

## **Legal Protection Of Workers Without Company Guarantees Due To The Pandemic Based On Legal Certainty**

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### **ABSTRAK**

Permasalahan pekerja tanpa jaminan kesejahteraan menjadi fenomena yang memerlukan perhatian terutama pasca pandemi dan memerlukan solusi yang proaktif, Penelitian ini menggunakan pendekatan normatif, pengumpulan bahan hukum dilakukan dengan prosedur identifikasi dan inventarisasi bahan pustaka atau data sekunder, yang mencakup bahan hukum primer, sekunder dan tersier. Hasil penelitian menunjukkan hak hak pekerja yang di PHK akibat pandemi covid 19 di di Store Ramayana City Plaza Depok, dan upaya hukum terhadap pekerja yang di PHK. Pertama hak pekerja dalam hubungan kerja. Hak yang paling mendasar adalah hak-hak normative berupa hak-hak yang menyangkut finansial (uang) dan nonfinansial. Bila terjadi pemutusan hubungan kerja/PHK, pengusaha diwajibkan membayar uang pesangon dan atau uang penghargaan masa kerja dan uang penggantian hak yang seharusnya diterima pekerja. Kedua, upaya hukum yang dapat dilakukan oleh pekerja, maka pekerja dapat melakukan musyawarah atau melalui prosedur penyelesaian perselisihan hubungan industrial di luar pengadilan, berdasarkan Asas kepastian hukum yang berlandaskan peraturan Undang-Undang No 13 Tahun 2003 tentang Ketenagakerjaan. Bahwa hubungan kerja merupakan suatu hubungan yang timbul antara pekerja dan pengusaha setelah diadakan perjanjian sebelumnya oleh pihak yang bersangkutan. Dengan hubungan kerja tersebut akan membawa hak dan kewajiban antara pengusaha dan pekerja. Upaya Hukum yang dapat dilakukan apabila hak di atas tidak dapat diperoleh pekerja, maka pekerja dapat melakukan musyawarah atau melalui prosedur penyelesaian perselisihan hubungan industrial di luar pengadilan, berdasarkan Undang-Undang No 13 Tahun 2003 tentang Ketenagakerjaan dan asas Kepastian Hukum, upaya

hukum melalui bipartit, konsiliasi, arbitase atau mediasi. dan jika dengan cara perundingan/ musyawarah tidak mencapai kesepakatan, maka langkah terakhir adalah melalui pengadilan hubungan industrial.

**Kata Kunci :** PHK, Industri Ritel

### **ABSTRACT**

*This research is normative legal research, the collection of legal materials is done by identifying and inventorying literature or secondary data, which includes primary, secondary, and tertiary legal materials. The results of the study show how the rights of workers who were laid off due to the Covid-19 pandemic at the Ramayana City Plaza Depok Store, and legal remedies for workers who were laid off. First, workers' rights in employment relations. The most basic rights are normative rights, namely rights that have been regulated in the Law and the Principle of Legal Certainty. Normative rights can be in the form of financial (money) and non-financial rights. In the event of termination of employment/ layoffs, the employer is required to pay severance pay and/or service gratuity and compensation pay that should have been received by the worker. Second, legal remedies that can be taken by workers, workers can carry out deliberations or through industrial relations dispute resolution procedures outside the court, based on the principle of legal certainty which is based on Law No. 13 of 2003 concerning Manpower. From the results of this study, it can be concluded that the employment relationship is a relationship that arises between workers and employers after a previous agreement was made by the parties concerned. This working relationship will bring rights and obligations between employers and workers. Legal remedies that can be taken if the above rights cannot be obtained by workers, then workers can carry out deliberations or through industrial relations dispute resolution procedures outside the court, based on Law No. 13 of 2003 concerning Manpower and the Principle of Legal Certainty, legal remedies through bipartite, conciliation, arbitration or mediation. And if negotiations/deliberations do not reach an agreement, then the final step is to go through the industrial relations court.*

***Keywords:*** *Layoffs, Retail Industry*

## A. INTRODUCTION

The problem of workers is a problem that often arises in developing countries including Indonesia. According to Umar Kasim, one of the problems that often arises is the termination of employment (hereinafter referred to as PHK), which results in loss of livelihood, so to ensure the peace of workers and certainty there should be no PHK.<sup>1</sup>

This condition is being experienced by many workers, especially in the private sector due to the Covid-19 pandemic. The end of 2019 is a new history in the life of the Indonesian nation and the world. The pandemic, which began in the Chinese city of Wuhan, has begun to spread to all parts of the world.<sup>2</sup> As a result, many activities were hampered and could not be carried out during the pandemic. Many companies also decrease their income and then make efficiency or reduce the number of workers, some even to the point of mass layoffs (PHK) to their workers.

