

Corporate Responsibility to the Employees Who Have Terminated Employment in Indonesia during the Covid-19 Pandemic

Ikhwan Aulia Fatahillah, Moh. Ahsanuddin Jauhari, Ine Fauzia, Yuyu Wahyu, Sumiati

Abstract— The occurrence of the Covid-19 Pandemic in Indonesia had a significant impact on industry and employment. Many industries were unable to operate and resulted many workers being laid off. The aim of this study is to analyze one of the problems arises due to the existence of the Covid-19 pandemic relating to employment relations between the companies and workers in the termination of working relationship. This study uses descriptive research method and normative juridical approach. The results of this study indicate that the Covid-19 Pandemic can be categorized as a force majeure based on the law of employment in Indonesia. This is based on the reasons that it is an unnatural condition, special circumstances that are immediately, and short-lived without being able to be predicted beforehand. If a company is dismissed, the company closed due to loss or force majeure. Then the laborer is entitled to get the right to severance pay of one time provision, one year of service award money, and compensation rights in accordance with the Article 156 of the Indonesian Employment Law. If the company is unable to give the rights of the workers, they can effort to resolve through a bipartite negotiation forum to get a win-win solution. If the bipartite path cannot be negotiated or failed, it can take the tripartite approach. If there is still a dead lock, the dispute can be resolved through the Industrial Relations Court. The implication of the legal remedy is to obtain legal certainty for the parties.

Index Terms— Covid-19, Corporate Responsibility, Employees, Termination of Employment, Relationship.

1 INTRODUCTION

The Covid-19 pandemic is the center of attention of international countries, including Indonesia as one of the largest countries in Southeast Asia region that affected by this virus outbreak. At least 210 countries have recorded Covid-19 Pandemics [1]. Various countries from around the world continue to work to reduce the spread of this new type of corona virus (SARS-CoV-2). The total number of Covid-19 positive patients worldwide has so far reached two million patients, and this number is not a small count in the spread of the virus, it is even said to be the largest virus spread of all time. Based on data collected in world meters as of April 16, 2020, there were 2,083,048 positive cases worldwide with a total of 134,603 deaths and 510,187 patients recovering [2].

There are several countries with the highest number of cases, in which the United States (USA) is one of the countries with the highest number of cases reaching 644,089 cases, 28,529 died, and 48,701 recovered. Spain came in second with 180,859 cases, 18,812 died, and 70,853 recovered. Italy with 165,155 cases, 21,645 deaths and 38,092 recovered. France notes 147,863 cases, 17,167 deaths, and a growth of 30,955 patients. Germany ranks fifth with 134,753 cases, 3,804 deaths, and

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Ahmad Yurianto [6], Indonesian Spokesperson for handling the Pandemic Covid-19, said that until April 14, 2020, 139,137 people were registered as Patients in Oversight in Indonesia based on Polymerase Chain Reaction (PCR) tests with positive confirmed numbers of 5,136 patients. The Task Force for the Acceleration of Handling Covid-19 (covid19.go.id) announced that the total number of positive cases infected in Indonesia experienced a significant increase to 5,136 patients. The patients undergoing the treatment and isolation process are around 3,954 patients with a percentage of 81.7 percent of the total corona positive cases in Indonesia. Then 446 patients

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were successfully cured with a death rate of 469 people.

The Indonesian government has also made various efforts so that the community can avoid the spread of the Covid-19 Pandemic. Physical distancing and social distancing are being promoted to suppress the spread of this virus [7]. Every step and effort is raised by the government so that the community is more careful and keeps a distance in carrying out daily activities. In addition, the government implements a lockdown system or Large Scale Social Restrictions for areas with a high amount of exposure, urging the public not to carry out activities that have the potential to exacerbate the spread of the Covid-19 Pandemic, by staying in their respective homes. These efforts are principally carried out to break the chain of distribution of the Covid-19 Pandemic [8].

The Covid-19 pandemic greatly influenced almost all government affairs. The virus is not only disrupting the health sector, but also in the fields of education, food, social, religious and economic, especially business and manufacturing activities [9]. In fact, many companies are unable to operate and have difficulty paying work wages, where the company is no longer able to survive. Many are taking alternatives by laying off or even terminating employment. Based on data compiled by the Ministry of Manpower, around 1.2-1.5 million workers have been laid off and even they have been terminated. The amount came from a total of 74,430 companies spread throughout Indonesia. The formal sectors 1.01 million people from 39,977 companies and the informal sector 189,452 people from 34,453 companies [10].

