

Termination of Employment Due to COVID-19 Pandemic (Case Study of Employees Affected by Layoffs without Severance Pay in Tangerang

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Termination of Employment Due to COVID-19 Pandemic

(Case Study of Employees Affected by Layoffs without Severance Pay in Tangerang)

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ABSTRACT

7
Termination of employment is the termination of the employment relationship due to a reason as the cause of the termination of the rights and obligations between the entrepreneur and the worker. These conditions are the causes that work during life which is often imagined and the times when the person concerned appears at a certain time from work as a support. What is being at this time is that various countries are trying their best to solve crucial problems above the presence of Covid-19 which is endemic to various parts of the world, including Indonesia. One of the strategies implemented by several companies in Indonesia is Termination of Employment for employees. This is in accordance with Law No. 2003. 13 Articles 164 and 165 concerning Manpower, it's stated that the company has the right to terminate the employment relationship with the worker if the company experiences a loss. However, after being laid off, there is a problem, namely that the worker does not get his right in the form of severance pay and is evicted from their rented residence. To answer that problem, the writer uses normative research, descriptive research, the type of data used by researchers is secondary data because it uses library materials. So the results of this study are that there are still many workers who are neglected and don't get their rights after being laid off. Therefore, it's necessary to agree and negotiate between workers and employers to find the best solution during pandemic like this.

Keywords: Termination of employment, force majeure, work contract

1. INTRODUCTION

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Termination of employment (PHK) is the termination of the employment relationship due to something that causes the end of the rights and obligations between the entrepreneur and the worker[1], and employees who are still actively working are very afraid of this. This is due to the unstable conditions of political life, followed by chaos in economic conditions. The chaotic economy caused various industries to go bankrupt and the impact even spread to sudden layoffs. This condition is the cause of people who work at that time often imagine and feel anxiety and worry about their turn one day being dismissed from work as a life support[2]. Termination of employment under normal conditions can create a comfortable atmosphere. After the task is carried out and plays a role according to the company's demands, and serves the organization, one will finally get a high appreciation for his efforts and efforts. The implementation of layoffs which is a manifestation of retirement in abnormal situations is still considered a

threat to employees. Developed countries with a rapidly growing industrial world are always looking for cheap standard wages, always trying to invest in various countries with higher estimated profits, even though they have to relocate and close or move their factories to other countries.

This condition always results in layoffs of employees in the country they are leaving. The implementation of efficiency from the company at this time, in response to the increase in various unnecessary positions in the past, thus based on the organizational structure there will be inflation beyond the limits of the company's capabilities.

When meeting the demands of efficiency, restructuring is an option. Thus the impact on the reduction or efficiency of positions on a large scale, this is something that can not be avoided from the enactment of layoffs. Layoffs are a solution taken to solve problems, even though layoffs should be the last resort, or in criminal law it is known as the subsidiarity principle or the "ultima ratio principle"[3].