In Indonesia, the government is trying to make various breakthroughs to suppress the impact of the Coronavirus on industry. Several economic breakthroughs were launched, and even President Joko Widodo immediately issued policies related to the Corona Virus Disease 2019 (COVID-19) pandemic as follows: (a) social distancing to Large-Scale Social Restrictions (PSBB).<sup>3</sup> (b) income tax borne by the government, Regular income received by employees earning 200 million a year who work for companies stranded by the Corona Virus Disease 2019 (COVID-19) pandemic gets article 21 income tax facilities (PPh 21) borne by the government. (c) credit payment allowance,<sup>4</sup> the Government provides a number of incentives for micro, small, and medium enterprises (MSMEs) groups, including credit

<sup>1</sup> Umar Kasim, *Hubungan Kerja dan Pemutusan Hubungan Kerja*, Jurnal Hukum Volume 2, tahun 2004, Hlm. 6

<sup>2</sup> Winariani, *Indonesian Journal of Respiratory, Official Magazine of the Indonesian Lung Doctor Association, Vol 40 No 2*, (April 2020), p. 120.

<sup>3</sup> PP No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19)

<sup>4</sup> In the Minister of Finance Regulation No.23/PMK.03/2020, companies that are subject to the coronavirus pandemic are companies registered in certain 440 KLU (Business Field Clarification) and companies that have been designated as KITE (ease of Import for Export Purposes) companies.

payment allowance of up to one year. (d) Electricity subsidy is a policy of drying electricity costs to PLN customers amid the Corona Virus Disease 2019 (COVID-19) pandemic. (e) Learning at home, the Ministry of Education provides a number of references for implementation from home during the Corona Virus Disease 2019 (COVID-19) pandemic.

The five policies determined by the government, *Social Distancing* to PSBB (Large-Scale Social Restrictions) in every area that already has cases of COVID-19 spread can threaten not only officials but also the productive age population in Indonesia. In population studies, the population is often referred to as workers or *manpower*, where the entire population is considered to have the potential to work productively. In industry or business, the concept of Worker is defined as personnel working in industry.

Dworkin states that rights are those that must be upheld by everyone. As Dworkin writes, “*Rights are best understood as trumps over some background justification for political decisions that the state at goal for the community as a whole.*”<sup>5</sup> (rights are best understood as the highest value of background justification for a political decision that expresses a goal for society as a whole), when faced with a conflict between the exercise of one's justified right and the public interest. Dworkin recognizes that interfering in an individual's life to negate rights is justified if a specific basis can be found.

According to Dworkin, as quoted by Peter Mahmud Marzuki, states that rights are not what is formulated but the value that underlies that formulation. The nature of rights is so valuable that it gave rise to the theory of interests and the theory of will, as proposed by Jeremy Bentham and Rudolf Von Jhering, considering that rights are interests protected by law.<sup>6</sup>

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<sup>5</sup> Lawrence Friedman, *The Legal System: A Social Science Perspective*.1977, Hlm. 164

<sup>6</sup> Peter Mahmud Marzuki. *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, 2006. Hlm. 176

Social interests are legal order, national security, economic protection of society, protection of religion, morals, human rights, inventions, health and unity of race, environment, individual interests, and family interests with the guarantee of freedom and equality for all people then justice will be realized.<sup>7</sup>

Rights are something inherent in humans by nature and because of this right is needed by law to maintain the continuity of the existence of rights in the pattern of social life, and because of this right, the law was created. These interests are not created by the state because they already exist in public life and the state only chooses which ones to protect. According to Peter Mahmud, there are 3 (three) elements in a right, namely 1. Element of protection; 2. Element of recognition; and 3. The element of will. If the principle of justice is carried out, good and ethical business is born.<sup>8</sup>

Protection is an important element of rights, as Houwing sees rights as an interest protected by law in some way.<sup>9</sup> The law must carefully consider interests and create a balance between them. Van Dijk in Peter Mahmud Marzuki states that "the law must function in achieving the goal of peace and prosperity, the goal of achieving peace can be realized if as much law as possible provides fair arrangements."<sup>10</sup>

