

# Legal Consequences of Termination of Employment in Hospitality Tourism Sector Due to Force Majeure Amid the Covid-19 Pandemic

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## ABSTRACT

The condition of tourism businesses in the hotel sector in Bali is now experiencing a significant decline since the emergence of Covid-19, which hit the whole world and impacted the absorption of workers, which decreased drastically. Many workers have experienced termination of employment due to economic congestion, especially in the hospitality tourism sector. Issues becoming problems comprise: what are the legal consequences of the termination of employment in the hospitality tourism sector in the force majeure of covid-19, and what efforts can be made by workers who experience the termination of employment to ensure their economic survival? The type of research used in this study is normative legal research with a statutory study approach. Primary legal materials are used and were collected from applicable laws and regulations, such as Law Number 11 of 2020 concerning Omnibus Law and Government Regulation Number 35 of 2021. Secondary legal materials are also used and were collected from literature, such as from relevant journals. Legal materials were analysed qualitatively through legal argumentation, and the results were presented descriptively. This study concludes that the legal consequences of termination of employment due to force majeure amid the Covid-19 pandemic are that workers are entitled to severance pay, award money, and compensation according to Article 45 of Government Regulation Number 35 2021. Efforts made by workers who have experienced termination of employment to ensure their economic survival include seeking new jobs, such as selling food, drinks, and clothes. Some are even becoming construction workers to support themselves and their families.

**Keywords:** Covid-19, Force majeure, Legal consequence, Termination of employment.

## 1. INTRODUCTION

The tourism sector in Indonesia generates enormous foreign exchange for the Indonesian state, supported by geographical conditions, culture, customs, and adequate facilities and infrastructure. Indonesia has become a tourism destination, and one of the most visited areas is the Island of Bali which is famous for its traditional culture and thick with customs. Tourism has become a leading sector in the Indonesian economy. This is because tourism is the key to development and prosperity. The tourism industry can provide a multiplayer effect for the stakeholders involved, increasing income and absorbing labor. Hence, it has an impact on increasing poverty reduction in the community. In addition, tourism has provided tangible benefits in various fields, not only in the economic sector but also in the social and cultural sectors [1]. The development of the tourism business can absorb labor to reduce unemployment.

However, since the emergence of the Covid-19 pandemic that hit the world, including Indonesia, which

began on March 2, 2020, the President of Indonesia, Joko Widodo, has announced that there are Indonesian citizens who have been confirmed positive for Coronavirus Disease 2019 (Covid-19) in Indonesia [2]. The Covid-19 pandemic has an impact on the health sector and has an impact on the social and economic sectors in Indonesia and even the world. The state of the economy is growing weaker and is even experiencing congestion due to the implementation of restrictions on community activities which also had an impact on the space for movement in the business field. Due to the emergence of the spread of the Covid-19 in Indonesia, the Indonesian government issued a policy on March 31, 2020, in the form of Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) for an acceleration of the handling of the Covid-19 [3]. Tourism will never exist if no people travel out of their neighborhoods to visit other places [4].

Considering such conditions, the Covid-19 pandemic has had a broad impact on the economy and society. Hence, the economy slumped, and many employees experienced layoffs because companies engaging in the

hospitality tourism sector reduced their employees. What will happen to workers experiencing the termination of employment during the pandemic? The condition motivated the conduction of the present research entitled “Legal Consequences of Termination of Employment in Hospitality Tourism Sector due to Force Majeure amid the Covid-19 Pandemic”. The following is the Formulation of the Problem

- 1) What are the legal consequences of termination of employment in the hospitality tourism sector due to force majeure amid the Covid-19 Pandemic?
- 2) What measures can be taken by workers who have been terminated to ensure their economic survival?