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Because entrepreneur, employees, and the government should try to avoid layoffs. Especially at the time, various countries are trying their best to solve the crucial problem of the presence of Covid-19 which has plagued various parts of the world, including Indonesia. The dilemma felt by all countries to overcome Covid-19 has caused the government and society to experience losses and anxiety. This causes disruption to health and the economy. Currently the government is issuing policy regulations through Government Law Number 21 of 2020 regarding PSBB (Large-Scale Social Restrictions) which aims to break the chain of spread of Covid-19. With the policies that have been issued, various companies that want to survive carry out strategies so that losses from the Covid-19 outbreak can be suppressed. One of the strategies implemented by several companies in Indonesia is Termination of Employment (PHK) for employees. This is in accordance with Law No. 2003. 13 Article 64 and 165 concerning Manpower, it is stated that the company has the right to terminate the employment relationship of the worker if the company suffers a loss. However, some companies with layoff actions and policies during the Covid-19 pandemic sometimes use the term force majeure reasons, in fact the company's production is still ongoing. The Jakarta Manpower, Transmigration and Energy Agency (Nakertrans and Energy) published official data in April 2020 which revealed that approximately 3,611 workers from 602 companies had been laid off and according to information from the Head of the DKI Jakarta Nakertrans and Energy Agency, Andri Yansyah, said that apart from being affected by Layoffs, around 21,797 workers and workers in 3,633 companies were laid off[4]. The important thing as a requirement for layoffs from the company or workers is that the company's operations and profits decrease or lose for 2 years. The Covid-19 pandemic has not yet reached 2 years. Questions for definitive answers to force majeure that fall into the category of natural disasters or do not need attention. Because the use of the term force majeure as a reason for the company to take layoffs cannot be justified. In fact, the disrupted economy caused by Covid-19 has affected workers and must be laid off so that they expect clear legal certainty. Thus, legal protection is needed for workers and it is hoped that there will be a policy from the government as a determinant of whether Covid-19 is included in the category of natural disaster force majeure or not. The development of the times in human life is caused by human desires, and essentially humans are creatures who have energy that can run the wheel of life in fulfilling the needs of clothing, food, and housing. Humans need to carry out cooperation that can result in agreements with other people so that they can provide benefits and their needs are met. This is in line with the Employment Agreement in Article 1601 of the Civil Code, namely the approval of the first party, namely the workers, to bind themselves to surrender their labour to another party, namely the employer, by receiving wages for the specified time.

Referring to the Manpower Law Number 13 Of 2003 contained in Article 164 Paragraph (1) which reads,

"entrepreneurs can lay off workers/workers because the company is closed due to force majeure". Furthermore, Article 164 Paragraph (3) adds that "entrepreneurs can lay off workers/workers because the company closed not because of losses for 2 consecutive years or not due to forced circumstances or force majeure but due to efficiency. All workers/workers when laid off also receive one-time severance pay. The Minister of Manpower stated that the force majeure which has consequences for workers with layoffs does not support all of the company's reasons, he gave an appeal to companies that should provide steps that can be taken such as; reducing work shifts, limiting overtime work, reducing facilities and wages for directors and managers or laying off workers temporarily. The World Labour Organization (ILO) also explained that the step of increasing unemployment benefits for workers who lost their income, and the wages must be paid regularly as determined within a reasonable period of time is a step that must be taken by the government. However, a number of companies that have made policies in terminating employment always have reasons that the company does not have sufficient funds to pay wages or severance pay for workers. This violates the labor regulations which state that a company may close if it has reached a loss for 2 years. However, as seen today, the Covid-19 outbreak has not reached 2 years. The pretext of using the term force majeure by some companies is unacceptable to some circles. Based on Subekti's opinion, force majeure is an excuse to be free from the obligation to pay compensation. Furthermore, it is not found in the Civil Code, namely the term force majeure by not explaining what kind of coercive circumstances can explain the term force majeure. Edy Sutrisno means that the company's operational activities are not running so that employers and workers cannot carry out their obligations due to circumstances beyond human capabilities[5]. This situation is absolute and relative. The case regarding layoffs that the author used as material for writing a pre-thesis proposal is about a layoff made by one of the textile companies in Tangerang. In this case, 2 female employees with the initials J and E were laid off without severance pay so they could not return to their hometown, Palembang. Both were also evicted from the rent because they could not pay the rent. In the end, they were found abandoned in the Saung KWT 60 A Dumpit area, Jatiujung, Tangerang City and accommodated at Balai Mulya Jaya Jakarta for 3 (three) months to be provided with basic needs, psychosocial support, skills activities and mental spiritual activities. This case needs to be raised because during this pandemic many people have lost their jobs. There needs to be legal protection for employees and the responsibility of the company concerned to solve this problem, because both employers, employees, and the government must strive to avoid layoffs. Based on the description above, this research is entitled Termination of Employment Due to the Covid-19 Pandemic (Case Study of Employees Affected by Layoffs Without Severance Pay in Tangerang). Based on the reasons stated in the background, the problem can be formulated as: how are the arrangements regarding

17 termination of employment based on law in Indonesia, and why do entrepreneurs can't afford to pay the employee which has become their right.

