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Company Liability Towards Workers Who Are Dismissed During the Covid-19 Pandemic as A Force Majeure Circumstance

Rosandra Nabila Nugraha¹, Agus Mulya Karsona², Sherly Ayuna Putri³.

¹Faculty of Law, Universitas Padjadjaran, Indonesia, rosandranabillaaa@gmail.com .

²Faculty of Law, Universitas Padjadjaran, Indonesia, agus.mulya@unpad.ac.id.

³Faculty of Law, Universitas Padjadjaran, Indonesia, sherly.ayuna@unpad.ac.id.

Corresponding Author: rosandranabillaaa@gmail.com¹

Abstract: The COVID-19 pandemic has significantly impacted the economy worldwide, including Indonesia. In the face of economic difficulties caused by social restrictions and declining demand, many companies have been forced to lay off employees as a last resort to maintain business continuity. This situation is often categorized as Force Majeure, an extraordinary event that cannot be predicted or avoided. Even though termination of employment can be carried out in these situations, applicable laws and regulations must still fulfill workers' rights. This study aims to determine the limitations of the COVID-19 pandemic as a Force Majeure situation and the company's responsibility towards workers laid off during the pandemic. The research method used is normative juridical, which is legal research on positive legal norms, principles, and doctrines with analytical descriptive research specifications that describe the applicable laws and regulations associated with legal theory and the practice of implementing positive law, which are then collected and classified into an orderly and systematic description. The study results show that the COVID-19 pandemic can be considered an urgent or Force Majeure, and companies are relieved to fulfill workers' rights. Still, many companies unilaterally layoff their workers. Protection of workers in these conditions is essential to prevent injustice and ensure social justice for the parties involved.

Keyword: Company, Layoff, COVID-19 Pandemic, Force Majeure.

INTRODUCTION

Companies are vital in facilitating a country's economic growth by creating sustainable jobs and increasing labor productivity. Companies are considered the backbone of the economy by linking companies needing labor and individuals looking for work (Fadilah & Nugroho, 2021). However, in 2019, a global pandemic occurred, namely COVID-19. At that time, the Government issued Regulation of the Minister of Health of the Republic of Indonesia 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), which is an effort to suppress or reduce the spread of the virus that is spreading by limiting community social activities.

Large-scale social Restrictions, according to Article 1 number 1 of the Regulation of the Minister of Health No. 9/2020, are restrictions on certain activities of residents in an area suspected of being infected with CoronaVirus Disease 2019 (COVID-19) in such a way as to prevent the possible spread of CoronaVirus Disease 2019 (COVID-19). The implementation of Large-scale social Restrictions includes school and workplace closures, religious activities, activities in public facilities, social and cultural activities, transportation, and other activities related explicitly to defense and security. Large-scale social Restrictions will be carried out during the extended incubation period, and if there is still evidence of spread, it will be extended.

Restrictions on activities during the COVID-19 pandemic have significantly impacted the economy because they have caused a global economic recession, with many financial sectors suffering losses due to this pandemic. The Center for Strategic and International Studies (CSIS) report states that the COVID-19 pandemic has impacted Indonesia's economic growth slowdown (Kharisma, 2020). Many companies, including Indonesia, have closed their businesses due to continuous losses. Therefore, to minimize the risks, many companies reduce their losses; they often cut workers' wages, unpaid bonuses, and even termination of employment (Satriabawa & Astariyani, 2022).

Termination of Employment, according to Mutiara S. Panggabean, is the termination of the employment relationship between workers and employers, which can be caused by various reasons so that the rights and obligations between them also end (Rahayu, 2018). Layoffs should be avoided because they can harm employers, but workers/laborers receive an even worse effect. Thus, all elements consisting of business owners (employers), employees (labor), labor unions, and the Government outlined in Article 151 Paragraph (1) of the Manpower Act are obliged to make every real effort and build togetherness to prevent layoffs (Husni, 2012).

