

## **FULFILLING THE WORKERS 'RIGHTS IN THE PANDEMIC TIME OF COVID-19**

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### **Abstrak**

Dalam hal perlindungan pengupahan dan perlindungan bagi tenaga kerja di tempat kerja pengusaha dapat melakukan penangguhan pembayaran upah (jika pengusaha tidak mampu membayar upah sesuai upah minimum), dengan terlebih dahulu melakukan perundingan dengan pekerja/buruh atau serikat pekerja/serikat buruh terkait penangguhan tersebut. Penangguhan pembayaran upah minimum oleh pengusaha kepada pekerja/buruh tidak serta-merta menghilangkan kewajiban pengusaha untuk membayar selisih upah minimum selama masa penangguhan. Untuk menghadapi dan menanggulangi krisis akibat wabah virus corona atau COVID-19, pada tanggal 31 Maret 2020, Presiden Joko Widodo telah menerbitkan Peraturan Pemerintah Pengganti Undang-Undang (PERPU) No. 1 Tahun 2020 tentang “Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) dan/atau dalam rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan. Namun, PEPRU Nomor 1 Tahun 2020 belum mengakomodir sepenuhnya terkait dengan dunia ketenagakerjaan. Urusan terkait dengan tenaga kerja sepenuhnya ada di tangan perusahaan dan riskan untuk menimbulkan kesewenang-wenangan perusahaan.

Kata kunci : tenagakerja, covid-19, keuangan negara.

### **Abstract**

*In terms of wage protection and protection for workers in the workplace, the entrepreneur can postpone the payment of wages (if the entrepreneur is unable to pay the wage according to the minimum wage), by first conducting negotiations with the worker / laborer or trade / labor union regarding the suspension. The postponement of the payment of the minimum wage by the employer to the worker / laborer does not automatically eliminate the obligation of the entrepreneur to pay the difference in the minimum wage during the suspension period. To deal with and overcome the crisis caused by the corona virus outbreak or COVID-19, on March 31, 2020, President Joko Widodo has issued Government Regulation in Lieu of Law (PERPU) No. 1 of 2020 concerning “State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and / or in the context of Facing*

*Threats that Endanger the National Economy and / or Financial System Stability. However, PEPRU No.1 / 2020 has not fully accommodated those related to the world of labor. Affairs related to labor are entirely in the hands of the company and it is risky to cause company arbitrariness.*

*Keywords: labor, covid-19, state finances.*

## **Introduction**

The spread of Corona Virus Disease 2019 (COVID-19) carries risks to public health and has even claimed lives for those infected in various parts of the world, including Indonesia. The 2019 Corona Virus Disease (COVID-19) pandemic has significantly disrupted economic activity and has major implications for the economies of most countries around the world, including Indonesia. Global economic growth is predicted to decline from 3% (three percent) to only 1.5% (one point five percent) or even lower than that. The development of the Corona Virus Disease 2019 (COVID-19) pandemic also has the potential to disrupt economic activities in Indonesia. One of the implications is a decrease in Indonesia's economic growth which is estimated to reach 4% (four percent) or lower, depending on how long and how severe the spread of the Corona Virus Disease 2019 (COVID-19) pandemic affects or even cripples community activities and economic activities.

But in general, several companies that cut off work relations during the Covid-19 pandemic often used force majeure reasons, even though these companies were still producing as usual. The important thing that becomes a condition for terminating a company's employment to employees is that the company has experienced a decrease or loss for 2 years. Meanwhile, the current Covid-19 pandemic has not reached or is 2 years. The clarity of force majeure which is still a question enters the classification in natural disasters or does not need attention. For reasons of force majeure that companies use to terminate employment relations cannot be justified.

Seeing the massive economic disruption caused by Covid-19 has affected many workers who have lost their jobs, they must get legal protection and clear legal certainty. Therefore, the lack of clarity regarding the termination of employment by companies during the Covid-19 pandemic is the author's focal point to discuss and analyze more comprehensively regarding policies issued by the government or companies for workers. So there is a need for legal protection for workers and a government policy is needed to determine whether Covid-19 is included in the force majeure of natural disasters or not.

