

Equitable Legal Protection Regulations on Workers' Rights in Employment Relations in Indonesia

Siti Umm Adillah¹

Unissula Law Faculty Lecturer

ummu@unissula.ac.id

Abstract

Legal protection for workers in employment relationships is very necessary, considering that the socio-economic position of workers is very weak, especially during the COVID-19 pandemic. Many companies have suffered losses due to the implementation of restrictions on community activities (PPKM) which affect the production process, marketing which results in company income, so that it also has an impact on workers and has a major impact on the normative rights of workers.

The research method in this paper uses normative juridical research that examines positive legal provisions, legal principles, and legal doctrine, using the statutory approach and conceptual approach. The data used, secondary data, which includes primary legal materials, secondary legal materials and tertiary legal materials. Secondary data collection techniques through literature study and data analysis techniques using qualitative analysis techniques.

Fair legal protection regulations for workers' rights in labor relations in Indonesia during the Covid-19 Pandemic have not been implemented properly, and are still not fair; companies and business owners feel as parties who have a strong position and have power, so they think only for the benefit of the company, without considering the rights of the workers, who because of the covid-19 pandemic, their lives are increasingly not prosperous. The government has taken steps in dealing with the Covid-19 pandemic problem related to efforts to provide equitable legal protection for workers from Termination of Employment (PHK), namely by issuing several regulations as legal protection for workers, such as the issuance of the Circular Letter of the Minister of Manpower of the Republic of Indonesia. Number: M/3/HK.04/III/2020 which specifically regulates wages for workers/labor, and Circular Letter of the Minister of Manpower and Transmigration Number: 197/MEN/PHIPPHI/V/2008 concerning Prevention of Termination of Employment (PHK).) which stipulates some basic steps before the layoff policy is established based on such regulatory provisions, basically a strong effort by the government to protect workers.

Key Words: *Legal Protection, Justice, Workers' Rights, Covid-19 Pandemic.*

A. Introduction

Legal protection for workers is the fulfillment of basic rights inherent and protected by the constitution as regulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads "Every citizen has the right to work and a decent living for humanity", and in Article 33 paragraph (1) which states that "The economy is structured as a joint effort based on kinship".

Protection of workers is intended to guarantee the rights of workers and ensure equal opportunity and equal treatment, without any discrimination for the sake of realizing the welfare of workers and their families while taking into account the progress of the business world and the interests of entrepreneurs. The laws and regulations related to the protection for workers are Law Number 13 of 2003 concerning Manpower and its implementing regulations from the legislation in the field of manpower.²

Workers are one of the main factors that play an important role in development, in addition to capital

¹ Lecturer at Sultan Agung Islamic University (Unissula) Semarang.

² Heru Suyanto, Andriyanto Adhi Nugroho, *Perlindungan Hukum Terhadap Hak-Hak Pekerja Outsourcing Berdasarkan Asas Keadilan*, Jurnal Yuridis E-ISSN: 2598-5906 I P-ISSN: 1693-4458, Fakultas Hukum Universitas Pembangunan Nasional "Veteran" Jakarta, <https://ejournal.upnvj.ac.id/index.php/Yuridis/article/view/179/150>, diakses pada tanggal 9 September 2021.

and natural factors. This is supported by the very large population of the State of Indonesia, which is as many as 269,536.482 people³, which is a very important capital. Considering that the worker factor in this development process must be considered, therefore efforts are needed to foster, direct and provide protection for workers to create welfare related to what they do. Basically, protection for workers is intended to keep workers more humanized.

The corona virus attacks everyone indiscriminately, both the working community and society in general and the impact of the COVID-19 pandemic has hit various sectors, including the political, social, educational and economic sectors. People who work in the formal sector, who have an employment relationship and the informal sector, who do not have an employment relationship or are commonly referred to as self-employed, experience different impacts. The impact that is most felt by the community in general is the economic downturn so that people need serious help and attention from the government.

Legal protection for workers in employment relationships is very necessary, considering that the socio-economic position of workers is very weak, especially during the COVID-19 pandemic. Many companies have suffered losses due to the implementation of restrictions on community activities (PPKM) which affect the production process, marketing and result in company income, so that it has an impact on workers and has a major impact on the normative rights of workers.