However, if layoffs are unavoidable, companies can use the COVID-19 pandemic as a force majeure reason for decisions to reduce losses. This is by Presidential Decree Number 12 of 2020 concerning the Determination of the Non-Natural Disaster of the Spread of CoronaVirus Disease 2019 (COVID-19), which makes the COVID-19 pandemic a force majeure.

Force Majeure was first recognized in Articles 1244 and 1245 of the Civil Code. Article 1244 of the Civil Code provides that a circumstance causes loss in an agreement without bad faith on the part of the parties. This circumstance is often referred to as force majeure, which means that an achievement or obligation cannot be carried out not because of the will of the parties but because of circumstances (Matantu, 2021). This situation can cause material and/or time losses due to delays in the implementation or inability to implement the agreement (Rini Apriyani, 2021). According to Abdulkadir Muhammad, Force Majeure is a situation where the debtor cannot fulfill the achievement due to an unexpected event that the debtor could not have predicted would occur when committing (Simanjuntak, 2017). Salim (2001) puts forward three consequences of force majeure:

- a. The debtor does not have to pay damages (Article 1244 of the Civil Code);
- b. The burden of risk does not change, especially in the case of temporary force majeure;
- c. The creditor is not entitled to fulfillment of the achievement but, at the same time, is legally free from his obligation to provide consideration, except for those mentioned in Article 1460 of the Civil Code.

Force majeure cannot automatically be used to cancel an agreement. Still, it can be used to negotiate the contract's cancellation or modification (Syahputra, 2023). Force majeure cannot automatically be used as a reason for canceling a contract on the grounds of force majeure. Previously, it must first be seen whether in the contract clause there is an agreement that if a force majeure event occurs during its implementation, the contents of the contract can be deviated from (Syahputra, 2023).

Termination of employment in the event of force majeure is permitted, especially in situations that force the company to reduce operations until the business closes (Matantu, 2021). However, termination of employment cannot be carried out unilaterally, especially if it does not consider workers' rights. Workers are entitled to severance pay, compensation for rights, and other benefits based on laws and regulations. Layoffs must also be carried out transparently and fairly to create sustainable solutions and protect workers' rights in all conditions.

Like the layoff case that occurred in Denpasar between workers and PT. Enam Pilar Sejahtera C.Q Hotel Kuta Lagoon Resort, Bali. During the COVID-19 pandemic, the company said that layoffs were carried out due to the pandemic's impact on efficiency. The workers demanded fair compensation based on their length of service. They rejected the mediation results previously conducted at the Badung Regency Manpower Office, which was considered biased towards the company. This lawsuit was filed with the Industrial Relations Court at the Denpasar District Court with Case Number 4/Pdt.Sus-PHI/2021/PN Dps to demand the cancellation of layoffs that did not comply with labor law and to obtain severance pay by calculating their rights. The total severance demand filed was IDR 697,354,518 (six hundred ninety-seven million three hundred fifty-four thousand five hundred eighteen rupiah).

The result of the lawsuit legally declared that the termination of employment (PHK) of the workers was in violation of the Manpower Act and ordered the company to pay suspended wages, severance pay, service awards, compensation for loss of rights, and holiday benefits for the 2020 period to the workers, totaling IDR 521,104,037 (five hundred twenty-one million one hundred four thousand thirty-seven rupiah).

A similar case occurred in Jakarta between workers and PT. Abdi Teknologi Informasi. Unlike the previous case, the company first instructed all workers to work from home (WFH) and borrow company assets from office laptops. Furthermore, the workers received a message delivered through the team leader. Due to the pandemic, the company restricted business activities, resulting in a massive decrease in work, and the company unilaterally decided to lay off workers without pay and forced the workers to voluntarily sign a letter of negotiation containing an agreement not to pay wages and to return all company assets. Feeling aggrieved, the workers tried to seek bipartite efforts, but the company could not express its opinion.

