

# **Labor Law Protection Due To Termination Of Employment Due To The Covid 19 Pandemic**

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## **Abstract**

At the beginning of the Covid-19 pandemic, the implementation of policies regarding large-scale social restrictions had a very significant impact on companies in North Sumatra. Sources of data used in this study are primary and secondary data. The data analysis method used in this study is descriptive qualitative. Based on the results of the study, the conclusion in this study is the regulation of termination of employment due to the covid-19 pandemic which is regulated in Law Number 11 of 2020 concerning job creation, namely by reason of efficiency because the first in the provisions of Article 154 a paragraph of the job creation law states that "the company performs efficiency, either followed by the closure of the company or not followed by the closure of the company due to the company experiencing losses". The collective agreement is the result of a final agreement that should not be contested in the future from both the workers and employers. Termination of employment due to COVID-19 in Indonesia, the average layoff is not because the company is closed or closed, but because of the implementation of Work from Home which is a recommendation from the government.

**Keywords:** Policy, Legal Protection, Termination

## **1. INTRODUCTION**

In general, based on Article 1601 A of the Civil Code, an employment agreement is an agreement which is agreed with the one party or in other words the worker/worker binds himself to the other party for a certain time by receiving wages. Meanwhile, In Law No. 13 of 2003 Article 1, an employment agreement is an agreement between workers/laborers and employers that contains the terms of work, rights, and obligations of the parties.

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The form of the agreement itself, will be done orally or in writing. The employment agreement consists of an employment contract that is a collective agreement and a company Agreement. An employment agreement causes an employment relationship between one party and the other. The existence of an employment relationship in an employment agreement shows the position of both parties and describes the rights and obligations of workers to employers/employers as well as the rights and obligations of employers to workers/workers.

Labor agreements are also permanent and contractual. Usually, work agreements that are contractual are only carried out at a certain time or not for a long period of time . Based on Law Number 11 of 2020 concerning job creation Article 59, a certain time work agreement is based on the time period and completion of the work. The duration and completion of a job will be included in the work agreement. The specified time work agreement is only for the type of work that is once completed or temporary , work that is not too long completion, work that is seasonal, work related to new products, new activities or additional products that are still in the experiment or exploration and work that is not fixed type or nature.

Based on Law Number 11 of 2020 article 61A on job creation states that if the PKWT ends based on the period and work agreement that has been set, then the company or employer is obliged to provide money or compensation to the workers/workers. Indonesia is currently entering a lockdown period or the so-called PSBB.

The Covid 19 pandemic and the PSBB implemented caused the Indonesian economic system to decline. This is due to the reduction of activities, such as working from home , prohibited to move outside the home even more ironically to the termination of employment for employees or workers who work on a contract basis . This happens because of weak market demand, the PSBB policy, limited capital assistance, and so forth. Of course, this is very detrimental for employees who work on a contract basis. This is due to changes in the work agreement that has been agreed together.

The phenomenon that occurs in most parts of Indonesia explains that many contract workers have been laid off due to the Covid 19 pandemic. Various reasons were a factor in the dismissal. One of them is the declining level of income both from companies, factories, tourist attractions and the like. These layoffs sometimes violate the rules of the employment contract that has been agreed upon by workers/workers with the company. Unilateral layoffs by companies to employees are very detrimental to employees.

Their normative rights are not fulfilled properly and are not in accordance with labor agreements that have been mutually agreed upon and should get job protection. Based on this description, the researcher is

interested in reviewing and researching more specifically in accordance with the provisions of civil law regarding the implementation of employee labor agreements with the companies where they work.

## **2. RESEARCH METHOD**

In preparing this scientific paper, the author using normative legal writing methods. This method examines normative law by looking at the law of the internal perspective whose object of study is to use legal norms.<sup>4</sup> Writing methods in addition to reviewing legislation that there is also done by examining the library materials such as books and legal journals. Using the normative legal writing method aims to be able to review again about the regulation of rights employees and legal protection based on the study library where in labor law regulation on legal protection of workers due to the impact of digitalization is still blurring norms.

## **3. RESULT AND ANALYSIS**

### **3.1. Legal Arrangements Regarding Termination Of Employment As A Result Of The Widespread Covid-19 Pandemic**

In general, based on Article 1601 A of the Civil Code, an employment agreement is an agreement which is agreed with the one party or in other words the worker/worker binds himself to the other party for a certain time by receiving wages. Meanwhile, In Law No. 13 of 2003 Article 1, an employment agreement is an agreement between workers/laborers and employers that contains the terms of work, rights, and obligations of the parties.

The form of the agreement itself, will be done orally or in writing. The employment agreement consists of an employment contract that is a collective agreement and a company Agreement. An employment agreement causes an employment relationship between one party and the other. The existence of an employment relationship in an employment agreement shows the position of both parties and describes the rights and obligations of workers to employers/employers as well as the rights and obligations of employers to workers/workers. Labor agreements are also permanent and contractual. Usually, work agreements that are contracts are only carried out at a certain time or not for a long period of time.

Based on Law Number 11 of 2020 concerning job creation Article 59, a certain time work agreement is based on the time period and completion of the work. The duration and completion of a job will be included in the work agreement. The specified time work agreement is only for the type of work that is once completed or temporary , work that is not too long completion, work that is seasonal, work related to new products, new activities or

additional products that are still in the experiment or exploration and work that is not fixed type or nature. Based on Law Number 11 of 2020 Article 57 concerning job creation, PKWT must meet the requirements.

Based on Law Number 11 of 2020 article 61A on job creation states that if the PKWT ends based on the period and work agreement that has been set, then the company or employer is obliged to provide money or compensation to the workers/workers.