Based on data from the Ministry of Manpower (Kemnaker), 29.4 million people have been affected by the Covid-19 pandemic. That number includes those affected by Termination of Employment (PHK), laid off without pay to reduce working hours and wages⁴. Other data submitted by the Minister of Manpower, Ida Fauziyah, noted that 17.8 percent of companies made layoffs during the COVID-19 pandemic. In addition, 25.6 percent of companies laid off their workers, and 10 percent of companies did both.

A survey conducted by the Ministry of Manpower in 2020 showed that around 88 percent of companies were affected by the pandemic which resulted in losses to company operations. However, these losses are generally due to a decrease in sales, which results in reduced production volumes. The survey also obtained information that even though they experienced operational losses and reduced production volumes, most of the companies still employed their workers.⁵

From the description of the data above, it appears that workers at work during the pandemic have weak positions and are less profitable in obtaining legal protection for their rights as workers and the owners of companies that still occupy prominent strength and power,⁶ so that many companies who easily terminated employment (PHK) during the covid-19 pandemic, the company laid off its workers, and the company did both to the workers.

The existence of Law Number 13 of 2003 concerning Manpower is expected to be able to enforce the issue of legal protection and guarantees for workers, implement various international instruments on workers' rights that have been ratified, as a member of the United Nations (UN) uphold and implement

3 Data Update, Jumlah Penduduk Indonesia dan Dunia Tahun 2019, <https://tumoutounews.com/2019/01/27/data-update-jumlah-penduduk-indonesia-dan-dunia-tahun-2019/>, diakses pada tanggal 27 Mei 2020.

4 Sebagaimana disampaikan Anwar Sanusi dalam diskusi daring, pada hari Sabtu tanggal 27 Maret 2021, ditulis oleh Danang Triatmojo, artikel dengan judul Kemnaker: 29,4 Juta Pekerja Terdampak Pandemi Covid-19, di-PHK Hingga Dirumahkan, <https://www.tribunnews.com/bisnis/2021/03/27/kemnaker-294-juta-pekerja-terdampak-pandemi-covid-19-di-phk-hingga-dirumahkan>, diakses pada tanggal 10 September 2021.

5 Sulaeman, *Menaker: 17,8 Persen Perusahaan PHK Karyawan Selama Pandemi Covid-19*, <https://www.merdeka.com/uang/menaker-178-perusahaan-phk-karyawan-selama-pandemi-covid-19.html>, diakses pada tanggal 10 September 2021.

6 Undang-undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, Cetakan II, Yogyakarta: Pustaka Pelajar, 2007, Penjelasan bagian Umum, hlm. 119.

the Universal Declaration of Human Rights. Human Rights (HAM).⁷

Based on the description stated above, in this paper the formulation of the problem is as follows: How is the regulation of fair legal protection for workers' rights in labor relations in Indonesia during the Covid-19 Pandemic?

B. Writing Method

The research method used in this paper is normative juridical, which is carried out through a literature study that examines secondary data by taking inventory, reviewing and analyzing and understanding law as a set of regulations or positive norms in the legal system that regulates human life.⁸ In addition to understanding and reviewing positive legal provisions, it also examines matters relating to legal principles and legal doctrine as well as studies documents, papers, legal articles, research results, and other reference sources.

The approach method used is the statutory approach (statute approach) and the conceptual approach (conceptual approach). The data used are secondary data, which includes primary legal materials, secondary legal materials and tertiary legal materials. Secondary data collection techniques through library research, namely: conducting a review of library materials related to the problems studied, data analysis techniques using normative-qualitative.

C. Theoretical Framework

The theoretical framework is the identification of theories that are used as the basis for thinking to carry out a research or in other words to describe the reference frame or theory used to examine the problem. Regarding this matter, Jujun S. Soerya Sumantri said: In essence solving a problem is to use scientific knowledge as a basis for argument in examining problems so that we get reliable answers. In this case, we use scientific theories as tools to solve problems.⁹

Starting from the opinion above, in this paper there are several theories that are used as a reference to discuss the existing problems. The theories are as follows:

1. Legal Protection Theory

Legal protection has the meaning as protection by using legal means or protection provided by law, shown to certain interests, namely by converting the interests that need to be protected into a legal right. In the law of "rights" is also called subjective law. Subjective law is an active aspect of the legal relationship provided by objective law, in terms of subjective law are norms, rules.

