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**EMPLOYMENT DURING THE PANDEMIC BASED ON REGULATION OF THE MINISTER OF  
MANPOWER NO. 21 OF 2021**

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**ABSTRACT**

This study aims to determine the legal protection for workers affected by the Covid-19 outbreak. Article 88 letter a paragraph 1 UURI No. 11 of 2020 concerning Job Creation, states that "The rights of workers/laborers to wages arise when there is a working relationship between the worker/labourer and the entrepreneur and ends when the employment relationship is terminated." Therefore, based on the considerations of UURI Number 11 of 2020 letter e, considering that efforts to change regulations relating to the convenience, protection, and empowerment of cooperatives and micro, small and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic projects, including increased protection and workers' welfare is carried out through changes to sector laws that do not yet support the realization of synchronization in ensuring the acceleration of work creation, so that legal breakthroughs are needed that can solve various problems in several laws into one law comprehensively. It can be concluded that the existence of the Law on the protection of workers' wages and protection for workers in their place of work, the company can postpone the payment of wages received by workers (if the company cannot pay it according to the minimum wage limits). An agreement was made with workers to suspend. And with the spread of Covid-19, the government issued a ministerial regulation regarding employment No.21 of 2021, so that it can provide legal protection for workers/laborers. so that legal breakthroughs are needed that can solve various problems in several laws into one law comprehensively. It can be concluded that the existence of the Law on the protection of workers' wages and protection for workers in their place of work, the company can postpone the payment of wages received by workers (if the company cannot pay it according to the minimum wage limits). An agreement was made with workers to suspend. And with the spread of Covid-19, the government issued a ministerial regulation regarding employment No.21 of 2021, so that it can provide legal protection for workers/laborers. so that legal breakthroughs are needed that can solve various problems in several laws into one law comprehensively. It can be concluded that the existence of the Law on the protection of workers' wages and protection for workers in their place of work, the company can postpone the payment of wages received by workers (if the company cannot pay it according to the minimum wage limits). An agreement was made with workers to suspend. And with the spread of Covid-19, the government issued a ministerial regulation regarding employment No.21

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Key Words : Employment during the pandemic, research, legal protection for workers

### PRELIMINARY

Covid-19 is a pandemic virus that has become a major concern for the entire world community since 2019. From NewsGoogle, 501,918,823 cases have been recorded in the world since April 14, 2022, while in Indonesia on April 14, 2022, the impact of Covid cases was recorded at 6,036,909. . This certainly causes many changes in the lives of various worlds including Indonesia itself. For example, the so-called new normal life where life is now slightly different from life before the COVID-19 pandemic.

In addition to affecting daily life, the COVID-19 pandemic also affects not only the health sector but also the employment sector, one of which is in Indonesia.

President Joko Widodo in his press conference at the Bogor Palace on March 15, 2020, gave a policy to the community to work from home (WFH). People are encouraged to carry out their activities at home. Starting from worship, exercise, study, to work. This is to minimize crowds that can cause the spread of the Covid-19 virus easily. This is considered because it is safer to stay at home and reduce the spread of the virus. This policy requires that several activities be carried out online, one of which is school. The Work From Home policy can be interpreted in the provisions of Article 86 paragraph (1) letter a of Law Number 13 of 2003 concerning Manpower (Labor Law) which states:

"Every worker or laborer has the right to obtain occupational health and safety protection."

This Work From Home (WFH) policy raises many pros and cons among the community. This Work From Home has benefits, including saving fuel oil so that it can reduce pollution, being more protected from the covid-19 virus, getting a new atmosphere at work. But the cons in the establishment of this policy are for people who are not able to do their work at home, this causes not a few MSMEs to experience a decrease in income and even go bankrupt. Industries that have a big impact are those that run in the fields of tourism, hospitality, travel, etc. This causes companies to look for ways to maintain their companies, namely by reducing labor or Termination of Employment (PHK).

This can happen due to unstable economic conditions which have an impact on companies experiencing a decline in income to the verge of bankruptcy and termination of employment (PHK) is one of the impacts of this which is carried out unilaterally by company officials.

(Maringan, Nicodemus, (2015), Juridical Review of the Implementation of Unilateral Termination of Employment (PHK) by Companies According to Law No. 13 of 2003 concerning Employment, Journal of Legal Opinion, Issue 3, Volume 3, Number 3, p. 2.)