The workers filed this lawsuit with the Industrial Relations Court at the Central Jakarta Class IA District Court under Case Number 420/Pdt.Sus-PHI/2021/PN.Jkt Pst, requesting the defendant to pay wages amounting to IDR 821,038,000 (eight hundred twenty-one million thirty-eight thousand rupiah), along with severance pay, service awards, and compensation for loss of rights totaling IDR 695,672,000 (six hundred ninety-five million six hundred seventy-two thousand rupiah). The result of the lawsuit declared that the Joint Agreement Letter, in which the plaintiffs voluntarily agreed not to receive wages and not to perform any work with PT. Abdi Teknologi Informasi, was invalid and null and void by law. The employment relationship between the plaintiffs and the defendant was officially terminated as of the date this ruling was read. Additionally, the court ordered the defendant to pay the wages usually received by the plaintiffs, totaling IDR 662,068,000 (six hundred sixty-two million sixty-eight thousand rupiah), as well as severance pay, service awards, and compensation for loss of rights amounting to IDR 717,671,680 (seven hundred seventeen million six hundred seventy-one thousand six hundred eighty rupiah).

The urgency of this research is that many companies are still facing the long-term impact of the pandemic, which affects their economic stability and the workforce. In addition, the regulatory changes from Law Number 13 of 2003 concerning Manpower to the Job Creation Law are expected to identify how the latest policies have implications for worker protection and to explore the limitations of Force Majeure as a reason used by companies and the company's responsibility towards workers who are Termination of Employment (PHK) in situations of Force Majeure.

METHOD

The research method used in this article is normative juridical research, which is legal research on positive legal norms, principles, and legal doctrines. In this study, the research specification is Descriptive Analytical, which describes the applicable laws and regulations associated with legal theories and the practice of implementing positive law concerning the problems that have been formulated by Soerjono (2010) supported by primary legal materials such as the Code of Civil Procedure, Law No. 13 of 2003 concerning Employment, Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law and others, as well as secondary legal materials including books and tertiaries obtained from internet articles. The data collection technique is carried out by compiling the data that has been received and examined beforehand, then classified into an orderly and systematic description.

RESULTS AND DISCUSSION

The COVID-19 Pandemic as a Force Majeure Circumstance and its Limitations in Terms of the Job Creation Law

The COVID-19 pandemic is considered a force majeure circumstance based on Presidential Decree Number 12 of 2020 concerning the Stipulation of the Non-Natural Disaster of the Spread of Corona Virus Disease 2019 (COVID-19). According to Abdulkadir Muhammad, Force Majeure is a situation where the debtor cannot fulfill the achievement due to an unexpected event that the debtor could not have expected to occur when making the contract (Simanjuntak, 2017). Force majeure is regulated in Article 1244 and Article 1245 of the Civil Code in the section on compensation because force majeure is a reason for exemption from the obligation to pay compensation (Rasuh, 2016). According to the Civil Code, three (3) elements must be fulfilled for force majeure, namely: failure to fulfill the achievement, there is a cause that lies outside the fault of the debtor, and the causative factor cannot be predicted in advance and cannot be attributed to the debtor (Rasuh, 2016). In addition, according to Soebekti, to be considered a "force majeure" (overmatch/Force majeure), the circumstances must be beyond one's control, compelling, and not known in advance (Abdul R. Saliman, 2011). The COVID-19 pandemic is considered a Force Majeure condition because it has fulfilled the elements mentioned in the Civil Code.

Regarding the possibility of implementing achievements in agreements, there are two classifications of Force Majeure, namely relative Force Majeure, which emphasizes that the fulfillment of accomplishments cannot be carried out usually but is still possible if forced. Like an agreement to export-import goods, after the deal is made, there is a ban on importing the goods and absolute Force Majeure, which is Force Majeure if at any time an achievement that arises from the contract can no longer be carried out. For example, if the goods that are the object of the contract have been destroyed by fire through no fault of the debtor (Husni, 2012)

The COVID-19 pandemic can be classified as a relative force majeure. A relative force majeure is a compelling circumstance that does not impact the inability to execute an agreement. In the context of the COVID-19 pandemic, which is a global pandemic that can cause debtors to default on their obligations. In a relative force majeure, it can be understood that the exemption is only temporary and only as long as the force majeure prevents the debtor from performing. If the Force majeure circumstances disappear, the creditor can demand fulfillment of the achievement. The result of relative Force majeure is temporary default (Andrianti, 2021)

