



## Perspectives of Business Personnel on Force Majeure as A Reason For Cutting Work Relationship in The Pandemic Time Covid-19

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### ABSTRACT

*The COVID-19 Pandemic outbreak that was experienced in almost all countries in the world, including Indonesia, added challenges as well as new anxiety for businesses and workers. The spread of COVID-19 in Indonesia increasingly adds to the difficulty of the national industrial sector. The COVID-19 pandemic can be categorized as a Force Majeure. It is a condition outside the wishes of the parties and cannot be predicted in advance, so the obligations specified in the contract cannot be fulfilled. Force Majeure can be used as a reason for companies to terminate their employees (PHK), as stipulated in "Article 164 paragraph (1) of Law No. 13 of 2003 concerning Labor", but companies must make every effort to protect the workers jointly. The practice that is happening right now is that many companies do layoffs without any protection for workers. The issue of how layoffs were under COVID-19 on the grounds of Force Majeure will be discussed in this study. The normative juridical method and the approach to legislation about labor were used in this research. The writer used secondary data such as primary legal materials, namely law, and literature related to research issues as secondary legal materials, collected through library studies, and analyzed descriptively analytically. The study result shows that layoffs on the grounds of Force Majeure due to the COVID-19 pandemic may be carried out by the company, but must still pay attention to workers' rights.*

**Keywords:** Force Majeure; Pandemic of COVID-19, PHK.



## INTRODUCTION

Since the end of 2019, Indonesia and all countries in the world have become the distribution area for the Corona Virus Disease 2019, from now on referred to as COVID-19. Various losses, from the health to the economic side, were caused by the disease caused by the SARS-CoV-2 Virus.<sup>1</sup> The determination of COVID-19 as a pandemic by the World Health Organization (WHO) is accompanied by a global economy which is sure to slow down, and this also affects the business world.<sup>2</sup> In April, the Spread of COVID-19 was declared a national disaster by the Government of Indonesia through "Presidential Decree Number 12 of 2020 concerning Non-Natural Disasters for the Spread of COVID-19". Physical distancing and diversion of various activities to be online based are carried out as a manifestation of the Government's appeal to stop the spread of COVID-19.

The government has made various efforts to reduce the spread of COVID-19, including intensifying the "#dirumahaja" campaign to provide an appeal for Physical Distancing followed by the issuance of various regulations to limit activities.<sup>3</sup> One of the rules that dismiss workplaces is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19), in particular, Article 13 paragraph 1. One of the side effects of the existence of these regulations is the indirect disruption of community activities that impact various sectoral activities, including the business sector. Industrial sectors in Indonesia, such as manufacturing, tourism, trade, and export-oriented businesses, have been affected

<sup>1</sup> Silpa Hanoatubun, "Dampak Covid-19 terhadap Prekonomian Indonesia". *EduPsyCouns: Journal of Education, Psychology and Counseling*, 2(1), (2020), p. 148.

<sup>2</sup> Aknolt Kristian Pakpahan, "Covid-19 Dan Implikasi Bagi Usaha Mikro, Kecil, dan Menengah". *Jurnal Ilmiah Hubungan Internasional*, Edisi Khusus April 2020, (2020), p. 62.

<sup>3</sup> Inayah & Surisman, "Work Termination during the Covid-19 Pandemic in tthe Perspective of Positive Law in Indonesia". *Legal Standing Jurnal Ilmu Hukum*, 4(1), (2020), p. 251.



and are experiencing ongoing difficulties.<sup>4</sup> The COVID-19 epidemic that is currently hitting not only adds to the challenges but also provides new anxiety for business people and workers.

Entrepreneurs are required to carry out their obligations even though production and business turnover are not smooth due to this pandemic.<sup>5</sup> This situation puts the company in a difficult condition to run its business so that every day it makes business actors more losers.<sup>6</sup> To survive, many companies have made decisions to lay off workers or workers and even terminate their employment (PHK). Quoted from a statement issued by the Indonesian Employers' Association (Apindo), that there were layoffs (PHK) and attempts to lay off massive 7 million workers in Indonesia.<sup>7</sup> This figure can illustrate that the COVID-19 pandemic has had such a devastating impact on the fate of workers in Indonesia. Layoffs by companies for workers amid COVID-19 will cause workers to lose income to support themselves and their families.<sup>8</sup>

The company's decision to lay off and lay off employees is a step taken by the company to reduce expenses so that the company can return to a stable condition. As did the start-up company Decacorn, namely "Grab Holdings", which also laid off 5% of its employees due to the impact of the COVID-19 pandemic.<sup>9</sup>

<sup>4</sup> Antonius Purwanto, *Dunia Usaha dan Pekerja Dibayangi Korona*. Available from: <https://kompas.id/baca/riset/2020/03/25/dunia-usaha-dan-pekerja-dibayangi-korona/> [accessed, June 10, 2020].

