

V. MANUSCRIPT_REVIEW 1

LEGAL PROTECTION AGAINST PAYS OF WORKERS RETURNED DURING THE COVID-19 PANDEMIC PERIOD IN INDONESIA

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Abstract

The emergence of Corona Virus symptoms has a very bad impact on the Indonesian economy. Especially for entrepreneurs and society with lower-middle-class status. The spread of the virus has made the Indonesian Government Issue regulations to better stay at home so that many businesses have closed and many workers have to be stopped. This research will explain the role of the law protection article on workers' pay while they are home-made during the Covid-19 Pandemic. The results show that the legal arrangements for the pay of workers who are sent home are *lexed specialis derogate lex generalis*. So it is concluded that if there are cases of Covid-19 in workers, then workers must carry out independent isolation and be fully paid. If conditions are normal and production is stable, workers must be reinstated.

INTRODUCTION

Starting in early 2020, the coronavirus is rapidly spreading throughout the world, creating a global health crisis with an impact on the economy [1]. The government has certainly struggled in facing the economic slowdown caused by the current global health crisis [2]. The emergence of the Coronavirus has resulted in reduced employment opportunities. in order a comprehensive and comprehensive arrangement is needed related to the interests of the workforce before work, during work and after work. Previously, it was noted that around 80 percent of migrant workers and 70 percent of the urban population worked in small businesses [3]. Therefore, it is important to know the legal context regarding the regulation based on regulations in laying off workers by employers due to the pandemic situation. From a legal perspective, it appears that little attention has been paid to addressing these issues [4].

Previously, article 93 paragraph (1) of Law 13/2003 reads "pays are not paid if workers do not work". Another regulation is that it is permitted to temporarily house workers in rotation as stipulated in point f of a circular letter from the minister of manpower to company leaders throughout Indonesia No. SE-907 / MEN / PHI-PPHI / X / 2004 concerning Prevention of Mass Termination of Employment ("SE 907/2004"). By temporarily laying off workers it is believed to be able to reduce the spread of the Corona Virus [9] and suspected corona must be paid in full. Even so, society and businessmen did not really comply with legal requirements during the fight against the COVID-19 emergency [10].

Employers can also lay off their workers and are obliged to re-hire after the situation stabilizes [11]. Of course it is necessary to study the legal rules governing the standardization of pays that must be received when workers are sent home. The rule of law will serve as an umbrella in protecting the rights and obligations of home workers. So that there is no imbalance between several regulations related to the legality of workers who were sent home by employers during the Covid-19 pandemic. It is hoped that this analysis process will not have an impact on the decline in the economic crisis among entrepreneurs, especially middle to lower class entrepreneurs. Because they are only small in size and have only standard management skills, moreover small businesses often operate without complying with labor laws as do big businesses [12].

RESEARCH METHOD

The data collection used is to find legal sources related to the protection of labor rights. Data collection used is legal research, which means that research is applied or applied specifically to legal science [13]. Researchers will look for and connect articles that will answer problems for workers and employers due to the Corona Virus. This legal investigation is underway to find legal rules, legal principles, and legal principles to address the immediate legal issue [14].

RESULT AND DISCUSSION

Workers who are laid off in Indonesian Positive Law

With regard to handling cases of workers who are at home, the state must intervene and establish a labor law [16-23]. Mahfud MD as Coordinating Minister for Political, Legal and Security Affairs of Indonesia stated that the formation of legal guidelines and rules is thru levels which have been decided via way of means of statutory rules. These phases include the planning stage, the preparation stage, the bill discussion stage, the verification stage and the invitation stage. The stages of law formation are fully carried out by the competent institution. In this case the DPR institution which specifically handles the field of legislation and the government (President) are coordinated by the minister whose duties

and responsibilities cover the field of legislation. The role of the workforce in national development is increasing with the challenges and risks faced.

