

**WORK TERMINATION DURING THE COVID-19 PANDEMIC IN THE
PERSPECTIVE OF POSITIVE LAW IN INDONESIA**

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Abstract

The case of work termination which involves businessowners and labor happens widely in various companies due to the Covid-19 pandemic in Indonesia. This research uses the normative legal research method. During this Covid-19 pandemic, this work termination is carried out to save the company and to prevent more victims. Problems which happen regarding work termination include the reasons for this termination and the post-termination compensation. Work relations is a reciprocal relationship which is based on a two-party agreement. The legal protection for work termination may be carried out during this Covid-19 pandemic. If the rights stated above are not obtained by the workers, then they may initiate a deliberation. They may also go through conflict resolution procedures on industrial relations outside of court, based on the Republic of Indonesia's Constitution No. 2 of 2004.

Keywords: *Work termination, Covid-19, Positive law.*

A. INTRODUCTION

The law of labor defines a worker as anyone who works for someone else and receives wages or other forms of reward. The other forms of reward stated in this definition may be in a form of items or goods in which its value is determined based on the agreement between the workers and the businessowners. Thus, anyone who work for other people with the compensation of receiving wage is a worker/labor/employee.¹

¹ Wafda vivid Izziyana, Hukum Ketenagakerjaan, UMPO pres, 2017, hlm 4

In every occupational relation, there will be a stage where the working relations end or is ended by one of the parties.² Based on that, there are often disputes between the workers and the businessowners. This is usually due to a feeling of dissatisfaction. The businessowner gives a wisdom which is good according to his/her opinion. Yet, the worker has other considerations and opinions, thus they are not satisfied with the wisdoms applied. Most disputes are problems regarding wage. Another problem regards the work termination.

Most businessowners are forced to stop or to decrease their business activities due to this Covid-19 pandemic. This means that there will be work termination or the decrease of the number of workers. Also, this Covid-19 pandemic forces the workers to work from home, or even not work at all. Then, the workers or the labor experience the decrease or the termination of income. In consequence, there is also less income for the family. In the perspective of the government, the Covid-19 causes work termination, which results to a higher rate of the unemployed, which creates social worries. The case of work termination which involves the party of the businessowners and the party of the labor happened quite a lot in various companies due to the Covid-19 pandemic. Even though work termination is a normal thing in the world of labor, its implication needs time, budget, energy, and consideration. Because of that, the work termination must be the last thing to do. That is why, business owners, workers, labor associations, and the government must carry out all efforts so that there is no work termination for the labor. Unfortunately, the reality shows that work termination cannot be avoided. The number of workers sent home on unpaid leave and those whose work is terminated due to the Covid-19 pandemic has reached as much as two million people. Based on the data from the Ministry of Labor on April 20th, 2020, there were 2.084.593 workers from 116.370 companies who were sent home on unpaid leave or whose work was terminated due to the impacts of the coronavirus pandemic. The details are as follows: in the formal sector, 1.304.777 workers were sent home on unpaid leave from 43.690 companies. Meanwhile, there were 241.431 people from 41.236 whose work was terminated. In

² Abdu.l Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, PT Citra Aditya Bakti, Bandung. 2009. hal. 1

the informal sector, 538.385 workers from 31.444 companies or small to medium business enterprises lost their job.³

Regarding this condition, the Minister of Labor asked the businessowners to reemploy these workers or labor whose work was terminated or who were sent home on unpaid leave after the Covid-19 pandemic is over. If the business activities run normally, if there is enough income, the workers whose work were terminated must be prioritized in being reemployed in the company. In its practice, the work termination which happened because the period of time determined in the work contract has ended is actually not a problem.⁴ This is different from the work termination which happened because of the policies applied by the businessowners. This may cause reactions from the workers who cannot accept the reasons for the work termination.

