

TERMINATION OF EMPLOYMENT UNDER THE CIRCUMSTANCES FORCING DUE TO COVID-19

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ABSTRACT

Companies can terminate employment because the company closes due to force majeure and efficiency reasons. The current Covid-19 pandemic situation must be understood by employers and workers as parties who are both affected to find the best solution. The outbreak of Covid-19 has restricted all community activities, including the operational activities of a company. Operational constraints certainly have an impact on the income earned by the company. As a result, companies have difficulty fulfilling their obligations to fulfill the normative rights of their workers/laborers. Including terminating the worker/labor relationship.

Keywords: Termination of Employment, Forced Circumstances, Due to Covid -19

INTRODUCTION

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a constitutional state. Law is placed as a basis for power and administration of the state in realizing the goals of the state as stated in the 1945 Constitution. The concept of a rule of law guarantees human rights that are owned by all people.

The rule of law is also known as the term "rechtstaat" which includes four important elements, namely the protection of human rights, the division of powers, a government based on laws and the existence of a state administrative court. The protection of workers and workers gets special attention in the concept of a rule of law relating to human rights. Article 27 paragraph (2) stipulates that every citizen has the right to work and a life worthy of humanity. Protection of laborers and workers is also contained in Article 28D paragraph (3) of the 1945 Constitution that every citizen has the right to work and receive rewards and fair and proper treatment in employment relations. In Article 1 number (2) of Law Number 13 of 2003 concerning Manpower, which will hereinafter be referred to as the Manpower Law, provides for labor, namely every person who is able to do work to produce goods and/or services both to meet their own needs and for the community. However, the guarantee of protection for laborers and workers, there are problems in it. One of these problems is the unilateral termination of employment by companies in Indonesia.

Article 88 paragraph (1) of the Manpower Law guarantees a wage policy for workers/labourers. However, on November 2 2020 the Job Creation Law (UU Ciptaker) was ratified and signed by President Joko Widodo and became Law Number 11 of 2020 concerning Job Creation. This law itself had drawn protests throughout Indonesia because it was claimed to damage workers' rights, ignore aspects of environmental protection, especially from the trade unions. The Constitutional Court ordered the DPR and the Government to amend the Ciptaker Law as a comparison with regulations in force in Indonesia. In the Ciptaker Law, the provisions of Article 88 of the Manpower Law were changed to Article 88 of the Ciptaker Law.

At the end of 2019, the world was shocked by the emergence of a virus called Covid-19, which was widely reported to have emerged from the city of Wuhan, China. Covid-19 stands for Coronavirus Disease 2019. This virus is a respiratory disease with a very high rate of spread and in a short time. The spread of Covid-19 can be transmitted through the droplet route (splash) from the respiratory tract and direct or indirect contact with infected people, respiratory tract diseases and the spectrum of infection with this virus ranges from people experiencing very mild non-respiratory symptoms to severe acute respiratory disease, sepsis accompanied by organ dysfunction and death so that this has an impact on limiting human movement space.

Regarding Covid-19, Ni Ketut Muliati emphasized that since the announcement of Covid-19 as a global epidemic or pandemic by the World Health Organization (WHO) on March 11 2020, Covid-19 has become very frightening for all countries because of its rapid spread. Based on the WHO announcement, many countries have finally taken action to prevent the increasing number of victims from Covid-19, starting from keeping their distance (social distancing) to Lockdown (not allowed to leave the residence at all).

Indonesia then adopted policies such as imposing a Lockdown, temporarily stopping teaching and learning activities at schools and at universities as usual and then switching to an online system, implementing work from home for formal workers, and rotating temporary layoffs by companies for workers or laborers (sent home). , delays and cancellations of various government and private events and many other things that really limit human activities, so that this causes the wheels of the economy to slow down and causes the country's economic sector to fall very badly. One of the people most affected by the Covid-19 pandemic is the people who work in the industrial sector as workers or laborers because this pandemic has forced most entrepreneurs to stop or reduce their business activities. One concrete example is a hotel that terminates the employment of its employees.

Hotel is an accommodation business entity or company that provides services to the general public with lodging or rest facilities for those in need, as a temporary residence while they are away from their place of origin, food and beverage providers, room service services and laundry services. This facility is intended for those who spend the night at the hotel or those who only use certain facilities owned by the hotel. However, as a result of the Covid-19 pandemic and the many policies implemented by the central government to inhibit the spread of Covid-19, this has had a very bad impact on the company's income because there are no more guests and the food business and meetings are no longer filled. This resulted in companies that were no longer able to fulfill their obligations and had to find ways to reduce expenditure figures to avoid even greater losses due to the Covid-19 pandemic so that many companies, one of which was a hotel, terminated employment. In cases like this, labor rights are precisely one of the company's targets to reduce expenditure figures in order to avoid greater losses on the grounds that Covid-19

is the cause of the company being unable to carry out its obligations to fulfill workers' rights, even the minimum wage for workers. is no longer fulfilled as it should be.