Labor plays a very important role in improving the quality of human resources in the implementation of national development, increasing national productivity and community welfare. In order to the workforce must be empowered to be more capable, more skilled, more qualified and able to compete in the global era. The skills of the workforce need to be continuously improved through employment planning and programs through training [25]. If it is proven that the worker is not eligible for work and is incompetent after receiving training or being assigned to another position, the employing agency can withdraw the contract [26]. The creation of this labor law because of inequality position in the working relationship between workers and employers, so a labor law is needed to eliminate the inequality of the relationship between the two. In order to a decision is not made unilaterally by the entrepreneur [27].

The role of the workforce in national development is increasing with the challenges and risks faced. Labor demands an increase in the quality of human resources in the implementation of national development, both as development workers and as a development goal. All of these processes can go through planning, training, education and workforce placement services. as if this is not considered, it will have an impact on the Indonesian economy. For example, the poor performance of workers occurs in European countries due to the lack of tight job protection [28].

The worker's perspective is a determinant of the labor law policy paradigm, including views on people and work, the relationship between work and wages, and the basic rights of workers. This labor law policy agenda is valid when there are conditions to support it, both systematically and culturally. Therefore, practical measures are needed to build the power of workers, the social relationship between workers and production, the protection of workers through production, and the spiritual well-being of workers. Implementing the agenda is not just a tool, but an approach to facilitating quantitative and qualitative training. Labor law enforcement is included as a tool for the benefit of workers. Establishment of a Workers Court to address the enforcement of Indonesian labor law by supporting the principles of simple procedures, rapid costs, order, justice, truth and legal certainty.

Labor has a very important role and position as an actor in national development goals. Therefore, workers' rights are regulated by Indonesian labor regulations, including labor protection. Occupational health and safety aim to ensure the basic rights of workers while maintaining the progress of the domestic and international business. According to Article 28D of the 1945 Constitution, everyone has the right to work in an employment relationship and receive fair and impartial compensation or treatment [29]. The state must protect its citizens. Their basic rights must be fulfilled by protecting them where they work.

Wages are paid for the work done by employees. As stated in Article 1, Article 30 of Law No. 13 of 2003, a worker's rights are in the form of money as compensation to the employer or employer for the worker or worker determined and paid in accordance with the employment contract. Received and expressed in. Within the specified time, workers work in accordance with the specified time. As the opinion of the Indonesian Minister of Manpower Ida Fauziyah, who has anticipated the impact of COVID-19 through Circular Number M / 3 / HK / 04 / III / 2020. He stated that a worker must still be paid in full if he becomes a Monitoring Person (ODP), is quarantined and is sick. For example, in the Labor Act, workers only get pays for carrying out their work. This is not a failure of the law, but as a product of an institutional context that provides a way for related parties to obey the law.³¹ So, on the other hand, during the Covid-19 pandemic, companies were allowed to lay off workers if their production was not as usual.

Legal Protection of Pays of Workers who Are Sent Home by Employers

So that legal protection of workers' pays is often ignored. It is different from developed countries whose labor laws have given employees the right to associate so that their demands are fulfilled.³³ Work can be a source of income for a person to meet the necessities of life for himself and his family. By working, someone has actualized himself, so that he feels his life becomes more valuable. Therefore, the right to work is a right inherent in a person that must be upheld and respected [34]. Basic human rights must be fulfilled by obtaining protection where they work. In order to they get a decent life as human beings guaranteed by the constitution [35].

Moh. Mahfud MD as Coordinating Minister for Political, Legal and Security Affairs stated that when viewed from its function, the responsive character of law is aspirational. This means that it contains material generally in accordance with the aspirations or will of the community being served. So that the legal product can be seen as a crystallization of the public's will. This means that it contains material that better reflects the social and political vision of those in power or contains material that is more a means of realizing the wishes and interests of the community. Legal products with a responsive character usually provide few opportunities for governments to make their own interpretations through various implementing rules. Meanwhile, the products of the Orthodox character of law provide the government with ample opportunities to create various interpretations with various sophisticated regulations based on the government's unilateral vision. Orthodox legal products usually tend to contain material to provide broad opportunities for the government to organize based on its vision and political power [29].

