

# Legal Protection for Terminated Foreign Workers Due to the Impacts of Covid-19 Pandemic in Bali

Ryan Soma

*University of Warmadewa*

*Corresponding author. Email: ryansoma@gmail.com*

## ABSTRACT

Covid-19 pandemic has emerged as a miracle that has had an incredibly enormous impact. It has made economies all through the planet cripple and unfavorably influenced business. As a champion among other traveler areas globally, Bali has become a social event place for explorers from around the globe. Hence, Bali has become a district having the movement business, the most significant wellspring of state pay in Indonesia. All countries have confined neighborhoods and made travel blacklists to prevent the spread of Covid-19. This raises certifiable consequences that ought to be looked at by various associations in Bali, especially in the movement business supporting business region; associations massed reductions considering the way that their compensation had dropped profoundly and shockingly a considerable part of them shut due to inoperability. This assessment was aimed at the Advanced Relations of Denpasar Court chipping away at this issue with No. 3/Pdt.Sus-PHI/2021/Pn.Dps, dated January 4, 2021, was introduced by three new experts regarding the non-permitting of workers' advantages. This assessment hopes to reveal the absolute protection for new workers who are reliant upon the end of work due to the impact of the Covid-19 pandemic, seen from the perspective of the Indonesian Work Act. It was driven using genuine trial assessment, specifically by looking at the object of study and zeroing in on the usage of discretionary data. The results show that absolute protection for new workers whose business was finished has been recognized according to the courses of action of the law, and the advantages of workers have been yielded according to material game plans.

**Keywords:** *Covid-19 pandemic, Foreign Worker, Termination of Employment Contract.*

## 1. INTRODUCTION

Every country in the worldwide, including Indonesia, is lamenting the impact of the 2019 coronavirus epidemic, commonly known as covid-19, which has destroyed economies throughout the world. Covid-19 has been labelled a worldwide pandemic by the World Health Organization (WHO). Temporary data from the WHO's official website on July 16, 2021, showed that 491,468 people had the latest disease cases, 188,655,968 confirmed cases, and 4,067,517 death [1]. automatically, the covid-19 reforms the order of human life, especially in the social, political, health, and economic aspects, and it poses a serious threat to countries in the world due to the fast nature of its spread.

The global spread of covid-19 has had a negative impact on the Indonesian economy. Almost all sectors of the national economy have experienced a slowdown, and even fears have emerged that the pandemic will cause an economic crisis that could result in mass layoffs.

The Indonesian government has established Government Regulation No. 21 of 2020 regulating large-scale social limitations as a preventative step against the spread of covid-19 (PSBB), and as a result, business sector processes such as those of tourism, hotels, airlines, and other sectors have resulted in very significant losses [2]. Termination of employment is the primary step for employers to reduce the company's operational costs and avoid continuous losses in the hope that the company can return to stable operations. The government's policy effort in establishing a "new normal" program has been made so that people can work as before by implementing health protocols [3]. However, the "new normal" policy has not been able to prevent mass layoffs in Indonesia. As a result of the impact of the covid-19 epidemic, an increasing number of workers are being fired without cause, there is a need for legal protection, justice, and legal certainty for workers.

It is undeniable that Bali is a dream destination for many people from around the globe, whether as a tourist destination, business, retirement, or others. Some of these facts cause many foreign nationals to live in Bali

compared to other areas in Indonesia so that the tourism business is dominated by Bali tourism. Industrial relations disputes that occur in Indonesia generally involve termination of employment for local workers. as a legal phenomenon, the impact of the covid-19 pandemic has resulted in the implementation of termination of employment for foreign workers, and that is in accordance with the issue being bought up in this study, that is, an employment contract dispute which is then resolved through the industrial relations court. This case stems from the dismissal of three foreign workers – citizens of the United States, Australia, and Spain – from a restaurant and bar company in Bali which experienced a drastic decline in income and caused losses due to the covid-19 pandemic. The company requested the foreign worker to resign by providing compensation as agreed by the parties, because the company’s cash flow was unable to pay the compensation, the foreign workers felt they were being mistreated. Then they demanded their rights by reporting to the manpower office of Badung Regency, then forwarded to the industrial relations court at the Denpasar district court. It is a fascinating phenomenon to be studied further, so this paper is made by raising a legal issue with the title “legal protection for terminated foreign workers due to the impacts of the Covid-19 pandemic in Bali.”

