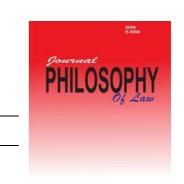
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THE ROLE OF THE GOVERNMENT IN THE LEGAL PROTECTION OF WORKERS PERFORMED BY TERMINATION OF EMPLOYMENT DURING THE COVID-19 PANDEMIC

Mahmuda Pancawisma Febriharini

Faculty of Law, University of 17 Agustus 1945 Semarang E-mail: mahmudapancawisma@yahoo.com

Abstract:

Covid-19 has shaken the Indonesian economy, and of course, the most significant impact felt due to this pandemic in industrial relations, both macro and micro. Many companies are threatened with the continuity of their production, which ultimately impacts the survival of workers in Indonesia. This condition emphasizes that the government needs to intervene in alleviating this problem. Based on this, this study aims to determine the government's role in providing legal protection to workers who have been laid off due to the COVID-19 pandemic. The results in the field show that many workers have been laid off or laid off with wages that are not paid in full. To support the welfare and continuity of work for workers and to support workers who have been laid off or laid off due to Covid-19, the Government has issued various incentives for employers and workers, namely in the form of cash assistance in the form of Wage Subsidy Assistance (BSU) and issuing pre-employee cards aimed at providing training, namely providing skills that can be used for industrial and entrepreneurial needs.

Keywords: Covid-19; Legal protection; Work termination.

Abstrak:

Dampak Covid 19 telah menggoyahkan ekonomi Indonesia dan tentunya dampak terbesar yang dirasakan karena adanya pandemi ini dalam hubungan industrial baik secara makro maupun mikro. Banyak perusahaaan yang terancam kelangsungan produksinya, yang pada akhirnya berdampak juga pada kelangsungan kerja para pekerja di Indonesia. Kondisi demikian menegaskan bahwa pemerintah perlu ikut campur dalam mengentaskan permasalahan ini. Berdasarkan hal tersebut maka Penelitian ini bertujuan untuk mengetahui bagaimana peran pemerintah dalam memberikan perlindungan hukum terhadap pekerja yang di PHK akibat pandemic COVID-19. Hasil di lapangan menunjukan bahwa saat ini banyak para pekerja yang sudah ter-PHK maupun dirumahkan dengan upah yang tidak dibayar penuh. Untuk mendukung kesejahteraan dan kelangsungan kerja bagi pekerja serta mendukung pekerja yang mengalami PHK maupun dirumahkan akibat Covid-19 ini Pemerintah telah mengeluarkan berbagai insentif bagi pengusaha maupun pekerja yaitu berupa bantuan uang tunai berupa Bantuan Subsidi Upah (BSU) serta mengeluarkan kartu pra pekerja yang bertujuan memberikan pelatihan, yakni memberikan keterampilan yang bisa digunakan untuk kebutuhan industri maupun berwirausaha.

Kata Kunci: Covid-19; Perlindungan Hukum; Pemutusan Hubungan Kerja.

A. Introduction

Humans are social creatures who cannot escape from interacting or relating to each other to fulfill their needs. (Hantono & Pramitasari, 2018) In meeting life's needs, humans must work alone or for other people or companies which can produce to meet their needs.

The relationship between workers/labor and employers that occurs in employment is also referred to as labor/industrial relations—understanding the term labor with industrial terms, considering that at the beginning of its development, labor relations brought problems to the relationship between workers and employers. However, the working relationship between workers and employers is not a stand-alone problem because economic, socio-political and cultural factors heavily influence it, so the term labor relations is replaced with the term industrial relations. (Izzati, 2021)

In industrial relations between workers/labor and employers, there are always differences of opinion of interest. On the one hand, workers' demands to fight for welfare improvement and more humane working conditions are already a reasonable demand. While on the other hand, entrepreneurs in the economic recovery due to the slow pace of the Covid-19 pandemic, coupled with the symptoms of a global recession which tend to have a negative impact on market share, is a dilemma for employers in facing the demands of workers. (Syafrida et al., 2020)

The problem of industrial relations disputes, which is increasingly developing and highlighted by the community, is also not left behind by the government. The government, which is in the middle between workers and employers, does not want a dispute between the two parties because, with the conflict, it is not only the workers and employers who suffer losses but also the government. (Syafrida et al., 2020)

In the last two years, Indonesia has been affected by the COVID-19 pandemic, which has affected industrial relations. The trend of the COVID-19 pandemic is getting higher and has not shown any signs of ending soon. The number of people exposed to and dying every day is increasing. Although on the other hand, those who are recovering continue to grow as well, and there is an encouraging trend in the number of those who are recovering.