## **2. METHODS**

The research belongs to normative legal research, which was conducted out using a statutory approach. There are three types of legal materials used: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials were collected from applicable laws and regulations, and secondary legal materials were taken from literature collected from journals related to this study’s object. Tertiary legal materials are collected from the English Dictionary, Legal Dictionary, and the Internet. These legal materials were collected through note-taking. Data were analyzed deductively- inductively with evaluative, argumentative, and descriptive techniques [5]. The data collection of this research was also carried out through interviews with several respondents, who were hotel employees and had experienced layoffs

## **3. RESULT AND DISCUSSION**

### ***3.1 Legal Consequences of Termination of Employment in Hospitality Tourism Sector in the Force Majeure of Covid-19***

The working relationship between an employer and an employee/labor does not always run smoothly. Sometimes, a dispute occurs between the employer and the employee/labor, resulting in employment termination. As an example, there is a case where several employees who are members of the Bali Regional Federation of Independent Trade Unions (FSPM) came to the House of Representatives of Bali Province (DPRD) to ask for protection. This happened because many employees in the tourism sector experienced layoffs amid the Covid-19 pandemic (Tuesday, 27/10/2020). The reason for the termination of employment is that the hotel management has terminated their employment relationship. The hotel management intended to do so because the pandemic conditions forced them to terminate their employment for hotel employees due to the unstable financial condition of the Company, and they compensated employees who were laid-off in the form of severance pay. On the other hand, the Governor of Bali

Province had issued a Circular in order that companies, including hotels, do not terminate the employment of employees [6].

In a statement by the Head of the Bali Province Manpower and Energy and Mineral Resources Office, Ida Bagus Ngurah Arda, (Tuesday 12/4/20), the number of formal employees who have been laid off and have experienced termination of employment since the emergence of the Covid-19 Pandemic on the island of Bali continued to grow. These employees include most of those who worked in hotels, restaurants, and other places. According to Arda, there were 65,594 laid-off formal workers and 2,189 workers who had been laid off; the figure is temporary. The Manpower Office claimed that the government (Ministry of Manpower) had appealed and made every effort to prevent companies from terminating workers [7]. Then, in September 2021, the Governor of Bali Province I Wayan Koster said the Covid-19 pandemic had dealt a moderately severe blow to the province of Bali. He revealed that around 75,000 more employees had been laid off and experienced termination of employment due to the impact of the tourism sector by the pandemic. The number is sure to continue to grow if the Covid-19 pandemic continues. More than 73,000 employees have been laid off; Meanwhile, more than 2,500 employees have experienced layoffs, said Koster at the event titled “Naker Tanggap Covid-19” in Nusa Dua Bali, Saturday, September 13/2020 [8].

Termination of employment may not be done unilaterally and arbitrarily. Termination of employment due to force majeure is regulated in Article 36 letter of Law Number 11 of 2020 concerning Omnibus Law (employment cluster) [9]. The legal basis for a company so that it may carry out Termination of Employment is Article 154 A of Law No. 11 of 2020 concerning Omnibus Law (Employment Cluster) which stipulates that Termination of Employment may take place for several reasons, such as the Company merges, merging, taking over, separating the Company. An employee/labor is unwilling to continue the employment contract, or the employer is unwilling to accept the employee/labor. A company may perform efficiently caused by situations that cause the Company to suffer losses. A may company close as a result of it experiencing continuous losses for two years. The Company may close due to a Force Majeure. The Company may be in a state of suspension of debt service obligations or bankruptcy.

Termination of employment may also occur due to a request for termination of employment submitted by the employee/labor because the employer has committed acts such as: molesting, insulting, or threatening the employee/labor, persuading workers to commit acts that violate the law, not paying wages on time, and not working outside the contract. It may also occur because of the decision of the industrial relations dispute settlement institution. Other things that may cause termination of employment are employee/labor resigning of their own accord, being absent for five working days without written information, committing a violation,

being unable to work for six months due to being detained by the authorities, prolonged illness, entering retirement age, and the employee/labor died. The first procedure that needs to be taken by both parties is a bipartite settlement, that is to say, conducting deliberation to reach a consensus. If it cannot be resolved bipartitely, the parties involved may request assistance from the local Manpower Office so that mediation, conciliation, or arbitration will be carried out. However, if the process cannot resolve the termination of employment dispute, the issue may be resolved through the industrial relations court.