One of the government's efforts to provide legal protection guarantees for workers who are terminated by their companies is to be regulated in Chapter XII of Article 150-172 of Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Act).

*(Yusuf Randy, The Corona Pandemic as a Reason for Termination of Workers' Work... Jurisprudence Volume 3, Number 2, June 2020, Pages 119-136)*

### **FORMULATION OF THE PROBLEM**

From the background stated, it can be concluded that the formulation of the problem is as follows:

1. What are the efforts to protect wages for workers / laborers related to the COVID-19 pandemic?
2. How will the impact of COVID-19 on employee layoffs?

### **RESEARCH METHODS**

This research was conducted using a normative juridical approach. Where the analysis pattern of this legal research methodology refers to the applicable laws and regulations and is relevant to legal issues related to Manpower. The research process is a library law research method that does not go directly or directly into the field in the research process. The data used is secondary data in researching the legal issues it raises which are obtained in a ready-made form, in the form of publications/reports. The purpose of this research is that researchers can solve existing problems or cases and or make decisions based on existing positive law.

## **CHAPTER II**

### **DISCUSSION**

#### **A. Efforts to Protect Wages Law for Workers/Labourers related to the Covid-19 Pandemic**

In the midst of the current disturbing Covid-19 virus outbreak, it poses many risks to economic activity and has a significant impact on economic conditions in Indonesia. Legal protection is a way to maintain and give recognition to the rights and dignity that people get equally.<sup>25</sup> Legal protection given to workers/laborers has an important meaning for the basic rights of workers/laborers to get guaranteed treatment and equal opportunities in the world of work in order to realize the welfare of workers/laborers and their families as well as in carrying out their business interests. The worker/labourer is in a position that is not easily advantaged in the employment relationship. So that the state by government functions needs to intervene regarding policies and extraordinary measures (extraordinary) related to employment during the Covid-19 pandemic which aims to create fair industrial relations. Many efforts have been made by the government in dealing with situations like this, namely by increasing productivity competencies for the affected communities,

This condition resulted in some companies experiencing a decrease in income and experiencing losses so that entrepreneurs were forced to stop or reduce their business activities. The reduced ability of workers/laborers to finance their daily living needs and their families is the impact of the issuance of the PSBB policy which requires to minimize community activities that limit community activities in public spaces. In the provision of wages, there are 2 things that should be considered by employers or employers, namely the principles of fairness and

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<sup>25</sup> Satijipto Raharjo, Ilmu Hukum (Bandung: Citra Aditya Bakti, 2000), hlm. 23

feasibility.<sup>26</sup>The government has intensified a policy to the public for WFH (Work from Home) where there will be a reduction in workers in every company and business actors start laying off their jobs due to the impact of Covid-19. Business actors are not a few of them who still pay their workers' salaries even though they are not full, but many also do not pay wages at all, even including workers affected by Covid-19 such as ODP (People Under Supervision), PDP (Patients In Treatment), and suspect.

With that, the government ensures that it will issue a policy of providing government assistance in the form of salary/wages subsidies for workers/laborers (BSU). The Minister of Manpower, Ida Fauziah, said that the BSU policy was issued to prevent employers from terminating employment relations with their workers, as well as assist workers who were laid off due to the Covid-19 pandemic. The number of prospective BSU recipients is estimated to reach approximately 8 million people with a budget requirement of Rp. 8 Trillion.

The following are important points as a form of wage protection for workers / laborers related to the Covid-19 pandemic based on the Regulation of the Minister of Manpower of the Republic of Indonesia Number 21 of 2021 concerning the Second Amendment to the Regulation of the Minister of Manpower Number 14 of 2020 concerning Guidelines for Providing Government Assistance in the Form of Salary / Wage Subsidies for Workers /Labourers in Handling the Impact of Corona Virus Disease 2019 (Covid-19):