Philipus M. Hardjon argues that the principle of legal protection for the people against government actions rests and stems from the concept of recognition and protection of human rights. Historically in the West, the birth of concepts about the recognition and protection of human rights was directed at the limitation and imposition of obligations on society and government<sup>11</sup>

M. Isnaeni argues that the issue of legal protection in terms of its source can be

<sup>7</sup> Agus Yudho Hermoko. *Asas Proporsionalitas Dalam Kontrak Komersil*, Laksbang Mediatma, Yogyakarta, 2008. Hlm. 45

<sup>8</sup> Satjipto Rahardjo. *Teori Hukum Strategi Tertib Manusia Linmas Ruang Dan General*, Genta Publishing, Yogyakarta, 2010. Hlm. 44

<sup>9</sup> *Ibid*, p. 221

<sup>10</sup> Peter Mahmud Marzuki. *Pengantar Ilmu Hukum. Op. Cit.* Hlm.189

<sup>11</sup> Philipus M. Hadjon. *Perlindungan Hukum Bagi Rakyat di Indonesia*, PT. Bina Ilmu, Surabaya, 1987. Hlm. 38

divided into two (2) types, namely external legal protection and internal legal protection.<sup>12</sup> The nature of internal legal protection, basically the legal protection in question is packaged by the parties themselves when making an agreement, this pattern is used as a basis when the parties assemble the clauses of the agreement they are working on so that legal protection from each party can be realized straightforwardly on their initiative.

External legal protection made by the ruler through regulations for the interests of weak parties, in accordance with the nature of laws and regulations that cannot be biased and impartial, must also be proportionately given balanced legal protection as early as possible to other parties.<sup>13</sup>

Legal protection is a description of the working of legal functions to realize legal objectives, namely justice, expediency, and legal certainty. Legal protection is protection provided to legal subjects in accordance with the rule of law, both preventive (prevention) and in the form of repression (coercion), both written and unwritten to enforce legal regulations.<sup>14</sup>

## **B. RESEARCH METHODS**

This research is descriptive-analytical, because the results of the research will explain the legal facts which are then analyzed systematically. In this study, the author tries to provide a clear, systematic, and comprehensive picture related to the implementation of workers and legal protection for workers then analyzed based on the results of writing done by the author. The approach method carried out in this study is a normative juridical approach, which is research focused on studying the

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<sup>12</sup> Moch. Isnaeni. *Introduction to the Law of Material Guarantees*. PT. Revka Petra Media, Surabaya, 2016, p. 159

<sup>13</sup> *Ibid.* Hlm 63

<sup>14</sup> Benedhicta Desca Prita Octalina, *Perlindungan Hukum Terhadap Anak Korban Eksploitasi Ekonomi*, diakses melalui <http://e-journal.uajy.ac.id/7178/1/JURNAL.pdf>

application of rules or norms in positive law.<sup>15</sup> Tertiary legal materials are supporting legal materials that provide guidance and explanation to primary legal materials and secondary legal materials, such as legal dictionaries.<sup>16</sup> Newspapers, weekly magazines, newsletters, and the internet can also be material for this research as long as it contains information relevant to the object of legal research.<sup>17</sup> Literature research, which collects research data. The type of data used in writing this thesis is secondary data, namely data obtained or collected from literature or literature that has a relationship with the object of research. The source of legal material used in this study itself is from primary legal material, secondary legal material, and tertiary legal material which is described as follows<sup>18</sup>

### C. RESULTS AND DISCUSSION

Laying off workers or PHK is an alternative that is often done by companies to reduce their expenses, this is simply so that the company can survive. In addition to the impact experienced by the company, it was also felt by workers who were laid off or who experienced PHK resulting in reduced or lost income/income, while the price of daily necessities increased when the Covid-19 pandemic crisis occurred, the reason for the price increase was due to disruptions in the domestic food supply chain, other shocks affecting food production and loss of income and remittances creating strong tensions and food safety risks in many countries.<sup>19</sup>

In the 1945 Constitution article 28D paragraph (2) it is stated that everyone has the right to work and to get fair and decent remuneration and treatment in employment relations (Indonesia 1945). In this case, it means that everyone has the same rights to work, receive remuneration, and get fair and decent treatment in employment

<sup>15</sup> Soerjono Soekanto, *Introduction to Legal Research*, (UI Press, Jakarta, 1986), p. 6.

<sup>16</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research, A Brief Review*, Raja Grafindo Persada, Jakarta, 2004, pp. 14-15.

