

## **THE ROLE OF THE GOVERNMENT IN PROVIDING LEGAL PROTECTION TO WORKERS THAT WAS LAID OFF DUE TO THE COVID-19 PANDEMIC**

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**ABSTRACT:** This study aims to determine the role of the government in providing legal protection to workers who have been laid off due to the COVID-19 pandemic. The impact of Covid 19 has shaken the Indonesian economy and of course the biggest impact is felt in industrial relations, both macro and micro. Many companies are threatened with the continuity of their production, which has an impact on the survival of our workers. Many have been laid off with wages not paid in full. To support the welfare and continuity of work for workers as well as to support workers who have been 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-employment cards that aims to provide training, namely to provide skills that can be used for industrial and entrepreneurship needs.

**Keywords:** Legal Protection; Layoff

### **INTRODUCTION**

Humans are social creatures, namely creatures who cannot escape from interacting or relating to each other in order to meet their needs. Humans in meeting the needs of life must work, either working alone or working 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. The understanding of the term labor with the term industrial, considering that in the beginning of the development of labor relations brought problems to the relationship between workers and employers. However, in the working relationship between workers and employers, it is not a stand-alone problem because it is heavily influenced by economic, socio-political and cultural factors, so the term labor relations is replaced by the term industrial relations.

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In industrial relations between workers/labor and employers there are always differences of opinion of interest. On the one hand, the demands of workers to fight for the improvement of welfare, more humane working conditions are already a reasonable demand. 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 that tend to have a negative impact on market share, is a dilemma for employers in facing the demands of workers.

The problem of industrial relations disputes, which is increasingly developing, and is being 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 dispute, it is not only the workers and employers who suffer losses, but also the government.

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 and dying every day is increasing. Although on the other hand those who are recovering continue to increase as well and there is an encouraging trend in the number of those who are recovering.

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

Many companies are threatened with the continuity of their production, which has an impact on the survival of our workers. Many have been laid off or laid off with wages not paid in full. This condition causes the workers in the end to have difficulty in 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 in order 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, it can come from employees and from the company. Layoffs can occur due to disciplinary factors, economics, business or personal factors.<sup>1</sup>

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<sup>1</sup> Sjafrri Mangkuprawira, *Manajemen Sumbaer Daya Manusia Strategik*, Ghalia Indonesia, Jakarta, 2003, p. 171

One of the impacts of the COVID-19 pandemic is the rise of layoffs. Data published in Tempo shows the number of laid-off workers has reached 3.05 million.<sup>2</sup> 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 the groups most affected by Covid-19. Conditions are somewhat different in the affected cities, namely business or trade.

The chart of layoff has increased significantly over the last 9 months. During the Covid-19 pandemic, generally termination of employment (PHK) for reasons of 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 principle of no work no pay (not working, not being paid).

Companies can perform layoffs as a result of the Covid-19 pandemic for reasons of efficiency as regulated in Article 164 paragraph (3) of Law No. 13 of 2003. The difference is that the severance compensation provided by companies for layoffs on the grounds of loss or force majeure is 1 time provision. Meanwhile, the severance pay for layoffs for reasons of efficiency is 2 times the provision.<sup>3</sup>

## **PROBLEM**

From the description of the background above, a problem arises, how is the role of the government in providing legal protection to workers who have been laid off due to the COVID-19 pandemic?

## **DISCUSSION**

In everyday life, termination of employment between workers and employers is commonly known as layoffs or termination of employment, which can occur due to the expiration of a certain 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.

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, Period of Service Rewards and Compensation at the Company, it is stated that: "Termination of Employment is the termination of working relationship between employers and workers based on the permission of the Regional Committee or the Central Committee."

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<sup>2</sup> <https://www.worldometers.info/coronavirus>

<sup>3</sup> [hukumonline.com](http://hukumonline.com) Wednesday, 15 July 2020

Termination of Employment Relations according to Article 1 Number 25 of Law Number 13 of 2003 concerning Manpower is: "Termination of employment relations due to a certain matter which results in the termination of the rights and obligations of workers/laborers and employers."<sup>4</sup>

Types of Termination of Employment (*PHK*):

a. Termination of Individual Employment

Individual layoffs are terminations of employment that usually occur due to certain reasons that are carried out on individual workers.