The disruption of economic activity will have implications for changes in the posture of the State Budget (APBN) for the 2020 Fiscal Year in terms of both the State Revenue, the State Expenditure side and the Financing side. The potential for changes to the 2020 State Budget for Fiscal Year comes from disruption of economic activity or vice versa. Many disruptions to economic activity have the potential to disrupt the 2020 State Budget in terms of State Revenue. State financial and fiscal policy responses are needed to deal with the risk of the Corona Virus Disease 2019 (COVID-19) pandemic, including increasing spending to mitigate health risks, protect the public and maintain business activities. Pressure on the financial sector will affect the 2020 State Budget, especially the financing side. The implications of the Corona Virus Disease 2019 (COVID-19) pandemic have also had an impact on the threat of a worsening financial

system as indicated by the decline in various domestic economic activities due to the steps to deal with the Corona Virus Disease 2019 (COVID-19) pandemic which poses a risk of macroeconomic and system instability. the government needs to jointly mitigate and coordinate policies in the KSSK, so that various efforts are needed by the Government and related institutions to take forward looking actions to maintain financial sector stability.

Based on information from the Minister of Manpower which was reported by [cnnindonesia.com](http://cnnindonesia.com) on April 13, 2020, as many as 90% of workers have been laid off (on holiday) and 10% have been laid off from tollal 1,506,713 workers. For the situation of Makassar City, there were 7,983 workers dismissed from 247 companies in Makassar City and 244 workers affected by layoffs ([fajar.co.id](http://fajar.co.id), / 15/04/2020).

In several cases, there have been policies issued by the company that have castrated workers' rights on the grounds that the Company experienced losses due to the Covid-19 Pandemic situation. In Makassar, based on data received by the Labor Union, forms of company policies that are considered without the protection of Labor Rights by the State, such as companies that house their Workers / Workers without giving wages, there are at least 3 companies that enforce work policies. Rolling by not paying wages for those who do not work (no work no pay), rolling for workers, should be equated with laying off workers. Finally, there are also 1 companies that issue a policy of reducing working hours which has an impact on reducing work wages.

The dismissal of workers on the pretext that the company suffered losses without an audit process, laying off workers without being paid, applying wages based on hours, reducing wages on an unclear basis, violated the provisions of Law No.13 of 2003 concerning Manpower which regulates protection of Labor rights.

On the other hand, the Central Government has implemented a Pre-employment Card program to stem the effects of layoffs which are considered capable of covering the needs of workers who have been laid off. If viewed critically, the Pre-Work Card Program will legitimize a massive wave of layoffs. The government seems to provide a way for companies to lay off workers without observing the applicable regulations.

The State should ensure that companies do not make policies that can harm Workers during the Covid-19 Pandemic. If the Government is not firm, then this situation will be very dangerous for the community at large, which of course will be detrimental to the State in terms of finance to overcome the economic impact of its citizens, the situation and the potential threat of hunger to socio-political turmoil that might occur if the company is allowed to make policies that are detrimental Labor.

## **Discussion**

### **Definition of Labor**

The Central Bureau of Statistics defines manpower as the entire population of working age (15 years and over) that has the potential to produce goods and services. BPS (Central Statistics Agency) divides the workforce (employed), namely:

1. full workers (full employed), are workers who have a number of working hours > 35 hours a week with certain work results in accordance with the job description; 2. labor is not full or under-employed, is workers with working hours <35 hours a week; and 3. Laborers who have not worked or are temporarily unemployed (unemployed), are workers who work hours of 0 > 1 hour per week. According to Law No. 13 of 2003 concerning Manpower Article 1, labor is anyone who is able to carry out work both inside and outside of work relations in order to produce goods and services to meet the needs of society. According to Law No. 13 of 2003 concerning Manpower Article 8 concerning manpower planning and manpower information includes: job opportunities, work training for labor productivity, industrial relations, working environment conditions, wages and labor welfare.

Labor issues continue to receive attention from various parties, such as the government, educational institutions, the community and families. The government sees the manpower issue as one of the central evenings of national development, because manpower is essentially a development force whose many contributions to the success of national development, including development in the workforce sector itself.

Where employment development aims to:

1. Empowering and utilizing manpower optimally,
2. Creating equal employment opportunities and provision of manpower in accordance with national development,
3. Providing protection for workers in realizing their welfare, and
4. Improve the welfare of workers and their families.