2. METHOD

30 This research uses the type of normative research, normative legal research is a written legal analysis research from library materials or secondary data called secondary legal materials as a reference in the field of law or reference materials in the field of law [6]. In this case the author will examine the law as an idea, then see 50 whether there is a match between *das sollen* and *das sein*. The nature of the research used is descriptive research because the research is expected to show a systematic and detailed description of the research problem. Entering the analysis on the basis of the description of the facts obtained will be 52 tried out carefully as well as answering the problem [7]. The type of data used by the researcher is secondary data, because it uses library materials as the main reference. Sources of data used are primary legal materials consisting of legislation, official records in making laws and judges' decisions [8] consisting of:

- 48 a. Employment Law Number 13 of 2003
- b. Job Creation Law Number 11 of 2020 Law of 2020 (Employment Cluster)
- c. Government Regulation Number 25 of 2021 No. 35 concerning Certain Time Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.

Then secondary legal materials are materials that provide an explanation of primary legal materials in the form of books that describe the material. Then tertiary legal materials, namely materials sourced from 55 dictionaries, the internet and others as an explanation of primary legal materials and secondary legal materials.

3. ANALYSIS

Legal protection is needed to protect workers because of problems like this. Legal protection is a place of refuge, namely elements of protecting actions, elements of protecting parties, 40 elements of ways to protect. Based on the opinion of Satjipto Rahardjo, legal protection is an effort 44 to protect a person's interests through the allocation 51 power to him to act in the context of his interests. Protection provided by law related to human rights and obligations as legal subjects through interactions with 49 how humans and their environment. Legal protection is divided into two, namely preventive legal protection and repressive legal protection. Preventive legal protection is legal protection provided by the government with the aim of preventing a violation 38 before the occurrence of a violation. Through preventive legal protection, the government is more careful in making decisions. Examples of preventive protection are regulations and laws that function to prevent violations from occurring,

12 and provide limits in carrying out obligations. While repressive legal protection is legal protection 53 in which is the final protection in the form of sanctions 41 to resolve disputes that have arisen due to violations, such as imprisonment, fines, and other additional penalties given if a violation has occurred. 60

The elements of legal protection itself are the existence of protection from the government against citizens, the existence of guarantees to obtain legal certainty, the existence of a matter related to the rights of citizens, and the existence of sanctions for violators. There is a close relationship 58 between legal protection and aspects of justice because the purpose of the law itself is the achievement of justice. Therefore, legal protection is one way to enforce justice, one of which is in the field of employment, especially 27 termination of employment. The process of enforcing legal protection in the field of employment, especially termination of employment, is also related to several labour law subjects, namely workers, employers, and labour organizations or trade unions. According to 33 Ariel La Porta, the form of legal protection from the state has two characteristics, namely prevention (prohibited) and punishment (sanction). The form of legal protection is clearly demonstrated through law enforcement institutions, for example the prosecutor's office, police, courts and non-litigation dispute 34 resolution institutions. The principle of legal protection stems from the concept of recognition and protection of human rights, because the direction of the concept is to place 63 limit obligations between the government and the community 46 The next principle of legal protection is the principle of the rule of law. This is related to the protection and legal 35 recognition of human rights so that these rights have a place and can be linked to the goals of the rule of law itself.

Termination means the process, method, act of deciding; determination, relationship means a related condition, contact, connection, bond; relationship (family, friendship, etc.). Work means the activity of carrying out something; which is carried out (done), so 29 that is done to earn a living; livelihood. So that the termination of employment is the breaking of ties / work ties between employers and employees 62. In addition to having a negative impact on health, the Covid-19 pandemic also affects the continuity of work and income for working workers. The decline in business caused by this pandemic is an excuse for companies to lay off and even lay off workers unilaterally and this cannot be justified. There are many cases of unilateral layoffs due to the pandemic, one of which is a case that the author adopted to be used as material in writing this thesis. The World Labour Organization (ILO) also provides recommendations outlining a strategic approach for responding to the crisis. The recommendations take the form of providing support to employers to take steps to prevent and reduce the risk of adverse human and labour rights impacts in their operations, or in service products where they are directly related. The ILO also calls for dialogue and collective bargaining to reduce layoffs. The government should also play a role in restoring labour market institutions, including employment services aimed at maintaining

