid off due to the Covid-19 pandemic.

So that the protection for workers who experience layoffs during a pandemic is the regulation of layoffs in Law Number 11 of 2020 concerning Job Creation and Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Rest Time, and Work termination. The provisions of Article 151 paragraph (1) and paragraph (2) of the Job Creation Law emphasize that employers, workers, trade unions and the government must strive to prevent termination of employment and if termination of employment cannot be avoided, the intent and reason for the termination of employment must be based on the provisions of Article 153 paragraph (1) of the Job Creation Law. Where the provisions of the article do not contain reasons related to difficult circumstances such as the Covid-19 pandemic.

The form of protection for workers that is most likely to be used is by applying the provisions of Article 45 of Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Time, Outsourcing, Working Time and Break Time, and Termination of Employment, which states that employers can terminate employment relations with workers/labor due to the reason the company is closed due to force majeure or force majeure which does not result in the company closing. In addition, there are also regulations that aim to provide protection for workers during the Covid-19 pandemic, namely Government Regulation Number 37 of 2021 concerning Implementation of a Job Loss Guarantee Program. This Government Regulation is one of the derivative regulations of the Job Creation Law as mandated by the provisions of Article 82 and the provisions of Article 185 letter (b) of the Job Creation Law. In the provisions of Article 18 it is explained that the benefits of a job loss guarantee (JKP) include cash, job market information schemes and job training.

## **Conclusion**

There are no specific rules made by the government to protect the rights of workers who have experienced termination of employment during the pandemic. The regulations that are used as a reference for terminating workers during a pandemic refer to the provisions of Law Number 13 of 2003 concerning Manpower, then several provisions have been amended in the Law Number 11 of 2020 concerning Job Creation and supplemented again in Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Work Agreements for Specific Periods, Outsourcing, Working Time and Break Time, and Termination of Employment. The implementation of legal protection for workers who have experienced termination of employment by employers due to the impact of the Covid-19 pandemic has not been fully in accordance with the applicable laws and regulations which are used as a reference for termination of employment during the Covid-19 pandemic.

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