During the COVID-19 pandemic, many companies laid off their workers for reasons of Force Majeure; this was done to reduce the company's operational costs so that the company could survive amid the economic crisis. According to Mahfud MD, as the Coordinating Minister for Political, Legal, and Security Affairs, the COVID-19 pandemic as a non-natural disaster cannot directly be used as a reason for force majeure in an agreement because it depends

on the content of the agreement clause. Therefore, a thorough case-by-case analysis must be carried out, considering the clauses in a contract. According to (Milendra, 2021), formulated as follows, namely:

- a. There is a force majeure clause in the agreement,
- b. The definition and limitations of the force majeure clause stipulated by the parties in the agreement are stated.
- c. There is a causality between the designation of the COVID-19 pandemic as a national disaster and the implementation of the agreement.
- d. There is good faith on the part of the party declaring force majeure.

The Job Creation Law itself does not mention the limitations of Force Majeure. Still, from the definition of Force majeure, it is possible to identify the limitations that fulfill the circumstances of Force Majeure, namely, beyond one's control or unpredictable at the time the contract was agreed upon, beyond the ability of one party to carry out the work and as a result of force majeure, losses occur for the employer (Brahmana, 2015). In addition, Force Majeure limitations are also usually listed in clauses in the Work Certificate and Company Rules. Force Majeure limitations help prevent abuse of this condition. Protecting workers' rights in employment must remain a top priority, even in Force Majeure situations. It is essential for parties involved, especially in labor relations, to understand the limitations of force majeure to ensure that the rights and obligations of each party are protected by applicable law.

Company liability towards workers affected by layoffs during the COVID-19 pandemic as a condition of Force majeure under the Job Creation Law

Corporate responsibility in the context of termination of employment refers to the obligations that companies must fulfill towards dismissed workers (Mashudi, 2019). Suppose layoffs are carried out for reasons of force majeure. In that case, companies are still obliged to satisfy the workers' rights regulated by law, such as compensation, severance pay, and other rights related to termination of employment (Sulaeman, 2023). The Government then issued Government Regulation No. 35 of 2021 concerning the Implementation of Fixed-Term Employment Agreements, Transfer of Rights, Working Hours and Breaks, and Termination of Employment, which is an implementing regulation of the Job Creation Law that provides further details regarding layoffs.

From the example of the two cases described earlier in the background, the verdict shows that companies are still obliged to pay severance even in urgent circumstances/Force majeure because force majeure does not eliminate or remove the company's obligation to pay its obligations to workers. Because under any circumstances, companies are still obliged to provide workers with their full rights. During the COVID-19 pandemic, the Government issued a Circular Letter from the Minister of Manpower of the Republic of Indonesia Number M/3/HK. 04/III/2020 concerning the Protection of Workers/Laborers and Business Continuity in the Context of the Prevention and Mitigation of COVID-19, in point 2 number 4 it is stated that for companies that restrict business activities due to government policies in their respective regions for the prevention and mitigation of COVID-19 so that it causes some or all of their workers/laborers to not come to work, taking into account business continuity, changes in the amount and method of payment of workers' wages are made by the agreement between employers and workers. Even though wages can be adjusted by agreement, companies are not allowed to pay below the minimum wage because Article 88a paragraph (4) of Law Number 6 of 2023 Concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation into Law reads: "Wage regulations stipulated by agreement between Employers and Workers or Labor Unions must not be lower than the wage provisions stipulated in legislation" so that even if an agreement has been reached between workers and companies regarding wages but the agreed wage is below the minimum wage, the deal is legally void.

With the issuance of the SE Kemnaker RI, the Government is helping to ease the burden on companies affected by COVID-19 so that even in these conditions, companies can still strive to avoid layoffs and still fulfill their obligations, and workers get their rights. Companies should not take advantage of this situation because urgent conditions or Force Majeure cannot eliminate the company's obligations, only easing the company's obligations to pay workers' rights. If layoffs are unavoidable, the company must be able to prove that it has been affected by the COVID-19 pandemic. The company must first prove that it has suffered losses for 2 (two) consecutive years, resulting in the company closing down by Article 154A of Law Number 11 of 2020 concerning Job Creation.