stability and recovery and taking appropriate action for people affected by the crisis through training programs to improve their employability[9]. The government should make efforts as quickly as possible to ensure basic income security, especially for workers whose livelihoods have been disrupted by the pandemic by developing social security and other social protection mechanisms, taking into account nationally applicable laws. Governments also need to make efforts to ensure access to health care and other social services, especially for groups of people who are particularly vulnerable to this pandemic. Social dialogue is very important in implementing effective measures to reduce the effects of the Covid-19 pandemic and its impacts, especially at the corporate level. Workers must be kept informed and maintain vigilance both about themselves and the steps taken to contribute to pandemic control. In an effort to reduce the effects of the pandemic, of course there needs to be cooperation between the government and the people.

The Minister of Manpower (Menaker) Ida Fauziyah issued a Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 concerning Protection of Workers/Labourers and Business Continuity in the Context of Prevention and Control of Covid-19. He explained that it was necessary to issue this letter because the spread of the pandemic in Indonesian territory continues to increase, and this step aims to protect business continuity for both workers and entrepreneurs. There needs to be encouragement from company leaders to deal with COVID-19 which aims to minimize the risk of transmission and maintain business continuity. Then the president issued a Presidential Law Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona virus Disease 2019 as a national disaster. The Presidential Decree is based on the consideration that non-natural disasters caused by the Covid-19 outbreak have resulted in an increase in the number of victims and property losses, the coverage of areas affected by the disaster is getting wider, and even has implications for broad socio-economic aspects. The World Health Organization (WHO) has declared Covid-19 a world pandemic (Global Pandemic) on March 11, 2020. Thus in the letter a Task Force for the Acceleration of Handling Covid-19 has been appointed.

In the Law Number 13 Of 2003 is not regulated regarding the settlement of a pandemic, but in Article 164 Paragraph 1 it is explained that employers can perform layoffs because the company is closed not because of losses for 2 consecutive years and not due to coercive circumstances or force majeure, but due to efficiency, but it is also regulated regarding the provision of severance pay, as provided in the Act. In the unavoidable layoffs, according to Law Number 11 of 2020 Article 151 paragraph (2) regarding Job Cluster (Employment Clusters), employers must inform the purpose and reasons for the layoffs to affected workers. If a worker refuses to be laid off, it will be resolved by bipartite negotiations between the employer and the worker and/or the trade union. But layoffs are still

something that must be avoided, what should be done is that both government, employers and workers must work together to find solutions to overcome the impact of Covid-19. According to Law Number 13 of 2003 relating to Manpower, Termination of Employment is the termination of employment due to a certain matter which results in the completion of the rights and obligations between the entrepreneur and the worker/labourer. This usually occurs due to termination by the company, resignation or expiration of the contract between the employee and the company. So it can be concluded that layoffs are the termination of the relationship between employees and employers, both requests from employees or the company itself due to something that is not harmonious. Employers, employees, and including the government with various businesses must try so there are no layoffs as stated in the following article of the Manpower Law:

Article 151 of the Manpower Law concerning Layoffs:

- (1) "Entrepreneurs, workers, trade unions/labour unions, and the government, must make every effort to prevent termination of employment.
- (2) In the event that every effort has been made, but termination of employment is unavoidable, then the intention of terminating the employment relationship must be negotiated by the entrepreneur and the trade/labour union or with the worker/labourer if the worker/labourer in question is not a member of a trade union/labourer.
- (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/labour after obtaining a determination from the industrial relations dispute settlement institution."

provisions for submitting an application to an industrial relations dispute settlement agency are in Article 152 of the Manpower Act which reads as follows:

- (1) "Application for termination of employment shall be submitted in writing to the industrial relations dispute settlement agency including the reasons behind it.
- (2) The application for determination as referred to in paragraph (1) may be accepted by the industrial relations dispute settlement institution if it has been negotiated as referred to in Article 151 paragraph (2).
- (3) Determination on the application for termination of employment can only be given by the institution for the settlement of industrial relations disputes if it turns out that the intention to terminate the employment relationship has been negotiated, but the negotiations do not result in an agreement."