In manpower development, the government is expected to be able to compile and determine manpower planning. Manpower planning is intended to be used as a basis and reference in formulating policies. Strategy and implementation of sustainable manpower development programs. Most people on earth in Indonesia realize that in the implementation of national development, the workforce has a very important role and position as actors in achieving development goals. In line with that, manpower development is directed at increasing the quality and contribution to development as well as protecting their rights and interests in accordance with human dignity. Manpower development is carried out on the principle of integration and partnership. Labor is a person who works or does something, a person who is able to do work, both inside and outside of a work relationship.

Sumarsono stated that labor is all people who are willing to work. The definition of labor includes those who work for themselves or their families who do not receive payment in the form of wages or those who are willing to work and are able to work but have no job opportunities so they are forced to be unemployed. Labor is any person who is capable of doing work in order to produce goods or services both to fulfill his own needs and for the community.

Labor can also be interpreted, that workers are people who are willing or able to work for themselves or family members who do not receive wages and those who work for wages. Meanwhile, according to Simanjuntak's opinion, the workforce is a group of the population of working age, where they are able to work or carry out economic activities in producing goods and services to meet community needs. From the definition above, it can be understood that the workforce is a group of people from the community who are able to carry out activities and are able to produce goods and services to meet community needs (Suroso; 2004).

Physically, ability is measured by age in other words, people who are of working age are referred to as the working age population. Labor also means human labor, both physical and spiritual, which is used in the production process, which is also known as human resources. It is this workforce who works on natural production resources. Humans use not only physical energy, but also spiritual energy. Physical labor is labor that relies on physically or physically in the production process. Meanwhile, spiritual labor is labor that requires a mind to carry out activities in the production process.

### **Classification of Labor**

To find the labor force and not the labor force, information is needed, namely: a. The number of people between the ages of 15 and 64, whose data is referred to as the working age population. b. The number of residents aged 15-64 years who do not want to work (such as students, students, housewives and voluntary unemployed), these residents are named after the non-labor force population. Thus, the labor force in a period can be calculated by subtracting the number of working age population and non-labor force. The ratio between the labor force and the working age population expressed in percent is called the labor force participation rate (Sukirno, 2013).

Basically, labor can be grouped into two parts, namely:

#### **Workforce**

The work force can be explained by several definitions, namely the labor force is the number of workers in an economy at a certain time. In addition, the labor force can be defined as the working age population who work or have a job but are temporarily not working and who are looking for work. According to Mulyadi, the workforce is part of the workforce that is actually involved or trying to be involved in production activities, namely the production of goods and services.

Based on the definition that has been stated above, it can be concluded that the workforce is the population of working age, namely residents aged 15 years and over who have jobs or who are looking for work. The labor force is a 15 year old worker who for the past week had a job, either working or temporarily not working for some reason. The workforce consists of the unemployed and the working population. The unemployed are those who are looking for work or those who are preparing a business or those who are not looking for work because they feel that it is impossible to get a job and those who already have a job but have not started working and at the same time they are not working (Feriyanto, 2014).

Unemployment with this concept is called open unemployment. Meanwhile, a working population is defined as a resident who carries out economic activities with the intention of obtaining or helping to obtain income or profit for at least one hour continuously during the past week. The working population is divided into two, namely full-time and under-unemployed residents (Kuncoro, 2013).

Underemployed are residents who work less than normal working hours (less than 35 hours a week, excluding those who are temporarily unemployed). The number of labor force working is a description of the conditions of available employment. The more available employment opportunities, the higher the total production of a country, where one indicator to see the development of labor in Indonesia is the Labor Force Participation Rate (TPAK) (Kusnendi, 2009).

The Labor Force Participation Rate (TPAK) shows a measure of the proportion of the working age population who are actively involved in the labor market, both employed and looking for work. TPAK can be stated for all existing workers or the



number of workers according to a certain age group, gender, education level or rural-urban area. TPAK is measured as a percentage of the total workforce to the total working age population. TPAK can indicate the relative size of the supply of labor (labor supply) that can be involved in the production of goods and services in an economy. In general, TPAK is defined as a measure that describes the number of labor force for every 100 working age population.

### **Not the Labor Force**

There are several versions that explain the definition of a non-labor force population, including, according to Ostinasia, what is meant by non-labor force is a working age population whose activities do not work or do not look for work or working age residents with school activities, take care of the household and others (Sholehati, 2017 ).

Whereas in another version it says that what is meant by not the workforce is workers aged 10 years and over who for a week only go to school, take care of the household and so on and do not carry out activities that can be categorized as working, temporarily not working or looking for work, therefore the group this is often called the potential labor force.