Legal protection is always related to the role and function of law as a regulator and protection of the public interest. Bronislaw Malinowski in his book "Crime and Custom In Savage", says that the law does not only play a role in situations of violence and conflict, but that the law also plays a role in daily activities.¹⁰

Legal protection for workers is very necessary considering the position of workers is on the weak side. Protection of workers is intended to ensure the fulfillment of the basic rights of workers and guarantee equal opportunity and treatment without discrimination on any basis to realize the welfare of work-

7 Niru Anita Sinaga dan Tiberius Zaluchu, *Perlindungan Hukum Hak-Hak Pekerja dalam Hubungan Ketenagakerjaan di Indonesia*,

8 Soerjono Soekanto, *Penelitian Hukum Normatif*, Jakarta: PT Raja Grafindo Persada, 2003, hlm. 13.

9 Jujun S. Soeryasumantri, *Filsafat Ilmu Sebuah Pengantar Populer*, Jakarta: Sinar Harapan, 1978, hlm. 316.

10 Soeroso, *Pengantar Ilmu Hukum*, Jakarta: Sinar Grafika, 2006, hlm. 16.

ers.¹¹

2. Theory of Justice

Justice¹² is one of the very substantial goals of law, because justice is synonymous with balance. A regulation aims not only to create benefits and legal certainty but must also aim at justice in order to fulfill the philosophical values contained in society.¹³ The philosophy of justice comes from the Greek words philos which means love and sophia which means wisdom. In its development, philosophy is called philosophy, namely the view of life of a person or group of people which is the basic concept of the life that is aspired to. Philosophy is also interpreted as an attitude of someone who is aware and mature in thinking about everything in depth and wants to see from a broad and comprehensive perspective with all relationships.¹⁴

One of the objectives of social justice in the field of employment can be realized by protecting workers against unlimited power from the employer/employer, through existing legal means. Protection of workers/laborers can be seen in the fourth paragraph of the preamble to the 1945 Constitution (UUD 45) and Article 27 paragraph (2), Article 28 D paragraph (1) and paragraph (2). Protection of workers can be carried out either by providing guidance, compensation, or by increasing the recognition of human rights, physical and socio-economic protection through applicable norms.¹⁵

D. Discussion

1. Overview of Employment Law

a. Definition of Employment Law, purpose and nature.

The term labor law used to be called labor law which is a translation of arbeidsrechts. Employment law is a set of regulations that regulate the legal relationship between workers or workers' organizations and employers or employers' organizations and the government, including the processes and decisions issued to make this relationship a reality.

Based on the above formulation, a conclusion can be drawn that manpower law is a set of regulations that regulate the legal relationship between workers, employers or employers, workers' organizations, employers' organizations, and the government.¹⁶

Employment development aims to:

- a. empower and utilize the workforce optimally and humanely;
- b. realize equal employment opportunities and the provision of manpower in accordance with the needs of national and regional development;
- c. provide protection to workers in realizing welfare; and

11 Heru Suyanto, Andriyanto Adhi Nugroho, *Perlindungan Hukum terhadap Hak-Hak Pekerja Outsourcing*

12 Dikutip dari Bruce Anzward, Ratna Hidayanti, *Perlindungan Hukum Bagi Pekerja Terhadap Jenis Dan Sifat Pekerjaan Dalam Mewujudkan Keadilan*, Jurnal de Jure Volume 12 Nomor 1 April 2020 ISSN (Print): 2085-8477; ISSN (Online): 2655-4348, diakses pada tanggal 14 September 2021.

13 Ardiansyah, "Konsep Corporate Social Responsibility Dalam Mewujudkan Keadilan Dalam Perspektif Islam," Al-'Adl 12, no. 1 (2019): hlm.124, <http://ejournal.iainkendari.ac.id/al-adl/article/view/1386>.

14 Rahman Amin, "Falsafah Keadilan, Kepastian Hukum, dan Penegakan Hukum", 2014, <http://rahmanamin1984.blogspot.co.id/2014/03/hukum-pidana.html>, diakses pada 1 April 2017

15 Niru Anita Sinaga dan Tiberius Zaluchu, Op.Cit., hlm. 57-58.

16 Darwin Prinst, *Hukum Ketenagakerjaan Indonesia* (Buku Pegangan Pekerja Untuk Mempertahankan hak-haknya), Bandung: Citra Aditya Bakti, 1994, hlm. 1.

d. improve the welfare of workers and their families.¹⁷

Employment law can be civil (private) and can be public. It is said to be civil because it regulates individual interests, in this case there is a relationship between workers and employers, namely where they enter into an agreement called a work agreement. Where the law of the agreement is regulated in the Civil Code Book III, namely regarding the chapter on engagement, and one of the sources of engagement is an agreement.