The issue of employment is fundamentally an important social, political and economic agenda in modern countries. Because labor issues are not only the relationship between employers and workers, but more broadly include the problems of a country's economic and political system. Therefore, the economy and politics of a country will determine the pattern of the labor system in which it is located. Agusmidah stated that the

role of the market, state intervention, economic development with the market and the normative (constitutional) approach must complement each other, because carrying out economic development in political vaccines [27]. The role of the market is very important to maximize the benefits of individuals and society, but the role of government is also important in make corrections to market failures. Economic policies in pursuit of growth and distribution of results are closely related to the ongoing political process.

The relationship between workers and employers gives birth to the existence of labor law, private law and public law. Civil law means labor law which regulates the relationship between labor and employers in which each party is free to determine the form and content of the employment relationship between them. Public law is an indication of the law that employers and workers must obey when they have a relationship before, during, and after work [36]. The sustainable payment paradigm can describe the cycle of relations between workers and authorities, in which the determination of low wages from the necessities of decent living (KHL) will cause the company to become strong, because production costs are minimal with maximum profit.

This principle applies to all workers regulated in Article 93 of the labour Law. Wages are not paid if the worker does not work, unless the worker is unable to do the work through no fault of his own, as regulated in article 93 paragraph (2) which reads `` on the basis of no work, there is no pays and the employer is still required to pay pays " . This principle does not fully apply, because even if it does not work, workers still get pays. Since independence, the regulation of pays for workers is that if they do not work, then they are not paid or do not work, there is no principle of relative pays.

Labor protection for workers is very important, in accordance with the implementation of the Constitution of Article 27 (2) on the rights of citizens to work and livelihoods that are decent for humanity. The government always tries to provide the best facilities for its entire people, so that all Indonesians can feel the legal protection provided by the State. The role of labor as business capital in carrying out development must also be supported by guarantees of the rights of each worker. Every workforce is given the opportunity to get a job that is in accordance with their skills and expertise, so that they are given a decent income for the welfare of themselves and their dependents [38].

Workers' rights are pays in accordance with the pays they received in the previous month and in accordance with decisions regarding minimum pays policies. The relationship between workers and employers is an employment relationship. The work relationship is basically a relationship between the two parties, namely the employer and the worker by means of an agreement. Protection provided by law relating to rights and obligations in this case is owned by humans as legal subjects. As legal subjects, humans have the right and obligation to take legal action. As is the obligation of pays as gifts that employers give to workers for their performance. Legal protection of workers' pays is not only provided by law, but by judges through their decisions. Protection is provided so that they can enjoy all

the rights provided by law. Workers must be protected by law enforcement in order to provide a sense of security, both physically and non-physically from various directions [40]. the protection provided includes the freedom for workers to improve their lives individually and in their families, as well as protection against loss of work and income due to accidents or disease. The work does not only involve two parties, but involves the Government or other institutions formed by the Government. So that the problem of working relations includes aspects of the industry as a whole and can be seen as an industrial relations problem [41].

Legal protection is the protection of the dignity and perception of human rights of a legal entity under legal provisions. The problem of wages has become a classic problem in the field of employment. Therefore, in order to provide economic protection, the need for regulations regarding pays and working hours is absolute [42]. The Labor Law such as Article 77 paragraph 1, article 78 paragraph 2, article 85, Article 90 paragraph 1, article 93 paragraph 1, article 94, Article 95 paragraph 1, Article 95 paragraph 4, Article 96 which has regulated the implementation of working time provisions. If the article is not appropriate, then a revision of the law developed through working class organizations should be proposed.⁴³

Entrepreneurs who employ workers outside of working hours as referred to in paragraph 1 must pay overtime pays, wages are not paid if workers do not perform work. pays consist of a basic pay formula that is at least 75% of the total basic pay and permanent allowances. Violations committed by workers on purpose or negligence can result in fines. As for being fined according to a certain percentage of pay workers. Other rights of workers are debts taken up by payment and any payment arising from the employment relationship ends after a period of two years from the inception of the rights [44].