Not the workforce, namely workers aged 15 years and over who for the past week only attended school, took care of households, etc. and did not carry out activities that could be categorized as working, temporarily not working or looking for work. The three groups in the non-labor force can at any time offer their services to work. Therefore this group is often called the potential labor force.

### **Employment Issues**

One of the fundamental problems faced by Indonesia along its journey to become an independent nation is the problem of unemployment, in which the government has made various efforts to reduce the unemployment rate (Wawa, 2005). Efforts taken by the government in the issue of unemployment from time to time have been taken through various development approaches based on economic growth (productioncontered development). However, the reality is that there are still many labor problems in Indonesia that the government cannot solve (Agus, et al. 2006).

The problems that arise in the world of labor in Indonesia are as follows:

#### **Expansion of Employment**

The problem of field expansion is an urgent problem, during Pelita IV there were actually quite a lot of jobs being created. However, the labor force has grown beyond the capacity for job creation, so the number of unemployed and underemployed is still quite large. For the fifth replica, the challenge of expanding employment opportunities is getting bigger because the Indonesian workforce is expected to grow and continue to grow. Most of them consist of a young, female and relatively highly educated labor force (secondary school). Therefore, it is hoped that during this development period, new job opportunities will be created in various sectors to accommodate the increasing workforce due to rapid population growth.

#### **Improvement of quality and work ability**

The quality and capability of Indonesian workers as a whole is relatively low. To improve this, it has been carried out through various educational and training programs

in line with the demands of development and technology developments so that they can be utilized as effectively and as maximally as possible. However, overall the quality and ability of Indonesian workers is still low, as reflected in the low productivity of work, both in terms of level and growth.

In the modernization era, increasing the quality and ability of work is not only related to the large number of the workforce that must be educated and trained, but also related to the suitability and quality of education and training outcomes with job field needs and job requirements. This problem is sometimes a dilemma given the limited resources available. However, herein lies the challenge that must be faced, namely how with limited resources we can increase the quality and ability of Indonesian workers equally, so that an increase in the productivity and quality of the Indonesian workforce can be achieved. Realizing the low quality of Indonesia's workforce, it is necessary to increase formal education, general and vocational formal education in an effort to build and develop knowledge, talents, personality and mental attitudes, creative reasoning and one's intelligence. They are the foundation of all human resources today.

Apart from formal education, job training is also a very important role in improving the quality of Indonesian workers. Job training is a process of developing skills and work skills that are directly related to work and job requirements or in other words, job training is closely related to the development of workforce professionalism, and functions as a supplement or complement to formal education, then both are compiled and developed in an integrated manner. as an integrated human resource development system.

### **Manpower Deployment**

The distribution and utilization of work has been developed through various programs and policies with the aim of increasing the utilization and more equitable distribution of the workforce, both sectorally and regionally. Sectorally, the development of sectors outside of the agricultural sector continues to be improved in order to be able to expand its role, either to generate surplus value or absorb labor. However, some of the Indonesian workforce is still relatively low in quality and comes from the agricultural sector. Our regional sector is still facing the problem of the spread of the workforce that has accumulated on the island of Java. The unequal distribution of the workforce, both sectorally and regionally, makes it difficult for the provision and utilization of manpower to its full potential, resulting in a paradoxical labor market situation, which is contradictory in nature.

For the purpose of regional distribution of manpower, policies and programs developed include inter-regional work programs, transmigration, wages and the like. Meanwhile, the distribution of labor by sector is carried out through job training and apprenticeship. In addition, it is also necessary to develop a manpower and labor market information system.

### **Labor Protection**

Labor protection is intended so that workers can work more productively, healthily and prosperously, so that they can live properly with their families. This is important considering the changes in the economic structure and the increasingly rapid employment opportunities will have a negative impact on the workforce, where these changes are not in favor of the workforce. Workers often feel disadvantaged or exploited by leaders or employers who impose policies arbitrarily for employees and

workers, low wages and guarantees of work safety are often a problem in the world of Indonesian workers. There is a need for an improvement in working conditions intended to create a safe and healthy working environment, so that workers can work calmly and productively in accordance with Article 27 paragraph (2) of the 1945 Constitution. If the workforce can live properly, their motivation and work productivity will increase.