Referring to the explanation above, the focus of this paper is to explain the company's responsibilities to the employees who have the termination of employment due to the Covid-19 Pandemic, and its relationship with the rights and the obligation of the company to them in line of the Indonesian Employment Law perspective.

2 METHOD

This study uses a descriptive-qualitative method and juridical-normative approach to explain the company's responsibilities to the employees who were laid off due to the Covid-19 Pandemic, and its impact on the termination of employment relationship. The sources and the technique of data collection are obtained through documentation studies with reference to various regulations and law instruments, court decisions, and supported by legal theories and opinions of legal experts. The data collected is analyzed through a deductive and inductive approach by considering the relevance of the legal theory framework and its practice to find legal reality in Indonesia, until a conclusion was formulated.

3 RESULT AND DISCUSSION

3.1 The Termination of Employment in Indonesian Law

Seeing the current situation, the impact of the Covid-19 pandemic was felt by many people. Even situations and conditions are more likely to be felt worse by workers or industrial companies. The impact felt by employees, workers, or laborers is the dismissal or termination of employment. The development of the Ministry of Employment data up to April 19, 2020 recorded that almost 11,340 companies were affected

by the Covid-19 pandemic and a total of 1.943.916 million workers who had been laid off and laid off, due to the condition of the company being unable to guarantee the workers' rights. Instead, there are many companies that take advantage of situations like this to terminate employment, and in the end the workforce has a huge impact amid uncertainty in dealing with the issue of termination of employment.

Putra Siregar & Ajeng Hanifa Zahra [11] said that the Covid-19 pandemic is expected to cause problems in the supply and demand side, including decreasing the amount of commodity production, decreasing income, weakening purchasing power, which has an impact on decreased demand for products, as well as on eventually led to a wave of layoffs of workers. According to them, the unnatural conditions occurred now can be seen as the special circumstances that are immediate or unpredictable situations, appear briefly, and cannot be predicted in advance become the reason that the Covid-19 Pandemic as a force majeure based on criteria in the Indonesian Employment Law.

As the reference, it is stated in the Article 164 paragraph (1) of the Indonesian Employment Law that if a coercive situation occurs or force majeure, a company has the right to give to compensation to the workers in the form of paying severance pay once. In contrast, Article 1244 and 1245 of the Indonesian Civil Code states that when the company becomes force majeure occurs, the company has not responsibility to give all compensation and claims and there is no change in the cost of damages in the event of force majeure or accidental events [12].

To overcome the impact of the Covid-19 pandemic disaster, the government issued a policy package that is expected to protect the employment sector, such as: (a) determination of non-natural disasters spread of Covid-19 that regulated in the Presidential Decree Number 12 of 2020; (b) the determination of community health emergency that regulated in the Presidential Decree Number 11 of 2020; and (c) the protection on worker and business continuity in the prevention and response of Covid-19 in Circular Letter of the Ministry of Employment Number: M/3/HK.04/III/2020.

In Black's Law Dictionary [13], force majeure is defined as an event or effect that can be neither anticipated nor controlled. Force majeure is not regulated in detail in the Indonesian Civil Code, but in outline of the Article 1244 stated that there is a reason for the debtor must be punished to compensate for costs, losses, and interest. If he does not prove, it does not carry out or not at the right time it was implemented, the presentation was caused by an unexpected thing, it could not be accounted for to him, if this bad intention was not on his side.

Force majeure as a natural disaster that inhibits the ongoing or running of a job, such as in the form of fire, earthquake, lightning, riots, and other similar types of the natural disasters, beyond prediction and human ability to prevent it. If force majeure occurs, the risk is borne by the contractor. Therefore, to the smallest risks, it is possible covered by the way of insurance or the third party. Simamora [14] provides a coercive boundary situation. He explains that a coercive state is an event that occurs outside the debtor's mistake after an engagement is made by the debtor when he cannot reckon with at the time of the engagement, or duly cannot account for

it, and the situation that cannot be predicted in the implementation engagement.

