



LEGAL PROTECTION FOR WORKERS THAT HAVE BEEN TERMINATED DURING THE COVID-19 PANDEMIC

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Abstract

This study aims to determine legal protection for workers who experience layoffs during the covid-19 pandemic. In this study, the type of research used is normative legal research using legal material collection techniques in the form of document studies or literature studies. The approach used in this research is a statutory approach and the sources of legal materials used are primary legal materials, secondary materials, and tertiary legal materials. The results of the study indicate that Termination of Employment has a negative impact on workers because they lose their jobs so that it also has an impact on increasing the poverty level of the Indonesian people. Due to the emergence of PSBB regulations from the government, of course, the space for work is getting narrower and layoffs are increasingly happening, therefore the regulation of Law no. 13 of 2003 concerning Manpower and also the role of the government is very important to overcome the occurrence of layoffs that are not in accordance with the laws and regulations.

Abstrak

Penelitian ini bertujuan untuk mengetahui perlindungan hukum bagi pekerja yang mengalami pemutusan hubungan kerja pada masa pandemic covid-19. Dalam penelitian ini, jenis penelitian yang digunakan adalah penelitian hukum normatif dengan menggunakan teknik pengumpulan bahan hukum berupa studi dokumen atau studi

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kepastakaan. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan perundang-undangan dan sumber bahan hukum yang digunakan adalah bahan hukum primer, bahan sekunder, dan bahan hukum tersier. Hasil penelitian menunjukkan bahwa Pemutusan Hubungan Kerja berdampak buruk bagi para pekerja karena kehilangan pekerjaan sehingga berdampak juga pada meningkatnya tingkat kemiskinan masyarakat Indonesia. Karena munculnya aturan PSBB dari pemerintah tentunya membuat ruang gerak untuk bekerja semakin sempit dan PHK semakin marak terjadi, maka dari itu pengaturan Undang-undang No. 13 Tahun 2003 Tentang Ketenagakerjaan dan juga peran pemerintah sangatlah penting untuk mengatasi terjadinya PHK yang tidak sesuai dengan peraturan Perundang-Undangan.

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PRELIMINARY

National Development is carried out in the framework of developing human beings as a whole and the development of Indonesian society as a whole in order to create a prosperous, just, prosperous, equitable society both materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In implementing national development, the Manpower has a role and a very important position as an actor and a development goal. Manpower development must be regulated in such a way that basic rights and protections for workers and workers/laborers are fulfilled and at the same time can create conducive conditions for the development of the business world (Asyhadie et al., 2019).

Basically a job is obligatory by law to have a cooperative relationship between workers and employers to be able to improve the quality and also the quality of the workers which will later affect the quality of the company and of course can make big profits for the company and the workers themselves. Workers are the driving force of the company which is the backbone that plays an important role in its business flow (Hakim et al., 2003).

Realizing that workers are the weak side in employment relations, it is necessary for government intervention through comprehensive and comprehensive policies aimed at creating fair industrial relations, because the government as the main bearer of the responsibility to realize social justice, general welfare, and as much as possible the magnitude of the people's prosperity (Harahap, 2020). Therefore, to be able to improve the quality of workers, a legal protection for

workers is needed in accordance with the rights and obligations of each party (Hakim et al., 2003).

Indonesia is one of the countries that has been affected by the Covid-19 pandemic. This virus has had a huge impact on various sectors, one of which is the employment sector. The effect is seen in the company's performance, the decline in community productivity, to the operational needs of workers. This situation resulted in many employers experiencing losses and affecting workers (Juaningsih, 2020).

This is in line with the issuance of a policy on Large-Scale Social Restrictions in the context of Accelerating the Handling of Corona Virus Disease 2019 (Covid 19), which is regulated in Government Regulation Number 21 of 2020 which includes the policy of implementing restrictions on community activities. This policy has a very significant impact on workers' rights because of restrictions on workers, forcing many companies to have to lay off their workers or in other words work from home, then workers' salaries are also cut, there is the practice of unpaid leave (laying off their workers but not getting paid). , to termination of employment or abbreviated layoffs (Prajnaparamitha & Ghoni, 2020).

In fact, layoffs that occurred during the Covid-19 pandemic caused many workers to lose their jobs and affected the welfare of workers, especially the normative rights of workers. Therefore, it is necessary to have legal protection to ensure the continuity of workers' lives, workers' rights in order to create justice with the aim of maximizing the welfare of workers, mentally and spiritually as well as the prosperity of every worker.

FORMULATION OF THE PROBLEM

1. What is the legal protection for workers who have been laid off due to the Covid-19 pandemic?

RESEARCH METHODS

In this study, the research method used is normative juridical research. The normative juridical method is where the law is conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm that becomes a benchmark for human behavior that is considered appropriate (Mustari & Rahman, 2012). This method aims to find the truth of the logic of legal science based on its normative side. The approach used is a legal approach. The data used in this study were sourced from secondary data where the data were obtained through library research in the form of primary legal materials, secondary legal materials, and tertiary materials (Nasution, 2016). This study uses a technique of collecting legal materials, namely document study techniques, then the technique of processing legal materials used is deductive and analyzed using a description technique, namely by describing primary legal materials and secondary legal materials (Wiratmaja et al., 2020).

