

Legal Due To The Party Layoff Due To Covid 19

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ABSTRACT

Indonesia became one of the countries infected with Covid-19. This certainly has an impact that can harm the country and society. Therefore, the government issued a policy of Large-Scale Social Restrictions (PSBB) with the aim of deciding the spread of Covid-19. One of the impacts felt by the community with the presence of Covid-19 is the Termination of Employment (FLE) carried out by several companies to workers on the grounds of force majeure or loss. This reasoning is controversial, bearing in mind that force majeure cannot be said to be a reason that can cause harm as in the Covid-19 outbreak, and is deemed to deviate from Article 164 Paragraph (3) of Law Number 13 Year 2003 concerning Labor.

Keywords: Layoffs, Force Majeure, Covid-19

1. INTRODUCTION

The world is facing a very crucial problem with the presence of Covid-19 which has spread throughout the world, including Indonesia. The dilemma of various countries in overcoming covid-19 has made the government and even the public feel unrest and loss that has an impact on health and the economy. So, the government needs to issue a policy regulated in PP. 21 of 2020 concerning PSBB (Large-Scale Social Restrictions) with the aim of breaking the chain of spreading Covid-19. This policy has led several companies to take steps to reduce losses due to Covid-19. One of the steps taken by several companies in Indonesia is to carry out a Termination of Employment (PHK) for employees who work at the company. This is in line with Articles 164 and 165 of Law No. 13 of 2003 concerning Manpower, which more or less the phrase states that a company has the right to terminate employment relations with employees if a company experiences losses.

But in general, several companies that cut off work relations during the Covid-19 pandemic often used force majeure reasons, even though these companies were still producing as usual. The important thing that becomes a condition for terminating a company's employment to employees is that the company has experienced a decrease or loss for 2 years. Meanwhile, the current Covid-19 pandemic has not yet reached or is considered to be 2 years. The clarity of force majeure which is still a question enters the classification in natural disasters or does not need attention. For reasons of force majeure that companies use to terminate employment relations cannot be justified. Seeing that the massive economic disruption caused by Covid-19 has affected many workers who have lost their jobs, they must get legal protection and certainty clear laws.

Therefore, the lack of clarity regarding the termination of employment by companies during the Covid-19 pandemic is the focus of the author to discuss and analyze more comprehensively regarding policies issued by the government or companies for workers. So there is a need for legal protection for workers and a government policy is needed to determine whether Covid-19 is included in the force majeure of natural disasters or not.

2. RESEARCH METHODS

This study uses a qualitative phenomenological approach, which is a research method that seeks to reveal the universal essence of phenomena that are personally experienced by a group of individuals (Cresswell: 1998). Phenomenological research data is obtained from various interviews reported by various media, which focus on the economic losses due to the Covid-19 pandemic in Indonesia from the discovery of the first covid case in Jakarta 2 March 2020 to 10 April 2020. Medium on the internet allows users to represent themselves as well as interaction, cooperate, share, communicate with other users and forming virtual social bonds (cf. Fuchs: 2011). This paper emphasizes its analysis on the process of concluding comparisons and the dynamics of the relationship of phenomena observed in various news about the Covid-19 pandemic in Indonesia, its impact on the national economy after the implementation of the PSBB. The data was transcribed, then by referring to the problem formulation, the researcher did coding, clustering, thematic labeling and interpreting.

Data source:

- a. www.bps.go.id
- b. www.detik.com
- c. www.cnbcindonesia.com
- d. www.kompas.tv
- e. www.bisnis.com
- f. www.pasardana.id

3. DISCUSSION

Layoffs of workers during the Covid-19 pandemic

The rhythm of human life develops according to the demands of an era, and humans are essentially creatures that have the power to move life to meet the needs of food, shelter and shelter. In meeting their needs, humans need to work together to produce an pact with other humans for mutual benefit. This is in line with the Work Agreement according to Article 1601 of the Civil Code, which is the agreement that the first party, namely workers, binds themselves to surrender

their energy to another party, namely the employer, with wages for a certain time (Wardani & Widhiandono, 2017).

In general, every legal relationship created by law always has two aspects, the contents of which on the one hand have rights, while on the other hand they have obligations. There are no rights without obligations, on the other hand there are no obligations without rights. because rights are interests protected by law, and obligations are positive legal norms that order individual behavior by setting sanctions (Mertokusumo, 2005).