Covid 19 has shaken the Indonesian economy and of course, the most significant impact is felt in macro and micro industrial relations. Many companies are confused about taking a stand on the continuity of production. On the one hand, a health protocol requires workers to work at home. But on the other hand, for production workers, the company has to shut down its production, and that's called corporate bankruptcy. The impact of all this is that many workers/laborers whose contracts have not been extended are temporarily laid off. Even worse, many workers have been laid off and are experiencing economic difficulties. (Sihaloho, 2020)

Many companies are threatened with the continuity of their production, which impacts our workers' work continuity. Many have been laid off or laid off with wages not being paid in full. In the end, this condition causes the workers to have difficulty meeting their daily needs. Given this fact, many governments have issued policies for companies related to the ease and continuity of doing business based on health emergencies to face threats that endanger the national economy and/or financial system stability.

The majority of layoffs are mass. Judging from the factors causing the termination of employment, the bias comes from employees and the company. Layoffs occur due to

disciplinary factors, economics, business, or personal factors. (Sjafri Mangkuprawira, 2003)

One of the impacts of the COVID-19 pandemic is the rise of layoffs. Data published in Tempo shows that the number of laid-off workers has reached 3.05 million. Still, according to the same source, Bappenas previously estimated unemployment this year to reach 4.2 million. Meanwhile, according to a survey by the Central Statistics Agency (BPS), low-income residents and workers in the informal sector are most affected by Covid-19. Conditions are slightly different in cities that are affected by business or trade. (Ngadi et al., 2020)

The wave of layoffs rose significantly over the last 9 (nine) months. During the Covid-19 pandemic, termination of employment (PHK) was generally terminated for force majeure and efficiency. The impact of the Covid-19 pandemic, in addition to workers being laid off, some workers being "laid off," terminating work contracts before they expire, cutting wages, and enforcing the no work, no pay principle.

Companies can perform layoffs due to the Covid-19 pandemic for reasons of efficiency as stipulated in Article 164 paragraph (3) of Law No. 13 of 2003. The difference is that the severance compensation companies provide for layoffs on the grounds of loss or force majeure is 1 (one) time provision. Meanwhile, the severance pay for layoffs for efficiency is 2 (two) times the provision. From the description of the background above, a problem arises, what is the role of the government in providing legal protection for workers who have been laid off due to the COVID-19 pandemic?

B. Discussion

In everyday life, termination of employment between workers and employers is usually known as layoffs or termination of work, which can occur due to the expiration of a specific time that has been agreed upon/agreed in advance and can also occur due to disputes between workers and employers, the death of the worker or for other reasons. (Putra & Maruf, 2021)

Termination of Employment (PHK) according to Article 1 Number 4 of the Decree of the Minister of Manpower Number: Kep-150/Men/2000 concerning Settlement of Termination of Employment and Determination of Severance Pay, Service Period Rewards and Compensation in the Company, it is stated that; "Termination of Employment Relations is the termination of employment relations between employers and workers based on the permission of the Regional Committee or the Central Committee."