Work termination is something which is not wished for by both parties, especially for the workers who are in a weaker condition compared to the businessowner.⁵ For the workers, work termination may bring psychological and financial impacts. For them, the work termination means that they must now face a phase of unemployment with all of the impacts which come with it. For the companies, work termination causes loss, as they must now let go of their workers who have been trained. This training consciously or unconsciously costs a lot of money. The workers also already knew how to work according to the needs of the company.⁶

Yet, during this Covid-19 pandemic, the work termination is actually to save the company and to prevent more victims. The problems which happen regarding work termination include the reasons for this termination and the post-termination compensation. Often, the workers think that the work termination decision of the companies are carried out arbitrarily. The fired workers suspect that the businessowners press their rights to receive severance pay, money reward for work period, or compensation money as the compensation of the work termination. Based

³<https://Money.Kompas.Com/Read/2020/04/23/174607026/Dampak-Covid-19-Menaker-Lebih-Dari-2-Juta-Pekerja-Di-Phk-Dan-Dirumahkan>.

⁴ Rocky Marbun, *Jangan Mau Di Phk*, Visimedia, Jakarta, 2010, Hal. 5

⁵ Vykel H. Tering, *Perlindungan Hukum Terhadap Pekerja Yang Mengalami Pemutusan Hubungan Kerja*, Lex Privatum, Vol.Ii/No. 1/Jan-Mar/2014.

⁶ F.X. Djumialdji, *Perjanjian Kerja*, Pt Bumi Akasara, Jakarta, 2001, Hal. 84

on the explanation above, thus the focus of this research is the work termination during the Covid-19 pandemic in the perspective of the positive law in Indonesia.

B. RESEARCH METHOD

This research uses the normative legal research method. The collection of the legal data is carried out using the identification and the inventorying procedures of literature materials or secondary data, which contains primary, secondary, and tertiary legal sources.

C. DISCUSSION

Occupational Contracts result to a legal relation between the businessowner and the workers. It is called the vertical or subordination work relations. There are some of the workers' rights in the occupational contracts. The most basic ones are the normative rights, which are the rights regulated in the Constitution. The normative rights may be in the form of rights which regard financial (monetary) and nonfinancial aspects. If the workers do not obtain these rights from the businessowner, thus the workers may file this case to the court. Apart from that, the workers may sue the actions of the businessowners who do not explain nor inform them regarding the company regulations, or its changes to the workers or labor which results to work termination.

The Law of Labor is public. If there is a unilateral work relation termination from the company to the labor, thus this is an arbitrary action which brings much loss to the labor. This is because due to the work termination, the worker has lost his/her job. It becomes worse if the work relation termination doesn't have any strong nor correct reasons. The law enforcement is an important part of the legal system, where it must be carried out using various systematic and sustainable efforts of development. It is an irony if the law is created using great sacrifices of energy and budget, yet it is useless as it cannot be implemented.

In the practice of implementing the law of labor, there are three parties which have crucial roles. These three parties are the businessowners, the workers, and the government. As we know, the work relations between the workers and the businessowners are in the territory of the civil law, as the work relations regard the legal relations between one person and another. With the legal relations which is

based on individual interests, there is a chance of the conflict of interest which may bring loss to one party. The party who experienced loss may be the worker or the businessowner.

Because of that, in the system of labor, there is a chance of civil law enforcement through the efforts to solve disputes on industrial relations outside of or through the court, as regulated in the stipulations of the Constitution No. 13 of 2003 Article 136, which states that: 1) Industrial relation dispute resolution must be carried out by the businessowners and the workers or the labor union through deliberation to reach an agreement. 2) If the dispute resolution through deliberation to reach an agreement as stated in clause (1) did not work, thus the businessowners and the workers or the labor union must resolve the industrial relation dispute through the procedures of the industrial relation dispute resolution which is regulated in the Constitution. Industrial court resolution is the last method which can be taken by the parties in resolving industrial relation disputes. This is if the bipartite negotiation, conciliation or arbitration and mediation cannot produce an agreement or a solution.

In the Constitution No. 13 of 2003 Article 151, the government's role which becomes the reference in handling the problems regarding the Covid-19 pandemic are as follows: (1) The businessowners, the workers, the labor union, and the government must by all means prevent the case of Work Termination. (2) If all efforts have been carried out, yet the Work Termination cannot be avoided, thus the reason for the Work Termination must be discussed by the businessowners and the labor union or the workers, if the mentioned worker is not part of the labor union. (3) In the case of negotiation as mentioned in clause (2), if it does not result to an agreement, the businessowner may only terminate the work relations with the workers after the businessowners have received the stipulation of the Industrial Relation Court.