<sup>5</sup> Muhyiddin, "Covid-19, New Normal dan Perencanaan Pembangunan di Indonesia". *The Indonesian Journal of Development Planning*, IV (2), (2020), p. 243.

<sup>6</sup> Irena Dwi Fetraningtyas, Kornelius Benuf, "Barriers to Execution of Fiduciary Guarantees by PT Bank Rakyat Indonesia (Persero) Semarang Pandanaran Branch Office". *Melayunesia Law*, 4(1), (2020), p. 27.

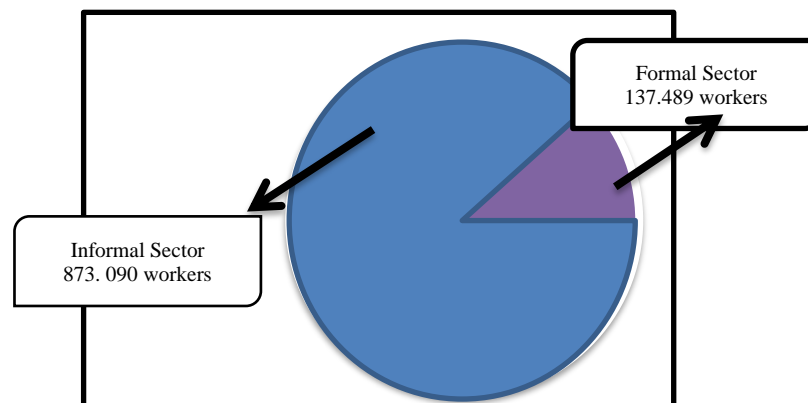
<sup>7</sup> Savira Wardoyo, *Soal PHK Pengusaha Punya Data Mengejutkan, Ada 7 Juta Orang*. Available from: <https://www.cnbcindonesia.com/news/20200508200443-4-157257/soal-phk-pengusaha-punya-data-mengejutkan-ada-7-juta-orang> [accessed, June 10, 2020].

<sup>8</sup> M. Rikhardus Joka, "Implikasi Pandemi Covid-19 Terhadap Pemenuhan Hak Hukum Pekerja yang Diputuskan Hubungan Kerja oleh Pengusahaan". *Binamulia Hukum*, 9(1), (2020), p. 3.

<sup>9</sup> Tim detikcom, *Grab PHK 5% Karyawan Dampak Pandemi Corona*. Available from: <https://inet.detik.com/business/d-5055570/grab-phk-5-karyawan-dampak-pandemi-corona> [accessed, June 10, 2020].

The Ministry of Manpower of the Republic of Indonesia released data on the number of workers who experienced layoffs and were dismissed as of April 2020, both from the formal sector and the informal sector. The data can be seen through the following diagram:

**Diagram 1:** Workers in Indonesia who are laid off and laid off



**Source:** Ministry of Manpower of the Republic of Indonesia

Based on the data in the diagram above, it is known that the number of good workers in all sectors, who experienced layoffs during the COVID-19 pandemic, were 1,010,579 workers. Layoffs were made for reasons of company efficiency. However, under these conditions, can layoffs be justified? Companies do not necessarily use reasons such as losses suffered by companies, Force Majeure, and efforts to improve efficiency during this pandemic. There are provisions for companies and employees regarding layoffs that have been stipulated by law.<sup>10</sup> This is stated in Article 164 of Law Number 13 of 2003 concerning Manpower, from now on referred to as “the Manpower Law which allows layoffs if there is a loss experienced by the company. Layoffs of workers are used as a last resort as a solution to the crisis experienced by companies due to the COVID-19 pandemic.