<sup>17</sup> Jay A. Sieglar dan Benyamin R. Beede, *The Legal Soucyces of Public Policy*, Lexington Books, Massachussets, Toronto, 2007. Hlm. 23.

<sup>18</sup> Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, Penerbit Sinar Grafika, Jakarta 2004, Hlm. 18.

<sup>19</sup>Nurmayanti. September Lonjakan Ketahanan Pangan Dunia.

*Liputan6.Com*.<https://www.liputan6.com/bisnis/read/4351912/lonjakan-harga-pangan-selama-pandemi-ancam-ketahanan-pangan-dunia>, 2020



relations, so that the role of the government in handling legal protection issues but also the continuity of business in the company sector.<sup>20</sup>

Protection of workers/workers is an inseparable part of the protection of citizens as a state obligation. Basic human rights must be fulfilled by obtaining protection wherever they work to obtain basic rights. Both different citizen status and the same citizen status, so that they argue a decent life as a human being in accordance with article 28D Paragraph 3 of the 1945 NKRI Constitution, that every citizen has the right to work and get wages (salary) and fair and decent treatment in employment relations.

The nature of the term "laying off workers" (merumahkan pekerja) or "laid-off workers" (pekerja yang dirumahkan) does not exist and is not regulated in the provisions of Law No. 13 of 2003 concerning employment, however, in practice, there are several cases of workers who are "laid off" (not laid off, do not work and do not receive salaries) by companies for various reasons, for example, because the company is unable to run production, the company is restructuring its business, until the company experiences a certain crisis. But the term "laid off" (dirumahkan) in some companies means the same as "laid off" (PHK) because there is no certainty and clarity regarding when to return to work as usual and what is regretful for workers is that they are not given severance pay when laid off.<sup>21</sup>

In addition to laying off workers, termination of employment is a termination of the source of income for workers or laborers and their families carried out by employers. Termination of employment is the beginning of the loss of livelihood for

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<sup>20</sup> Matompo, O. S. *Perlindungan Hukum Bagi Pekerja Asing Di Indonesia. Legal Standing: Jurnal Ilmu Hukum*, Vol 4 No 2, Hlm 12. 2020

<sup>21</sup> Krisgawati, V. & Antari, P. E. D. *Sosialisasi Hak Pekerja Yang Dirumahkan Akibat Pandemi Covid-19 Di PT. Global Retailindo Pratama. Vol13 No 13, 18– 25, 2020*

workers/laborers which also causes loss of jobs and income. In some cases, companies feel unable to pay their workers' wages in emergency situations because the restriction of activities in the scope of labor and business has had an impact on decreasing the company's turnover or profit generation.<sup>22</sup>

Based on article 61 paragraph (1) of Law No. 13 of 2003 concerning manpower, the employment relationship or employment agreement ends if (a) the worker dies before the expiration of the agreement period (b) there is a court decision/decision or determination of an industrial relations dispute resolution institution that has permanent legal force. (c) the existence of certain circumstances or events stated in the employment agreement, company regulations, or collective labor agreement that may cause the termination of the employment relationship, meaning that the party terminating the employment relationship is required to pay compensation to the other party in the amount of wages of the Worker/labourer until the expiration of the term of the employment agreement, as referred to in article 62 of the Manpower Law. Other losses incurred due to the resignation of workers are (a) work productivity will decline (b) the company will lose potential workers who are difficult to find replacements (c) reduced functions in managing the company.

In general, some companies that terminate employment during the COVID-19 pandemic often use *force majeure* reasons even though the company is still producing as usual. The important thing that is a condition for termination of company employment to workers is that the company has decreased or written losses for 2 years. Meanwhile, the current COVID-19 pandemic has not reached or is considered 2 years. The clarity of *force majeure* is still a question of entering the classification in natural disasters or does not need attention at all. Force *majeure* reasons used by the company to terminate employment cannot be justified. The massive disruption caused by COVID-19 has affected many workers who lost their jobs and must get legal protection and clear legal certainty. So, to avoid PHK, employers can make changes in the amount and method of payment of wages to the

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<sup>22</sup> *ibid*

wages of workers/laborers who are temporarily laid off due to the COVID-19 outbreak, based on the agreement of the parties. In addition, workers/laborers who are suspected or positive for COVID-19 are also entitled to wages based on the circular. If employers are unable to pay wages according to the minimum wage as a result of COVID-19, employers can suspend wage payments (if employers are unable to pay wages according to the minimum wage), by first negotiating with workers/laborers or trade unions/trade unions regarding the suspension.