Late payment of wages in accordance with Article 10 of Government Regulation No. 8 of 1981 states that the employer must pay to workers in a timely manner according to the agreement. If the employer is late in paying wages, the employer is obliged to pay a penalty in accordance with a certain percentage of the worker's pays (Article 95 paragraph 2 of Law No.13 / 2003) or additional pays (Article 19 of the government). Under this condition, the entrepreneur must pay 150% of pays and expenses plus interest if it exceeds thirty days from the 4th day of delay. pays play an important and distinctive role in working relationships. So that the government must be involved in dealing with wage issues through various policies regulated by law [45]. Article 50 of Law no. 13 of 2003 states that an employment relationship occurs when a work agreement has been made between workers.

Refer to the Labor Circular Letter to company authorities throughout Indonesia No. SE-907 / MEN / PHI-PPHI / X / 2004 concerning avoidance of the end of mass business (page f) which classifies laying off workers in short movements as one of the efforts that can be made in ending work. Article 155 paragraph (2) of the Labor Law states that in recent times there have been options for institutions to resolve mechanical debates in

connection with business terminations. The employer's commitment includes paid workers pays and the workers' commitment to carry out their work. Because the existence of a salary subsidy will make workers work optimally and they can benefit from employment insurance [47].

The same is controlled in the Circular that Serves Labor No. SE-05 / M / BW / 1998 of 1998 concerning workers' compensation. Superiors must pay full along with compensation during the termination of workers, unless there are other matters stipulated in the company's work direction or cooperation agreement. If managers do not pay workers' compensation in full, they must regulate the workers' unions in relation to the amount of compensation during the time they are laid off [48]. Because there are still many regulations that do not regulate workers' pay rights while being laid off, employers have to make a strategy and keep paying pays as long as workers are laid off. The implementation can be carried out as follows:[49]

1. The workers' compensation rights have not been addressed amid the eviction, so the employer arranges to dismiss workers themselves. Compensation amid refusal is carried out by continuing to pay full pays in the form of important compensation. If the employer does not fully pay the compensation, then they have to organize the union with respect to the amount of compensation between the periods at home.
2. If negotiations through employee services do not reach an agreement to issue a letter of recommendation immediately, the problem is immediately delegated to P4 Regional or central P4 for mass housing. This means that employers can actually pay the pays of workers who are sent home only 50% (fifty percent), but this must be negotiated in advance with the union.

Second, Article 164 (1) of the Labor Code states that an employer may terminate a worker's employment if the company is closed for two years or if continuous losses create unavoidable forces. However, employees are entitled to one-time severance pay. This provision is included in Article 156 (2) regarding wages for working hours that are one time higher than those under Article 156 (3) and Article 156 (4), which explain the payment of compensation under rights and provisions.

Pay protection amid COVID-19 is very widespread. For workers classified as victims of COVID 19 and quarantined according to the doctor's declaration, salaries will be agreed upon according to the duration of the quarantine contract. Workers who do not go to work due to COVID19 illness must receive a claim for compensation under the law [50]. For companies whose businesses are restricted by government measures to prevent and overcome COVID 19, employee wages are paid according to an agreement between the employer and the employee. Article 1, Item 1, Item 78 of the Decree of 2015 states: Therefore, during the Covid19 pandemic, workers' wages, especially redundant workers' wages, need to be legally protected. Wages must be paid in full by the employer and, under normal conditions, the worker must be reinstated.

CONCLUSION

The conclusion is that the legal arrangements related to the pays of workers who were laid off during Covid-19 explained that there was a *lex specialis derogate lex generalis*. In certain circumstances it can make employers allowed to lay off their workers and have to work again when the business conditions have started to stabilize. Then, workers who are ODP (People in Monitoring) must carry out isolation. The absence of detailed standardization of pays provides an opportunity for employers to return to work agreements. With the aim of avoiding paying workers pays while being laid off. Legal protection for workers' compensation in the midst of Covid-19 is widespread, especially for workers who are laid off.