Termination of this relationship is a layoff that is common and can be considered reasonable to occur in connection with individual desires, or individual actions, in this case the initial initiative or intention is put forward by the worker himself and or the entrepreneur:

(1) Beginner's initiative or intention worker :

- The worker has the intention to change jobs because of his desire to have a permanent job level, which is better for the development of his life in the future;
- The worker really intends to leave the company because he wants to find another job, rather than working in the company which always does not give him satisfaction;
- The worker did intend to leave the company because he was ashamed that he was always under suspicion and closely monitored;
- The worker intends to leave the company because his family moves to another place or because his health does not allow it;
- The workers do intend to move from the company and accelerate the realization of that desire, intentionally doing things that are not in line with the wishes of the entrepreneur.

(2) Beginner's initiative or intention businessman :

- Employers do have the intention to lay off workers, because these workers always violate work discipline.
- The entrepreneur has indeed intended to dismiss the worker concerned because the worker has acted dishonorably and disturbed the peace of the other workers;

In this case, the termination of employment carried out by the entrepreneur, only because it will take place against the worker concerned in accordance with his intentions or wishes that have been submitted directly to the entrepreneur.

b. Terminated Employment Relationship by Law

An employment relationship that is 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.

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<sup>4</sup> Law No. 13 of 2003 concerning Manpower

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: "The Work Agreement for a Specified Time ends 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 will expire. 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 in a regulation. Notification of the act of termination is required because it is based on law or according to custom, as well as if the length of work is determined from the beginning, while 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 death of the worker (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 wishes, even the worker has the right to unilaterally terminate the employment relationship without the company's approval.

Termination of 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 stipulates as follows:

- Persecute, humiliate or threaten the worker, family or household member of the worker or allow it to be done by the family, household member or subordinate of the employer;
- Persuade workers, their families or their housemates to do something that is against the law or with morality, or it is done by the employer's subordinates;
- 2 (two) times not paying workers wages on time;
- Does not meet the requirements or does not perform the obligations stipulated in the Work Agreement;
- Does not provide sufficient work to workers whose income is based on the results of the work carried out in accordance with the agreement;
- Not or not enough to provide the required work facilities to workers, whose income is based on the results of the work done;

If the employment relationship is continued, it may 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 they are rejected by workers to do some work for the company others that are not in accordance with the Employment Agreement.

d. Employment Relations Terminated by Employers

Termination of employment by employers is the most common, either because of the mistakes of the workers or the condition of the company. 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 achievement of a just and prosperous society equally, 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 may issue a final warning letter to workers due to the worker's error in committing the following acts:

- a. Keep refusing to obey orders or assignments which is appropriate to be given to him by or on behalf of the entrepreneur, while the order is in accordance with the work agreement that has been made;
- b. Deliberately or negligently caused himself to be in such a condition that he cannot carry out his work;
- c. If it turns out that in the future the worker does not carry out his work in accordance with the agreed provisions;
- d. Violating the provisions stipulated in the work agreement, while he has been given a valid first or second warning letter.

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 at the Company, in principle Termination of Employment by Employers is divided into 2 (two), that is :

1). Minor Error

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

In the case of a minor error, the employer may give a warning to the worker either verbally or in writing; before terminating the employment relationship. (paragraph 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 in the event that 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 or company regulations or collective work agreement. (paragraph 4);

- b). According to Article 8 of the Minister of Manpower Decree No: Kep-150/Men/2000 Deviations 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) times in a row the employee still refuses to obey orders or proper assignments as stated in the work agreement or company regulations or collective work agreement;
  - Deliberately or negligently results in him being unable to carry out the work assigned to him;
  - Not able to do the job even though it has been tried in the existing task area;
  - Violating the provisions set out in the work agreement or company regulations or collective bargaining agreements, which 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 so as to harm the entrepreneur or the interests of the State; or
- c). Getting drunk, drinking intoxicating liquor, taking drugs, taking drugs or abusing drugs prohibited or other stimulant drugs that are prohibited by laws and regulations, in the workplace and in places determined by the company, or
- d). Committing immoral acts or gambling in the workplace; or
- e). Attack, intimidate or deceive employers or co-workers and trade prohibited goods both within the company and outside the company environment, or
- f). Persecute, threaten physically or mentally, violently insult the employer or the entrepreneur's family or co-workers; or
- g). Persuading an entrepreneur or co-worker to do something that is against 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 co-workers 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 interest of the State; and
- k). Things other regulated in the work agreement or company regulations or collective labor agreement.

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

- 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).

Termination of employment is prohibited in the event that:

- a). The worker is 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 in accordance with 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 abortion;
- e). For reasons of female workers carrying out the obligation to breastfeed their babies which have been regulated in work agreements 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 to terminate the employment relationship based on important reasons. An important reason for submitting a written request to the Court at his actual place of residence to declare a Termination of Employment Agreement.