This current study examines the legal protection for foreign workers who are subject to termination of employment due to the impact of the covid-19 pandemic in Bali.

## 2. METHOD

This research was conducted by using an empirical legal research method. With this method, this study was conducted to examine the rules of law in terms of their application as an empirical social force. This empirical legal research was carried out to observe comprehensively how foreign workers who were subject to termination of employment due to the Covid-19 pandemic in Bali are legally protected, whether the foreign workers receive the same legal protection as local workers in Indonesia or not. The research data are secondary data collected through documentation studies of various regulations, industrial relations court decisions, academic journal articles, and official websites.

Furthermore, the legal materials collected for this research are described and linked in such a way and presented in a more systematic order to provide answers to the issues that have been formulated in the research problem [4].

Prescriptive-analytical analysis of legal materials is carried out, that is, using deductive-inductive reasoning to generate legal figures as responses to issues or other research results to provide prescriptions of what should be the substance of legal research [5]. The outcomes of the analysis, which are based on legal logic, legal

arguments, and legal principles, are then utilized to develop conclusions as solutions to issues that must be solved and as medium for legal reasoning.

## 3. RESULT AND DISCUSSION

### *3.1 Legal Protection for Foreign Workers Subject to Termination Due to the Impact of the Covid-19 Pandemic in Bali*

In the current era of globalization, labour movement from one country to another is indirectly used and encouraged. It is impossible to avoid the presence of foreign employees in Indonesia. In fact, the usage of foreign employees in Indonesia is driven by a demand for two things: those (foreign workers) who contribute cash (as investors) and those (foreign workers) who offer distinctive talents in terms of knowledge [6]. Apart from these two things, in essence, the use of foreign workers is not allowed. Every company must prioritize the use of local workers from Indonesia (Indonesian workers) [6].

Indonesia has collaborated with all commercial partners globally, both established and emerging, based on a free and active foreign policy. Foreign workers' presence in Indonesia is a means of influencing the investment climate. Their existence is a result of the demand for skilled specialists and technology that can support a work process, causing private enterprises, both international and domestic, to hire foreign people as employees. The goal of hiring foreign employees is to fill skilled and professional positions that are currently unfilled by Indonesian workers. By increasing the transfer of research and technology, the national development process is naturally accelerated. The government must maintain a balance between native and foreign employees to avoid legal issues and excessive usage of foreign labour.

Joko Widodo, Indonesia’s president, issued Presidential Regulation No. 20 of 2018 Concerning the Use of Foreign Workers on March 26, 2018, which is anticipated to boost the country's economy and create job prospects through higher investment. According to the Presidential Regulation, any employer who employs foreign workers must have a Plan of Foreign Workers Employment (RPTKA), which must be legalized by a minister or other authorized authority.

The legal protection of employees is becoming increasingly important as the number of foreign workers in Indonesia grows. Workers’ legal protection transforms a fundamental right that is totally inherent and must be safeguarded in the constitution, as stated in Article 27 paragraph (2) of the Republic of Indonesia’s 1945 Constitution, which states: “Every citizen must be entitled to labour and worthy of humanity” [7]. It is said that each individual in concern, whether Indonesian or foreign national, must acquire legal certainty that will create a sense of fairness.