The termination of employment is broadly interpreted as a form of dismissal of employees in a company [15]. In the Indonesian Employment Law states that the termination of employment is mean the termination of employment relationship between the company and workers that caused by a matter and results the ending of the rights and the obligations between the company and the employers [16]. Soepomo [17] explained that the termination of employment is the termination of employment relationship between the employers or the workers and their company. In this context, Manulang [18] explained that there are four terminologies that inherent with the termination of employment such as: (a) termination as the completion or the termination of employment agreement; (b) dismissal as disciplinary action; (c) redundancy as part of the technological development; and (d) retrenchment as the economic problems, which the company does not have the ability to fulfill their obligations to the workers in the form of wages.

According to Wahyuni [19], the application of the employment law in Indonesia is actually expected that employers and workers have the same opportunities and recognition in the law. In this case, both can maintain a balance in work relationships, there is recognition of rights and obligations, there is a mutually beneficial relationship, and bound in an agreement that is protected by law in accordance with the values contained in Pancasila and the 1945 Constitution.

Ideally, every worker needs to be guaranteed and protected like stipulated in the Indonesian employment law which consists of several points such as: first, labor rights; second, the fundamental rights of the workers (bargaining with employers and strikes); third, protection of occupational safety and health; fourth, special protection for female, child, and disabled workers; fifth, wages, labor welfare and social security; and sixth, the termination of working relationship.

Yella Adriani [20] argues that legal protection for workers is one form of protection that must be provided by legal instruments for legal subjects, both preventive and repressive, and in writing as well as unwritten. Legal protection must ensure certainty, expediency, and justice. Erick Tucker [21] describes labor law as intended with the aim that the law is able to provide protection for laborers in opposing the capitalist labor market. In this context, Santoso [22] explains that the termination of employment caused by the cost efficiency of the company is not regulated or prohibited in the Indonesian Employment Law. The interpretation and testing of the provisions in Articles 151 and 153 of the Employment Law states that the termination of employment is permitted on several conditions, including: over-employment and disclosure of information on company conditions. In addition, the company must also prove that it has made efforts to prevent the termination of employment and consult with the workers through union representatives.

3.2 Corporate Responsibility to the Employees in the Termination of Employment Case

The termination of employment must be carried out on the basis of a sense of social justice for both parties towards

workers or companies. Anak Agung Ngurah [23] explained that labor must be protected by labor law. In this case, there needs to be more specific arrangements regarding the fulfillment of the rights of workers who are laid off. Dismissal of employees can certainly affect the company because it relates to funds that must be given to workers in the form of pension funds, severance pay, and benefits. Likewise, when re-hiring employees, each company also requires a lot of funds, including the compensation costs, employee training, incentives, bonuses, and others. Therefore, layoffs will have a major impact not only on the workers, but also on the company itself.

During the recent times, the reason of the companies do layoffs is generally caused by the company stopping operating due to losses in two years in a row, force majeure, or cost efficiency. Losses received by companies as Article 156 paragraph (1) must be proven in the form of financial statements for the last two years that have been audited by a public accountant. If layoffs are carried out because of efficiency, then workers are entitled to severance pay of twice the salary, one-time service reward money, and compensation money to be received.

The termination of employment is due to forced labor have a large impact. Because of the end of the employment relationship, the workers who only rely on income as laborers certainly can no longer provide for their families' livelihoods. Therefore, to help or ease the burden of the workers affected by the termination of employment, the Indonesian employment law has required the companies to provide severance pay, appreciation money, and compensation payments to the workers.

If the company does the termination of the employment, referring to Article 156 of the Indonesian Employment Law, the company has an obligation to give the right to every worker to receive one time severance pay, a period of service, and compensation for compensation. First, severance pay, appreciation money, and compensation rights, can be received by employees if, as in letter (c) mass layoffs occur due to force majeure, letter (d) layoffs occur because the company has efficiency and the letter (f) the company experiences bankruptcy [24].

Tenure awards and compensation payments must be given to workers if: (a) the employee is detained and unable to carry out work effectively after six months have elapsed; and (b) the employee is detained and has obtained a court decision that has permanent legal force. Under certain conditions, the employee is only entitled to get compensation money and separation money due to: (a) the employee has been absent for more than five days and has been called in accordance with applicable procedures and no response from the employee; and (b) resign from work without pressure.