There needs to be a good relationship between employees and employers so that the goals of the company can be achieved and successfully meet the interests of the employer or the employee himself. If there is a difference of opinion in a company, it should be resolved by deliberation to reach consensus. Employees and employers must take responsibility for each other in carrying out their

respective duties in order to realize harmony and harmony within a company[10].

Arrangements regarding wages in the event of layoffs are regulated in Article 156 of the Manpower Act as follows:

(1) "In the event of termination of employment, the entrepreneur is required to pay severance pay and/or service award money and compensation for entitlements that should have been received.

(2) The calculation of severance pay as referred to in paragraph (1) shall at least be as follows:

- a. working period of less than 1 (one) year, 1 (one) month of wages;
- b. working period of 1 (one) year or more but less than 2 (two) years, 2 (two) months of wages;
- c. working period of 2 (two) years or more but less than 3 (three) years, 3 (three) months of wages;
- d. work period of 3 (three) years or more but less than 4 (four) years, 4 (four) months of wages;
- e. working period of 4 (four) years or more but less than 5 (five) years, 5 (five) months of wages;
- f. working period of 5 (five) years or more, but less than 6 (six) years, 6 (six) months of wages;
- g. working period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months of wages.
- h. working period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months of wages;
- i. working period of 8 (eight) years or more, 9 (nine) months of wages.

(3) The calculation of the service award as referred to in paragraph (1) shall be determined as follows:

- a. work period of 3 (three) years or more but less than 6 (six) years, 2 (two) months of wages;
- b. working period of 6 (six) years or more but less than 9 (nine) years, 3 (three) months of wages;
- c. working period of 9 (nine) years or more but less than 12 (twelve) years, 4 (four) months of wages;
- d. working period of 12 (twelve) years or more but less than 15 (fifteen) years, 5 (five) months of wages;
- e. working period of 15 (fifteen) years or more but less than 18 (eighteen) years, 6 (six) months of wages;
- f. working period of 18 (eighteen) years or more but less than 21 (twenty one) years, 7 (seven) months of wages;
- g. working period of 21 (twenty one) years or more but less than 24 (twenty four) years, 8 (eight) months of wages;
- h. working period of 24 (twenty four) years or more, 10 (ten) months wages.

(4) The compensation money that should be received as referred to in paragraph (1) includes:

- a. annual leave that has not been taken and has not yet fallen;
- b. the cost or return fare for the worker/labourer and his/her family to the place where the worker/labourer is accepted to work;
- c. housing reimbursement as well as treatment and care are set at 15% (fifteen percent) of the severance pay and/or service pay for those who meet the requirements;

d. other matters stipulated in the employment agreement, company regulations or collective labour agreement.

(5) Changes in the calculation of the severance pay, the calculation of the reward for the service period, and the compensation for entitlements as referred to in paragraph (2), paragraph (3), and paragraph (4) shall be stipulated by a Government Regulation."

Severance pay is an amount of money given as provision to employees who are dismissed from work in the context of reducing workforce. This money is a right for workers that the company must pay attention to. Article 16150 of the Manpower Law explains the obligation to provide severance pay to workers in the event of layoffs.

The company has the right not to grant this right only if the employee has done something that is not good for the company, for example stealing, committing corruption, and others. Decreased income or even no income, resulting in a decrease in the ability of employers to pay wages for their workers. Therefore, it is necessary to have an agreement between workers and employers, if a dispute occurs, it should be resolved by deliberation. According to a practitioner of Industrial Relations Law, Aulia Kemalsjah Siregar, S.H., if the company is unable to pay its rights, an agreement can be made such as debt. But the fact that things are not like this is because the impact of this pandemic itself has been very severe, especially for middle to lower companies, so there needs to be negotiations between workers and employers. This pandemic has resulted in entrepreneurs in Indonesia or the world having to reduce their business activities where the reduction has a negative impact on company revenues. The Minister of Manpower, Ida Fauziyah, said that the company's level of compliance to pay compensation to those who had been laid off was still low, because the company was unable to pay on the grounds that it did not cover operational costs and so on. He said in practice, only about 7% follow the Manpower Act regulations regarding severance pay.