Termination of Employment Relations, according to Article 1 Number 25 of Law Number 13 of 2003 concerning Manpower, is; "Termination of employment relationship due to a certain matter that results in the termination of the rights and obligations of workers/laborers and employers." Types of Termination of Employment (PHK) include: (Rosok, 2017)

a. Termination of Individual Employment

Individual layoffs are terminations of employment, usually due to specific reasons that are carried out on individual workers. Terminating this relationship is a common layoff and can be considered reasonable to occur in connection with personal desires or individual actions. In this case, the initial initiative or intention was put forward by the worker himself and or the entrepreneur:

- (1) The initiative or intention of the novice worker:
 - Workers do have the intention to change jobs because of their desire to

have a permanent job level, which is better for the development of their lives in the future:

- The worker intends to leave the company because he wants to find another job rather than work in the company, which always does not give him satisfaction;
- Workers plan to leave the company because they are ashamed of being suspected and monitored closely;
- The worker intends to leave the company because his family is moving to another place or because his health doesn't allow it;
- Workers plan to move from the company and accelerate the realization of that desire, intentionally doing things that are not in line with the employer's wishes.
- (2) The initiative or intention of a novice entrepreneur:
 - Employers do have the intention to lay off workers because these workers consistently violate work discipline.
 - The entrepreneur has indeed intended to dismiss the worker in question because the worker has acted dishonorably and disturbed the peace of the other workers;

Di dalam hal ini pemutusan hubungan kerja yang dilakukan oleh pengusaha, hanya karena akan berlangsung terhadap pekerja yang bersangkutan sesuai dengan niat atau keinginannya yang telah diajukan secara langsung kepada pihak pengusaha.

b. Terminated Employment Relationship for the sake of Law

An employment relationship terminated by law is a termination of employment that occurs automatically in connection with the expiration of the term of the agreement made by the employer and the worker.

Likewise, in Article 12 of the Regulation of the Minister of Manpower Number Per-02/Men/1993 concerning Work Agreements for a Specified Time, it is stated that "Specific Time Work Agreements expire by law with the expiration of the time specified in the Work Agreement or with the completion of the agreed work." Although the termination of employment occurs automatically, the parties may agree to provide notification when the employment agreement expires. This notification can later be followed by the provisions of whether the work agreement/employment relationship will be terminated or not. It is in a written agreement or a regulation. Notifying the act of termination is required because it is based on law or according to custom and if the length of work is determined from the beginning. At the same time, both parties in permitted matters do not deviate from something stipulated in the written work agreement. Besides being able to occur due to the expiration of the term of the agreement, this legal termination of employment can also occur due to the worker's death (Article 13 of the Regulation of the Minister of Manpower Number Per-02/Men/1993).

c. Employment Relations Terminated by the Labor Party

In an employment relationship, the worker/employee may terminate his/her employment relationship with the approval of the employer/company at any time he/she wants. Even the worker has the right to terminate the employment

relationship without the company's approval unilaterally. Terminating employment by a worker for urgent reasons is a situation such that it affects the worker that he should not expect to terminate the employment relationship.

Serious mistakes committed by employers which constitute an urgent reason for workers to terminate their employment relationships with employers are stipulated in Article 19 paragraph (1) of the Regulation of the Minister of Manpower of the Republic of Indonesia Number Per-02/Men/1993, which specifies as follows:

- Persecuting, abusively insulting, or threatening the worker, family, or household member of the worker or allowing it to be done by the family, household member, or subordinate of the employer;
- Persuading workers, their families, or housemates to do something that is against the law or with morality, or the employer's subordinates do it;
- 2 (two) times not paying workers wages on time;
- Not meeting the requirements or not performing the obligations set out in the Employment Agreement;
- Not providing sufficient work to workers whose income is based on the results of the work carried out following the agreement;
- Not or not enough to provide the necessary work facilities to workers, whose income is based on the results of the work done.

If the employment relationship is continued, it can pose a danger to the safety of the life or health of the worker, which the worker did not know when the Work Agreement was concluded;

- Ordering workers to do things that are not proper and have nothing to do with the Employment Agreement;
- Ordering workers, even though workers reject them, to do some work at another company that is not following the Employment Agreement.

d. Employment Relations Terminated by Employers

Termination of employment by employers is the most common, either because of the workers' mistakes or the company's condition. Termination of employment by employers often has a negative impact, especially on workers and their families in maintaining their survival. In connection with the consequences of this termination of employment, in the era of national development, which requires the equal achievement of a just and prosperous society, both materially and spiritually, this termination of employment should not need to occur.