Before doing the termination of employment to the workers based on force majeure or efficiency reason, the company must consider several aspects, such as: first, the status of workers and the compensation provided to them. The status of workers has various types that are regulated in the Indonesian Employment Law. There are two categories namely Specified Time Work Agreements (PKWT) and Indefinite Time Work Agreements (PKWTT). The status of workers must first get the attention of the company, if the

company does terminated the workers in PKWT status before the work end period, then the company is obliged to give the compensation payments to the workers amounting to work wages until the expiration of the working relationship agreement. However, if a company terminates employment with the workers in PKWTT status, the company must pay the compensation in accordance with the Article 156 of the Indonesian Employment Law [25].

Second, make a joint agreement and make records to the PHI (Industrial Relations Court). The termination of employment is an undesirable condition for companies, trade unions, workers, and the government. However, due to various reasons and situations, some industrial companies were forced to terminate employment based on legal provisions. In Article 155 of the Manpower Act, it is explained that if there is no agreement between the company and the workforce that is dismissed, the company can only carry out the termination of employment for workers after an industrial relations court ruling. Other situations that arise outside the context of the court's ruling, the company cannot do the termination of employment and at the same time null and void according to the provisions of Article 155 paragraph (1) of the Indonesian Employment Law.

If it is related to the impact of the Pandemic Covid-19 case, termination of employment is included in the category of force majeure or a situation that forces a company to unilaterally terminate the employment? Under normal conditions, a company is generally not allowed to do the termination of employment, but in a state of force a company is allowed to take decisions quickly and effectively with the aim of saving the company's business activities in the future.

The termination of employment due to the Covid-19 pandemic becomes one of the specific indicators for a company to lay off. Legally, this is justified in the sense that a company can do that on the grounds of force majeure due to the Covid-19 pandemic outbreak. However, there are logical consequences that must be borne by a company that must meet the obligation to provide compensation in the form of payment of double the salary as stipulated in the Minister of Manpower Regulation or provide maximum compensation as stipulated in Article 156 paragraph (2) of the Indonesian Employment Law.

There are a number of court decisions in Indonesia that can be used as a legal reasoning for conducting the termination of employment due to force majeure reasons, such as: (a) the Indonesian Supreme Court Decision Number: 15/K/Sip/1957 (risk of war, loss of objects of the covenant caused by God's power such as being hit by lightning, fire, seized by the Japanese army) [26]; (b) the Indonesian Supreme Court Decision Number: 3389/K/Pdt/1984 with the contents of the ruling administrative actions, orders from the ruling, the judges decisions, all binding administrative actions, and a suddenly event that cannot be resolved by the promised parties) [27]; and (c) the Indonesia Supreme Court Decision Number: 409K/Sip/1983 with contents about accidents at sea such as ships sinking due to big waves [28].

The company can make the termination of employment decisions to deal with urgent situations, including: first, the company must be honest and transparent in conveying the real situation and force majeure that is being experienced. This is done with the aim that workers who are laid off can

understand the situation that is being faced by the company; second, the company explains in detail and clearly to workers about the real condition of the company; third, do the termination of employment or no work no pay, which covers three aspects: (a) for workers with contract status. If the contract expires, there is no need for an extension; (b) the company negotiates with workers to change the status of workers to partners/distributors/resellers/freelancers so that they do not become a heavy burden of the company; (c) consider each policy to be taken, collect data on compensation, and provide it according to the company's current capabilities; and (d) the company has an agreement with employees and forms of a new commitment to deal with the current situation [29].

Referring to the provisions of Article 156 and 164 of the Indonesian Employment Law, the rights and obligations of the company to the workers in practice often occur that the company is unable to fulfill the rights of dismissed the workers. If the company is unable to provide the workers' rights, according to the provisions in Article 3 (1) of the Law Number 2 of 2004 on the Settlement of Industrial Relations Disputes, both parties can make efforts to resolve through a bipartite negotiation forum to get a win-win solution [30]. If the bipartite channel cannot negotiate or fails, it can take a tripartite pathway (dispute resolution agency) in accordance with Article 3 (2) of the Law Number 2 of 2004 on the Settlement of Industrial Relations Disputes. If it is still clogged, according to the provisions of Article 4 (1) of the Settlement of Industrial Relations Disputes, this matter can be resolved through the Indonesian Industrial Relations Court I.