<sup>10</sup> Diki Mardiansyah “The Corona Virus And Labor Rights Issues: How Do Workers Get Their Rights?” *The Indonesian Journal of International Clinical Legal Education*, 2(2), (2020), p. 132.



The background above underlies this research to focus on the problem of how layoffs were practised during the COVID-19 period on the grounds of Force Majeure that occurred in Indonesia. So that it will also discuss the terminology of Force Majeure, and its implementation in work relations in Indonesia, and will explain the actions of companies that use Force Majeure as a reason for laying off workers during the COVID-19 pandemic.

### RESEARCH METHODE

This research is a research-based on statutory regulations using secondary legal data, or the method is called the normative juridical research method.<sup>11</sup> Secondary data consists of primary and secondary legal materials. Primary legal materials, such as statutory regulations and judges' decisions, are legally binding documents. Meanwhile, the opinion of legal experts in books, previous research results, and other sources that explain primary legal material is secondary legal material.<sup>12</sup> This research uses Law no. 13 of 2003 concerning Manpower as primary legal material, while books and legal journals related to the problems in this study are used as secondary legal materials. The process of collecting data and legal materials was carried out by means of literature study and then analyzed descriptively and analytically, to answer research problems.

### RESULTS AND DISCUSSION

#### **Force Majeure as the Company's reason for layoffs during the COVID-19 Pandemic**

##### **Terminology and Legal Basis of Force Majeure in Indonesia**

Force majeure, for dutch, means overmatch, is a situation that occurs without the will of the parties and cannot be predicted. This results in non-fulfilment of

<sup>11</sup> Kornelius Benuf & Muhamad Azhar."Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer". *Gema Keadilan*, 7(1), (2020), p. 24.

<sup>12</sup> Ronny Hanitijo S, *Metodologi Penelitian dan Yurimetri*. (Semarang: Ghalia Indonesia, 1990), p. 15-20.



obligations in a contract. There is a term in Arabic, namely قهـار (qahhar) which means "force" so that this condition can be called the Force Majeure.<sup>13</sup> Several experts have provided opinions regarding the meaning of this force majeure. According to Subekti, force majeure is the reason used to be released from the obligation to pay compensation.<sup>14</sup> According to Abdulkadir Muhammad, force majeure is a condition that causes the debtor to be unable to fulfil his performance due to unexpected events at the time the engagement is made.<sup>15</sup> According to Setiawan, force majeure is a condition that prevents a debtor from fulfilling his performance after approval occurs. When a debtor agrees, he cannot expect this situation even to occur before the debtor is negligent in fulfilling his achievements so that he cannot be blamed and does not have to bear the risk.<sup>16</sup> Force Majeure, which is a condition in which the debtor is unable to fulfil his / her performance, but accountability is not asked of it due to unforeseen circumstances so that the situation or event cannot be accounted for by a debtor who was not previously in bad faith.<sup>17</sup> Thus, an event that causes one party to suffer a loss, but it occurs beyond the willingness and ability of the parties can be categorized as Force Majeure.<sup>18</sup>

Each condition can be classified into force majeure freely by the parties if the contract does not clearly describe the classification of events and conditions of force majeure and as long as it does not conflict with conditions beyond the willingness and ability of the parties.<sup>19</sup> The conditions of force majeure in practice that is stated

<sup>13</sup> Ahmad Abdul Haq, *Keadaan Memaksa*. Available from: <<http://www.wikiapbn.org/keadaan-memaksa/>> [accessed, June 12, 2020].

<sup>14</sup> P.N. H. Simanjuntak, *Hukum Perdata Indonesia Cetakan ke- 3*. (Jakarta: Kencana, 2017), p. 295.

<sup>15</sup> Abdulkadir Muhammad, *Hukum Perikatan*. (Bandung: Citra Aditya Bakti, 1992), hlm. 28.

<sup>16</sup> P.N. H. Simanjuntak, *Op cit*, p. 297.

<sup>17</sup> Laras Sutrawaty, "Force Majeuree Sebagai Alasan Tidak Dilaksanakan Suatu Kontrak Ditinjau Dari Perspektif Hukum Perdata". *Tadulako Law Review*, 5(2), (2016), p. 4.

<sup>18</sup> Herman Brahmana, "Eskalasi dan Force Majeure dalam Perundang - Undangan Jasa Konstruksi". *USU Law Journal*, 3(2), (2015), p. 81.