Employment law is said to be public, because in certain cases the government participates or interferes in labor issues and administrative sanctions are given if there is a violation committed by the company or criminal sanctions, if there is a criminal problem within the company then will relate to Criminal Law.

2. Equitable Legal Protection Regulations on Workers' Rights in Employment Relations in Indonesia During the Covid-19 Pandemic.

a. Implementation of legal protection for workers' rights in Indonesia

Indonesia as a country based on law (rechtstaat) and the rule of law, which aims to limit the authorities (government in the broadest sense) in acting and acting based on laws and regulations that apply to a certain place and time for its people.¹⁸

Indonesian people really need legal protection to get legal certainty and justice so that people feel welfare and prosperity. Therefore, fair law enforcement and the protection of human rights are two important aspects in realizing the rule of law and are the basic ingredients in nation building and become the basic needs of civilized nations on earth.¹⁹

Protection of workers can be seen in the fourth paragraph of the preamble to the 1945 Constitution (UUD 45) and Article 27 paragraph (2), Article 28 D paragraph (1) and paragraph (2) of the 1945 Constitution. Juridically based on Article 27 of the 1945 Constitution the position workers are the same as employers/entrepreneurs, but socially and economically the position of the two is not the same. This unequal socio-economic position creates a tendency for employers to act more dominantly in determining the contents of the agreement by prioritizing their interests compared to the interests of workers. To prevent things like this, it is very necessary for government intervention to provide legal protection. Protection of workers/laborers is intended to include, among others: To ensure the fulfillment of the basic rights of workers, to ensure equal opportunity and treatment without discrimination.

Protection of workers can be carried out either by providing guidance, compensation, or by increasing the recognition of human rights, physical and socio-economic protection through applicable norms. is largely determined by economic and socio-cultural developments and the community or country in which a company operates, including:²⁰

- 1) Right to work. The right to work is a human right. Because it is so important for Indonesia to clearly state, and fully guarantee, this right to work can be seen in Article 27 paragraph (2), of the 45 Constitution: "Every citizen has the right to work and a decent living for humanity."
- 2) The right to fair wages. Real wages are the embodiment or compensation of the results of their work. Everyone has the right to a fair wage, that is, a wage commensurate with the labor he has contributed.

17 Undang-undang Nomor 13 Tahun 2003 tentang *Ketenagakerjaan*, Cetakan II, Yogyakarta: Pustaka Pelajar, 2007, Penjelasan bagian Umum, hlm. 119.

18 <https://jurnalhukumdanperadilan.org>., diakses pada tanggal 15 September 2021.

19 Ketut Sendra, *Penerapan Asas Keterbukaan Dalam Perjanjian Polis Kaitannya Dengan Perlindungan Hukum Terhadap Konsumen Asuransi Di Indonesia*, Disertasi, Universitas Jayabaya Jakarta, 2013, hal.18-19.

20 A. Sonny Keraf, *Etika Bisnis, Tuntutan dan relevansinya*, edisi baru, Yogyakarta: Kanisius, 1998, hlm. 162-172.

- 3) Right of association and assembly. In order to be able to fight for their interests, especially the right to a fair wage, workers must be recognized and guaranteed their right to associate and assemble. They must be guaranteed the right to form trade unions with the aim of uniting to fight for the rights and interests of all their members. By association and gathering, their position becomes stronger and therefore their reasonable demands can be paid more attention, which in turn means that their rights will be more guaranteed.²¹
- 4) The right to protection of security and health. The basis and right to protection of occupational safety, health and safety is the right to life. This guarantee is absolutely necessary from the start as an integral part of the policies and operations of a company. Risks must be known from the start, this is necessary to prevent disputes in the future if something unexpected happens.²²
- 5) The right to be legally processed. This right is especially applicable when a worker is accused and threatened with certain penalties for allegedly committing certain violations or wrongdoings. He must be given the opportunity to prove whether he committed the wrongdoing as alleged or not.²³
- 6) The right to be treated equally. This means that there should be no discrimination within the company whether based on skin color, gender, ethnicity, religion, and the like, both in attitude and treatment, salary, or opportunities for positions, training or further education.
- 7) Right to privacy. Although the company has certain rights to know the curriculum vitae and certain personal data of each employee, employees have the right to keep their personal data confidential. Even the company must accept that there are certain things that the company should not know and want to keep employees secret.
- 8) Right to freedom of conscience. Workers should not be forced to take certain actions that they consider to be bad: committing corruption, embezzling company money, lowering the standards or ingredients of certain products in order to increase profits, covering up fraud committed by the company or superiors.²⁴