3.3 The Effect of the Termination of Employment on the Company and the Employees

The termination of employment became a crucial issue in managing labor in Indonesia during the Covid-19 pandemic. Many of these cases have caused the majority of workers to lose their jobs and income. It also had a massive impact on the decline in the community's economic level, decreasing purchasing power, and increasing unemployment in the community. The most serious impact is the increase in unemployment and crime in the poor, including massive demonstrations. Sidabutar [31] explains that there are at least four types of industrial relations disputes regulated in UUPPHL, namely (a) rights disputes; (b) conflicts of interest; (c) disputes over the termination of employment; and (d) internal disputes among union members within the company.

Aloysius Uwiyo [32] explained that the Covid-19 Pandemic situation had a significant impact on the future of workers, employers and the government. Impacts on the company include: (a) decreasing the number and activities of production which have stopped; (b) finding new workers; (c) relinquish experienced and loyal employees; (d) requires a fee for the recruitment process; (e) unable to carry out operational activities normally even many companies went bankrupt; and (f) other viewpoints, if terminating employment, the company requires a large fee to provide severance and compensation to workers who were laid off.

For companies that are no longer able to operate due to the Covid-19 pandemic, it is permissible to conduct the termination of employment based on statutory regulations by proving that there are losses that cause companies to close.

Nugraha [33] explained that many companies used the Covid-19 Pandemic situation to terminate work relationships en masse, even though if the company concerned traced it might not be fully affected. The Indonesian Employers' Association (APINDO) states that other efforts before undertaking the phases of the termination of employment, many companies negotiate with workers to deduct employee salaries, even to the point of asking employees to take time off of dependents that impact the unpaid leave in a time that not specified. Shortly, due to financial reasons, the company is seen as unable to bear compensation from termination of employment.

Jumisih, Deputy Chair of the Indonesian Labor Confederation, in Tjandraningsih [34] said that the great burden and pressure was felt especially by women workers. Especially in the garment industry sector, the majority of workers are women. Workers who have school-age children are required to accompany their children to learn online which can only be done after returning from work. The pressure experienced has also forced companies to lay off their employees without getting full wages until the termination of employment without severance. This situation causes a loss of labor income. Psychologically, workers dismissed during the Pandemics Covid-19 experience discomfort because they have to be unemployed, lose self-confidence, cut off relationships with friends and work relatives, and he has to struggle to find a new job. Another impact of the Covid-19 Pandemic on workers is the Holiday Allowance.

Another impact of the Covid-19 Pandemic on workers is the Holiday Allowance (THR). The question arises here whether it should still be paid or not. THR has been regulated in Government Regulation Number 78 of 2015 concerning Wages, the Ministry of Employment Regulation Number 6 of 2016 on Independence Day Benefits for the Workers in the Company, and the Ministry of Employment Regulation Number 20 of 2016 on the Procedures of Administrative Sanctions for the Company, the Government Regulation Number 78 2015 on Wages. Specifically for the current conditions, the Ministry of Employment ensures that the Holiday Allowance remains an obligation for employers to be paid seven days before the religious holiday allowance [35].

Based on the reason We can emphasize here that If the company is late in fulfilling these obligations, the company can be fined by 5% of the total holiday religious allowance. In dealing with the Covid-19 Pandemic crisis, the Indonesian government is also trying to maintain the stability of the relationship between workers and companies. Shortly, the government needs to create the recommendation to the companies to survive from this situation, such as reducing production, delaying payments, rescheduling loan payments to banks, reducing working hours, and laying off the employees.

4 CONCLUSION

Referring to the discussion above, it can be concluded that the fulfillment of the rights of the workers who experienced the termination of employment due to the Covid-19 pandemic has fulfilled the category as a force majeure, which is an unnatural condition and special circumstances that are immediate and lasted briefly without being able to be predicted beforehand. The workers who experience the termination of employment

due to the force majeure conditions are subject to a one-time severance pay, a one-time employment award, and compensation payments according to Article 156 of the Indonesian Employment Law. Basically, the companies still have obligations and legal responsibilities to guarantee the rights of the dismissed workers. However, the Covid-19 pandemic cannot be used as an excuse by the companies to avoid liabilities arising from termination of employment. If the company is unable to provide the rights of the dismissed workers, according to the Article 3 (1) of the Indonesian Employment Law Number 2 of 2004, the companies have to resolve through the bipartite negotiations forum to get a win-win solution. If the bipartite path cannot negotiate or fails, it can take the tripartite approach. If there is still a dead lock, the dispute will be resolved through the Industrial Relations Court.

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