<sup>19</sup> Rahmat S.S. Soemadipradja, *Penjelasan Hukum tentang Keadaan Memaksa, Nasional Legal Reform Program*. Jakarta: Gramedia, (2010), p. 120.



in a contract are as follows;<sup>20</sup> Natural disasters in the form of earthquakes, fires, hurricanes, cyclones, flash floods or volcanic activity; War whether declared or not, terrorism; Rebellion, mass riots, riots, power struggles, social disturbances, strikes or lockouts, blockades by people other than Contractor or subcontractor personnel; Cargo embargoes, unreasonable delays in burning ships and clearing customs (defined as the time exceeding 30 days from the day of arrival of the ships ready for unloading); Material changes to national and regional laws and regulations; Other things.

The force majeure clause in a contract, including a work contract, aims to prevent an incident that is detrimental to one of the parties, because of an "act of good".<sup>21</sup> There are several conditions so that force majeure can be used to free debtors from their responsibilities. Purwahid Patrik stated that there are three conditions, namely: 1) to fulfil his obligations there must be obstacles; 2) the occurrence of the obstacle is not due to the fault of the debtor, and 3) not caused by a situation that becomes the risk of the debtor.<sup>22</sup> Meanwhile, R. Subekti stated the conditions for a condition to be said to be force majeure, namely: 1) the condition was not under the control of the debtor and was coercive; and 2) at the time the agreement is made the situation must be unknown, at least the debtor does not bear the risk.<sup>23</sup> These conditions are held so that debtors do not abuse force majeure reasons to escape responsibility.

The legal basis for enforcing force majeure in Indonesia is regulated in Article 1244 and Article 1245 of the Civil Code. Article 1244 of the Civil Code, which reads:

<sup>20</sup> Siti Yuniarti, *Force Majeure*. Available from: <https://business-law.binus.ac.id/2016/07/31/force-majeure/> [accessed, June 12, 2020].

<sup>21</sup> Agri Chairunisa Isradjuningtias, "Force Majeure (Overmacht) dalam Hukum Kontrak (Perjanjian) Indonesia". *Veritas et Justitia*, 1(1), (2015), p. 148.

<sup>22</sup> Purwahid Patrik, *Dasar-Dasar Hukum Perikatan*. (Bandung: Mandar Maju, 1994), p. 35.

<sup>23</sup> Raden Subekti, *Aneka perjanjian*. (Bandung: Penerbit Press Citra Aditya Bakti, 1995), p. 124.



*"If there is a reason for that, the Debtor must be sentenced to compensate costs, losses and interest if he can prove that the failure or not at the right time to carry out the agreement, is due to an unexpected thing, and cannot be held responsible to him. even if it is bad, it is not on his side."*<sup>24</sup>

Meanwhile, Article 1245 of the Civil Code reads:

*"It is not necessary to replace loss and interest costs, if due to coercive circumstances or because of an accidental incident the debtor is unable to provide or do something that is required or because the same things have committed an illegal act."*<sup>25</sup>

When the contract agreed by the parties has not set a clause regarding force majeure, force majeure can still be applied using "Article 1245 of the Civil Code" as a legal basis. Also, the application of force majeure needs to be supported by adequate evidence as to what are the real consequences experienced by debtors in force majeure. So that the evidence can explain an obstacle that resulted in the achievement being unable to be implemented, the application of the argument of force majeure must meet the requirements that achievement of achievement is hindered or prevented, but this is outside the debtor's fault and is not a debtor's risk.<sup>26</sup>

The COVID-19 pandemic can be a reason for debtors not to do their achievements because of force majeure. Still, not all agreements that cannot be implemented during the contract pandemic use force majeure reasons, because the COVID-19 pandemic cannot be generalized as force majeure in every case, instead,

<sup>24</sup> R. Subekti dan R. Tjitrosudibio, *Kitab Undang-undang Hukum Perdata (KUH Perdata)*. (Jakarta: Pradnya Paramita, 2003), p. 324.

<sup>25</sup> R. Subekti dan R. Tjitrosudibio, *Ibid.* p. 325.