In the Civil Code the provisions regarding the obligations of workers/workers are regulated in Article 1603 letter (a), (b), and letter (c) of the Civil Code which essentially states that:

- 1) Workers are obliged to do their own work, they may not, other than with the permission of the employer, be replaced by a third person in carrying out their work.
- 2) In carrying out work, workers are obliged to obey the rules and instructions given by the entrepreneur.
- 3) The obligation to pay compensation and fines. If a worker commits an act that is detrimental to the company either by intention or negligence, then in accordance with legal principles, the worker is obliged to pay the compensation or the fine.

In addition to legal protection for workers, legal protection for employers is also very necessary considering its role as a provider of employment and as a driving force for a country's economy. Workers and employers are in need of each other so that what is the rights and obligations of each must be equally protected. In Law Number 13 of 2003 concerning Manpower, entrepreneurs have rights and obligations in running their business.

Entrepreneur's rights, among others:

- 1) Make work regulations and agreements. The company regulations are made unilaterally by the entrepreneur and the work agreement is made jointly between the trade/labor union and the entrepreneur or the entrepreneur's union. In this case, because the regulations are made unilaterally, the material

21 *Ibid.*, hlm. 168.

22 *Ibid.*, hlm. 169 – 170.

23 *Ibid.*, hlm. 170

24 *Ibid.*, hlm. 171.

maximizes the obligations of workers and minimizes workers' rights and maximizes the rights of employers/employers and minimizes the obligations of employers/employers²⁵. However, these regulations and agreements still refer to the applicable labor provisions.

- 2) The right to lay off. Employers may terminate the employment relationship of workers/laborers in accordance with Article 158, Article 163 to Article 165.²⁶
- 3) Closure of the company. The closure of the company is based on Article 146 to Article 149 of Law Number 13 of 2003 concerning Manpower.
- 4) The right to form and become a member of a company organization. Provisions regarding employers' organizations are regulated in accordance with applicable laws and regulations (Article 105 of Law Number 13 of 2003 concerning Manpower).²⁷
- 5) The right to hand over part of the work to another company. The company may hand over part of the execution of the work to other companies through a written contract of work agreement or the provision of worker/labor services. (Article 64 of the Manpower Act).

The employer's obligation is to fulfill the rights of workers as described above, among others: the right to work, the right to a fair wage, the right to associate and assemble, the right to security and health protection, the right to be legally processed, the right to treated equally, the right to privacy, the right to freedom of conscience.

b. Legal Protection Regulations Against Workers' Rights During the Covid-19 Pandemic.

Regulations that specifically regulate the protection of workers/laborers during a pandemic, namely the existence of a Circular Letter of the Minister of Manpower by issuing several provisions regarding corporate responsibility in the COVID-19 pandemic situation, for the sustainability of the rights of workers/laborers in the COVID-19 situation. Some of them are about the protection of payment of wages and the obligation to issue health protocols in the workplace.

The company's obligations to workers during the Covid-19 pandemic are as follows:

- 1) Protection of the right to wages for workers/labor during the Covid-19 Pandemic as stipulated in the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 requires companies to pay attention to the following matters:²⁸
 - a) Workers in the category of People Under Monitoring (ODP) for the Covid-19 virus do not come to work for a maximum of 14 days, and wages are paid in full.
 - b) Workers suspected of Covid-19 must undergo a period of quarantine/isolation, wages paid in full.
 - c) Workers do not enter due to Covid-19 illness, wages are paid according to the laws and regulations.
 - d) Companies that restrict business activities until some or all of the workers are absent from work, changes to the method or amount of wage payments are made in accordance with the agreement between the entrepreneur and the worker.
- 2) For business actors who are still running the company during the COVID-19 period, it must be carried out by considering risk mitigation plans and health protocols for workers/laborers. Circular

25 H.R. Abdussalam, *Hukum Ketenagakerjaan (Hukum Perburuhan)* yang telah direvisi, Jakarta: Restu

26 *bid.*, hlm 120

27 *bid.*, hlm 272.

