Legal Protection for Workers for Termination of Work Due to the Covid-19 Pandemic

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Abstract. The purpose of this study is so that everyone can know and analyze the harmony of legal protection of workers who have experienced (PHK) because the Covid-19 Pandemic on the grounds of force majeure in the manpower act and what legal action can taken by affected workers. The method used in this research is a normative legal method approach by prioritizing legislation (statue approach) using law number 13 of 2003 concering manpower. The results of this study prove that the Covid-19 pandemic can be categorized as force majeure because the parties cannot predict the Covid-19 pandemic and do not have a contributory effect and this pandemic is an obstacle that occurs in general.

Keywords: Legal Protection · Labor · Pandemic

1 Introduction

Indonesia is one among the countries suffering from Covid-19 that incorporates a prejudicious impact on the country and society. One of them is in the field of employment, while the problems that occur are Termination of Employment carried out by the company. Some companies that are experiencing difficulties then encourage employers to issue policies that harm workers which are carried out by the company unilaterally to workers on the grounds of the force majeure of the covid-19 pandemic [1].

Based on data from the Ministry of Manpower, the pandemic has had an impact on the employment sector which recorded that as of July 31, 2020 there were more than 3,500,000 (three million five hundred thousand) workers who were laid off due to the Covid-19 pandemic [2]. Termination of Employment (PHK) is something that is very feared by employees. This is because there is no certainty of economic conditions which has an impact on many companies having to go out of business, and of course the impact on termination of employment which is carried out unilaterally by employers [3]. In Law Number 13 of 2003 concerning Manpower, it is a regulation regarding workers which is also a rule of law which includes termination of employment. Layoffs themselves are regulated in Article 150 to Article 170 of Law Number 13 of 2003 concerning Manpower.

As a legal umbrella (Umbrella Act) in the field of employment, among others, it determines that employers and workers both have the right to terminate employment accompanied by arrangements regarding all legal consequences. However, in reality it

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proves that termination of employment cannot be prevented entirely. So that what has been mandated by Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) that every citizen has the right to work and a decent living, has not been achieved [4].

2 Research Methods

In this study using normative juridical legal research methods. Based on the research method above, the approach that will be used in this research is the statutory approach. The type of data used is secondary data. The analytical method that will be used by the author is descriptive qualitative.

3 Result and Discussion

3.1 The Covid-19 Pandemic as a Reason for Tragedy in Termination of Employment

The utilization relationship is essentially the connection between the employee and also the employer/employer once the utilization agreement, that is Associate in Nursing agreement during which the primary party, the employee binds himself to a different party, particularly the leader to figure for wages and also the leader declares his ability to use the employee by paying wages. The President of the Confederation of Indonesian Trade Unions stated that there were several factors that caused the termination of employment due to the Covid-19 pandemic, including [5]:

1. The depletion of raw materials for the manufacturing industry, such as materials imported from China and other countries affected by the COVID-19 pandemic. The decline in production caused by a lack of raw materials will result in the emergence of potential reductions in employees by way of layoffs.
2. The decline in tourist visits to Indonesia drastically so that as a result many workers have been laid off.

As explained in the previous paragraph, a decrease in the number of production due to the Covid-19 pandemic automatically reduces the income earned by the company. As a result, some companies have difficulty managing their finances, including to meet operational cost needs, one of which is paying for workers' normative rights such as wages. To be able to find the answer, we must first consider the reasons for the termination of employment. If the reasons from the company are not things as prohibited in Article 153 Paragraph (1) of Law Number 13 of 2003 then Termination of Employment may be carried out. Furthermore, to assess the legality of Termination of Employment, it is enough to pay attention to 2 (two) things, namely reasons and compensation. If the company suffers a real loss due to the impact of Covid-19, the company is more likely to say force majeure is the reason for the layoff.

To determine a state of coercion or unavoidable casualty supported the teachings of jurisprudence, it's a minimum of supported the subsequent factors:

a. Impossibility
b. Impossible contract execution could be a scenario wherever someone isn't any longer attainable to hold out his contract thanks to events outside his responsibility.
c. Impracticability
d. Meanwhile, there's conjointly what's known as "impracticality" in polishing off the contract. The purpose is that the prevalence of an occasion while not fault of the parties, the event is such, with the event the parties are literally on paper still attainable to perform their achievements, so even though the achievements within the contract square measure meted out, it'll need nice sacrifices in terms of prices, time and alternative sacrifices. Thus, in distinction to the impossibility of polishing off the contract, wherever the contract is totally not possible to continue, within the inutility of implementing this contract, the contract continues to be attainable to be dead, however it becomes sensible if it continues to be implemented.
e. Frustrated
f. What is meant by this frustration is frustration with the intent of the contract. Namely, during this case there's an occasion that's not responsible to at least one of the parties, that event makes it not possible to attain the aim of constructing the contract, if truth be told the parties should still be ready to do the contract. as a result of the aim of the contract is not possible to attain, therefore the contract is in a very state of frustration.