In labor law, companies and workers have rights and obligations that must be given and protected. A company has the responsibility and obligation to ensure health, safety, wages and fair treatment of workers. Because workers / laborers are one of the most important assets in influencing the success of a company. With this statement, it is a logical consequence that a company must protect and guarantee the needs of workers / laborers in accordance with the mandate of the constitution Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia states that "every citizen has the right to work and a decent living" by pay attention to human rights as echoed by the Universal Declaration of Human Rights.

In the dynamics of employment in Indonesia, the work relationship does not necessarily run optimally or it can be said that there are problems that can be caused by the worker or the company. Among workers who feel aggrieved by the policies of the company, as well as companies that feel hurt by the negligence of the workers. From these factors, it can allow for disputes between workers and employers in terms of Termination of Employment (PHK) coupled with the Covid-19 pandemic which has spread throughout the world, including Indonesia. As a result, some companies have issued policies to terminate working relations with some workers who are deemed to have increased the company's losses.

Based on data published by the Ministry of Manpower, there are 2.8 million workers who have been directly affected by Covid-19. They consisted of 1.7 million formal workers laid off and 749.4 thousand laid-offs. However, the unfortunate thing is that the company that has cut the relationship from working is arguing that it is "force majeure". This reason is a debate among workers and experts who are questioning whether force majeure is acceptable or not in terminating work relations during the Covid-19 pandemic.

National Loss

The losses that are easiest to calculate are the aggregate losses nationally. However, because it is macro in nature, this calculation is only used by large-scale economic actors, or by the state in preparing (revising) the APBN. One method of calculating can use the reference Gross Domestic Product (GDP), which is the accumulated total production in a country during a

year. Indonesia's GDP per capita per year in 2019 according to the Central Statistics Agency (BPS) is USD 4,174.9 or IDR 59.1 million (exchange rate of IDR 14,156 per USD). With a population of 267 million, Indonesia's GDP in 2019 will be Rp15,833.9 Trillion (www.bps.go.id).

The proportion of areas in GDP or known as PDRB (Gross Regional Domestic Income), referring to previous BPS data, is DKI Jakarta at 17.53% (to GDP), Bodetabek (Regency & City of Bogor, Regency and City of Bekasi, Depok City, Kabupaten & Kota Tangerang, and Kota Tangerang Selatan) amounted to 7.3%, and Bandung Raya (Kota & Kabupaten Bandung, Kabupaten Bandung Barat, Kota Cimahi) contributed 3% to GDP. Meanwhile, Indef data states, the circulation of RI money is in Jakarta (Jabodetabek) by 70%. This can also be interpreted by Jabodetabek as affecting 70% of Indonesia's GDP.

Indonesia's economic growth in 2020 was originally estimated at 5.3%. However, this figure was corrected as a result of the Corona pandemic, and some people predicted growth below 2%. Given the uncertainty and different predictions, as well as fluctuations in the USD exchange rate (drastic increase to Rp16.00 per USD at the beginning of April 2020), the authors chose to ignore these two factors, namely the economic growth in January-April 2020 and the USD exchange rate during the crisis. So that the GDP figure used in this paper is the 2019 reference.

So how much is the national economic loss due to the Covid-19 pandemic? There are 2 options in calculating losses. The first method uses the assumption that the circulation of money in Jabodetabek is 70% of the total money supply in Indonesia. If this means that 70% of Indonesia's GDP is influenced by economic movements in Jabodetabek, then total cessation of activities in Jabodetabek for 1 month will result in a national loss of $= 1/12 \times 70\% \times \text{IDR } 15,833 \text{ Trillion} = \text{IDR } 923 \text{ Trillion}$. However, if the termination is not complete because there are still several types of activities that are not prohibited from operating, such as the health sector, staple food, strategic industries, etc., the losses will be smaller. If the activity rate is around 10%, then the loss will be $90\% \times \text{IDR } 923 \text{ trillion}$ or around IDR 830 trillion. If the Jabodetabek PSBB is extended by 2 weeks, the national loss will reach $1.5 \times \text{IDR } 830 \text{ trillion} = \text{IDR } 1,260 \text{ trillion}$ or half of the state budget in the 2020 State Budget. The second way is to use a comparison of the proportion of GRDP from areas that impose social restrictions. The accumulated GRDP of Jabodetabek is 24.83% of the national GDP. So the limitation of activities with the same provisions above, in Jabodetabek for 1 month causes a loss of $1/12 \times 24.83\% \times \text{IDR } 15,833 \text{ Trillion} \times 90\% = \text{IDR } 294.85 \text{ Trillion}$. If extended for 2 weeks, the loss will be around IDR 442.3 trillion. And if followed by Bandung Raya in the same period, will increase the loss 17.6% (i.e. $3\% / 17\% \times 442.3 \text{ T} = 75.1 \text{ T}$) to IDR 517.5 Trillion. Losses due to restrictions in other areas can be calculated using the same method, namely comparing the proportion of GRDP to GDP over a period of time compared to 12 months.