DISCUSSION

Protection for Layoff Workers due to the Covid-19 Pandemic

The relationship between the workforce and the company is that the relationship results in progressive benefits for both parties. Companies benefit from

the presence of workers and workers get the opportunity to work and earn income by providing jobs by the employers. Employers or employers who provide work to workers are considered as determinants of the welfare of individual workers, even though legally the positions of employers and workers are considered equal. However, in reality, many workers socio-economically feel that their position cannot be equated or aligned with the position of the entrepreneur, because the entrepreneur has the power to determine the end of the welfare of each worker (Wijayanti, 2009).

Employment law clearly provides protection and social justice for workers who are the main actors in employment. However, social injustice often occurs against workers, one of which is the occurrence of termination of employment or in other words called layoffs. Layoffs according to Article 1 number 25 of Law Number 13 of 2003 concerning Manpower is the termination of the employment relationship due to a certain matter which results in the termination of the rights and obligations between the worker/ laborer and the entrepreneur (Simanjuntak, 2007).

Basically, layoffs have a huge impact on the financial condition of workers and their families because these workers lose their livelihoods and sources of income. Moreover, the number of job opportunities is now relatively small compared to the number of workers looking for work. In the end, workers who experience layoffs do not get new jobs and this has implications for increasing unemployment and poverty (Mustakim & Syafrida, 2020).

From the entrepreneur's point of view, layoffs are caused by financial problems that require employers to take efficiency measures. This causes an increase in the compensation that must be borne by employers, especially if it is seen from the length of the working period and the workers. Another risk that must be borne is that employers must be willing to let go of experienced workers and recruit new workers who do not necessarily produce better results. As is happening now, the layoffs that occurred were caused by the COVID-19 pandemic (Hatane et al., 2021).

The occurrence of termination of employment for fellow workers will have a bad impact on workers, because workers will lose their jobs and unemployment in Indonesia will certainly increase. This causes an imbalance in life for workers to be able to meet the needs of themselves and their families (Muslim, 2020). An employment relationship is a relationship in which both parties undergo a cooperation, namely between workers and the company in a work agreement and also work arrangements that are known and mutually agreed upon, both the workers and the company both have the same absolute and absolute rights. bound to each other in a work agreement, so that the company has a strong right to assign its workers to be able to work according to the company's criteria and can obtain an advantage for the company itself which will later affect the income of the workers who drive the company's wheels (Kartasaputra et al. al., 1986).

The termination of an employment relationship may occur automatically at a time specified by the parties, both workers and the company. Termination of employment according to Article 1 Paragraph 25 Number 13 of 2003 states that the termination of an employment relationship is due to an urgent matter (force majeure) which causes the termination of the rights and obligations of the worker and the company (Uwiyono et al., 2014).

However, it is also stated in Article 1 Paragraph 23 of Law Number 13 of 2003, thus termination of employment is any type of termination or termination of employment relationship between job recipients and employers or employers due to the occurrence of certain urgent circumstances (Ramlan & Fitri, 2020). It is different with the termination of employment carried out by the company because the time specified in an agreement has ended because it causes problems between workers and the company, it is different from layoffs that occur due to a dispute resulting from an urgent situation (*force majeure*), where this cause will certainly have a significant impact between the two parties, especially the workers themselves who incidentally come from people whose economic position is very weak (Soepomo, 1982).

Protection regarding the fulfillment of the rights of workers affected by layoffs is contained in Article 1 of the Decree of the Minister of Manpower Number: Kep-150/Men/200, namely in the form of rights to severance pay, long service awards and compensation. These three rights are rights that must be given to workers when a layoff occurs. The amount and the calculation formula are regulated in Article 156 Paragraph (2) of Law Number 11 of 2020. The details of the amount of severance pay depend on the period of service, the longer the working period, the greater the severance pay and vice versa. In addition, the amount of severance pay also depends on the reason for the layoff of the worker (Simanjuntak, 2007).

In Article 151 Paragraph (2) of Law Number 11 Year 2020 states that: "If the layoff is unavoidable, the employer must notify the worker of the reason for the layoff, and in Article 151 Paragraph (3) it states: "If the worker refuses the reason, he must there are bipartite negotiations, and if there is no agreement, then layoffs can only be carried out when there is a determination of an industrial relations dispute. So when going to lay off, the company actually doesn't just convey the reasons for the layoff but is obliged to negotiate it with workers, when there is no agreement then the layoff can only be done after a decision from the Industrial Relations Dispute Agency (PHI) (Marbun, 2010).

Provisions regarding layoffs are also further regulated in Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment, which states that companies that lay off due to efficiency cause the company to experience unemployment. losses, then the company is allowed to pay severance pay half of the provisions that have been set. This provision is contained in Article 43 Paragraph (1) letter a of the PP (Prajnaparamitha & Ghoni, 2020).