1. Indonesian citizen as evidenced by the ownership of a resident registration number;
2. Workers/Laborers who receive Wages, and are registered as workers' social security participants who are still active in BPJS for employment. Participants can check the BPJS Employment membership status whether it is active or not through the page provided. On the page there is also a menu "Wage Subsidy Assistance" which informs whether or not it passes the verification and validation of BPJS Employment as a prospective BSU recipient.
3. Workers/ laborers who are candidates for BSU recipients are in the PPKM IV Zone in accordance with the instructions of the Minister of Home Affairs No. 20 of 2021 in conjunction with Number 23 of 2021 concerning the Enforcement of Restrictions on Micro-Based Community Activities and Optimizing the Command Post for Handling Corona Virus Disease 2019 at the Village and Sub-District Levels to Control the Spread of Corona Virus Disease 2019.
4. Participants who pay contributions with the amount of fees calculated based on wages below Rp. 3.500.000,-, (three million five hundred thousand rupiah) according to the latest wages reported by the Employer to BPJS Employment.
5. Workers/laborers in sectors affected by PPKM include the consumer goods industry, trade and services except for education and health services), transportation, various industries, property, and real estate.

Based on the provisions above, according to the Minister of Manpower, Ida Fauziah, BPJS was chosen as the data source, considering that currently BPJS Employment data is considered the most accurate and complete. So that it is accountable and valid, it is used by the government as a basis for providing subsidized assistance quickly and on target. While the provisions in point number 4 if in the case of workers in the PPKM area whose MSE is above Rp. 3.500.000, -, (three million five hundred thousand rupiah) then use the UMK as the limit of the wage criteria. Provision of BPJS Employment salary subsidies of Rp. 1,000,000.00,- (one million rupiah) will be

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<sup>26</sup> Emmanuel Kurniawan, *Tahukah Anda Hak-Hak Karyawan Tetap dan Kontrak*, (Jakarta: Dunia Cerdas, 2013), 23

directly transferred to the employee's account through the State Bank Association, namely BNI, BRI, Mandiri, and BTN.

Distribution through the Indonesian Sharia Bank (BSI) is specifically for recipients of the BPJS Employment salary subsidy in Aceh. Manpower development must be regulated in such a way that it fulfills the basic rights and protections for workers and workers/hunters and at the same time creates conducive conditions for the development of the business world.<sup>27</sup> It is hoped that with the government's concern, issuing policies like this can support financially for people affected by the Covid-19 pandemic, as well as bring implications for changes in the Indonesian economy for the better.

### **B. The Impact of Covid-19 on Termination of Employees**

Our world is currently being hit by an outbreak of a pandemic disease, namely the Corona Virus Disease 2019 (COVID-19) pandemic. Many of the impacts that were felt during this pandemic in several fields, not only in the health sector but also in the field of work, also felt the impact of this pandemic. Economic activity is one of the most important pillars in the order of people's lives, with the Covid-19 pandemic, the sectors in business are getting weaker day by day, which makes business actors who were originally pursuing profit (profit) to maintain their business continuity.

The Indonesian government officially declared the corona virus as a national disaster which was determined by President Joko Widodo by signing Presidential Decree No.<sup>28</sup>. WFH or Work From Home is an effort to follow up on the President's appeal to the public to work, study, and worship from home to minimize the spread of the Covid-19 corona virus. The policy is related to the provisions of Article 86 paragraph (1) letter a of Law No. 13 of 2003 concerning Manpower which states that:

“Every worker/labor has the right to obtain occupational health and safety protection.”

The pros and cons of the WFH policy are for some workers/laborers who are unable to implement the work from home policy due to many factors that make it impossible to do it at home. As of April 20, 2020, the Minister of Manpower Ida Fauziyah explained that at least 2,084,593 workers from the formal and informal sectors came from 116,370 companies who felt the impact of this pandemic. The existence of activity restrictions and an appeal from the government to Work From Home creates a new problem for companies, namely experiencing financial difficulties, this then encourages employers to issue several policies that are detrimental to workers/laborers including the practice of unpaid leave (laying off workers, but not being paid), laying off workers, and ends in Termination of Employment (PHK).

The most affected business places are hospitality, tourism, public relations, building or construction, and travel<sup>29</sup> Companies that suffer losses due to the economic impact of the current Covid-19 period will try to find ways to avoid even greater losses or declines, one of the ways is by reducing or terminating the employment relationship of their workers. Termination of Employment (PHK) is something that is feared and avoided by employees, due to the receding economic conditions that have an impact on many companies having to go out of business so that it has an impact on termination of employment which is carried out unilaterally by the company.