28 Surat Edaran Menteri Ketenagakerjaan Republik Indonesia No. M/3/HK.04/III/2020 tentang Perlindungan Pekerja/Buruh dan Kelangsungan Usaha Dalam Rangka Pencegahan dan Penanggulangan COVID-19 <https://jdih.kemnaker.go.id/data_puu/SE_Pelindungan_Pekerja.pdf>

Letter of the Minister of Manpower Number M/7/AS.02.02/V/2020 is required to pay attention to:²⁹

- a) The company is to prepare a business continuity plan in the face of the COVID-19 pandemic, here in addition to regulating business activities and how to maintain the main source of business, it also includes prioritizing the obligation for companies to arrange for a safe workplace from potential transmission and also the company's HR policies (sick leave, travel, compensation, overtime, etc.).
- b) The company in carrying out its business must implement the protocol for preventing the transmission of COVID-19 in the workplace, which consists of:
 - (1) Conducting a clean and healthy life behavior campaign,
 - (2) Implementation of company hygiene and sanitation,
 - (3) Ensure the use of personal protective equipment,
 - (4) Checking body temperature at every company entrance and observing the general condition of workers/laborers and guests,
 - (5) Incorporating material for preventing the spread of COVID-19 into Safety Induction,
 - (6) Conducting guidance by socializing and educating all workers/laborers about COVID-19,
 - (7) Regulating work patterns and grouping workers/labourers,
 - (8) Inform workers/laborers not to visit health facilities except in emergency situations,
 - (9) Temporarily postpone the health examination of the workforce until the aspects of occupational safety and health are met/the COVID-19 pandemic ends,
 - (10) Health workers or occupational safety and health (K3) experts carry out proactive monitoring, and
 - (11) If you find a worker/labourer who meets the ODP/PDP criteria or is sick with COVID-19, the health officer or occupational safety and health (K3) expert coordinates with the relevant agencies and disseminates the self-isolation protocol.³⁰

However, in practice, many companies are still doing layoffs due to being affected by COVID-19. It was recorded that until June 2020, workers who experienced layoffs due to COVID-19 reached 3.05 million workers.³¹ To date, there is no specific regulation regarding Termination of Employment (PHK) related to COVID-19. So that in terms of Termination of Employment (PHK) still have to look at the provisions contained in Law Number 13 of 2003 concerning Manpower.

Article 164 paragraph (1) of Law Number 13 of 2003 concerning Manpower states that Termination of Employment (PHK) can only be carried out by fulfilling two conditions:

- a. Because the company closes due to continuous losses for 2 (two) years, or
- b. Force majeure.

Those affected by layoffs are entitled to severance pay, gratuities for years of service, and compensation for entitlements according to the reasons for layoffs.

The question is, can the force majeure due to COVID-19 be the reason for the termination of employment (PHK) of workers? In civil terms, termination of employment (PHK) is the non-performance of the engagement/agreement between the company and the worker/labourer. In this situation of force

29 Surat Edaran Menteri Ketenagakerjaan Republik Indonesia No. M/7/AS.02.02/V/2020 tentang Rencana Keberlangsungan Usaha Dalam Menghadapi Pandemi *CORONA VIRUS DISEASE 2019 (COVID-19)* dan Protokol Pencegahan Penularan COVID-19 Di Perusahaan <https://jdih.kemnaker.go.id/data_puu/M.7.AS.02.02_0001.pdf>

30 Papang Hidayat, Dampak Pandemi Covid-19 terhadap Hak-Hak Pekerja; Sebuah Panduan Akses terhadap Keadilan Dampak Pandemi Covid-19 terhadap Hak-Hak Pekerja; Sebuah Panduan Akses terhadap Keadilan, Institute for Criminal Justice Reform (ICJR), 2020, hlm. 22 – 25.

31 Dewi Rina Cahyani, 'Corona Impact, 3.05 Million People Affected by Layoffs Until June' Tempo (Jakarta, 8 Juni 2020) <<https://bisnis.tempo.co/read/1350955/dampak-corona-305-juta-orang-terkena-phk-hingga-juni/full&view=ok>> diakses 11 Agustus 2020.

majeure and the worker/laborer, the non-performance of an agreement can occur in the form of layoffs, delays in payment of wages, or changes in the provisions regarding payment of wages.