Meanwhile, in the non-litigation dispute resolution method, during the Covid-19 pandemic, it is carried out through negotiation using deliberation to reach an agreement. The procedures used may be the bipartite, conciliation, arbitration, or mediation. In the effort to resolve industrial resolution disputes through bipartite, what is meant is the company-level bipartite negotiation, with an internal scale. It only directly involves the parties in dispute or in conflict, which are the

businessowners and the labor union or the workers. The resolution scope of the bipartite negotiation includes four types of industrial relation conflict, which are the conflict of rights, the conflict of interests, the conflict of work termination, and the conflict between labor unions within a company. This bipartite resolution must be complete at most thirty work days since the starting date of the negotiation, based on the stipulations of the Constitution No. 2 of 2004 regarding Industrial Relation Dispute Resolution. If during the period of thirty work days, on party refuses to negotiate or if the negotiation has been carried out but there is no agreement, the bipartite method is deemed as having failed.

The next step of industrial relation dispute resolution is conciliation. It is an alternative which is voluntary as opposed to mandatory. There are three types of industrial relation dispute resolution which is the scope of conciliation. These types of conflicts are the conflicts of work relation termination, the conflict of interests, and the conflicts between the worker unions or the labor unions within a company. The conciliation-type of resolution is carried out after the related parties propose a written request to the conciliator which are agreed upon by the parties. At most seven work days after receiving the written request for dispute resolution, the conciliator must carry out an investigation on the case. Then, at most on the eighth day, there will be the first conciliation trial. If an agreement is reached through this conciliation, a mutual agreement will be made. It will be signed by the related parties, witnessed by the conciliators and registered in the court of industrial relations to obtain the certificate of registration.

The next effort for industrial relation dispute resolution is arbitration. It is also an alternative like conciliation, which is voluntary instead of mandatory. The dispute resolution through arbitration is done by an arbiter based on the agreement of the conflicting parties. The arbiter is chosen and appointed by the parties from the list of arbiters determined by the minister. There are two types of conflicts which are the resolution scope of the arbitration, which are the conflict of interest and the conflict between labor unions within a company.

Many companies were closed due to the Covid-19 pandemic, since it is a condition of force majeure. According to the Constitution No. 13 of 2003 Article 164 clause (1), the businessowner can terminate the work contract of the workers, with

the condition that he/she pays the government severance pay to the workers. The businessowner must carry out a negotiation regarding the work termination, as a win-win solution to meet the businessowner and the workers in agreeing upon the labor wage of 100% for the first four months, 75% for the second four months, and 50% for the next four months. After that, the businessowner may terminate the work contract or to continue the work relations with the workers.

In the case where the Covid-19 pandemic causes the companies to close not because of experiencing loss nor due to experiencing force majeure, but the companies close due to efficiency, thus the company must pay the wage twice and give one severance pay.

In the Covid-19 pandemic, the government suggests that if possible, the businessowners and the workers keep carrying out their rights and responsibilities from home, without giving transport money. Meanwhile, sending the workers home without paying them any wages, or what is called the unpaid leave cannot be carried out by the businessowners. This is because the unpaid leave is a right of the worker, not the businessowner. It cannot be arbitrarily applied by the businessowner without discussing it with the workers.

D. CONCLUSION

The work relation is a relation which forms between the workers and the businessowners after a contract between the two parties. The legal protection regarding work termination may be carried out during this Covid-19 pandemic. If the rights above are not obtained by the worker, thus the worker may carry out a deliberation or go through the industrial relation conflict resolution outside of court, based on the Constitution No. 2 of 2004 regarding Industrial Relation Conflict Resolution. The legal efforts which may be taken include bipartite, conciliation, arbitration, or mediation. If an agreement cannot be reached through the negotiation or deliberation methods, thus the last step is going through the industrial relation justice court.

E. REFERENCES

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