<sup>27</sup> Tim Legality, Undang – Undang ketenagakerjaan Terbaru Dan terlengkap (Yogyakarta: Anak Hebat Indonesia, 2017) hlm 3.

<sup>28</sup> Agus Wibowo, “Presiden Tetapkan Covid-19 sebagai Bencana Nasional”, <https://bnpb.go.id/berita/presiden-tetapkan-covid19-sebagai-bencana-nasional> ,diakses tgl 20 Jan 2021.

<sup>29</sup> Job Street, “Covid-19 Job Report”, Agustus 2020, diakses dari [jobstreet.co.id](http://jobstreet.co.id) pada 26 Jan 2021 pukul 13.20.

Umar Kasim said that layoffs are a sensitive issue, employers should be wise in doing layoffs that can reduce people's welfare, people lose their jobs, even worse layoffs can result in unemployment.<sup>30</sup> To protect the rights of workers as a result of the layoffs, the government has provided legal protection guarantees for workers whose employment has been terminated by employers. Currently, the issue of employment is very complex and varied because in reality the working relationship between employers and workers does not always run harmoniously. Companies are not immediately able to lay off due to losses, force majeure or for efficiency caused by the pandemic and restrictions on company activities.

In fact, there are some workers who have been laid off during the Covid-19 pandemic, or with the intention of not being laid off but also there is no clarity about their status and wages, even though there is no term in the Manpower Law. Many entrepreneurs have used the corona pandemic as an excuse for force majeure to carry out layoffs, considering its huge impact on company operations. The existence of government policies that have determined the corona pandemic as a national disaster and the issuance of a number of legal products can strengthen the reasons for entrepreneurs to declare this pandemic as an event that creates compelling circumstances so that it can be categorized as a non-natural disaster on a national scale.

On the other hand, Aloysius Uwiyono sees the corona pandemic outbreak as a coercive situation because it causes entrepreneurs and workers to be (forced) prohibited from carrying out their work activities as usual.<sup>31</sup> The Manpower Act does not explicitly regulate whether or not companies can use efficiency as an excuse for layoffs. Some of the laid off workers were not the will of the workers themselves, therefore the company should still have to pay remuneration, which is stated in PP no. 78 of 2015 Article 25 concerning Entrepreneurs who are obliged to pay wages if the workforce is willing to do the work that has been given.

If layoffs occur, the Manpower Law has provided legal protection for parties who have experienced layoffs, one of which is Article 156 paragraph (1) which states that in the event of a layoff, employers are required to pay severance pay and/or awards during work and money compensation that should have been received. Aloysius Uwiyono said that if the layoffs were carried out by the company because the company suffered a loss or forced majeure, the provisions regarding workers' rights apply the provisions of Article 164 paragraph (1) of the Manpower Act.

### CHAPTER III

#### CLOSING

#### CONCLUSION

Regarding the protection of wages and protection of workers during the Covid19 pandemic, the government has issued a Circular Letter of the Minister of Manpower No. M/3/HK.0/III/2020 regarding wages during the Covid19 period. During the pandemic, the company/employer may delay the payment of wages (if the company/employer cannot pay the minimum wage), by negotiating first with the employee/employer, employee or trade union/labor union regarding the suspension

<sup>30</sup> Kasim,Umar (\_\_,\_\_,2004), Hubungan Kerja dan Pemutusan Hubungan Kerja, *Informasi Hukum*, Volume 2, hlm.26.

<sup>31</sup> DA, Ady,Thea ,(2020 ,April,22), Guru Besar ini Bicara PHK Alasan Force Majeure Dampak Covid-19, Di akses pada tgl 25 April 2020, Pukul 16:50 WIB ,Hukum Online.com.



and reporting it to the Tuban Manpower Office. And to deal with employer-employee conflicts, dispute resolution methods with alternative dispute resolution methods can be used by mediators, and the above is carried out in a neutral manner.

### SUGGESTION

After reviewing, discussing and concluding, the author provides suggestions

- As a result of the application of sanctions to contractors who do not apply the city minimum wage or UMK in the city, the city has not yet implemented the minimum wage. It is necessary to provide guidance and monitoring of the implementation of the UMK by the person in charge of the work. Labor inspectors also need to be more active in encouraging and socializing so that existing companies are said to be aware of the obligation to pay wages and the sanctions that will be received when workers' rights or workers' motions are granted.

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