Which calculation result is more valid? Both have a basis of legitimacy. Using the money supply reference, it is acceptable to argue that most of the large-scale economic activities in the regions, in the process, also involve Jakarta, either because of the head office or due to transactions with third parties. So that activity is also reflected in the circulation of the money. What needs to be validated is the large percentage of money circulation in Jabotabek, is it true that 70% or less. As for the second calculation, using the proportion of GRDP to GDP is also acceptable, considering that the data is a real picture of economic activity during the recording period. And this method will also make the calculation easier if more and more regions are implementing PSBB, and in different time frames. For example, West Sumatra, which contributes 1.5% to GDP, the PSBB for a month will cause economic losses of around Rp. 16.6 trillion. Likewise the PSBB in Pekanbaru City, Malang City, Tegal City, Surabaya, etc. can easily calculate the effects of the losses.

Considering the absence of data on the proportion of money in circulation per region other than Jabodetabek, the authors prefer to use the second method in the calculation. This is due to the fact that the PSBB has been widely applied, and continues to increase, so that calculations using only the Jabodetabek reference are invalid.

Other Potential Losses

Apart from the losses that can be calculated above, there are other potential losses that could occur due to non-business factors. For example, if economic difficulties have resulted in an increase in crime and damage to business facilities. As is known, more than 30 thousand prisoners have been released due to concerns over the spread of Covid-19 in overcrowded prisons (www.kompas.tv, 01/04/20). These prisoners experienced economic shock as well, and some of them have been proven to have committed acts

crime is only days after release. In the third week of April 2020 alone, there have been 3 robberies of minimarkets in Jabodetabek, as well as various thefts and robberies involving recidivists in various regions.

Apart from crime, the potential for chaos due to the economic crisis can also occur. The situation of mass chaos can result in unexpected losses such as property destruction, vehicle destruction, damage to public and tourist facilities, as well as security costs that must be borne by the community. Chaotic conditions can also spread to mass looting of shops or factories, or even sacrifice human life or honor. Abnormal situations, whether due to the outbreak of crime or chaos situations, the value is not calculated because it depends on the scale, area, and how long it took to occur. However, this factor will only arise if the restrictions are prolonged until the crisis escalates or is difficult to control.

Deal with Losses

In the business world there is always a gain and there is a loss. For business actors who have diversified across sectors with different types of businesses that are at different poles, they are likely to survive the crisis. For example, they lose money from their business in renting party tools - because all crowd activities are prohibited - but they also have a garden that is planted with various kinds of vegetables. In times of crisis, the crop yields increased demand. Or a car rental entrepreneur who has few orders, gets it compensation for income from increased demand for delivery of goods. And things like that can happen. For large-scale businesses, there is usually cross-sectoral conglomeration, so cross subsidies can be made between business entities in the group. Overall, they may experience losses, but they can still be saved through businesses in other sectors. It will be a problem if conglomeration occurs in the same sector, for example from upstream to downstream and does not penetrate other sectors. Businesses that have cash funds can also get around losses, namely by buying assets or businesses that are good but cheaply sold. Maybe the cash funds were obtained from selling assets at low prices (meaning that in accounting, they suffered losses), but if used to get other, better assets, it could generate profits. And after the crisis is over, the new assets can produce better, or be sold at a much higher price, enough to compensate for the losses.

What if diversification or other efforts cannot be made to reduce losses? Finally, in general, the same steps will be taken, namely savings. All circles will try to reduce expenses as much as possible, and try to survive as long as possible. Furthermore, if it is still insufficient, will take the next step, namely looking for a loan or debt. After that, look for ways to get new income or income.

