Company Policy on Termination of Employment at Pandemic Covid-19 from a Fair and Justice Perspective

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Abstract--Currently the spread of the Covid-19 Virus develops rapidly not only in Indonesia but almost all over the world, before the new normal applied by the government, almost most cities in Indonesia implemented a large-scale social restriction (hereinafter called PSBB) It means that all activities are done at home to slow down and stop the distribution of the Covid-19 Virus including study, worship, and work. Because the government policy has finally made some companies in Indonesia to choose to do a termination of employment (hereinafter called PHK) that resulted in the number of employees who are not able to work. In this case it is necessary the role of labour, government and the company to negotiate in order to provide a solution and legal certainty, because in law No. 13 year 2003 about employment itself is not described in detail related to disease or pandemic outbreak Covid-19 This is included in circumstances that compel "Force Majeur" or Hardship state "boiled sic stantibus". Because the present state is new to normal how the workers, fate affected by termination of employment relationship is on the call back or even vice versa. In this case it is important to note the aspects of the specificity and fairness in the company's policy considering that on the one hand will increase the amount of unemployment in Indonesia, while if the company retains its employees in the crisis, then the company could potentially suffer losses that lead to bankruptcy conditions.

Keywords- Company; Termination of Employment; Covid-19

I. INTRODUCTION

On 11 February 2020, the WHO announced the virus name circulating in December 2019 precisely in Wuhan, Hubei province, called Coronavirus Disease (COVID-19) caused by the virus Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2). The spread of this virus is transmitted from human to human and spread very quickly. So on March 12, 2020, the WHO announced the COVID-19 as a pandemic. As of 29 March 2020, there were 634,835 cases and 33,106 total deaths worldwide. While in Indonesia already set as much as 1,528 cases with positive COVID-19 and 136 cases of death. The first COVID-19 was reported in Indonesia on March 2, 2020, a number of two cases. Data 31 March 2020 showed confirmed cases amounting to 1,528 cases and 136 cases of death. Meanwhile, the COVID-19 mortality rate in Indonesia amounted to 8.9%, which is the highest in southeast Asia. On 6 July 2020, there were 63,749 positive cases and as many as 3,171 cases of death due to COVID-19 in Indonesia.

Of course the COVID-19 has an impact, one of them impacts in the economic field, in Indonesia itself the reception of tax trading sector during this pandemic period has decreased whereas as we know trade has the second largest contribution to tax revenues. Because Indonesia itself relies heavily on raw materials from China mainly plastic raw materials, textile raw materials, electronic parts, computers and furniture. COVID-19 also affects investment, because the community will be more cautious when buying goods and when investing. In addition to the trading sector, the aviation sector experienced a similar thing is the reduction of flight, due to the prohibition from the government. In this case, the tourism sector is not less affected, tourism supporting sectors such as hotels, restaurants and retail entrepreneurs will also be affected by the presence of this COVID-19. The hotel occupancy decreased to 40 percent, and the restaurant also decreased in sales as most of the consumers were tourists. The weakening of tourism also affects the retail industry, the area that has the most impact on the industry is the Riau Islands, Bali, Manado, Bangka Belitung, Medan and Jakarta. The distribution of COVID-19 also has an impact on

micro-small and medium enterprises (MSMES) because the tourists are the main consumers of SMES, which usually tourists buy souvenirs if they are traveling somewhere.

Because of the impact of the COVID-19, made President Joko Widodo on 13 April 2020 issued Presidential Decree No. 12 year 2020 on the determination of the Non natural disaster dissemination of Corona Virus Disease 2019 (COVID-19) as the National Disaster (hereinafter referred to as Presidential Decree 12/2020). After the Presidential decree 12/2020 was issued a significant impact on the field of labor, which is after applied to the presidential decree many companies that implement WFH (Work From Home) so that the number of workers are hosted and also many companies that do termination of employment relations to workers. Because many companies are experiencing bankruptcy. One of the cases of pandemic termination of employment is the case of a working relationship that occurred in Southeast Sulawesi (hereinafter called SulTra), in SulTra itself as many as 1,018 workers from the one in SulTra was formulated, and as many as 42 people became unemployment. Therefore, the issue of this article is the concept of fairness and justice in the contract of agreement and the coherence of the termination of employment on the situation of COVID 19 pandemic to the concept of justice and fairness.