<sup>26</sup> Laras Sutrawaty, *Op.cit.* p. 4.





it must be assessed on a case by case basis by the situation and factual conditions of each of these cases.<sup>27</sup>

### **Termination of Employment (PHK) in the Manpower Law**

The existence of the Manpower Law aims to protect workers from the arbitrariness of employers.<sup>28</sup> The regulation of layoffs in the Manpower Law is based on just reasons (just cause).<sup>29</sup> Article 1 point 25 of the Manpower Law, stipulates that termination of employment is the termination of a working relationship due to some issues resulting in the termination of rights and obligations between workers/labourers and entrepreneurs. Termination of employment is a condition where the worker stops working for his employer.<sup>30</sup> Layoffs are feared by workers because they lose their source of income to meet their daily needs and their families.<sup>31</sup>

The essence of layoffs is the beginning of suffering or the beginning of all endings. This happens because when the working relationship is terminated, it is the beginning of the absence of work which is a source of income that is used to meet the needs of one's own life and family.<sup>32</sup> Various factors, such as a specific time that the work contract has previously agreed upon has ended, can lead to layoffs. The work agreement must be based on legal principles, such as the principle of freedom of contract, the principle of consensus, the principle of pacta sun

<sup>27</sup> Aminah, "Pengaruh Pandemi Covid 19 Pada Pelaksanaan Perjanjian". *Diponegoro Private Law Review*, 7(1), (2020), p. 650.

<sup>28</sup> Eric Toker, "Renorming Labour Law: Can We Escape Labour Law's Recurring Regulatory Dilemmas?" *Industrial Law Journal*, 39(2), (2010), p. 99.

<sup>29</sup> ILO, *Labour Market Indicators Questionnaire*, dalam Budi Santoso. "Justifikasi Efisiensi Sebagai Alasan Pemutusan Hubungan Kerja". *Mimbar Hukum*, 25(3), (2013), p. 405.

<sup>30</sup> Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia. Cetakan ke 2, edisi revisi*. (Bandung: PT.Citra Aditya Bakti, 2007), p. 56.

<sup>31</sup> Yani Nur Fatimah "Penyelesaian Perselisihan Hubungan Industrial di Pengadilan Hubungan Industrial dalam Pemenuhan Hak Pekerja/Buruh Yang di Putus Hubungan Kerja". *Pandecta*, 10(2), (2015), p. 216

<sup>32</sup> Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*. (Jakarta: Sinar Grafika, 2016), p. 158.



servanda, the principle of balance, the principle of justice.<sup>33</sup> Also, disputes between workers and employers, workers die, and other reasons can be reasons for layoffs.<sup>34</sup>

The Manpower Law divides layoffs into 2 (two) types, namely voluntary layoffs and involuntary layoffs. Voluntary layoffs are usually defined as the resignation of a worker/labourer without coercion and pressure from the employer, including due to the expiration of the contract period, failing to pass the probation period, entering retirement age, and the worker dies. Meanwhile, involuntary layoffs are layoffs that occur not because of the initiative of the worker/labourer, but rather the initiative of the entrepreneur. This can occur due to several factors, including violations committed by workers, the company has closed because it suffered losses for two consecutive years, due to force majeure, and because employers were doing efficiency.<sup>35</sup>

The Manpower Law, has determined the reasons for layoffs stipulated in the Manpower Law, as follows; resign without pressure (Article 162 Paragraph 1), Failure to pass the probationary period (Article 154), Completion of a particular time working agreement (Article 154 letter b), Workers commit violations of work agreements, collective labor agreements or company regulations (Article 161 paragraph 3 ), Workers apply for layoffs due to employer violations (Article 169 Paragraph 1), Marriage between workers (if regulated by the Company) (Article 153), Mass layoffs due to company losses or force majeure (Article 164 paragraph 1), Mass layoffs because the Company is efficient (Article 164 paragraph 3), Consolidation, Merger, change of status and Worker does not want to continue working relationship (Article 163 paragraph 1), Consolidation, Merger, change of

<sup>33</sup> Yetniwati, Elita Rahmi, dan Hartati, "Sistem Pengawasan terhadap Perjanjian-Perjanjian terkait Pengiriman Pekerja Migran atau Tenaga Kerja Indonesia ke Luar Negeri". *Nagari Law Review*, 3(2), (2020), p. 57.

<sup>34</sup> H. Zaeni Asyhadie dan Rahmawati K, *Hukum Ketenagakerjaan dalam Teori dan Praktik Di Indonesia*. (Jakarta: Prenadamedia Group, 2019), p. 252.

