

Default Due to Force Majeure and Paying Compensation for the Rest of the Employment Contract to PKWT Employees (Case Study of Industrial Relations Court Decision Number 9pdt.Sus-Phi/2020/Pnbna)

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ABSTRACT

Justice and social welfare are manifestations of efforts to achieve state goals as mandated in the 1945 Constitution of the Republic of Indonesia. In the implementation of justice and social welfare, the role of the community is required. To achieve this goal, the employment sector is needed to make it happen. The problem in the research raised by the author is a default due to Force majeure as a result of the Government's efforts to overcome the Covid-19 Pandemic based on Law Number 13 of 2003 concerning Manpower and Law Number 11 of 2020 concerning Job Creation.

Keywords: *Default, Force majeure, Remaining Contract Compensation Payments.*

1. INTRODUCTION

Since the policy of dealing with the COVID-19 pandemic, many contract employees and permanent employees have been affected by termination of employment (PHK) by the company, there have been certain efforts by the government so that workers can survive during this pandemic. The government's efforts have not been able to keep companies afloat during this pandemic in retaining their workforce, many efforts have been made by companies to keep their workforce afloat by cutting salaries, laying off or taking temporary leave.[1] But what if the company does not get any income at all and there are many workers who are not needed since the national non-natural disaster management effort was established.

After many workers were affected by termination of employment, many companies faced bankruptcy problems and industrial relations dispute lawsuits from workers affected by termination of employment, many of these lawsuits were about asking for their rights in compensation for the remaining work contracts, severance pay, benefits holiday and a claim to still be able to work. This can make it difficult for the company to survive during this pandemic, in addition to the threat of bankruptcy, the company also has problems in dealing with labor claims, which the judge granted. In this case, it is difficult for the company to stay afloat, amid the bankruptcy lawsuit, the company also has

the obligation to pay the lawsuit which was granted by the judge.

In the history of the legal journey in Indonesia, it is closely related to labor problems, we can see this from government policies that are regulated together with the legislative body in the form of laws and government regulations such as Law Number 13 of 2003 concerning Employment, Law No. 2 of 2004 concerning Settlement of Industrial Relations Disputes, Law No. 11 of 2020 concerning Job Creation, Government Regulation of the Republic of Indonesia No. 35 Year 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Relationship Employment, Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages, and Government Regulation of the Republic of Indonesia Number 37 of 2021 concerning the Implementation of the Job Loss Guarantee Program.

There are various government efforts to prevent layoffs and maintain business continuity during the pandemic and before the pandemic, including issuing a circular letter from the Minister of Manpower of the Republic of Indonesia Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers/Labourers and Business Continuity in the Context Prevention and Control of COVID-19, and Circular Letter Number: SE-907/MEN/PHI-PPHI/X/2004 concerning the prevention of mass layoffs.[2]

As a result of the handling of the Covid-19 pandemic, industrial relations dispute claims continue to increase,

many solutions offered by companies do not find agreements with workers until they end up at the court level, at the court level many companies are still obliged to carry out their obligations and carry out the final decisions that are detrimental to the company. At this court level, many final decisions do not consider the long-term consequences, only thinking about the short-term by benefiting workers. During this pandemic, the hospitality business has the most impact, even the company cannot cover operational costs, on the other hand, the company cannot cover operational costs, the company is also still required to pay compensation for the rest of the work contract, where the company wants to postpone obligations due to force majeure which is unacceptable. Of course, the long-term impact of the company will be permanent closure, this closure can increase the number of unemployed which can have a negative impact on the Indonesian economy.[3]

2. METHOD

This legal research is prescriptive and applied. Prescriptive science, namely the science of law studies the purpose of law, values of justice, legal validity, legal concepts, and legal norms. Legal science as an applied science, the prescription given in legal research must be able and possible to be applied. Prescription put forward is the result of research that can be in the form of new arguments.[4]

Legal materials collection techniques are techniques or methods used to collect legal materials. The technique of collecting legal materials used by the author is the study of documents or literature to collect secondary legal materials.[5]

The analysis technique used by the author is an interpretation analysis technique using comparative interpretation. Comparative interpretation or interpretation by way of comparison is an explanation based on comparative law. By comparing, we want to find clarity regarding a statutory provision. There are two methods of interpretation used in normative legal research.[6] First, grammatical interpretation, namely interpretation according to grammar and words which are tools for legislators to express their intentions and desires. Second, systematic interpretation, which is an interpretation that connects one article with another article in the relevant legislation or the relevant legislation or other legal legislation, or reads the explanation of a piece of legislation, so that it can understand its meaning.[7]