Indonesia is currently entering a lockdown period or the so-called PSBB . The Covid 19 pandemic and the PSBB implemented caused the Indonesian economic system to decline. This is due to the reduction of activities, such as working from home , prohibited to move outside the home even more ironically to the termination of employment for employees or workers who work on a contract basis . This happens because of weak market demand, the PSBB policy, limited capital assistance, and so forth. Of course, this is very detrimental for employees who work on a contract basis. This is due to changes in the work agreement that has been agreed together.

The phenomenon that occurs in most parts of Indonesia explains that many contract workers have been laid off due to the Covid 19 pandemic. Various reasons were a factor in the dismissal. One of them is the declining level of income both from companies, factories, tourist attractions and the like. These layoffs sometimes violate the rules of the employment contract that has been agreed upon by workers/workers with the company.

Unilateral layoffs by companies to employees are very detrimental to employees. Their normative rights are not fulfilled properly and are not in accordance with labor agreements that have been mutually agreed upon and should get job protection. Based on this description, the researcher is interested in reviewing and researching more specifically in accordance with the provisions of civil law regarding the implementation of employee labor agreements with the companies where they work.

### **3.1.1. Good Faith Between The Company And Employees In Signing A Work Agreement In The Completion Of Termination Of Employment (Phk) Due To The Covid 19 Pandemic**

Good faith in the implementation of the agreement refers to objective good faith. A standard used in objective good faith that refers to an objective norm. The behavior of the parties to the agreement should be tested on the basis of norma-unwritten objective norms that develop within society. Good faith provisions refer to unwritten norms that have become legal norma as a separate source of law. The civil code itself does not require a balance of the achievements of both parties to the agreement. So that an agreement will remain valid even if the achievements and counter-achievements of both parties are not balanced or biased.

In the course of this development, there are changes in circumstances that cannot be taken into account since the treaty was closed, for example due to the occurrence of wars, natural disasters or extraordinary price increases. With consideration of the agreement should be executed in good faith, speed and propriety.

Similarly, in the implementation of PKB where PKB is an agreement between employers and workers, so that both parties are obliged to carry out the agreement they have made in good faith. In this case, the employer has the right to receive the work of the workers as agreed as stated in the agreement and does not demand more than what was agreed, and does not burden workers with work that is not in accordance with the agreed agreement. As the legal basis of the monitoring activities is Article 115 of Law Number 13 of 2003 concerning manpower Jo Permenakertrans RI number Per.16/MEN/XI/2011 on procedures for making and ratifying company regulations and making and registering Collective Bargaining Agreements, this provision is intended that all the rules that have been made and outlined in the CLA must be registered with the local manpower and Transmigration Office which will then be observed and examined for the truth of the content / material contained in the CLA whether it deviates or not from the applicable laws and regulations, if it deviates, so the Department of manpower and Transmigration through an industrial relations mediator employee must correct and return to both parties to be changed in accordance with legal regulations so as not to cause harm to the parties, especially the workers. And after it is considered correct, the Department of manpower and Transmigration will issue a PKB Registration Decree.

The basis of good faith serves to protect the interests of the parties to the employment relationship. This principle places the obligation for the parties not to commit destructive actions against other parties by exercising their respective rights and obligations so that the benefits of CLA can be realized in accordance with their expectations.

### **3.1.2. Labor Protection In Termination Of Employment As A Result Of The Covid 19 Pandemic**

Termination of employment that occurs for reasons of rationalization or reduction of employees/workers/labor, as well as the reason for minor errors of workers/labor, then all elements of the employer/employer, workers/labor, unions/trade unions and the government to try as much as possible so as not to termination of employment. The application for the determination of termination must be accompanied by the reason that is the basis for termination. The application for determination can be accepted by the industrial relations dispute resolution institution, if the termination of

the employment relationship has been negotiated between the employer and the worker/laborer or between the employer and the trade union/trade union.

In addition to the decision of the industrial relations dispute settlement institution has not been determined, both employers and workers/laborers must continue to carry out all their obligations. In addition, employers can make deviations in the form of suspension actions to workers/laborers who are in the process of termination of employment by remaining obliged to pay wages along with other rights commonly received by workers/laborers.

#### **4. CONCLUSION**

The regulation on termination of employment due to the covid-19 pandemic which is regulated in Law Number 11 of 2020 concerning Job Creation is for efficiency reasons because the first in the provisions of Article 154 a paragraph (1) of the job creation law states that “the company performs efficiency, either followed by the closure of the company or not followed by the closure of the company due to the company experiencing losses”. As long as the company can fulfill the rights of workers/laborers, such as the right to severance pay, work time award money, and money in lieu of rights in accordance with the provisions of laws and regulations. If the problem of industrial relations disputes at the Medan City Employment Office can be resolved and a collective agreement is reached, then the mediator at the Medan City Employment Office makes a collective agreement whose contents are an agreement from the mediation session, then signed by the employer is also given a company stamp, and the workers also sign above 6000 stamps, also the collective agreement is signed by the mediator. The collective agreement is the result of a final agreement that should not be contested in the future from both the workers and employers. Termination of employment due to COVID-19 in Indonesia, the average layoff is not because the company is closed or closed, but because of the implementation of Work from Home which is a recommendation from the government. In this case, it can still be done an achievement but only the time is not in accordance with the agreed. Meanwhile, in the force majeure described in Article 1245 of the Civil Code which regulates the reimbursement of losses and interest can be forgiven if there is a forced situation, but not only article 1245 of the Civil Code, the requirements in order to apply for force majeure, force majeure must also be proven that it is true that there is an obstacle that.

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