The substance of the work agreement made must not conflict with the existing labor agreement or collective work agreement/collective work agreement as well as company regulations, the substance must not conflict with the collective work agreement. The relationship between workers and employers will be disrupted if one party imposes its will on the other party, so that the fulfillment of the needs or interests of one party is harmed.

Termination of employment due to forceful circumstances is regulated in Article 164 paragraph (1) of the Manpower Act, Employers can terminate employment of workers/laborers because the company has closed because the company has suffered continuous losses for two years or forceful circumstances with the provisions of laborers is entitled to one time severance pay according to the provisions of Article 156 paragraph (2) long service pay in the amount of one time to the provisions of Article 156 paragraph (3) and compensation money according to the provisions of Article 156 paragraph (4). In the Ciptaker Law the provisions of Article 164 have been abolished, termination of employment in the Ciptaker Law is further regulated in Article 154 a paragraph (1).

LITERATURE REVIEW

1. Employment Relations

Employment relations are (legal) relations between employers and workers/laborers (employees) based on work agreements. The work relationship is something abstract, while the work agreement is something concrete, real. The definition of a working relationship according to Article 1 point 13 of the Labor Law, what is meant by an employment relationship is the relationship between the employer and the worker or laborer based on a work agreement which has the elements of work, wages and orders. In accordance with this understanding, with the existence of a work agreement, an agreement will be born. In other words, an engagement born because of a work agreement. According to the Labor Law, the elements of a working relationship consist of having a job, having orders and having wages (Article 1 point 15 of the Labor Law). a certain time and an unspecified time that has elements of work, wages and orders.

Labor law regulates all matters related to labor before, during and after work. The purpose of labor law is to empower and empower the workforce optimally and humanely, realize equal distribution of employment opportunities and supply of manpower that is in accordance with the needs of national and regional development, provide protection to the workforce in realizing prosperity and improving the welfare of the workforce and their families. What is meant by labor law are all legal regulations governing manpower both before work, during or in work relations, and after work. The term labor law used to be called labor law which is a translation of *arbeidsrechts*, but the two have different meanings in terms of substance. The change in the term labor law to manpower law has a different scope.

2. Definition of Termination of Employment

According to Article 1 paragraph (25) of the Labor Law, it defines Termination of Employment Relations as termination of the employment relationship due to a certain matter which results in the end of the rights and obligations between the worker/worker and the entrepreneur. In the Manpower Act, arrangements for termination of employment are regulated in Articles 150-172 of the Manpower Law. Based on the provisions of the Labor Law, it is understandable that termination of employment is the last option in saving a company.

Termination of employment often occurs due to disputes where this situation will have an impact on both parties. Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes article 1 paragraph (2) determines what is meant by an industrial relations dispute is a difference of opinion that results in a conflict between the entrepreneur or a combination of entrepreneurs and workers/labourers or a trade union/labor union due to a dispute regarding rights, disputes over interests, disputes over termination of employment and disputes between trade unions/labor unions within one company.

Based on Article 150 of the Manpower Law, it is emphasized that the provisions regarding termination of employment in this law include termination of employment that occurs in business entities that are legal entities or not, owned by individuals, owned by associations or owned by legal entities, both privately owned and state owned. as well as social enterprises and other businesses that have administrators and employ other people by paying wages or other forms of compensation. Furthermore, in the case of termination of employment for reasons of rationalization or minor misconduct of the worker/labourer, Article 151 paragraph (1) of the Manpower Law stipulates that employers, workers/labourers, trade/labour unions and the government must make every effort to prevent termination of employment. The provisions of Article 151 are amended so as to emphasize, Article 151 of the Ciptaker Law paragraph (1): Employers, workers/laborers, trade unions and the government must make every effort to prevent termination of employment.

Juridically, the Manpower Law recognizes several types of termination of employment. The types of termination of industrial relations are:

a. Termination of Employment by Employers

According to Zaeni Asyhadie in his book explaining that termination of employment by employers is a type of termination of employment that often occurs. This is due to :

1. the company is experiencing setbacks so it needs to rationalize or reduce the number/labor.
2. The worker/laborer has made a mistake, whether it is a mistake that violates the provisions contained in company regulations, work agreements or collective bargaining agreements (minor fault), or criminal wrongdoing (serious fault).

b. Termination of Employment by the Court

In the case of termination of employment by the court prior to the formation of the industrial relations court through Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, what is meant by termination of employment by the court is termination of employment by an ordinary civil court at the request of the person concerned (employer/ workers) based on important reasons. Article 1603 v of the Civil Code states that each party (worker, employer) at any time, even before work begins, has the authority based on important reasons to submit a written request to the court at his actual place of residence to declare the work agreement terminated.