3. DISCUSSION

3.1. The Industrial Relations Court's Decision Granted Compensation for the Remaining Work Contract of the Plaintiff in the Industrial Relations Dispute Case NUMBER 9/PDT.SUS-PHI/2020/PNBna

Compensation for the rest of the work contract is a right that PKWT workers get in the event of layoffs. The amount of compensation is equal to the wages of the workers until the expiration of the employment contract agreement based on article 62 of the Law on Manpower of 2003, however, certain unexpected conditions such as force majeure create an imbalance between workers and employers which in the event of layoffs, salary cuts, and withholding compensation when the company loses money and even closes at the industrial relations court level, which always grants workers' demands without considering the company's financial condition.

In relation to the case that the author is researching, that in this case the defendant intends to postpone his obligations by laying off workers without being paid until the estimated end of August for the Covid-19 pandemic, while the plaintiff refuses to be laid off without pay, the plaintiff wants the implementation of the shift work system to be rejected. The defendant because the hotel where they worked was temporarily closed because it could not cover operational costs. There has been a bipartite refusal to be dismissed from the plaintiff but there is no good faith from the defendant who refuses to attend and does not respond to the recommendation of the Banda Aceh City Manpower Office No. 560/Pgl-11.06.20/2020 dated 15 June 2020.

In this case, the judge's consideration was only based on the fact that there had been unilateral layoffs because the judge concluded that the plaintiff had not received a salary since May, and for legal certainty the judge granted compensation for the remainder of the contract, the judge did not consider the defendant's financial statements, did not consider that the plaintiff was not working and was not working. Considering that the defendant's company was closed during the Covid-19 pandemic response policy.

In this case, the judge's decision to grant compensation for the remaining contractual demands of the plaintiff was indeed in accordance with the circular letter of the minister of manpower even though the judge did not present the circular letter of the minister of manpower as the reason for rejecting the defense of the defendant in the circular letter of the minister of manpower of the Republic of Indonesia Number M/3/HK.04/ III/2020 of 2020 concerning Protection of Workers/Labourers and Business Continuity in the Context of Prevention and Control of Covid-19 in paragraph II number 4 which contains that "For companies that restrict business activities due to government policies in their respective regions for the prevention and control of COVID-19 -19, thus causing some or all of the workers/laborers to not come to work, taking into account the continuity of the business, the changes in the amount

and method of payment of wages for workers/laborers shall be made in accordance with the agreement between the entrepreneur and the worker/laborer.”[8]

The author is of the opinion that the defendant experienced a difficult financial situation as a result of the Government's policy to deal with the Covid-19 pandemic so that it required a very large sacrifice to carry out the obligation to provide work and salary in accordance with the contents of the agreement, in this case the author argues that in this case it can make force relative majeure as a reason to be able to carry out delays in achievement. The judge granted the compensation for the remainder of the contract, which was not in accordance with the theory of relative force majeure because the defendant was in a condition that required great sacrifices to implement the agreement's achievements.

Based on the case where the compensation for the remainder of the contract was granted by the Judge, the author argues that the Judge's decision is not in accordance with the principle of balance because the defendant needs a large sacrifice to carry out the performance of the work agreement as a result of the Government's policy in dealing with the Covid-19 pandemic, while the position of the plaintiff benefits in In this case, because the plaintiff did not work while being sent home, the judge considered that there had been layoffs so that the plaintiffs received compensation in which the plaintiffs did not work but compensation was still paid, which means that if the dismissal is considered a layoff, the judge requires the company to pay the compensation, there is no chance for the defendant to survive. during the Covid-19 pandemic.

The author is of the opinion that in this case it is not clear on the legal basis whether it is permissible to lay off temporary workers without pay or with a few percent deduction, the term layoff is only found in Circular Number: SE-907/MEN/PHI-PPII/X/2004 concerning prevention of termination mass, there is no related law to discuss it. Article 93 paragraph 1 of the Law on Manpower reads "Wages are not paid if the worker/labourer does not do the work". It can be interpreted that companies are allowed to lay off without paying, but the article is considered contrary to article 2 letter F, namely "workers/laborers are willing to do the work that has been promised but the entrepreneur does not employ him, either because of his own fault or obstacles that the entrepreneur should be able to avoid;". Based on the article, the entrepreneur is still obliged to pay the wages of the worker/laborer who is willing to do the work that has been promised but the company does not employ him, either because of his own fault or an obstacle that the entrepreneur should be able to avoid. It can be concluded that the issue of unpaid leave or being sent home without salary payments by the employer must have the approval of the workers, the employer cannot do it unilaterally if the work agreement does not contain provisions regarding force majeure in the contents of the article on rights and obligations.