Legal protection for foreign workers has been outlined in the following laws and regulations:

- a. Presidential Decree Number 20 of 2018
- b. Law Number 13 of 2003 concerning Manpower
- c. Decree No. 40 of 2012 of the Ministry of Manpower and Transmigration Concerning Certain Positions Restricted to Foreign Workers
- d. Ministry of Manpower Regulation No. 10 of 2018 on Procedures for the Employment of Foreign Workers
- e. Ministry of Law and Human Rights Regulation No. 16 of 2018 on Procedures for the Granting of Visas and Stay Permits for Foreign Workers

The latest regulatory adjustments regarding the employment of foreign workers, since the issuance of Law Number 11 of 2020 concerning Omnibus Law, amendment and abolition of several articles in Law Number 13 of 200, have made it easier for foreign workers to enter Indonesia, including [8]:

- a. Changes in Article 42 to Foreign Workers only need to have a Plan for Employment of Foreign Workers approved by the Central Government and no longer require written permission from the ministry or an appointed official.
- b. The abolition of Article 43 regarding the Plan for Employment of Foreign Workers at least contains a description of the reasons for the employment of foreign workers, the position of foreign workers in the company, the period of the employment of foreign workers, and the appointment of Indonesian citizens as companions.
- c. The abolition of Article 44, which requires companies to employ foreign workers, complies with positions and applicable competency standards regulated in a Ministerial Decree.

In principle, labor law aims to achieve social justice for all people, and this is based on two aspects:

The law is ideally realized through statutory regulations (heteronomous) and is autonomous. This legal realm must represent legal products that are in accordance with *das sollen*, that is to say, by justice and truth, of certainty, and have benefits for the parties. These rules and regulations will subsequently be aligned with the notion of justice as defined in Article 27 paragraph (2) of the Republic of Indonesia's Constitution of 1945;

Implementation of normative law contributes in the form of supervision through structural instruments (law enforcement) and taking action on parties who do not comply with legal provisions.

Juridically, the worker's position is equal to that of the entrepreneur. However, socially the position of the two cannot be equalized because the position of the entrepreneur is higher than that of the worker. The position between high and low in the employment relationship gives rise to a *dienstverhoeding* (overextending) relationship, thus causing employers to act arbitrarily toward workers. The purpose of providing legal protection to workers is to ensure the continuity of a consistent and harmonious working relationship system without any pressure from the stronger party to the weaker party. In addition, the purpose of legal protection for workers covers the ongoing employment contract and at the end of the employment contract. Termination of an employment relationship may happen due to the expiration of the employment contract or due to the entrepreneur's action terminating the contract. This is where the purpose of legal protection lies, namely to fulfill workers' rights after the end of the employment contract. From legal protection in termination of employment, the most important issue concerns the correctness of the status of workers in the employment contract and the truth of the reasons for termination of employment. The legal rules governing termination of employment lead to the existence of labour rights related to the termination of employment.

Because the validity of the law cannot be measured juridically, but must also be measured sociologically and philosophically, legal protection from the power of entrepreneurs is implemented if the laws and regulations in the field of labor that require or compel entrepreneurs to act in accordance with the legislation are actually implemented by all parties, because the validity of the law cannot be measured juridically, but must be measured sociologically and philosophically [9].

Workers' protection is separated into three categories, according to Soepomo: Economic protection, i.e., the provision of sufficient money to workers, even if they are unable to work against their will. Workers' protection in occupational health insurance, as well as freedom of association and protection of the right to organize, are examples of social protection. Technical protection, i.e. worker security and safety in the workplace [10]. Protection of workers is considered in labor law. Article 4 letter (c) of Law Number 13 of 2003 concerning Manpower states, "One of the objectives of manpower development is to protect workers in realizing welfare" [11].