Termination of employment carried out by the court at the request of the employer does not need to obtain permission from the relevant institution. Termination of employment also does not cause significant problems for both parties. From the part of the worker who is bound by an agreement like this already understands his position and position in carrying out the work. Usually, workers can prepare themselves to look for another job, when the time for termination of employment will come

Article 158 paragraph (1) of the Manpower Law emphasizes that employers can terminate the employment relationship with workers/laborers on the grounds that workers/laborers have made serious mistakes as follows:

1. commit fraud, theft, or embezzlement of goods and/or money belonging to the company
2. provide false or falsified information to the detriment of the company
3. drunk, drinking intoxicating liquor, using and/or distributing narcotics, psychotropics, and other addictive substances in the work environment.
4. committing immoral acts or gambling in the work environment
5. attacking, abusing, threatening, or intimidating colleagues or employers in the work environment
6. Persuading friends, coworkers, or employers to commit acts that are contrary to laws and regulations.
7. Recklessly or intentionally damaging or leaving company property in a state of danger which causes losses to the company.
8. Recklessly or intentionally letting a colleague or employer be in a dangerous situation at work
9. unloading or leaking company secrets that should be kept secret except for the interests of the state or
10. commit other acts within the company which is punishable by imprisonment of 5 years or more.

Furthermore, paragraph (2) confirms that the serious error referred to in paragraph (10) must be supported by the following evidence:

1. labor workers caught red-handed
2. means of acknowledgment from the worker/labor concerned or
3. other evidence in the form of an incident report made by the competent authority in the company concerned and supported by at least two witnesses

c. Termination of Employment by Law

What is meant by Termination of Employment by law is the termination of the employment relationship by itself without any specific legal action either by the employer or by the worker.

The Civil Code recognizes two terminations of employment in Article 1603 a which states that:

1. an employment relationship that ends by law if the expiration date is specified in the agreement or employer regulations or in laws and regulations or if all of these do not exist according to custom.
2. the previous termination statement in this case is only required:
 - a. if so it was agreed in a written agreement
 - b. if according to laws and regulations or according to custom, also in terms of the length of time the employment relationship is determined beforehand, a statement of termination is required, while both parties where permitted by a written agreement or in the employer's regulations do not make deviations. Furthermore, Article 1503 (j) of the Civil Code, confirms that the employment relationship ends with the death of the worker.

3. Force Majeure Circumstances in Termination of Employment

Force majeure is a state of coercion. Force majeure is a situation beyond the power and also a situation that cannot be known at the time the agreement is made.

Furthermore, a coercive circumstance is a coercive circumstance where there is an event which is categorized as a circumstance which brings consequences for the parties in an engagement, where a party who is unable to fulfill the performance is not declared in default. Thus, in the event of a forced circumstance, the debtor is not obliged to pay compensation and in a reciprocal agreement, the creditor cannot demand cancellation because the agreement is considered null and void.

In the Civil Code, force majeure is regulated in Articles 1244 and 1245 in the section on compensation because force majeure is a reason to be released from the obligation to pay compensation. Article 1244 of the Civil Code stipulates that if there is a reason for this, the debtor must be punished by paying compensation for costs, losses and interest, if he does not prove that this was not carried out or that the agreement was not carried out at the right time due to something unexpected or unforeseen. can be accounted for to him, all of that was also bad faith on his part. Meanwhile Article 1245 of the Civil Code stipulates, costs, losses and interest do not have to be reimbursed, if due to coercive circumstances or due to an unintentional circumstance, the debtor is unable to provide or do something that is required or because of the same things he has committed an act that forbidden.

The types of force majeure events are based on jurisprudence and the decision of the Supreme Court regarding the scope of the types of force majeure events including:

- a. The risk of war, the loss of the object of the agreement caused by the power of the Most High, being struck by lightning, fire, seized by the Japanese army during the war.

- b. Act of God, Administrative actions of the authorities, orders from those in power, decisions, all administrative actions that determine or bind a sudden event that cannot be resolved by the parties to the agreement.
- c. Government regulations. Both the PN and PT stated that what was put forward by the defendant Super Radio Company NV could not be used as an excuse force majeure because if the defendant cannot get an AJS motorcycle from NV Danau because of his family's government regulations regarding the prohibition to import more than one brand of motorcycle then to fulfill his obligations to the plaintiff, he must try to get a motorcycle from NV Ratadjasa or by other means, as long as not by breaking the law. Both the PN and PT stated that the defendant Super Radio Company NV had neglected his obligations
- d. accidents at sea, for example a ship sinks due to large waves hitting the ship's hull.
- e. emergencies, situations or circumstances that are completely unforeseen and/or very coercive that occur outside the power of the party that must excel.