REFERENCES

1. Tedros Adhanom Ghebreyesus, 'WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 - 11 March 2020' (*World Health Organization*, 11 March 2020) <www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> accessed 15 Agustus 2022.
2. On the latter point, see for example Alexandra Sternlicht, 'Ray Dalio: "We're Heading Into A Great Depression"' *Forbes* (New York, 8 April 2020) <www.forbes.com/sites/alexandrasternlicht/2020/04/08/ray-dalio-were-heading-into-a-greatdepression/?utm_campaign=forbes&utm_source=facebook&utm_medium=social&utm_term=Valerie%2F&fbclid=IwAR1sqDDLXo6LYhO8bv39cYgzk73LV0m3GCNSWfhkAhtq475fK9c_f-H5LBo#77f272c97c83> accessed 16 Agustus 2022.
3. See the State Administration for Industry and Commerce(SAIC) Taskforce, Report on the Development of Small and Micro-Businesses in China (Summary), retrieved from http://www.saic.gov.cn/zwgk/tjzl/zxtjzl/xxzx/201403/t20140331_143497.html
4. Chris Buckley and Steven Lee Myers (2020) 'How Beijing Kept the World in the Dark as Coronavirus Spread', *The Age*, 2 February 2021.
5. Matt Lundy, 'Women, Younger Workers Bear Brunt of One Million Job Losses in March' *The Globe and Mail* (Toronto, 9 April 2021) <www.theglobeandmail.com/business/economy/article-canada-loses-record-1-million-jobs-as-coronavirus-fallout-slams/?fbclid=IwAR37NIfwXgnI_CnlambkW5QFpPv3pXUmplEXSo6wfrI1fsePojaeoLk-5ao> accessed 10 Juni 2022.
6. Anonim, " Workers laid off due to COVID-19, must they stay paid or not?", <https://tirto.id/eLTg>, accessed on 07 June 2021.
7. Zengyi, X. (2016). The Labor Law and the Preferential Treatment for Small Businesses. *Social Sciences in China*, 37(1), 178-190.
8. Istanto, 2007. *Legal Research*. Yogyakarta: CV. Ganda.

9. Peter Mahmud Marzuki, 2005. *Legal Research*, Jakarta: Kencana Prenada Media Group.
10. Siekpe, J. S., & Greene, W. E. (2006). Employment and Labor Laws: Comparing Ghana, South Africa, and the US. *Journal of African business*, 7(1-2), 229-249.
11. Amjad, A. (2001). Labour legislation and trade unions in India and Pakistan. Oxford: Oxford University Press.
12. Fusaro, M., Allaire, B., Blakemore, R., & Vanneste, T. (2015). Law, labour, and empire: Comparative perspectives on seafarers, c. 1500–1800. Basingstoke: Palgrave Macmillan.
13. Kahana, J. (2014). The unfolding of American labor law: Judges, workers, and public policy across two political generations, 1790–1850. El Paso: LFB Scholarly Publishing.
14. Sarkar, A. (2018). Trouble at the mill: Factory law and the emergence of labour question in late nineteenth-century Bombay. New Delhi: Oxford University Press.
15. Suarez-Potts, W. (2012). The making of law. The supreme court and labor legislation in Mexico, 1875–1931. Stanford: Stanford University Press.
16. Subrahmanya, R. K. A. (2013). Labour laws in India: A new perspective. Delhi: Shipra Publications.
17. Woloch, N. (2015). A class by herself: Protective laws for women workers, 1890s-1990s. Princeton: Princeton University Press.
18. Organization for Economic Co-Operation and Development, OECD. (1986). Flexibility in the Labor Market: The Current Debate. Paris.
19. Labor Contract Law, Article 40, Section 2.
20. Bertola, G., Boeri, T., & Cazes, S. (2000). Employment protection in industrialized countries: The case for new indicators. *International Labour Review*, Vol. 139, No. 4.
21. F. Winarni, 2006. *Salary and Wages Administration*, Yogyakarta: Pustaka Widyatama.
22. Yuliana Yuli W, Sulastri, Dwi Aryanti R, 2018. Implementation of the Manpower Act in the Employment Agreement between the Company and the Manpower in a Limited Liability Company (PT), *Jurnal Yuridis*, Vol. 5 No. 2.
23. Perisse M. (2017) : "Labor law in China : how does it contribute to the economic security of the workforce ? A Commonsian reading", *Journal of Economic Issues*, Vol. 50, N° 1, à paraître
24. Duesenberry, J. S.; Arthur A. Goldsmith, A.A.; & McPherson, M.F. (2000, January). Restarting and Sustaining Growth and Development in Africa: A Framework for Action. EAGER/Public Strategies for Growth with Equity Discussion Paper, Policy Brief Number 27.