Due to the high number, the level of compliance with the Act is still low because many companies are unable to pay it. He explained that in the Job Creation Act, one of the provisions that changed was the intervention of the government in giving rights to workers, which was given through the Job Loss Guarantee Program (JKP) which was managed by the government through BPJS Ketenagakerjaan.

4. CONCLUSION

1. First, layoffs are termination of employment relations due to a main matter that has an impact on the completion of rights and obligations between workers and employers. This usually occurs as a result of resignation, dismissal by the company, or the expiration of the contract between the employee and the employer and has been regulated in the 2003 Manpower Law no. 13. Employers,

workers, labour union workers, and the government, through various efforts in order to prevent termination of employment.

2. Second, the entrepreneur can terminate the employment relationship with the worker/worker because the company is closed due to the company losing continuously within two years, or forcing conditions (force majeure), provided that the worker/worker is entitled to severance pay, namely 1 times in accordance with Article 156 paragraph (2) of the service period of 1 (one) time as stated in Article 156 paragraph (3) and compensation for entitlements in accordance with the provisions of Article 156 paragraph (4). Force majeure can be used if the company has suffered losses for 2 years. If the company is still carrying out activities as usual or does not close the company forever, then this cannot be called terminating the employment relationship because the pandemic is the reason for force majeure.

3. Third, the reason the company defaults in realizing the obligations that give rights to employees is because it is considered that the rules regarding payment of rights are still too high, especially during a pandemic like this, resulting in a decrease in the ability of employers to pay wages for their workers.

Both workers and employers and the government should make every effort to avoid layoffs. And it would be better if the disputes that occurred were resolved amicably in order to reach a mutual agreement. If there is no way out, it should be resolved bipartite or tripartite. In the event of layoffs, it is better to provide severance pay, compensation for entitlements, gratuities for years of service and so on to workers. If the company does not have enough money, it is necessary to negotiate between the worker and the employer, or it is still given but not according to the legislation by following the capabilities of the entrepreneur himself. And there should be cooperation between workers, employers, and the government because of a pandemic like this, all these aspects are interrelated. Because if employers layoffs, the workers will lose their jobs. Because those who lose their jobs, it can increase the crime that occurs in the community so that it becomes a separate problem for the government to tackle the crimes that occur. Forced circumstances (Overmacht) according to Sri Soedewi Masjochoen Sofwan is a condition in which the debtor is unable to fulfil the debt (absolute overmacht)[11] or there is the possibility of fulfilling the debt, but requires great sacrifices beyond human capacity and causes enormous losses (relative overmacht). Regarding the regulation of force majeure to resolve the issue of layoffs, it is regulated in Article 164 paragraph (1) which reads, among others:

"Entrepreneurs can terminate the employment relationship of workers/labourers because the company is closed due to the company experiencing continuous losses for 2 (two) years, or force majeure, provided that the worker/labourer is entitled to severance pay of 1 (one) year) times the provisions of Article 156 paragraph (2), the reward for the

service period is 1 (one) times the provisions of Article 156 paragraph (3) and compensation for rights in accordance with the provisions of Article 156 paragraph (4)."

Workers who should receive money as a substitute for their rights, namely annual leave that is not taken, and has not been dropped; the cost or cost of going home for the worker/worker and to the family's place where the worker/worker is accepted to work; replacement for housing and care and treatment provided that 15% of the severance pay and/or service period award for those who meet the conditions; and all other matters agreed in the employment agreement, company regulations or collective labour agreement. As described above, force majeure can be used if the company has suffered losses for 2 years. If the company still carries out activities as usual or does not close the company forever, then this cannot be called terminating employment relationship because the pandemic is the reason for force majeure. If the layoff is carried out due to a compelling situation, the company should provide the rights of the workers in accordance with the applicable regulations, namely Article 164 paragraph (1) of the Manpower Act. Workers should have these rights and employers should also give what they are entitled to even though in the implementation things happen that unexpected, and still have to follow the provisions of the Manpower Act.

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