3.2. The Covid-19 Pandemic as the Reason for Force Majeure Layoffs and Laying Off PKWTs according to Law Number 13 of 2003 concerning Manpower with Law Number 11 of 2020 concerning Job Creation

The explanation regarding layoffs, Covid-19 and the pandemic is also not contained in the Job Creation Act, but discusses in more depth the reasons for layoffs for PKWTT (unspecified time work agreement) affected by layoffs by the company and the nominal amount for PKWTT along with the reasons for the layoffs described by the entrepreneur. Layoffs for PKWT (certain time work agreement) for certain reasons are not contained in the Job Creation Act or its derivatives, namely PP (government regulations) 35 of 2021 concerning PKWT, Outsourcing, Working Time and Rest Time and layoffs.

The term layoff is not contained in Law Number 13 of 2003 concerning Manpower, but is contained in Circular Letter Number: SE-907/MEN/PHI-PPII/X/2004 concerning the prevention of mass layoffs letter F.

In Law No. 13 of 2003 concerning Employment there is no term pandemic and Covid-19, Covid-19 itself only emerged in early 2020 while Law No. 13 of 2003 concerning Manpower was made in 2003.

In this case the hotel company or as the defendant made a work agreement for a certain time for 1 year, extended by 1 year and extended again for 1 year, based on article 59 paragraph (4) that the plaintiff is indeed a PKWT worker cannot be appointed as a permanent employee, because it is in accordance with the provisions of Article 59 paragraph (4). the provisions of the article which contain that PKWT is held for a maximum of 2 years and is only extended once for a period of 1 year.

Based on the article of the job creation law that a certain time work agreement is further regulated in PP 35 of 2021 concerning PKWT, Outsourcing, Working Time and Rest Time and layoffs, it is a government regulation to implement the provisions of Article 81 and Article 185 letter b of Law Number 11 Year 2020 Regarding Job Creation, it is necessary to stipulate a Government Regulation regarding Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. The PKWT in the PP regarding the term of a work agreement for a certain time is more flexible than the Manpower Act No. 13 of 2003 which in the Manpower Act stipulates a period of no more than 3 years, the PP derivative work copyright law regulates a maximum period of 5 years.

Prior to the existence of Law Number 11 of 2020 concerning Job Creation, it has been regulated that there is a suspension of payment of employee salaries if the company is in a state of financial difficulty as regulated in Article 90 paragraph (2) of the Manpower Law but the article has been deleted based on Article 81 number 27 of Law Number 11 of 2020 concerning Job Creation.

3.3. Force Majeure as Reason for Default for Suspension of Liability

In this case, the defendant used the Force Majeure reason with the intention of delaying achievements, this reason was strengthened by the decision of the President of the Republic of Indonesia Number 12 of 2020 concerning the determination of non-natural disasters that spread corona virus disease 2019 (Covid-19) as a national disaster. It is certainly legal to do layoffs or lay off without paying for force majeure, considering that these conditions are indeed in a state that threatens the economy for companies and workers whose companies are affected by the handling of the Covid-19 pandemic. Even though the work agreement does not include a standard clause containing articles regarding the rights and obligations of employers and workers/laborers if the cause and effect of force majeure results in a default without compensation, the company can still use the force majeure reason as the basis against the claim from the plaintiff.

If the worker refuses to be laid off with deductions or without compensation that has been made in the work agreement for a certain time because it is considered a unilateral layoff, the employer can hold a discussion with the worker/laborer by making a collective labor agreement, if there is no agreement between the employer and the worker, they can make bipartite and tripartite, if they do not find the agreement, the worker/labourer can register a lawsuit with the industrial relations court, the employer only needs the reasons for the dismissal and evidence that can support the layoff with or without compensation.

The reason for delaying performance is because of relative force majeure, standard clauses regarding work conditions can be made that contain the rights and obligations of employers and workers/laborers, in this case it does not conflict with the law because force majeure on PKWT is not contained in the Law on Manpower and the Law on Job Creation. regarding the amount and deduction of compensation if the PKWT is affected by layoffs due to events outside the will of the parties and based on the principle of freedom of contract. The standard clause of this work agreement for a certain time is in accordance with article 61 paragraph (1) of the Law on Manpower, the employment agreement ends when: "the worker dies; expiration of the term of the work agreement; there is a court decision and/or decision or stipulation of an industrial relations dispute settlement institution that already has permanent legal force; or the existence of certain circumstances or events that are stated in the work agreement, company regulations, or collective work agreement that may cause the end of the employment relationship." Meanwhile, Article 62 says that the compensation for the rest of the work contract is not paid if the layoff is not the result of Article 61 paragraph (1).