II. PROBLEMS

First The Concept Of Justice And Fairness In Contractual Agreements and Second The Termination Of Employment On The Situation Of COVID 19 Pandemic On Justice And Fairness Perspectives.

III. RESEARCH METHOD

The research method of this article uses both normative and empirical methods. The normative method, is a method by looking at the law of the internal perspective that the object of research is using the legal norm. The method of writing by studying the literature materials such as books and legal journals. In this article the normative method used is the labor law and the Civil Code of law. Empirical research method is a method on the enforcement of normative legal provisions (codification, statute, or contract) in action on any particular legal event that occurs in the scope of the community. The technique of collecting data in empirical legal research there are 3 (three) techniques used, either individually or independently or used together at once. These three techniques are interviews, poll, or questionnaire and observation. The data used in this study includes two types of data, i.e. primary data of the collection method is conducted using observations, interviews, and questionnaires, while for secondary data the collection method is done by reading in libraries or literature, citing having relation to research issues. The data used in this article includes secondary data, i.e. data collection in the study of this library conducted research by studying and collecting data related to the research object. In this article use books relating to termination of employment, as well as journals relating to contractual agreements as well as working relationship agreements.

IV. DISCUSSION

The Concept Of Justice And Fairness In Contractual Agreements

The definition of the Covenant, as stipulated in article 1313 Indonesia Civil Code is an act by which one or more bind itself to one person or more. Agreements made by the parties both orally and in writing need to heed the principles of legal agreements, legal regulations relating to the agreement. Thus the contracts published an Alliance for the one who made it. The alliance itself is a legal relationship between two persons or two parties, based on which one has the right to demand something from the other, and the other party is obliged to fulfill the demands. The legal relationship between the Alliance and the Agreement is that the Treaty publishes the Alliance. The agreement is a source of alliance. Legal relationship is a relationship that causes the law. The consequences of the law are due to the emergence of rights and obligations, where the right is burden. The existence of a covenant shall not be separated from the

conditions fulfilled in the validity of an agreement as set forth in section 1320 Indonesia Civil Code. In addition to the terms of the validity of an agreement as mentioned in article 1320 Indonesia Civil Code, in the implementation of the Agreement must also observe and apply the principles in the contract law.

On the contract law is known principles of the contract law, namely: the principle of conjugalism, principles of contractual freedom, the principle of binding power of the contract (Pacta Sun Servanda), the principle of good faith, the principle of belief, the principle of legal equality, the principle of balance, the principle of legal certainty, the Moral principle, the principle of equanimity, the principle of balance and principle of protection. As such, the entire principle above is important and must be noted for covenant makers so that the final goal of an agreement can be achieved and carried out as desired by the parties. In the discussion this time will focus on the principle of obedience and the principle of fairness. The principle of the self-determination is governed by article 1339 Indonesia Civil Code which states that the contract is not only binding to the things expressly stated therein, but also for everything that is according to the dissolution, habit or statute. Etymologically, the fairness is interpreted as appropriateness, worthiness, appropriateness, suitability, everything we do should conform to the boundaries prevailing in society. The principle of fairness here relates to the provisions on the contents of the agreement. The self-determination is one of the principles contained in the law of the contract. The principle of the vow is binding not only because the law shows it, but because it determines the content of the promise binding. This principle is a measure of the relationship specified also by the sense of community fairness. The terms of the determination are actually rooted in the nature of the law regulations in general, namely the effort to make a balance of various interests that exist in the community. Meanwhile, according to Mariam Darus, the propriety is "that should be felt as polite, proper and just. So the fairness and persistence formula includes all that can be captured both with intellect and feeling". In the legal ordinance, it is not permissible for a person to be fully fulfilled, which can cause the interests of others to be urged or ignored, resulting in an imbalance. Presumably, it is not impossible for the Government to act on the basis of the subconscious, for example, in providing relief to the victim of a natural disaster, a person is not impossible to order assistance to the victim without needing to go through the standard procedures according to the Regent's instructions; It is done because of its purpose to give to the person what it belongs to though by giving the order it is administratively procedural he violates the rule of law that has been established. In such cases, the forward is a value of non-procedural compliance.