Important reasons are in addition to the urgent reasons (*dringnederenden*), changes in personal circumstances 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.

f. Mass layoffs

Mass termination of employment is considered 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".<sup>5</sup>

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

- a). There are a number of workers who collectively show certain actions, which are considered by the employer to be able to damage the peace of work for other workers and oppose work orders;
- b). There is a change in work methods in the company and for the sake of saving some of the work must be dismissed;
- c). As a result of the economic recession, sluggish 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 a number of workers were forced to be laid off.

In carrying out a large-scale termination of employment, the following matters must be considered:

1. Labor organizations should be invited to negotiate, in particular regarding:
  - a. Amount of reduction;
  - b. Reduction of the amount of overtime;
  - c. Special negotiations are held within a reasonable time prior to termination;
  - d. Selection of who should be dismissed first.
2. Dismissal so that according to a certain size (criteria), both the interests of the company and the interests of the workers are taken into account. In this size to note:
  - a. Smooth work in the company;
  - b. Skills, abilities, skills of each worker;
  - c. Length of service;
  - d. Working family situation.
  - e. In this case, the company needs more workers, so that priority is given to workers whose employment relationship is terminated due to a reduction in the workforce.

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

Layoffs are actually a routine activity carried out by every organization for the sake of continuing its business. Termination is the exit of members of the organization from membership due to limited ability to meet the interests of the organization. Layoffs are something that is not desired by the parties in the organization. Layoffs for employees is 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 certain reasons, or layoffs at the request of the employee himself. For companies, layoffs will lead to new processes in human resources so that they incur relatively large costs, except for other things based on company considerations.<sup>6</sup>

To support the welfare and continuity of work for workers and 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.

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 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 Rp. 650,000 to job seekers who had passed the training, but during this pandemic the Pre-Employment Card is currently being transferred as cash assistance to workers who have been laid off or laid off, workers informal sector and SMEs.

In addition, BPJS Employment support is also needed, by providing cash assistance. Of course, with funds under management of almost Rp. 500 trillion, BPJS Ketenagakerjaan can allocate its operational funds to help workers who have been laid off or who have been laid off without pay. In addition, BPJS Ketenagakerjaan can also simplify the process of taking JHT funds by

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<sup>6</sup> Wilson Bangun, *Manajemen SDM Hubungan Industrial*, Erlangga, Jakarta, 2017, p. 219

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.<sup>7</sup>

In addition, the Ministry of Manpower also has a short-term solution in order 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 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 furloughs," he said. Based on data from the Central Statistics Agency (BPS), the number of the workforce in February 2021 was 139.81 million people, an increase of 1.59 million people compared to August 2020. In line with the increase in the number of the workforce, the Labor Force Participation Rate (TPAK) also increased by 0.31 percent.<sup>8</sup>

In SE Minister of Manpower M/3/HK.04/III/2020 concerning 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:<sup>9</sup>

1. For workers/laborers who are categorized as COVID-19 Monitoring Persons (ODP) based on a doctor's statement so that they cannot enter work for a maximum of 14 days or according to Ministry of Health standards, 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 due to 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, causing some or all of their workers/laborers to be absent from work, taking into account business continuity, changes in the amount and method of payment of workers/laborers' wages are made. in accordance with the agreement between the entrepreneur and the worker/labourer.

Based on the circular, 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.

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<sup>7</sup> <http://ksarbumusi.or.id/2020/04/10/dampak-pandemi-covid-19-terhadap-cepat-industrial>

<sup>8</sup> <https://money.kompas.com/read/2021/08/19/133300426/dampak-ppkm-kemenaker-almost-48-persen-pekerja-terancam-phk-dan-dirumahkan>

<sup>9</sup> Point II SE Minister of Manpower M/3/HK.04/III/2020

## CONCLUSION

The impact of the COVID-19 pandemic has been felt by many formal and informal workers in all countries without the exception of Indonesia being affected. Several companies have gone out of business as a result of COVID-19 and have forced them to terminate their employment (*PHK*) and lay off their employees without providing 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 prioritized for those who are unemployed and victims of layoffs, this program is also open to employees and entrepreneurs. Registered participants will receive a financial 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 entrepreneurial needs. BPJS for Employment by providing cash assistance in the form of Wage Subsidy Assistance.

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. There are alternative efforts to keep employing workers/laborers and maintain the continuity of business activities as described above.

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**Law and Regulation**

Law number 13 of 2003 on Manpower

Law number 2 of 2004 regarding Industrial Relations Dispute Settlement

Law Number 11 of 2020 concerning Job Creation;

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

Regulation of the Minister of Manpower Number: Per-02/Men/1993 concerning Work Agreements for a Certain Time

Circular Letter of the Minister of Manpower 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