The protection provided to workers is aimed at fulfilling the basic rights of workers and ensuring harmony, agreement and treatment of workers' basic rights without discrimination. This is in order to realize the welfare of workers and their families by taking into account the development and progress of the business world. Work protection for workers has the aim of ensuring the continuity of the employment relationship system without any pressure from various parties, therefore employers are required to implement the provisions regarding such protection in accordance with laws and regulations, including when doing layoffs (Mustakim & Syafrida, 2020).

In essence, unilateral layoffs are not justified in the provisions of labor laws and regulations, either for compelling reasons or for reasons of efficiency because it is

very detrimental to workers. If layoffs cannot be avoided for reasons that are in accordance with existing provisions, it must be ensured that workers get their rights in the form of severance pay, service pay and compensation with details of the amount in accordance with existing provisions (Ramlan & Fitri, 2020).

CONCLUSION

Based on the above discussion, it can be concluded that the legal arrangement for termination of employment for workers during the COVID-19 pandemic, as it is known, is a force majeure situation where this situation is regulated in Article 156 of Law Number 13 of 2003 which states that a the company can lay off its workers when the company suffers continuous losses and does not make a profit or when the company is about to close, the company is in force majeure which forces it to lay off employees while still fulfilling the company's obligations, namely paying severance pay and final wages. As it is known that the legal arrangement for termination of employment by the company is still the company's obligations that have not been fulfilled, especially in the payment of wages or salaries for workers. Legal protection for workers/laborers who experience layoffs due to compelling reasons in the future is to ensure that the provision of worker/labor rights such as severance pay, award or service payments during the worker/laborer's working period, and the granting of compensation rights for the consequences From the fact that the layoffs were actually carried out by the company in accordance with the existing laws and regulations, in the future there needs to be more specific arrangements regarding the protection of the rights of workers who have been laid off due to the COVID-19 pandemic as a force majeure reason for laying off workers.

BIBLIOGRAPHY

- Asyhadie, H. Z., SH, M., & Rahmawati Kusuma, S. H. (2019). *Hukum ketenagakerjaan dalam teori dan praktik di Indonesia*. Prenada Media.
- Hakim, A., Indonesia, P. H. K., & Penerbit, P. T. (2003). *Citra Aditya Bakti*. Bandung.
- Harahap, A. M. (2020). *Pengantar Hukum Ketenagakerjaan*.
- Hatane, K., Alfons, S. S., & Matitaputty, M. I. (2021). Perlindungan Hukum Terhadap Pekerja Di Masa Pandemi Covid-19. *TATOHI: Jurnal Ilmu Hukum*, 1(3), 265–275.
- Juaningsih, I. N. (2020). Analisis Kebijakan PHK Bagi Para Pekerja Pada Masa Pandemi Covid-19 di Indonesia. *Adalah*, 4(1), 189–196.
- Kartasaputra, G., Kartasaputra, A. G., & Kartasaputra, R. G. (1986). *Hukum perburuhan di Indonesia berlandaskan Pancasila*. Bina Aksara.
- Marbun, R. (2010). *Jangan Mau di-PHK begitu saja*. VisiMedia.
- Muslim, M. (2020). PHK Pada Masa Pandemi Covid-19. *ESENSI: Jurnal Manajemen Bisnis*, 23(3), 357–370.
- Mustakim, M., & Syafrida, S. (2020). Pandemi Covid-19 Sebagai Alasan Force Majeure Dalam Melakukan Pemutusan Hubungan Kerja di Indonesia. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 7(8), 695–706.
- Mustari, M., & Rahman, M. T. (2012). *Pengantar metode penelitian*. Laksbang Pressindo.
- Nasution, B. J. (2016). *Metode Penelitian Ilmu Hukum, cetakan Kedua*. Mandar Maju, Bandung.
- Prajnaparamitha, K., & Ghoni, M. R. (2020). Perlindungan Status Kerja Dan

- Pengupahan Tenaga Kerja Dalam Situasi Pandemi COVID-19 Berdasarkan Perspektif Pembaharuan Hukum. *Administrative Law and Governance Journal*, 3(2), 314–328.
- Ramlan, R., & Fitri, R. R. (2020). Perlindungan Hukum Bagi Tenaga Kerja Dari Tindakan Phk Perusahaan Dimasa Covid-19. *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, 8(2), 58–73.
- Simanjuntak, D. D. H. (2007). PHK dan Pesangon Karyawan, Cet. ke-1. *Yogyakarta: Pustaka Yustisia*.
- Soepomo, I. (1982). Hukum Perburuhan Indonesia bidang hubungan Kerja. *Djambatan Jakarta*.
- Uwiyono, A., Suryandono, W., Hoesin, S. H., & Kiswandari, M. (2014). *Asas-asas hukum perburuhan*. Rajawali Pers.
- Wijayanti, A. (2009). *Hukum ketenagakerjaan pasca reformasi* (Vol. 1). Sinar Grafika.
- Wiratmaja, I. G. N. A., Mangku, D. G. S., & Yuliantini, N. P. R. (2020). Penyelesaian Sengketa Maritime Boundary Delimitation Di Laut Karibia Dan Samudera Pasifik Antara Costa Rica Dan Nicaragua Melalui Mahkamah Internasional. *Jurnal Komunitas Yustisia*, 2(1), 1–10.