According to Article 18 paragraph (1) of the Regulation of the Minister of Manpower of the Republic of Indonesia Number Per-02/Men/1993, employers can issue a final warning letter to workers because of the worker's mistake in committing the following acts:

- a. Still refuses to obey orders or appropriate assignments given to him by or on behalf of the entrepreneur while the order is following the work agreement that has been made;
- b. Deliberately or negligently caused himself to be in such a condition that he was unable to carry out his work;
- c. If it turns out that later on, the worker does not carry out his work following the agreed terms;

d. Violating the provisions stipulated in the work agreement while he has been given the first or second warning letter, which is still valid.

In the Decree of the Minister of Manpower of the Republic of Indonesia No: Kep-150/Men/2004 concerning Settlement of Termination of Employment and Determination of Severance Pay, Work Period Rewards and Compensation in the Company, in principle Termination of Employment by Employers is divided into 2 (two) namely:

1. Minor Error

a. According to Article 7 of the Decree of the Minister of Manpower No. Kep-150/Men/2000

In the case of a minor error, the employer may warn the worker verbally or in writing; before terminating the employment relationship. (Verse 1); The written warning letter, as referred to in paragraph (1), can be in the form of the first, second, and third written warning, except if the worker makes a mistake, as referred to in Article 18 paragraph (1). (Paragraph 2); The validity period of each warning letter, as referred to in paragraph (2), is 6 (six) months unless otherwise stipulated in the work agreement or company regulations, or collective agreement. (Paragraph 3); The validity of the warning letter, as referred to in paragraph (1), is based on the applicable provisions in the work agreement, company regulations, or collective work agreement. (Paragraph 4);

b. According to Article 8 of the Decree of the Minister of Manpower No. Kep-150/Men/2000

Deviation from the provisions as referred to in Article 7 paragraph (2), the entrepreneur may directly issue a final warning letter to the worker if:

- After 3 (three) consecutive times, the employee still refuses to obey the proper order or assignment as stated in the work agreement or company regulations or collective work agreement;
- Deliberately or negligently resulted in him being unable to do the work assigned to him;
- Not able to do the job even though it has been tried in the existing task field:
- Violating the provisions stipulated in the work agreement, company regulations, or collective labor agreements may be subject to a final warning.

2. Serious Error

According to Article 18 paragraph (1) of the Minister of Manpower Decree No. 150/Men/2000, the permit for termination of employment can be granted because the worker has committed the following serious mistakes:

- a. Fraud, theft, and embezzlement of goods/money belonging to the entrepreneur or belonging to a co-worker or belonging to a friend of the entrepreneur; or
- b. Provide false or falsified information to harm the entrepreneur or the interests of the State; or

- c. Getting drunk, drinking intoxicating liquor, drugs, using drugs, or abusing illegal drugs or other stimulant drugs prohibited by laws and regulations, at work and in places determined by the company, or
- d. Committing immoral acts or gambling in the workplace; or
- e. Attacking, intimidating, or deceiving employers or co-workers and trading prohibited goods both within the company and outside the company environment, or
- f. Persecutes, threatens physically or mentally, violently insults the employer or the employer's family or co-workers; or
- g. Persuading an entrepreneur or co-worker to do something contrary to the law or decency and applicable laws and regulations, or
- h. Recklessly or intentionally damage, harm, or leave the entrepreneur's property in danger; or
- i. Recklessly or intentionally damage or expose themselves or their coworkers to danger; or
- j. Disclosing or divulging company secrets or defaming the good name of the entrepreneur or the entrepreneur's family, which should be kept secret except for the interests of the State; and
- k. Other matters are regulated in the work agreement, company regulations, or collective labor agreement.

Furthermore, the application for termination of employment permit cannot be granted if it is based on the following:

- a. Matters relating to the management and or membership of a trade union registered with the Ministry of Manpower or in the context of forming a trade union or carrying out other tasks or functions of a trade union outside working hours or during working hours with the written permission of the entrepreneur or as regulated in a collective bargaining agreement;
- b. Complaints of workers to the authorities regarding the behavior of entrepreneurs who are proven to have violated state regulations;
- c. Understanding, religion, sect, ethnicity, class or gender (Article 2 paragraph (3) Kep-Menaker No. 150/Men/2000).