#### **D. CONCLUSION**

The legitimacy carried out by the company against workers who were laid off due to COVID-19 cannot be used as an excuse and the non-fulfillment of the *elements of Force Majeure* and elements in the Manpower Law in the rules, so the alternative choice is often done by companies to reduce company expenses is to lay off workers, this is simply so that the company can survive due to the covid-19 crisis. However, the COVID-19 pandemic has had an impact on the sustainability of the business world which has led to the disruption of work relations between workers and companies, this condition has resulted in some companies experiencing a decrease in revenue, losses, and business closures so that *Force Majeure* cannot be a reference for termination of employment. In this case, the Minister of Health has enacted Minister of Health Regulation 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)*. Thus, *force Majeure* is an alternative because the COVID-19 pandemic is not a natural disaster but a non-natural disaster, workers in layoffs cannot include *Force Majeure*. The legal protection provided by the company to workers is that workers' rights are still paid in full by the company, but if the company cannot pay in full or 50%, the company can suspend payment, or it can be negotiated through the union in advance against the wages of workers who are laid off without guarantees. Certainty from the government to laid-off workers includes economic protection, which is a type of protection related to efforts to provide workers/workers with a form of income sufficient to meet their daily needs and to be able to meet the needs of their families, including if the worker

is unable to work because of something beyond his ability. This protection is called social security. Social protection, is a protection related to community business, the purpose of which is to enable these workers to develop their lives as human beings in general, and as community members and family members, commonly called occupational health.

The Regional Government of Cianjur Regency needs to discuss and review the existing company regulations in the Cianjur area relating to the legitimacy and accountability of companies to workers to ensure a balance between the rights and obligations of workers as well as companies and the Cianjur Regency Manpower Office to make supervisory efforts in protecting the rights and obligations of workers so that workers who Being laid off get all his due. Legal protection of trade unions can play a role or protect laid-off workers, it is expected that trade unions as independent organizations, namely a forum authorized to fight for the rights of workers with social goals, for social welfare, social justice, and prosperity. In society, independent social organizations are very important and are expected to be effective and efficient in their involvement as social *agents* and *agents of change*.

## BIBLIOGRAPHY

### A. Buku

- Agus Yudho Hermoko. *Asas Proporsionalitas Dalam Kontrak Komersil*, Laksbang Mediatma, Yogyakarta, 2008.
- Bambang Waluyo, *Penelitian Hukum Dalam Praktik*, Penerbit Sinar Grafika, Jakarta 2004.
- Jay A. Sieglar dan Benyamin R. Beede, *The Legal Sources of Public Policy*, Lexington Books, Massachusetts, Toronto, 2007.
- Lawrence Friedman, *The Legal System: A Social Science Perspective*.1977
- Moch. Isnaeni. *Pengantar Hukum Jaminan Kebendaan*. PT. Revka Petra Media, Surabaya, 2016.
- Nurmayanti. September Lonjakan Ketahanan Pangan Dunia.
- Peter Mahmud Marzuki. *Pengantar Ilmu Hukum*, Kencana Prenada Media Group, Jakarta, 2006.
- Philipus M. Hadjon. *Perlindungan Hukum Bagi Rakyat di Indonesia*, PT. Bina Ilmu, Surabaya, 1987.
- Satjipto Rahardjo. *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan General*, Genta Publishing, Yogyakarta, 2010.
- Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 2004.

\_\_\_\_\_, *Metode Penulisan Hukum*, UI Press, Jakarta, 2002.

\_\_\_\_\_, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1986.

### B. Jurnal

- Krisgawati, V. & Antari, P. E. D. Sosialisasi Hak Pekerja Yang Dirumahkan Akibat Pandemi Covid-19 Di PT. Global Retailindo Pratama. Vol 3 No 13, 18– 25, 2020
- Matompo, O. S. Perlindungan Hukum Bagi Pekerja Asing Di Indonesia. Legal Standing: *Jurnal Ilmu Hukum*, Vol 4 No 2, 2020.

Umar Kasim, Hubungan Kerja dan Pemutusan Hubungan Kerja, Jurnal Hukum Volume 2, tahun 2004.

Winariani, Jurnal Respirologi Indonesia, Majalah Resmi Perhimpunan Dokter Paru Indonesia, Vol 40 No 2, (April 2020).

### **C. Peraturan Perundang-Undangan**

PP No. 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (Covid-19)