One example raised in this study is the case decided based on the Industrial Relations Court Decision at the Denpasar District Court No. 3/Pdt.Sus-PHI/2021/Pn.Dps, dated May 5, 2021, between Plaintiffs, namely Kirk Ian Bouffard (PLAINTIFF I), Marcus David Boyle (PLAINTIFF II), Tobias Blazquez Garcia (PLAINTIFF III), and PT. CDM Bali Berjaya - Café del Mar. (the ACCUSED). As for the case, it can be described as follows:

PLAINTIFFS are employees of the ACCUSED based on employment contracts dated November 20, 2018, and May 31, 2019. In this case, each has an employment contract with a term of 2 years and can be extended for a certain period by the provisions as stipulated in the Manpower Act, and then the work contract is referred to as a Fixed-term Employment Agreement (PKWT);

The impact of the pandemic, which caused the company's revenue to decrease drastically in February 2020, caused the ACCUSED to summon the PLAINTIFFS. The aim is to dismiss and ask the PLAINTIFFS to resign from the company, and the ACCUSED has promised to provide compensation to the PLAINTIFFS, and the total amount will be paid to the PLAINTIFFS in March 2020. However, it has not been realized, so the PLAINTIFFS filed a lawsuit through the Industrial Relations Court.

The judge ADJUDICATES in light of Law Number 13 of 2003 respecting Manpower, as revised by Law Number 11 of 2020 about Omnibus Law and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, as well as other relevant laws and regulations:

The Judge grants the PLAINTIFFS' claims in part; The Judge declares that the employment contract between the PLAINTIFFS and the ACCUSED ends due to termination of employment based on the provisions of Article 61 paragraph (1) letter d of Law Number 13 of 2003 concerning Manpower as amended into Law Number 11 of 2020 concerning the Omnibus Law, as of the date this decision is read out; The Judge sentences the ACCUSED to pay the PLAINTIFFS' rights by the details below:

To PLAINTIFF I i.c Kirk Ian Bouffard: Salary until July 1st: USD11,500 x 4 months = USD 57,500

Equivalent to = IDR.630,200,000

Addition: 10% x IDR. 630,200,000  
= IDR.63,020,000

Total = IDR. 693,220,000 (Six hundred ninety-three million two hundred and twenty thousand rupiahs)

To PLAINTIFF II i.c Marcus David Boyle:

Total deal = IDR.282.062.759

Addition: 10% x IDR.282.062.759  
= IDR.28.206.275

Total = IDR.310.269.034 (Three hundred and ten million two hundred and sixty-nine thousand and thirty-four rupiah)

To PLAINTIFF III i.c Tobias Blazques Garcia:

Total = IDR.216.951.500

Addition: 10% x IDR. 216.951.500  
= IDR. 21.695.150

Total = IDR.238.646.650

Total = IDR. 1.242.135.684

The judge sentences the ACCUSED to pay the court fee, which until now has been set at IDR. 420,000.00 (four hundred and twenty thousand rupiahs); and

The judge rejected the Plaintiffs' claims for other than and the rest.

If one of the parties to a Fixed-term Employment Agreement terminates the employment relationship before the expiration of the period specified in the Fixed-term Employment Agreement, or if the termination of the employment contract is not due to the provisions referred to in Article 61 paragraph (1) of the Law Number 13 of 2003 concerning Manpower, the party terminating the employment relationship must pay compensation to the other party. When a worker/labourer has a Fixed-term Employment Agreement, he or she is entitled to compensation if the contract is unilaterally terminated in the midst of the term.

According to the Ministry of Manpower's Circular Letter No. SE-907/MEN/PHI-PPHI/X/2004 about Prevention, if a firm has challenges that may jeopardize employment, termination of employment contracts must be a last choice, after a variety of attempts have been made, including:

- a. Reducing wages and perks of top-level workers;
- b. Reducing shift;
- c. Reducing working hours;
- d. Reduce working days
- e. Lay off or lay off workers/laborers in rotation for a while.

Therefore, if there are workers/laborers who are laid off due to a public health emergency due to the Covid-19 pandemic, the workers are still entitled to total wages or wage deductions if it has been agreed by the company and the workers [12].