The amount of severance pay received by employees of victims of termination of employment has been regulated in Government Regulation No. 35 of 2021 concerning Fixed-term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment which was promulgated on February 2, 2021, in Jakarta. In this regulation, the rights of employees related to termination have been described. Matters regarding workers' rights due to termination of employment are regulated in Article 40 of the Government Regulation No. 35 of 2021, as elaborated below:

- 1) In the event of Termination of Employment, the employer is obliged to pay severance pay and/or service award money, compensation for entitlements that should have been received.
- 2) Severance pay as referred to in paragraph (1) is provided with the following conditions:
  - a. less than 1 of service, one month of wages;
  - b. one year of service or more but less than two years, Two months wages;
  - c. two years of service or more but less than three years, Three months wages;
  - d. three years of service or more but less than four years, Four months of wages;
  - e. four years of service or more but less than five years, Five months wages
  - f. five years of service or more but less than six years, Six months of wages;
  - g. six years of service or more but less than seven years, Seven months wages;
  - h. seven years of service or more but less than eight years, eight months of wages;
  - i. eight years of service or more, nine months of wages;
- 3) The period of service award as referred to in paragraph (1) is as follows:
  - a. three years of service or more, but less than six years, two months of wages;
  - b. six years of service or more, but less than nine years, Three months of wages;
  - c. nine years of service or more, but less than twelve years, four months wages;
  - d. 12 years of service or more, but less than 15 years, five months of wages;
  - e. 15 years of service or more, but less than 18 years, six months of wages;

- f. 18 years of service or more, but less than 21 years, seven months of wages;
  - g. 21 years of service or more, but less than 24 years, eight months of wages; and
  - h. 24 years of service or more, ten months wages.
- 4) The compensation money received as referred to in paragraph (1) includes:
    - a. annual leave that has not been taken and has not fallen;
    - b. the fee or cost of returning the worker/labor and their family to the place where the worker/Labor was accepted to work;
    - c. other matters stipulated in the Employment Agreement, Company Regulations, or Collective Labor Agreement.

Nevertheless, in the event of force majeure such as the Covid-19 pandemic, the rights of the workers affected by the termination of employment are in accordance with Article 45 of the Government, No. 35 of 2021. The provisions are as follows:

- 1) Employers may terminate the Worker/Labor relationship due to the reason that the Company is closed due to force majeure, then the Worker/Labor shall be entitled to:
  - a. severance pay of 0.5 times from the provisions of Article 40 paragraph (2);
  - b. service award of 1 time from the provisions of Article 40 paragraph (3); and
  - c. compensation for rights by the provisions of Article 40 paragraph (4).
- 2) Employers may terminate the Worker/Labor for reasons of force majeure which do not result in the Company to close; and therefore, the Worker/Labor shall be entitled to:
  - a. severance pay of 0.75 times from the provisions of Article 40 paragraph (2);
  - b. payment for a service period of 1 time from the provisions of Article 40 paragraph (3); and
  - c. compensation for rights by Article 40 paragraph (4).

Established on the provisions of Government Regulation No. 35 of 2021 mentioned above, the conditions regarding the rights of a worker/labor affected by the termination of employment due to force majeure are classified into: if the termination of employment occurs due to force majeure resulting in the Company closing, the legal consequences for the rights received by the worker affected by the termination of employment is in the form of severance pay of 0.5 (zero point five) or half of the provisions of Article 40 paragraph (2). The reward for the service period is only one time from the provisions of Article 40 paragraph (3), but the compensation for entitlements is the same as the provisions of Article 40 paragraph (4). Suppose the termination of employment occurs due to force majeure but does not result in the Company closing. In that case, the rights received by the worker/labor affected by the

termination of employment are in the form of severance pay of 0.75 times of the provisions of Article 40 paragraph (2), the reward for years of service is one time from the provisions of Article 40 paragraph (2), and compensation for rights by the provisions of Article 40 paragraph (4).