4. Covid-19 as a Force Majeure Condition

Corona virus (covid-19) was first discovered in Wuhan, Hubei Province, China. Until now, the drug for Corona (Covid-19) has not been found and the number of victims is increasing. This virus rarely evolves and infects humans, but this outbreak has proven that it can spread from animals to humans and is currently able to spread from human to human. The way a person can be infected with Covid-19 is through coughing and sneezing, touching the face and hands after handling items of people who have been exposed to the virus. Symptoms that appear are runny nose, dizziness, cough, sore throat, fever, and not feeling well. Efforts being made to prevent the virus from spreading are washing hands diligently, not touching the face area, spraying disinfectant on frequently used objects, covering your mouth and nose when sneezing, and coughing with a tissue, wearing a mask and going to the doctor if you have difficulty breathing.

5. Basic Legal Considerations for Termination of Employment Relations Due to Covid-19

Termination of employment by an employer or entrepreneur is not uncommon for termination of employment with various factors as a cause, in accordance with Article 158 paragraph (1) of the Manpower Act confirming the factors causing termination of employment: The workers have made a serious mistake.

In the Civil Code, Force Majeure is regulated in Articles 1244 and 1245 of the Civil Code. Article 1244 of the Civil Code stipulates "if there is reason for the debtor to be punished for compensation, losses and interest, if he does not prove that the matter was not carried out or not carried out at the right time or not at the right time the agreement was carried out due to something even the unexpected cannot be accounted for." Meanwhile, Article 1245 of the Civil Code stipulates, "costs, losses and interest must not be reimbursed, if due to a forced mistake or due to an unintentional circumstance, the related person is unable to provide or do something that is required or because of the same things he has committed an act the forbidden".

According to the law, termination of employment is permissible as long as it is in accordance with the laws and regulations in force in Indonesia. Under the Labor Law, termination of employment can be carried out if in accordance with the provisions of Article 158 paragraph (1) of the Manpower Act confirming the cause of the termination of employment. Entrepreneurs can terminate the employment relationship with workers/laborers on the grounds that workers/laborers have made serious mistakes as follows:

- a. commit fraud, theft, or embezzlement of goods and/or money belonging to the company
- b. provide false or falsified information to the detriment of the company
- c. drunk, drinking intoxicating liquor, using and/or distributing narcotics, psychotropics, and other addictive substances in the work environment
- d. committing immoral acts, or gambling in the work environment
- e. attacking, abusing, threatening, or intimidating colleagues or employers in the work environment
- f. persuade colleagues or employers to commit acts that are contrary to laws and regulations.
- g. recklessly or intentionally damaging or leaving in a state of danger the company's property which causes losses to the company.
- h. recklessly or intentionally allowing co-workers or employers to exercise their rights at work
- i. uncover or leak company secrets that should be kept secret except for the benefit of the state or
- j. commit other acts within the company which is punishable by imprisonment of five years or more.

In addition to what has been stated above, companies according to the Labor Law also allow termination of employment on the following grounds:

- a. Good resignation of the employee's own volition
- b. Resignation in writing of his own volition
- c. Resignation due to reaching retirement age regarding age limit.
- d. The worker made a serious mistake
- e. The worker is detained by the authorities
- f. The company suffered a loss
- g. Workers are absent continuously
- h. Worker died
- i. Workers commit violations
- j. Change of status, merger, consolidation or change of ownership
- k. Termination of employment for reasons of efficiency.

The criteria for coercive circumstances are in accordance with the provisions of Article 164 paragraph (1) of the Labor Law "employers can terminate the employment relationship with workers/laborers because the company has closed because the company has suffered continuous losses for two years or coercive circumstances provided that workers/laborers have the right to for severance pay in the amount of the provisions of Article 156 paragraph (2), gratuity pay in the amount of one time in the provisions of Article 156 paragraph (3) and the reimbursement money is in accordance with the provisions of Article 156 paragraph (4).

CONCLUSION

1. The legal considerations carried out by the judge in determining the termination of employment are in accordance with what is stipulated in Article 164 paragraph (1) of the Manpower Act which stipulates that employers can terminate employment of workers/laborers because the company closes because the company suffers a financial loss. continuously for two years or force majeure.
2. The legal considerations made by judges in determining employee severance pay in termination of employment due to Covid-19 as a result of force majeure are based on Article 156 paragraph (2) to paragraph (5) of the Manpower Act.

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