With the publication of the Ministry of Manpower's Circular Letter M/3/HK.04/III/2020 of 2020, Concerning Worker/Labourer Protection and Business Continuity in the Context of Covid-19 Prevention and Control (SE Menaker 3/2020). The Ministry of Manpower's Circular 3/2020 is in response to the rapid spread of Covid-19 in numerous Indonesian provinces, as well as the World Health Organization's (WHO) official declaration of Covid-19 as a global pandemic. One of the topics specified in the Ministry of Manpower's Circular 3/2020 is the execution of:

Workers/laborers who are classified as People under Monitoring for Covid-19 due to a doctor's statement that they would be unable to return to work for a maximum of 14 days or according to Ministry of Health regulations will have their salaries paid in full.

Workers/laborers who are suspected of having Covid-19 cases and are quarantined/isolated based on a doctor's statement will be paid in full during the quarantine/isolation period.

Workers/laborers who are unable to work owing to sickness caused by Covid-19, as evidenced by a doctor's declaration, will be reimbursed in accordance with the rules and regulations.

Changes in the amount and method of payment of workers' wages are made by agreement between the employer and the worker/laborer for companies that limit their business activities due to government policies in their respective regions for the prevention and control of Covid-19, causing some or all of their workers/laborers not to come to work, taking into account business continuity. As a result, changes in the quantity and mode of payment of workers' salaries are carried out by agreement between the employer and the worker, taking into account the business continuity.

Based on the results of the author's examination of the Industrial Relations Court Decision at the Denpasar District Court Number 3/Pdt.Sus-PHI/2021/Pn.Dps, dated May 5, 2021, to the plaintiffs, namely Kirk Ian Bouffard (PLAINTIFF I), Marcus David Boyle (PLAINTIFF II), and Tobias Blazquez Garcia (PLAINTIFF III) and ACCUSED PT. CDM Bali Berjaya – Café del Mar, legal protection has been given to foreign workers who have been terminated due to the impact of the Covid-19 pandemic in Bali. This is because the ACCUSED and the PLAINTIFFS have agreed upon the termination of employment. The judge's decision has granted part of the PLAINTIFFS' demands, namely several compensations by the parties' mutual agreement. Before the PLAINTIFFS files a lawsuit, the provisions of the decision are by the provisions of the legislation in Indonesia.

Based on the description above, the legal analysis uses the theory of legal certainty according to Gustave Radbruch in a combined theory of ethics and utility whose legal concept is that the law aims at justice, usefulness, and certainty [13]. The notion of legal certainty has two meanings: first, there are general norms that inform individuals about what acts they may or may not do, and second, the existence of broad legal principles provides individuals with legal protection against government arbitrariness. Individuals can learn what the government may charge or do to them. Legal certainty comes not only in the form of articles in the law, but also in the consistency of judicial judgments between one judge's decision and the decisions of other judges in comparable circumstances. [14].

With the existence of legal certainty, the purpose of the law is justice to be achieved. The main thing about the value of legal certainty is the existence of the regulation itself. "Regarding whether the regulation must be fair and have benefits for the community, it is beyond prioritizing the value of legal certainty." [15]

## 4. CONCLUSION

The impact of the Covid-19 pandemic in Indonesia has caused the economy to become unstable and grow negatively, especially in Bali because the tourism sector is the leading supporter of the economy. The pandemic has caused many companies to lay off their workers.

Legal protection for foreign workers who are subject to termination of employment due to the impact of Covid-19 in Bali, according to the results of this study, is that foreign workers who are subject to termination of employment have received legal protection because the considerations of the Panel of Judges are under Indonesian legislation. As a result, the judgement upholds the notion of justice for both employers and employees. Foreign employees in Indonesia are entitled to legal protection and social security in order to acquire legal certainty, and a comfortable and conducive working environment is provided for them.

The employer's strategy of terminating employment during the Covid-19 epidemic is not a win-win option at this moment, according to the findings of this study. As a result, the government must adopt a government policy on worker protection in the event of a Covid-19 pandemic. This regulation is more binding on entrepreneurs who are still employing their workforce during the Covid-19 pandemic to protect workers' work status and avoid termination of employment contracts.

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