Based on the theory of force majeure in chapter 2 which the author quoted, that force majeure is divided into 2 (two) namely absolute and relative force majeure. Absolute force majeure is in a situation where the debtor cannot carry out the performance due to an unexpected event that results in

an object of the agreement being destroyed due to a natural disaster or a major accident. Meanwhile, based on the theory of relative force majeure, force majeure exists, if the achievements carried out are still possible but require great sacrifices so that those who carry out the achievements can suffer big losses. For example, the object in the agreement is constrained because the government prohibits imported goods from entering Indonesia for an indefinite period of time due to the issue that disease outbreaks can be transmitted through the imported goods.[9]

In this explanation, the author argues that in this case it is appropriate to use the relative force majeure reason because the defendant's hotel company is only temporarily closed in order to reduce losses due to not being able to cover the operational costs of the defendant's hotel, which means that the defendant needs a large sacrifice to be able to carry out the achievements in a certain time work agreement that. Employers can make standard clauses in work agreements regarding the rights and obligations of employers and workers/labourers regarding employers' rights to delay performance in the event of circumstances beyond the will or control of the entrepreneur resulting from relative force majeure.

The author's analysis is based on the balance theory that the defendant suffered losses due to efforts to overcome the Covid-19 pandemic so it took a big sacrifice to carry out the achievements of the work agreement that had been made, while the plaintiff did not have a major impact due to efforts to overcome the Covid-19 pandemic because as long as the policy was in place, they still received assistance. from the Ministry of Social Affairs.[10] Meanwhile, the defendant did not receive tax relief from the government and did not bear the operational costs that the defendant could not cover as long as the hotel was open or closed.[11] Based on this opinion, the author describes that the position of the defendant is not balanced with the workers in the case studied by the author and the results of the decision are detrimental to the defendant.

The author's analysis is based on the judge's consideration that the judge's consideration is not based on the values of justice because it does not explain the rejection of the defense of the defendant's position in writing and the legal basis for the rejection, the judge does not consider that the defendant's position requires great sacrifices to carry out the performance of the work agreement.

4. CONCLUSION

4.1. According to the author, the reason the Judge granted the plaintiff's claim was because the plaintiff had not received a salary since May for the sake of legal certainty. The judge considered that a unilateral layoff had occurred on the legal basis of Article 62 of Law no. 13 of 2003 concerning Employment, the Judge did not explain why he rejected the defendant's defense of the government's policy regarding that the defendant was affected by the Covid-19 pandemic, did not explain the reasons for rejecting the

contents of the agreement and did not consider the contents of the Manpower Office recommendation issued.

4.2. Lay off and lay off PKWT workers in Law No. 13 of 2003 concerning Manpower with Law no. 11 of 2020 concerning Job Creation, there is no reason for Default due to force majeure, it does not regulate further regarding the remaining compensation deductions in the case of layoffs and layoffs.

4.3. Based on article 61 paragraph (1) letter (d) of Law no. 13 of 2003 concerning Employment, the entrepreneur can make a work agreement for a certain time containing the rights and obligations between the entrepreneur and the worker/labourer regarding the amount of compensation and suspension of obligations in the event of a default by reason of force majeure.

[8] Indonesia, Surat Edaran Menteri Ketenagakerjaan Republik Indonesia Nomor M/3/HK.04/III/2020 Tahun 2020 Tentang Pelindungan Pekerja/Buruh Dan Kelangsungan Usaha Dalam Rangka Pencegahan dan Penanggulangan Covid-19.

[9] Mariam Darus Badruzaman, *Kompilasi Hukum Perikatan*, (Bandung: PT. Citra Aditya Bakti, 2001), hal. 25.

[10] Dinsos-Aceh, "RP 2,3 triliun dana bansos sudah disalurkan di Aceh", <https://dinsos.acehprov.go.id>, accessed on 6 July 2021.

[11] Ahmad Wijaya, "Sepi tamu, pengusaha hotel di Banda Aceh minta keringanan pajak", www.antaranews.com, accessed on 6 July 2021.

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[5] Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenadamedia Group, 2019), page 238.

[6] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Yogyakarta: Liberty, 2007), page 174.

[7] Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Yogyakarta: Liberty, 2007), page 93