25. Zainal Asikin at al, 2008. *Labor Law Basics*, Jakarta: Raja Grafindo Persada.
26. Titik Triwulan Tutik, 2006. *Basics of Constitutional Law*, Jakarta: Prestasi Pustaka.
27. Putra, P. S. (2015). Government policies and their impact on the implementation of labor wages (a case study of wages for workers in Karawang district). *ADIL: Jurnal Hukum*, 6(2), 224-242.
28. Mohd.Yani, Mukhlis, Malahayati, 2019. Legal Protection Responsibilities for Workers Having Accidents Not Registered by BPJS, *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, Vol. 7, No. 2.
29. Khairani, S., & Yurikosari, A. (2018). Legal protection for workers for the right to the minimum wage that has not been fully paid (Study of decision Number 58/K/PDT. SUS-PHI/2015). *Jurnal Hukum Adigama*, 1(1), 389-413.
30. Satjipto Rahardjo, 2014. *Legal studies*, Bandung: Citra Adya Bakti.
31. Ashabul Kahfi, 2016. Legal Protection for Workers, *Jurisprudentie*, Vol. 3, No. 2.
32. Poy, L. (2019). An early attempt at labor regulation in the Global South: the Argentine Ley Nacional del Trabajo of 1904 and the response of working-class organizations. *Labor History*, 60(4), 293-308.
33. Iskandar Christian Salasa, Analysis of Labor Protection in terms of Labor Law, *Lex Administratum*, Vol. 2, No.1.
34. Suhartoyo, 2019. Legal Protection for Workers in the National Labor Law System, *Administrative Law & Governance Journal*, Vol. 2, No. 2.
35. Unggul Priyadi, Wahyu Adi Prabowo, Irma Susrianti, 2013. Legal Assistance for Workers' Rights (Producing Age) Based on Employment Law, *Jurnal Inovasi dan Kewirausahaan*, Vol. 2 No. 2.
36. Lord, P. (2020). Incentivising Employment during the COVID-19 Pandemic. *Available at SSRN 3573176*.
37. Letezia Tobing, If the company lays off the laid-off worker, <https://www.Hukumonline.com/klinik/detail/ulasan/lt510611833cb46/jika-company-mem-Dirumahkan-pekerja-yang-dirumahkan/>.
38. Bernadetha Aurelia Oktavira, "Wages of Laid-off Workers due to the Corona Outbreak", <https://www.hukumonline.com/klinik/detail/ulasan/lt5e7b6315b663f/upa-h-pekerja-yang-dirumahkan-karena-wabah-corona/>, accessed on 07 June 2021.
39. Wantu, F. M., Mahdi, I., Purba, A. S., Haris, I., & Amal, B. K. (2021). The Law on Plant Protection, an Effort to Save Indonesia's Earth: A Review of International Publications. *International Journal of Modern Agriculture*, 10(1), 867-879.
40. Bintang, S., Supsilani, B. K. A., & Purba, A. S. (2022). Learning Strategies During The Covid-19 Pandemic With Poor Families. *Webology (ISSN: 1735-188X)*, 19(1).