### **Fulfilling the Rights of Workers During the Covid-19 Pandemic**

As a rule of law, Indonesia guarantees respect, protection and fulfillment of human rights (HAM). The state has an obligation (duty bearer) in ensuring welfare for the survival of every citizen of its country. One of these obligations is manifested in the form of providing guarantees for the right to work and a decent living to every citizen, which is also a right inherent in every individual in society. These provisions have been regulated in the 1945 Constitution, Law No.39 of 1999 concerning Human Rights, Law No. 13 of 2003 concerning Manpower and Law No. 11 of 2005 concerning the Ratification of the Covenant on Economic, Social and Cultural Rights.

However, in the practice of upholding human rights, the State has failed to protect and fulfill the rights of the people. This can be seen very clearly from the Government's stance in tackling the spread of Covid-19 which threatens hundreds of millions of Indonesians. Since Covid-19 or the Corona Virus was declared a Pandemic by the World Health Organization (WHO), the Government has not been prepared to take preventive steps to minimize maximally preventing the spread of Covid-19 from entering Indonesia. Worse, the government shows an attitude of neglect and takes lightly by issuing counter-productive statements that tend to be outlandish.

The failure of the State to guarantee the right to protection from the threat of danger and to the health of citizens in the absence of preventive action at the beginning of the Covid-19 Pandemic, has had an impact on Economic, Political and Social stability in Indonesia. The failure of the State to protect and fulfill the right to health has an impact on other rights. From a human rights perspective, there is the principle of interdependence, if one right is violated or fails to fulfill, it will have an impact on other rights.

The COVID 19 pandemic has also resulted in most Entrepreneurs being forced to stop or reduce their business activities. This means that there will be Termination of Employment or reduction of workers. It also forces workers to Work From Home (WFH) or not work at all. This means that the source of income for workers / laborers and their families is reduced or stopped. As a result of the COVID 19 Pandemic, for the Government Termination of Employment is an increase in the number of unemployed which can cause social unrest.

To deal with and overcome the crisis caused by the corona virus outbreak or COVID-19, on March 31, 2020, President Joko Widodo has issued Government Regulation in Lieu of Law (PERPU) No. 1 of 2020 with a fairly long title, which is about "State Financial Policy and Financial System Stability for Handling the Corona Virus Pandemic Disease 2019 (Covid-19) and / or in the context of Facing Threats that Endanger the National Economy and / or Financial System Stability". If we pay close



attention, PERPU can be seen as an example of the application of “omnibus law” in Indonesia, even preceding the discussion of various draft laws which the Government intends to be the first “omnibus law” in the history of implementing this idea in practice. However, PEPRU No.1 / 2020 has not fully accommodated those related to the world of labor. Affairs related to manpower are entirely in the hands of the company and it is risky to cause company arbitrariness.

### **Conclusion**

The Minister of Manpower, in his statement related to force majeure which has consequences for workers by terminating employment relations does not support the company's reasons, he urged that companies should make steps that can be taken such as; reducing wages and perks for managers and directors, reducing work shifts, limiting overtime work or temporarily laying off workers. However, some companies that have issued policies to terminate employment continue to argue that they do not have sufficient funds to pay severance pay or workers' wages. This violates the labor regulations which state that a company can close if it has reached a loss for 2 years. Meanwhile, Covid-19 has not reached or entered half a year. The reasons for force majeure used by several companies are not acceptable to some circles.

In terms of wage protection and protection for workers in the workplace, the entrepreneur can postpone the payment of wages (if the entrepreneur is unable to pay the wage according to the minimum wage), by first conducting negotiations with the worker / laborer or trade / labor union regarding the suspension. The postponement of the payment of the minimum wage by the employer to the worker / laborer does not automatically eliminate the obligation of the entrepreneur to pay the difference in the minimum wage during the suspension period. Then, according to the Circular of the DKI Jakarta Provincial Manpower, Transmigration and Energy Office Number 14 / SE / 2020 of 2020 concerning the Appeal to Work at Home (Work From Home), company leaders are expected to take preventive steps related to the risk of transmitting COVID-19 infection by doing chores at home. The need to issue a Government Regulation related to the Protection of Workers in the COVID-19 Pandemic situation so that it is more binding on employers who still employ workers in the midst of the COVID-19 Pandemic situation in order to protect work status so as to avoid Termination of Employment.

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