<sup>35</sup> Indi Nuroini, "Penerapan Perjanjian Bersama Dalam Pemutusan Hubungan Kerja". *Jurnal Yudisial*, 8(3), (2015), p. 324.



status and Employer does not want to continue working relationship (Article 163 paragraph 2), bankrupt Company ( Article 165), Workers die (Article 166), Workers are absent for 5 days or more and have been appropriately summoned 2 times (Article 168 paragraph 1), Workers are severely ill or due to work accidents a (after 12 months) (Article 172), Workers enter retirement age (Article 167), Workers are detained and unable to perform work (after 6 months) (Article 160 Paragraph 7), Workers are detained and found guilty (Article 160 paragraph 7) .

Based on the reasons above, it is explained about the reasons for layoffs, it is known that there are 17 (seventeen) reasons stipulated in the Manpower Law for layoffs, namely; "Resigning without pressure, failing to pass the probation period, completion of a work agreement for a specific time, workers violating work agreements, collective labor agreements, or company regulations, workers applying for layoffs due to employer violations, marriage between workers (if regulated by the company), mass layoffs because the company loses or forces majeure, mass layoffs are due to the company's efficiency, consolidation, merger, change of status and workers do not want to continue working relations, consolidation, merger, change of status and employers do not want to continue working relationships, workers die, workers are absent for 5 days or more and have been appropriately summoned twice, the worker is severely ill or because of a work accident (after 12 months), the worker enters retirement age, the worker is detained and unable to perform work (after 6 months), and the worker is detained and found guilty. It is only for these reasons that a company can carry out dismissal against its workers, which is regulated in the Manpower Act.

### **Force Majeure as the reason for layoffs during the COVID-19 period**

Referring to the previous explanation that Force Majeure could be the reason for layoffs, Article 164 paragraph (1) of Law no. 23 of 2003 concerning Manpower which strictly regulates that:



*"Employers can terminate the employment relationship of workers/labourers because the company is closed because the company has suffered continuous losses for 2 (two) years, or a force majeure, provided that the worker/labourer is entitled to severance pay of 1 (one) ) times the provisions of Article 156 paragraph (2) the reward money for the service period is 1 (one) time the provisions of Article 156 paragraph (3) and rights compensation money according to the provisions of Article 156 paragraph (4)."*

The contents of this article have provided room for employee layoffs to be carried out due to the closure of the company due to several reasons, one of which is force majeure. However, the problem is that the explanation or further provisions regarding the force majeure referred to in the Law have not been regulated so that this can lead to multiple interpretations in classifying the conditions that cause force majeure.

The government has issued several policies that aim to prevent the spread of COVID-19, one of which is by declaring this pandemic a national disaster and calling on the community to do physical distancing and activities (including working) from home. Legal umbrellas were even issued in connection with this appeal, including; Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19), Presidential Decree Number 11 of 2020 concerning Determination of Public Health Emergencies for Corona Virus Disease 2019 (COVID-19), Regulation of the Minister of Health Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19), and finally, through Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) ) As a National Disaster.



The side effect that arises from policies to break the chain of the spread of COVID-19 by the Government is the obstruction of business opportunities and activities; it can even become a threat to the business existence of business actors if these policies are implemented for a long time. This can directly threaten the survival of workers. Layoffs on the grounds of COVID-19 caused massive force majeure by the company. The reason for dismissal is because "force majeure" is contained in "Article 164 Paragraph (1) of Law Number 13 of 2003 concerning Manpower" which allows layoffs to be carried out if due to force majeure the company is closed.<sup>36</sup>

The COVID-19 pandemic, which is a disaster that arises beyond the power, will, and cannot be resolved by the parties, can be categorized as a force majeure.<sup>37</sup> Then, the COVID-19 Pandemic has been designated as a National disaster, as stated in Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19). Based on this, the COVID-19 Pandemic is a strong reason to be categorized as a force majeure.