Pemutusan hubungan kerja dilarang dalam hal:

- a. Workers are unable to come to work due to illness according to a doctor's statement for a continuous period not exceeding 12 (twelve) months:
- b. Workers are unable to carry out their work because they fulfill their obligations to the state by following applicable laws and regulations;
- c. Workers carry out worship that is ordered by their religion and approved by the Government;
- d. For reasons of marriage, pregnancy, childbirth, or miscarriage;
- e. For reasons of female workers carrying out the obligation to breastfeed their babies, which have been regulated in the work agreement or company regulations or collective labor agreements, or statutory regulations;

f. Workers have blood ties and or marital ties with other workers in the same company unless it has been regulated in company regulations or collective work agreements (Article 2 paragraph (4)) Kep-Menaker No. 150/Men/2000).

e. Court Terminated Employment Relationship

Each party to the employment agreement may request the District Court terminate the employment relationship for important reasons. An important reason for submitting a written request to the Court at his actual residence is to declare a Termination of Employment Agreement.

Important reasons are, in addition to the urgent reasons (*dringnederenden*), changes in the personal situation or property of the applicant or other parties or changes in the circumstances in which the work is carried out, which are of such a nature that it is appropriate to immediately or in a short time terminate the employment relationship.

Before the court gives its decision, first summon the parties to hear their statements regarding the termination of the employment relationship. If the court grants the request, it can, at the same time, determine when the employment relationship will end.

f. Mass layoffs

Mass termination of employment is deemed to occur "if within one month a company terminates employment with 10 (ten) or more workers or conducts a series of Terminations of Employment which can represent an intention to carry out massive layoffs." (Widyaningsih, 1982)

The original intention (initiative) in this massive layoff was on the part of the entrepreneur. The important value of his efforts is the intention or will of the entrepreneur to lay off a number of his workers, which exceeds 10 (ten) people at once or in succession in connection with several things that affect and urge him, among others:

- a. A number of workers collectively show specific actions that the employer considers to be able to damage the peace of work for other workers and oppose work orders.;
- b. There was a change in work methods in the company, and for the sake of saving, some of the work had to be dismissed;
- c. As a result of the economic recession, the sluggishness of product marketing, or the difficulty of obtaining raw materials for the implementation of production in the company, all of these have caused entrepreneurs to take policies to reduce production so that many workers were forced to be laid off.

In carrying out massive layoffs, the following must be considered:

- 1. Labor organizations to be invited to negotiate, especially regarding:
 - a. Subtraction amount:
 - b. Reduction of the amount of overtime:
 - c. Particular negotiations are held within a reasonable time before termination;
 - d. Who should be dismissed first?.

- 2. Dismissal so that according to a specific criterion (criteria), both the company's and workers' interests are taken into account. In this size to note:
 - a) Smooth work in the company;
 - b) Skills, abilities, and skills of each worker;
 - c) Length of the working period;
 - d) Working family situation.
 - e) If the company needs more workers, priority should be given to workers whose employment relationship was terminated due to a reduced workforce.

In the first half of 2020, the world was in an uproar with the spread of a new virus called the corona, commonly called coronavirus disease-19 (Covid-19). One of the areas affected by the coronavirus pandemic is the workforce. The COVID-19 pandemic also affects company performance, productivity, and finances, as well as the obligation of employers to meet operational cost needs such as workers' normative rights, including wages. In addition, many companies are laying off workers to take unpaid leave (laying off workers but not being paid) and doing unilateral termination of employment (PHK) for various reasons. (Predianto & Khoirurrosyidin, 2020)

Layoffs are a routine activity carried out by every organization to continue its business. Termination is the exit of members of the organization from membership due to limited ability to meet the organization's interests. Layoffs are something that the parties in the organization do not desire. Layoffs for employees are a loss of work which means a reduction in part of the salary or wages that are the source of the employee's income. Therefore the employee does not want it except for specific reasons or layoffs at the employee's request. For companies, layoffs will lead to new human resources processes, so they incur relatively high costs, except for other things based on company considerations. (Wilson Bangun, 2017)