Even before carrying out layoffs, companies are still obliged to strive for the absence of layoffs, such as reducing working hours, prioritizing early retirement, and bipartite negotiations. If layoffs occur, the company must follow the existing layoff procedures regulated in laws and regulations. If the worker receives a notification letter without rejecting the termination of employment, the employer must immediately report the termination of employment. However, suppose the worker has received a notification letter and denies the termination of employment. In that case, the worker is obliged to make a rejection letter along with the reason no later than 7 (seven) working days after the worker receives the notification letter (Sutrisno, 2024).

The termination of employment carried out during the COVID-19 pandemic with the reason of Force Majeure by PT. Enam Pilar Sejahtera C.Q Hotel Kuta Lagoon Resort, Bali is considered a violation of regulations due to the lack of prior warning letters, and the bipartite and tripartite efforts failed to reach a mutual agreement, as they were deemed more advantageous to the company. Therefore, the lawsuit from the workers was granted by the court, which ordered the company to pay severance pay, severance wages, long service awards, replacement benefits, and holiday allowances for the year 2020, totaling IDR 521,104,037 (Five hundred twenty-one million one hundred four thousand thirty-seven rupiah). The company is still able to operate, although on a smaller scale, which indicates that it did not incur significant losses. Therefore, the termination could have been avoided by reducing wages through mutual agreement, without going below the minimum wage, reducing working hours, and other alternatives.

The same goes for the layoffs carried out by PT. Abdi Teknologi Informasi, but the company first tried not to lay off its workers by furloughing them, even though in the end, the workers were forced to voluntarily sign a Collective Bargaining Agreement letter containing an agreement not to be paid wages and to return all company assets. The company not only violated the minimum wage provision but eliminated wages in full, so the company's decision was an act that violated the normative rights of the workers. The company laid off its workers without allowing them to have free space to conduct bipartite meetings. After that, the company opened new vacancies instead of recalling the previous workers. The ruling states that the Collective Agreement, which voluntarily states that workers will not receive wages and will not perform any work for PT. Abdi Teknologi Informasi, is null and void by law, and orders the company to pay the wages normally received by the workers, totaling IDR 662,068,000.00 (Six hundred sixty-two million sixty-eight thousand rupiah), along with severance pay, long service award, and replacement benefits totaling IDR 717,671,680.00 (Seven hundred seventeen million six hundred seventy-one thousand six hundred eighty rupiah). The outcome of this court decision is valid, as the company is still operational and even opened new job vacancies, indicating no significant loss, as acknowledged by the company which is undergoing efficiency measures in response to the economic crisis during the COVID-19 pandemic.

CONCLUSION

The COVID-19 pandemic has been recognized as a Force Majeure event because it has fulfilled three main elements in the Civil Code, namely the inability to fulfill achievements,

causes beyond the fault of the debtor, and unpredictable events as well as supported by the issuance of Presidential Decree Number 12 of 2020 concerning the Stipulation of Non-Natural Disasters of the Spread of Corona Virus Disease 2019 (COVID-19). This pandemic has caused many companies to take steps to minimize the losses suffered, one of which is by laying off employees. The force majeure limitation itself is not detailed in the Job Creation Law but can be seen from the clauses in the collective agreement. The constraints regarding Force Majeure are carried out to maintain the parties' rights and prevent abuse of these conditions, especially in employment, so workers' rights are still protected even in an emergency.

In the case of company liability towards workers who are laid off, the Government provides relief in Force Majeure situations such as the COVID-19 pandemic by changing wage payments through mutual agreement to ease the business burden. However, even though layoffs can be carried out based on force majeure, companies must still follow the applicable procedures and ensure negotiations with the workers because Force Majeure itself does not eliminate the company's obligation to fulfill the rights received by the workers.

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