With that, the author concludes that the Covid-19 pandemic is enclosed operative majeure:

a. The Covid-19 pandemic are often categorised as a relative unavoidable casualty reason.
b. unavoidable casualty that is subjective
c. The Covid-19 pandemic is categorised as a short lived unavoidable casualty reason
d. The state of the Covid-19 pandemic as a sort of unavoidable casualty for agreements generally
e. The Covid-19 pandemic includes unavoidable casualty thanks to inutility.

3.2 Legal Protection for Workers for Termination of Employment (PHK) Due to the Covid-19 Pandemic

The outbreak of the Covid-19 virus throughout the world, one of which is in Indonesia, has disrupted various sectors, especially the business sector. Many companies have stopped their business activities to prevent the spread of Covid-19 from spreading. As a result of the cessation of business activities, there were a lot of workers who were laid off and not even a few were terminated. In this case the protection of workers and workers gets special attention in the concept of the rule of law relating to human rights. Article 27 Paragraph 2 of the 1945 Constitution of the Republic of Indonesia states that "Every citizen has the right to work and a decent living for humanity". The protection of workers and workers is also stated in Article 28 D Paragraph 3 of the 1945 Constitution

of the Republic of Indonesia, which states that: "Every citizen has the right to work and receive compensation and fair and proper treatment in an employment relationship".

As regulated in Law Number 13 of 2003, Legal Protection for workers aims to ensure a harmonious working relationship between workers and employers without being accompanied by pressure from the strong party to the weak party. Employers who wish to terminate employment of workers in the company are based on reasons that justify taking such action and must not deviate from the prevailing laws and regulations, namely Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes jo. Law Number 13 of 2003 concerning Manpower. Disputes about layoffs so far most occur because of layoffs carried out by one party and the other party cannot accept it. In this case, mass termination of employment due to the Covid-19 Pandemic on the grounds of force majeure without severance pay or severance pay is not in accordance with the provisions of the agreement, and violates the right to work and receive a decent wage as regulated in Article 28 D Paragraph 2 of the 1945 Constitution and the Convention. ILO No. 100 and article 156 of the UUK. By considering the position of workers who are lower than the government to provide legal protection. Legal protection is meant to ensure that the employment relationship can be guaranteed by the existence of justice as well as the protection of human rights (workers), both of which are the objectives of the legal protection itself.

Legal protection for workers who have been laid off due to the Covid-19 Pandemic on the grounds of Force Majeure, according to researchers, the legal protection is contained in Article 151 Paragraph (1), 156 Paragraph (1) and Article 164 Paragraph (1) of Law Number 13 of 2003 about Employment. Then the regulations that form the basis of legal protection for workers in the Covid-19 pandemic situation are regulations issued by the Minister of Manpower, namely 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 Covid-19 Prevention and Control [6].

4 Conclusion

The Covid-19 pandemic can be categorized as force majeure because it has caused enormous obstacles to the company's operational activities. Layoffs due to the Covid-19 pandemic on the grounds of force majeure are in accordance with existing labor law in Indonesia. With the constraints of operational activities, it has an impact on income for the company, as a result the company has difficulty in paying the wages of workers which are the obligations of the entrepreneur/company. In addition, the Covid-19 pandemic is also categorized as a force majeure event considering its unpredictable nature because it arises outside the control of the parties. However, the reason for this compelling situation needs to be underlined that a layoff can be carried out on the grounds of force majeure and the loss must be proven by financial statements showing consecutive losses for 2 years and must be based on an audit. Then another reason is that the scope of force majeure is no longer limited to natural events or acts of god and the loss of the agreed object, but has expanded to administrative actions of the authorities and political conditions, so with the government policy that has declared the Covid-19 pandemic a national disaster. And the

issuance of a number of legal products that can strengthen the reasons for entrepreneurs to categorize the Covid-19 pandemic as an event that creates compelling circumstances.

Legal protection for workers for layoffs due to the Covid-19 pandemic is contained in Article 151 Paragraph (2), 156 Paragraph (1) and Article 164 Paragraph (1) of Law Number 13 of 2003 concerning Manpower and Regulations issued by the Ministry of Manpower, namely Circular letter of the Minister of the Republic of Indonesia Number M/3/Hk.04/III/2020 of 2020 concerning Protection of Workers and Business Continuity in the Context of Prevention and Control of Covid-19. For this reason, legal actions that can be taken by workers to take legal action against layoffs are divided into 2 (two) types, namely efforts to settle outside the court or attempt to settle through the courts. In an effort to settle out of court, it can be pursued through bipatriate procedures, and conciliation or arbitration or through mediation. Meanwhile, efforts to settle out of court are pursued through the Industrial Relations Court. And if the parties to the dispute do not accept the decision of the industrial relations court, then the litigating parties can apply to the Supreme Court.

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