As for the fundamental role of justice, Herlien Boediono argues that the concepts of consensualism, binding power, freedom of contract, and balance are full of normative expectations regarding the ideal development of a social role, in accordance with the social rules adopted by the traditions, norms and history of the society concerned. Thus to assess whether a treaty has been balanced, it is not only assessed by positive law but it should also be seen whether the agreement is fair to society or not. Unfulfilled balance elements affect the force of law in a contract. The balance will be achieved while the parties agree to jointly bind themselves without any pressure from any party. The Parties are in equal position and have the same rights and obligations. When it is equal, the parties can perform the activities better, so that the welfare of the people can be achieved. The form of justice itself consists of two, the first of which is, distributive justice, referring to the similarity of human beings based on the principle of proportionality. Gustav Radbruch suggested that the distributive justice of the relationship was superordinatory and subordinated meaning between those who had authority to divide and who had the portion according to the right. To implement this justice it is necessary that the party divides the superordination of more than one person or group of people as the person who receives the same part has a position that is subordinated to the dividing. According to John Rawls himself, Justice has two objectives, namely: First, this theory would articulate a series of common principles of underlying justice and explain the various moral decisions that are seriously considered in specific circumstances within the community. What he meant by "moral decisions" is a series of moral evaluations that have been made and if it causes social action in the community. A moral decision

that is really considered refers to the moral evaluation that is made reflecsively.

Secondly, Rawls is willing to develop a more superior theory of social justice over the theory of utilitarianism. Rawls forces it to "average" (averages utilitarianism). The intention is that the social institution is said to be fair if it is devoted to maximising profits and usability. Moderate Utilitarism contains the view that the social institution is said to be fair if it is only assumed to be in order to similate the average per capita profit. For both versions of utilitarianism the "profit" is defined as satisfaction or profit occurring through options. Rawls is superior to both versions of the utilitarianism. The principles of justice he explained are superior in explaining ethical moral decisions on social justice.

Rawls, also argues that justice has two principles, below is a solution to the main problem of justice: Firstly, it is the same principle of freedom (principle of greatest equal liberty). These principles include:

1. Freedom to participate in political life (voice rights, right to run in elections).
2. Freedom of speech (including freedom of the press).
3. Freedom of belief (including religious beliefs).
4. Freedom to be yourself (person).
5. The right to retain private property.

Secondly, the principle consists of two parts, the difference principle and the principle of fair equality on the occasion (the Electroskycorp of fair equality of opprtunity). The core of the first principle is that social and economical differences should be regulated in order to provide the greatest benefit to those who are most disadvantaged. The term socio-economic differences in the principle of difference to the inequality in the prospect of a person to acquire the fundamental element of welfare, income and authority. Being the most disadvantaged terms (at least benefited) point to those who have at least had the opportunity to reach the prospects of welfare, income and authority. To implement this justice it is necessary that the party divides the superordination of more than one person or group of people as the person who receives the same part has a position that is subordinated to the dividing, while for what is the benchmark in this principle is the services, achievements, needs, and functions.

The Termination Of Employment On The Situation Of COVID 19 Pandemic On Justice And Fairness Perspectives.