Considering that every disaster will inevitably lead to an emergency, just as COVID-19 is a non-natural disaster that can cause a health emergency. The increasing number of positive patient cases and victims dying every day has made the COVID-19 pandemic also categorized as an extraordinary event. Various aspects of community life, such as politics, economy, socio-culture, defence and security, and welfare, are ultimately affected. Concern about being exposed to workers with the virus that causes COVID-19 is a reasonable reason to lay off workers because if there are casualties among workers, the company will find it

<sup>36</sup> Imas Novita Juaningsih, "Analisis Kebijakan PHK Bagi Para Pekerja pada Masa Pandemi Covid-19 di Indonesia". *Adalah: Buletin Hukum dan Keadilan*, 4(1), (2020), p. 193.

<sup>37</sup> Juanda Pangaribuan, *Pengaruh COVID-19 Sebagai Force Majeure Terhadap Hubungan Kerja*. Available from: <<https://www.hukumonline.com/berita/baca/lt5e97ca9b56661/pengaruh-covid-19-sebagai-force-majeure-terhadap-hubungan-kerja-oleh--juanda-pangaribuan?page=all>> [accessed, June 16, 2020].



challenging to avoid accusations of negligent manslaughter. On the other hand, the act of laying off workers automatically stops the operations and production of the company. As a result, the company's cash flow or liquidity will be in bad condition even though the company still has to carry out its obligations. This weakens the company's ability to retain its employees, and if it continues, layoffs due to force majeure cannot be avoided.

Although layoffs due to force majeure caused by the COVID-19 pandemic are allowed, companies should still pay attention to the interests of employees who have been laid off. Many workers or workers who have been laid off have claimed to have been dismissed unilaterally by the company. Workers 'or workers' rights such as severance pay, reward pay, and compensation pay for rights paid by the company in instalments or not at all.<sup>38</sup> The existence of the COVID-19 phenomenon brings its learning in the context of the development of labour law in Indonesia; the Government must be able to make policies in labour law with novelty that accommodate the balance of interests of various parties. Labour law reforms must accommodate regulations regarding the rights and obligations of all parties, including workers, employers, and the state during the Pandemic.<sup>39</sup>

The Manpower Law regulates that if force majeure is the reason for layoffs to be made, based on "Article 164 paragraph (1) workers are entitled to severance pay of 1 (one) time, the provisions of Article 156 paragraph (2) the reward for working period is 1 (one) time the provisions of Article 156. paragraph (3) and compensation money according to the provisions of Article 156 paragraph (4). Meanwhile, if the dismissal by the company is due to efficiency reasons, then based on the provisions of Article 164 paragraph (3) the company is obliged to pay the

<sup>38</sup> Sharon Patricia, *Pekerja Terkena PHK Tanpa Prosedur yang Seharusnya*. Available from: <<https://kompas.id/baca/ekonomi/2020/04/09/korban-phk-diberhentikan-tanpa-prosedur-yang-seharusnya>> [accessed, June 16, 2020].

<sup>39</sup> Richard Kennedy, "Legal Discourse on Manpower during COVID-19 Outbreak". *Law Reform*, 16(1), (2020), p. 70.



workers' rights consisting of severance pay of 2 (two) times the provisions of Article 156 paragraph (2), the reward money for the working period of (one) times the provisions of Article 156 paragraph (3) and compensation for rights according to the provisions of Article 156 paragraph (4).

### CONCLUSIONS

The COVID-19 pandemic that hit Indonesia can be categorized as force majeure because the COVID-19 pandemic is classified as a national disaster that occurred beyond the control of the parties, and these parties cannot handle it. Force majeure in labour law can be used as an excuse for companies to lay off their workers. However, if a company does layoffs due to force majeure caused by the COVID-19 pandemic, the company must still pay attention to the rights of employees who have been laid off. Workers' rights, such as severance pay, reward pay, and compensation money, are paid by the company in instalments or not at all. Layoffs amid the current Covid 19 epidemic, layoffs of workers/labourers should be a "last resort". Before laying off workers, companies can take several steps that can be taken, such as: not extending non-permanent contracts, reducing wages and facilities for managers and directors; reduce work shifts; limiting/eliminating overtime work, reducing working hours; reduce working days, and lay off or lay off workers for a while. Before carrying out this step, of course, the employer must discuss and agree with the trade union or workers' representatives in the company concerned. For this reason, employers jointly protect workers, one of which is through deliberation between the company and employees before deciding on layoffs. If in the end, the business actor decides to lay off the worker or labourer, then the business actor should pay attention and fulfil the rights of the worker or labourer who has been laid off.



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