To support the welfare and continuity of work for workers and to support workers who have been laid off or laid off due to Covid-19, the Government has issued various incentives for employers and workers. In addition to incentives, the government has also designed direct assistance to workers who have been laid off or who have been laid off, and also to informal workers. (Hasanah & Ramadhani, 2021)

Not only formal workers who get incentives from the Government, informal workers and formal workers who are laid off and laid off without pay also receive assistance from the Government with the Pre-Employment (Prakerja) Card Program. The initial format of the Pre-Employment Card was focused on vocational training, which would be accompanied by the provision of cash funds of IDR 650,000 to job seekers who had passed the training. However, during this pandemic, the Pre-Employment Card is currently being transferred as cash assistance to workers who have been laid off or laid off, informal workers, and MSME actors.

In addition, BPJS Employment support is also needed by providing cash assistance. Of course, with funds under management reaching almost IDR 500 trillion, BPJS Ketenagakerjaan can allocate its operational funds to help workers

who have been laid off without pay. In addition, BPJS Ketenagakerjaan can also simplify the process of taking JHT funds by workers who have been laid off or laid off without pay, which is currently required at least one month after the layoff can be changed to one week after the layoff.

In addition, the Ministry of Manpower also has a short-term solution to maintain the survival of workers and businesses through the Circular Letter (SE) of the Minister of Manpower Number M/7/AS.02.02/V/2020. This circular letter is addressed to all governors. "This circular encourages company leaders to immediately prepare plans for implementing business continuity, including through risk mitigation and identification of pandemic impact responses, taking into account the large potential for workers who are threatened with layoffs or being laid off," he said. Based on data from the Central Statistics Agency (BPS), the workforce in February 2021 was 139.81 million, an increase of 1.59 million people compared to August 2020. In line with the rise in the number of the workforce, the Labor Force Participation Rate (TPAK) also increased by 0.31 percent.

In SE Minister of Manpower M/3/HK.04/III/2020 concerning the Protection of Workers/Labourers and Business Continuity in the Context of Prevention and Control of COVID-19. The Minister of Manpower asks governors to implement wage protection for workers/laborers related to the COVID-19 pandemic, as follows:

- 1. For workers/laborers categorized as COVID-19 Monitoring Persons (ODP) based on a doctor's statement so that they cannot come to work for a maximum of 14 days or according to the standards of the Ministry of Health, their wages are paid in full.
- 2. For workers/laborers who are categorized as suspected cases of COVID-19 and are quarantined/isolated according to a doctor's statement, their wages are paid in full during the quarantine/isolation period.
- 3. For workers/laborers who do not come to work because of COVID-19 illness and are proven by a doctor's statement, their wages are paid according to the laws and regulations.
- 4. For companies that limit their business activities due to government policies in their respective regions for the prevention and control of COVID-19, thereby causing some or all of their workers/laborers not to come to work, taking into account business continuity, changes in the amount and method of payment of workers/labor is carried out following the agreement between the entrepreneur and the worker/laborer.

Based on the circular letter, to avoid layoffs, employers can make changes to the amount and method of payment of wages for workers/laborers who have been temporarily laid off due to the COVID-19 outbreak, based on the agreement of the parties. In addition, workers/laborers who are suspected of or positively infected with COVID-19 are also entitled to wages.

C. Closing

The impact of the COVID-19 pandemic has been felt by many formal and informal workers throughout the country, without the exception of Indonesia, which has been affected. Several companies have gone out of business due to Covid-19 and have made

them terminate their employment (PHK) and lay off their employees without paying wages.

The government's role in providing legal protection for laid-off workers in the COVID-19 pandemic is to issue pre-employee cards. Although it is prioritized for the unemployed and victims of layoffs, this program is also open to employees and entrepreneurs. Registered participants will receive a monetary aid of IDR 3,550,000 for training costs and incentives. The purpose of the training is to provide skills that can be used for industrial and entrepreneurship needs. BPJS Employment provides cash assistance through Wage Subsidy Assistance (BSU). These things will provide resilience and survival for workers/laborers during a pandemic who have been laid off or laid off without pay and have no other income. Thus, layoffs are not recommended to be carried out. There are alternative efforts to continue to employ workers/laborers and maintain the continuity of business activities as described above.

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