The employment agreement is the beginning of the establishment of a working relationship. The relationship between employers and workers will occur after a work agreement. In article 1, number 14 of the law No. 13 of 2003 concerning employment It is explained that the employment agreement is an agreement between a worker and an employer with a job that contains the terms of employment, the rights and obligations of the parties. The employment agreement is not requested by a certain form, can be done orally with a letter of appointment by an entrepreneur or in writing, a work agreement that must be held in writing, only contains:

1. Types of work;
2. Duration of the agreement applies;
3. Amount of monthly wage;
4. Duration of rest time.

This employment agreement terminates if there is a termination of employment (hereinafter referred to as PHK). In undergoing PHK, the parties are entrepreneurs and workers/laborers must thoroughly know the things related to PHK, especially for workers/workers, so that they can get what they are right after the PHK. In article 1 number 25 of Law No. 13 of 2003 concerning Employment (hereinafter referred to as Law 13/2003) mentioning PHK is termination of employment due to a certain matter resulting in the expiration of rights and obligations between workers and entrepreneurs. In article 61 Act 13/2003 mentions that the working relationship expires for the sake of the law if the time expires stipulated in the agreement and in the law rules or if all of it does not exist, according to the customs. The end of working relationship for workers means loss of livelihood which means also the beginning of unemployment with all consequences, so as to ensure the certainty and tranquility of labor life should be no termination of employment. But in reality it proves that the PHK cannot be prevented entirely. Pemutusan hubungan kerja dibagi menjadi 4 (empat) kelompok, yaitu :

1. Termination of employment by law, occurs without the need for an action, occurs by itself for example due to expiration or due to the death of the worker;
2. Termination of employment by the workers, occurs because of the wishes of the workers with certain reasons and procedures;
3. Termination of employment by the entrepreneur, occurred due to the wishes of the entrepreneurs with the reason, specific requirements and procedures;
4. Termination of employment by court ruling, occurring for certain urgent and important reasons, such as the transition of ownership, asset transfer or bankruptcy.

Due to the impact of the PHK, the mechanism of arbitral PHK should be arranged so that workers are entitled to appropriate protection and obtain their rights in accordance with the prevailing laws and regulations. Protection of such workers in Dutch is called *arbeidsbescherming*. The intention and also the purpose of the protection of these workers is that workers can be protected from the injustices of entrepreneurs. In this case the government also strongly put, with the enactment of Law No. 13 year 2003 about Labor. It can be noted that in the workforce it has often occurred PHK even before the pandemic period. In this period of pandemic, the PHK occur. However, there are differences that at the time before the PHK conducted by entrepreneurs usually because workers make mistakes, different during this time of pandemic, PHK carried out without the fault of workers. Coupled with the issuance of Presidential Decree No. 12 year 2020 on the determination of the non-natural disaster dissemination of Corona Virus Disease 2019 (COVID-19) as the National Disaster (hereinafter referred to as Presidential Decree 12/2020). Due to the regulation of this decree, the Company shall make termination of employment, on the condition of having to pay the severance money, the money of the employment, and the reimbursement of rights that should be accepted, on the condition of having to pay the severance money, the money, and the reimbursement of rights that should be received. In termination of this work relationship article that can be used is article 164 paragraph (3) of employment Law for efficiency reasons.

As already mentioned earlier can be taken example cases of PHK occurring in SulTra. We can relate to the principle of obedience and the principle of justice found in the Covenant contract. Surely at this time the pandemic made the unrest for the company as well as the workers, on the other side of the worker was very dependent on his work to fulfill the needs of his life, and PHK were terrible. However, on the other side of the company at the time of the pandemic decreases in earnings, which of course also affects the income of workers, in which case the company cannot pay the wages of its employees.

The purpose of the creation of labor law, especially the manufacture of law 13/2003 which is the parent of other Labor Act is to realize a prosperous society, equitable, prosperous, and equitable both materically and spiritually based on the Pancasila and the Constitution of the Republic of Indonesia year 1945. That, the realization of a prosperous, fair, and prosperous society as intended in the purpose of Law 113/2003 is to realize the welfare and fairness for the parties involved in the working relationship. It is seen in article 1 number 15 Law 13/2003, namely employer and employee.

While in Article 151 Law 13/2003 explains, that:

1. Employers, employees/workers, trade unions/unions, and governments, with all efforts to undertake to avoid termination of employment.
2. In the event that all efforts have been made, but termination of employment is inevitable, then the intention of termination of employment shall be negotiated by employers and trade unions/unions or with workers/workers if the worker/workers in question are not a member of trade unions/unions.
3. In the case of approval negotiations, the employer may only terminate the working relationship with the worker/Labour after obtaining the determination of the industrial relations dispute resolution institution.