Such steps will be taken by individuals, micro-entrepreneurs, companies, organizations, as well as by the state. Global car manufacturers such as Toyota have submitted new debts of around USD 9 billion (IDR 135 Trillion) to overcome the crisis ([www, Bisnis.com](http://www.Bisnis.com), 27/03/20). So it is natural that once the pandemic strikes, lending institutions such as the International Monetary Fund (IMF) immediately offer debt packages to potential countries. Indonesia has also issued Global Bonds or debt securities, which are then called pandemic bonds worth USD 4.3 billion in early April 2020 (www.cnbcindonesia.com, 13/04/20). Austerity measures, seeking loans, and efforts to get new income, are common steps to survive. Survival during this crisis is considered very important, as a capital to find compensation for post-crisis losses. Because if you can't survive, then rush to collapse before the crisis ends, then all potential loss returns will be lost. For example, if a company goes bankrupt, all that can be done is to release assets to cover liabilities, then the company can no longer operate, maybe even shareholders still bear the inherited debt. Meanwhile, if the company survives, it can still run even though it has to repay new debts, then there is still

hope of getting profit after the crisis ends. If all individuals, business entities, non-business organizations, and all parts of a country can pass through the crisis period, they will survive and return production, then in the end the national losses will be covered. Because they will again be able to pay taxes, maybe even more. It will also absorb new labor so as to increase individual income, which in turn will also increase state income and boost GDP.

Force majeure analysis in the Termination of Employment Policy during the Covid-19 pandemic in Indonesia

Referring to Article 164 Paragraph (1) of Law Number 13 Year 2003 concerning manpower states, employers can terminate workers / laborers because the company closes due to force majeure. Then Article 164 Paragraph (3) of Law 13/2003 adds that employers can also lay off workers / laborers because the company has closed down not because of losses for 2 consecutive years or not due to force majeure but due to efficiency. Even the workers / laborers are at Layoffs get one-time severance pay.

The Minister of Manpower, in his statement related to force majeure which has consequences for workers by terminating employment relations does not support the company's reasons, he urged that companies should make steps that can be taken such as; reducing wages and perks of managers and directors, reducing work shifts, limiting casual work or laying off workers temporarily. However, several companies have issued policies for terminating employment continues to argue that they do not have sufficient funds to pay severance pay or workers' wages. This violates the labor regulations which state that a company can close if it has reached a loss for 2 years. Meanwhile, Covid-19 has not reached or entered half a year. The reasons for force majeure used by several companies are not acceptable to some circles.

According to Subekti, force majeure is an excuse to be exempted from the obligation to pay compensation. Then, the Civil Code does not find the term force majeure without explaining what kind of coercive situation the term force majeure is. However, there are a number of terms in the Civil Code that govern compensation, the risk for a one-sided contract is then taken for the term force majeure (Suadi). With the existence of force majeure, it cannot automatically be used as an excuse for companies to protect themselves from coercive circumstances because they only want to run away from their responsibilities, so there must be several conditions so that this does not occur.

According to R Subekti, a situation is said to be force majeure, namely; the situation itself is beyond the control of the company and is coercive, and the situation must be a condition which cannot be known at the time this agreement is made, at least the risk is not borne by the workers who are laid off. With the existence of several conditions, a person cannot arbitrarily say that he is

experiencing force majeure. In Article 47 paragraph (1) letter j Law 2/2017 on Construction Services explains force majeure. According to the provisions of this article, force majeure can be interpreted as an event that arises beyond the will and ability of the parties that cause harm to one of the parties. These coercive circumstances include:

A compelling situation that is absolute (absolute), namely that it is impossible for the parties to exercise their rights and obligations.

An absolute (relative) coercive situation, namely that it is possible for the parties to exercise their rights and obligations.

In the case of the Covid-19 outbreak, it can be said to be an unexpected event at the time the agreement or policy was made. This means that if there is an agreement made when the plague is spreading and spreading, termination of employment cannot be used as an excuse as a force majeure. Thus, it is necessary to protect workers in order to guarantee the basic rights of workers and to realize worker welfare while continuing to work.

concerned with the development of the company's interests (Adisu & Jehani, 2007).

4. CONCLUSION

Based on the description above, Layoffs in the pandemic covid-19, which have been used as alibis by several companies, are deemed illogical, because some companies argue with force majeure. Where these reasons cannot be categorized as an outbreak that is currently shooting in Indonesia, Covid-19, and the outbreak is also not categorized as a National Disaster. Referring to Law Number 13 of 2003 concerning Manpower, the losses caused by the company have not reached 2 years, so the company cannot simply terminate the work relationship. So there needs to be other efforts given by companies or the government in overcoming the impact of Covid-19 on laid-off workers so that they can limit working time / overtime and workers can be dismissed by not cutting off work relations. With this, it can help the government to reduce unemployment and can help the government grow the economy during the Covid-19 pandemic.

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