Article 1244-1245 of the Civil Code (KUHPerdata) states that in the case of releasing the obligation to pay fees, the elements that must be met are: something unexpected, cannot be insured by the parties, and there is no bad faith from the parties.

In Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19),³² COVID-19 was finally considered a national disaster. So that national disasters that impact on the implementation of work activities are hampered, it can be said that an agreement between the company and the worker/ laborer cannot be implemented or is difficult to implement and can be a reason for termination of employment or layoffs.³³

3. Equitable Legal Protection of Workers' Rights During the Covid-19 Pandemic

Employment law was born from the idea of providing protection for parties, especially workers/laborers as weak parties and social justice in working relationships between parties who have considerable similarities and differences. The similarity is that humans are both created by God who have human dignity while the difference is in terms of position or socio-economic status, where workers have income by working for entrepreneurs/employers. The goal of social justice in the field of manpower can be realized, one of the ways is by protecting workers/labor against unlimited power from the employer/employer, through existing legal means.

One of the goals of social justice in the field of employment is to protect workers against unlimited power from the employer/employer, through existing legal means. Protection of workers/labor can be seen in the fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia (UUD 45) and Article 27 paragraph (2), Article 28 D paragraph (1) and paragraph (2). Protection of workers can be carried out either by providing guidance, compensation, or by increasing the recognition of human rights, physical and socio-economic protection through applicable norms.

In general, there are several workers' rights that must be protected, including: the right to work, the right to a fair wage, the right to associate and assemble, the right to security and health protection, the right to be legally processed, the right to be treated equally, the right to privacy, the right to freedom of conscience. Employers' rights, among others: Make work regulations and agreements, the right to lay off work, close the company, the right to form and become a member of a company organization, the right to hand over part of the work to other companies. To realize the protection of workers' rights, it can also be done through guidance, supervision and law enforcement in the field of manpower.

Juridically, the position of workers/labourers is free and balanced. However, in practice, the position of the employer and the worker/labourer is often in an unbalanced state. Several problems were still encountered, including: Regulatory factors; Cultural factors both workers, employers/entrepreneurs and law enforcers; Although theoretically the employer and the recipient of the work are equal in position, in practice they are different; The ability of the company to fulfill workers' rights.³⁴

32 Presidential Decree No. 12/2020 concerning the Designation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters. <https://jdih.setneg.go.id/viewpdfperaturan/P18857/Keppres%20Nomor%2012%20Tahun%202020>

33 Ady Thea, 'Guru Besar Ini Bicara PHK Alasan Force Majeure Dampak COVID-19' Hukumonline (22 April 2020 <<https://www.hukumonline.com/berita/baca/lt5ea02c57c5dc8/guru-besar-ini-bicara-phk-alasan-force-majeure-dampak-covid-19/>>) diakses 11 Agustus 2020.

34 Niru Anita Sinaga dan Tiberius Zaluchu, *Perlindungan Hukum Hak-Hak Pekerja dalam Hubungan Ketenagakerjaan di Indonesia*, <https://journal.universitassuryadarma.ac.id>, accessed on 12 September 2021

E. Closing

Fair legal protection regulations for workers' rights in labor relations in Indonesia during the Covid-19 Pandemic have not been implemented properly, and are still not fair, companies and business owners feel as parties who have a strong position and have power, so they think only for the benefit of the company, without considering the rights of the workers, who because of the covid-19 pandemic, their lives are increasingly not prosperous. The government has taken steps in dealing with the Covid-19 pandemic problem related to efforts to provide equitable legal protection for workers from Termination of Employment (PHK), namely by issuing several regulations as legal protection for workers, such as the issuance of the Circular Letter of the Minister of Manpower of the Republic of Indonesia. Number: M/3/HK.04/III/2020 which specifically regulates wages for workers/labor, and Circular Letter of the Minister of Manpower and Transmigration Number: 197/MEN/PHIPPHI/V/2008 concerning Prevention of Termination of Employment (PHK).) which stipulates some basic steps before the layoff policy is established based on such regulatory provisions, basically a strong effort by the government to protect workers.

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Kitab Undang-Undang Hukum Perdata.