Workers with a Fixed-term Work Agreement (or so-called *PKWT*) only get compensation money as stipulated in Article 15 of Government Regulation Number 35 of 2021 and does not apply to foreign workers. Regarding the amount of compensation paid to employees of a Fixed-term Work Agreement according to Article 16, it is as follows: compensation to workers with a Fixed-term Work Agreement who has served for 12 months continuously shall be given at the rate of 1 month's wages; Compensation money for workers with a Fixed-term Work Agreement who has worked for one month or more but less than 12 months is calculated proportionally with the following pattern: work period divided by 12 times one-month wages (The calculation of the wages referred to in this case is the primary wage and fixed allowances (if any).

Regarding Job Loss Insurance, it is regulated in Article 46 A to E of Law Number 11 of 2020 concerning Omnibus Law (Employment Cluster), which specifies that workers who have been terminated shall be entitled to receive job loss insurance. Job loss insurance benefits are cash, access to job market information, and job training. After having a membership period, a maximum of 6 (six) months of wages shall be insured (Article 46D). In Article 1 point 1 of Government Regulation Number 37 of 2021 concerning the Implementation of the Job Loss Insurance Program, it is stated that the Job Loss Guarantee, abbreviated as *JKP*, refers to social security provided to Workers/Labors who experience termination of employment in the form of cash benefits, access to labor market information, and Job Training. *JKP* participants shall be workers/labors whom employers have included in the social security program (Article 4 of Government Regulation 37/2021). Cash disbursement is organized by the Social Security Administering Body (*BPJS*) for Employment (Article 24 of Government Regulation 37/21). Benefits of access to information and job training shall be organized by the Ministry of Manpower (Articles 29 and 34).

### ***3.2 Efforts the Workers Affected by Termination of Employment Could Take to Ensure Their Economic Survival***

The Covid-19 pandemic having hit the whole world has brought about a very significant impact on social and economic aspects. The economy has become exceptionally down, especially in the tourism sector. With the implementation of large-scale social restrictions (*PSPB*), the movement of the economy is automatically restricted, including hospitality tourism, which is the sector most affected by Covid-19, especially in Bali. Most of the business world in the tourism sector has been closed, resulting in many workers being laid off and even

being terminated due to force majeure. The termination, as a result, cause workers to lose their livelihoods.

From the results of interviews conducted with several respondents (employees affected by the termination of employment), it was found that there were various efforts made by workers affected by the termination of employment to ensure their economic survival, including seeking other jobs, which made them who initially were as a hotel employee become a construction worker, trader, motorcycle/taxi driver, shop assistant, parking attendant, and others. Some work as construction workers, some sell goods online, and some sell necessities, food, and drinks. In addition, some also sell clothes, children's toys, masks, hand sanitizers, and so on. Some sell their wares by using a car to do outdoor selling on the side of the road to earn a fortune; they dare to do so as long as they can earn money to support their lives with their families, including to pay their children's school fees.

## **4. CONCLUSION**

Legal consequences of termination of employment in the hospitality tourism sector due to Force Majeure amid the Covid-19, based on Government Regulation No. 35 of 2021, includes. Suppose the termination of employment is done due to force majeure, which causes the Company to close. In that case, the legal consequence is the Company shall fulfill the rights of workers affected by the termination in the form of severance pay of 0.5 from the provisions of Article 40 paragraph (2); the period of service award shall be given only one time of the provisions of Article 40 paragraph (3), but the amount of compensation shall be the same as the provisions of Article 40 paragraph (4). Meanwhile, suppose the force majeure does not cause the Company to close. In that case, the rights that shall be obtained by the workers/labors who are subject to the termination of employment are in the form of severance pay of 0.75 times of the provisions of Article 40 paragraph (2), a period of service award of 1 (one) time from the provisions of Article 40 paragraph (2). The compensation for rights is under the provisions of Article 40 paragraph (4). Then, effort made by workers affected by the termination of employment to ensure their economic survival is seeking other jobs. Originally hotel employees have now become construction workers, traders, motorcycle/taxi drivers, and others. They are willing to do all the jobs as long as they can make money to support themselves, their families, and their children's needs and school fees.

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