When associated with the theory of justice of John Rawls as in his book A Theory of Justice states that in order to achieve equality, there needs to be the fulfillment of basic rights, basic rights to employers such as:

1. The absence of a clear contract according to the working system between workers and employers and workers with workers with the company's service providers;
2. There is no clear status as to whether workers employed in employer companies can be permanent employees or not;
3. Not clearly mentioned about the deductions of wages that must be received by workers working on employers;
4. There are no regulations governing the severance if workers working on employer companies are at any time dismissed.

Justice can be interpreted as legality. It is fair if a rule is applied to all cases where according to its content is indeed the rule to be applied. It is unfair if a rule is applied to one case but not in other similar cases. According to legality, a fair statement that individual actions are fair or unfair means legal or illegal, i.e. such actions are appropriate or not with a valid legal norm to assess as part of a positive legal ordinance. Justice according to Hans Kelsen is legality, so the benchmark of fair law is valid according to the law. Meanwhile, termination of employment at the time of pandemic, is done without fault of its own workers or can be called by PHK that are carried out at any time, but due to the decree 12/2020 itself then PHK at the time of the pandemic are allowed, provided that the company shall pay money Severance 2 (two) times the provisions of article 156 paragraph (2), as stipulated in article 164 Law 13/2003.

> "(1) the employer may conduct termination of employment of workers/Labour because the company closed caused by the company suffered a loss continuously for 2 (two) years, or the state of force majeure, With the provisions of workers/workers entitled to Severance money of 1 (one) time the provisions of article 156 paragraph (2) of the change of rights in accordance with the provisions of article 156 paragraph (4).
>
> (2) The company's loss as referred to in paragraph (1) must be substantiated with the last 2 (two) year financial report audited by a public accountant.
>
> (3) Employers may conduct termination of employment of workers/laborers because the company closed not due to loss of 2 (two) years in a row or not because of force majeure, but the company does the efficiency, with paragraph (2), the prize money of the employment of 1 (one) time the provisions of article 156 paragraph (3) And the change of rights in accordance with article 156 paragraph (4).

For the PHK due to the pandemic can be classified the reason the company performs efficiency. Because, during the pandemic, the company's income also decreased, which will also affect the wages of workers. In accordance with the basic right to the theory of justice of John Rawls, the PHK have fulfilled these fundamental rights, which is where the severance arrangement for workers in the PHK due to the company doing the efficiency is set out in article 164 paragraph (3) Law 13/2003. Based on Hans Kelsen's theory of justice is also fulfilled, which PHK due to pandemic are allowed in the presidential decree 12/2020..

V. CONCLUSION

The principle of fairness and justice in is a condition where it is devoted to maximize profit by means of each party doing its rights and obligations. And how to implement the justice by dividing the parties into two, which parties have the superordination nature of a group that as the parties accept the position of the Subordani. As for the basis of the Submiser itself is governed by article 1339 Indonesia Civil Code which states that the Treaty is not only binding to the things that are expressly stated therein, but also for everything that is according to the fairness, custom or statute.

In the termination of the working relationship because of the COVID-19 pandemic, it

is said to fulfill the principle of justice. Because in the PHK due to the pandemic itself is allowed with the issuance of decree 12/2020 on the condition that the company must pay Severance 2 (two) times, this has been a fundamental right in the theory of justice. Meanwhile, the company meets the principle of compliance if in its own agreement already lists the rights of workers when it does PHK because the company performs efficiencies, the principle of self-compliance is not only regulated in the law but can be arranged in the employment agreement. Therefore, if the company actually does the termination of the work relationship as the company performs efficiency, it is better to give information to the previous worker, and show data related to its income. It is of course avoiding unwanted things in the later days, and of course the company must provide clarity to the employees who have been in the PHK how many severance will be received, and when the severance is given.

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