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by Ida Hanifah

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

Ida Hanifah ¹
Anwar Soleh Purba ²
Khairuddin Alwi Fajar P. ³

ABSTRACT

Purpose: This study aims to explain the role of the legal protection article on the wages of workers who work at home during the Covid-19 Pandemic. Because the virus spread has made the Indonesian Government issue regulations to better stay at home, many businesses have closed, and many workers have had to stop.

Theoretical framework: This research is reinforced by the theory related to employment as written in Law No. 13 of 2003, which explains that the workforce is everyone who can work to produce goods or services to meet their own needs and for society in general.

Method: The data collection method used is a qualitative review of labour laws and seeking legal sources for protecting labour rights. His research technique involves conducting interviews and analyzing related literature on post-Covid-19 labour laws.

Results and conclusions: The study shows that the legal wage arrangement for repatriated workers is lexed specialize derogate lex generalis. So it was concluded that if there is a Covid-19 case in a worker, the worker must self-isolate and be paid in full. If conditions normalize and production stabilizes, workers will have to be rehired.

Research implication: This research has explained the role of labour law in society. Originality/value: Existing laws have provided guaranteed to workers, so they are considered applicable, and subsequently, it is necessary to continue the analysis through Article 86 paragraph (1), the letter of law Number 13 of 2013 concerning Manpower, where every worker/ Workers have the right to obtain protection for occupational safety and health.

Keywords: Legal Protection, Worker Pays, at Home, COVID-19, in Indonesia.

PROTEÇÃO LEGAL CONTRA REMUNERAÇÃO DE TRABALHADORES RETORNADOS DURANTE O PERÍODO DA PANDEMIA DE COVID-19 NA INDONÉSIA

RESUMO

Objetivo: Este estudo tem como objetivo explicar o papel do artigo de proteção legal sobre os salários dos trabalhadores que trabalham em casa durante a pandemia de Covid-19. Como a disseminação do vírus fez com que o governo indonésio emitisse regulamentos para que os trabalhadores ficassem em casa, muitas empresas fecharam e muitos trabalhadores tiveram de parar.

Estrutura teórica: Esta pesquisa é reforçada pela teoria relacionada ao emprego, conforme escrito na Lei nº 13 de 2003, que explica que a força de trabalho é toda pessoa que pode trabalhar para produzir bens ou serviços para atender às suas próprias necessidades e à sociedade em geral.

¹ Law Studies Program, Faculty of Law, Universitas Muhammadiyah Sumatra Utara, Medan, Sumatra Utara, Indonesia. E-mail: idahanifah@umsu.ac.id Orcid: <https://orcid.org/0000-0003-2664-9150>

² Law Studies Program, Faculty of Law, Universitas Muhammadiyah Sumatra Utara, Medan, Sumatra Utara, Indonesia. E-mail: Anwarsolehpurba12@gmail.com Orcid: <https://orcid.org/0000-0001-6964-2794>

³ Law Studies Program, Faculty of Law, Universitas Sumatra Utara, Medan, Sumatra Utara, Indonesia. E-mail: khairuddinalwifajar123@gmail.com Orcid: <https://orcid.org/0009-0008-5172-1816>



Método: O método de coleta de dados utilizado é uma revisão qualitativa das leis trabalhistas e a busca de fontes legais para proteger os direitos trabalhistas. Sua técnica de pesquisa envolve a realização de entrevistas e a análise da literatura relacionada às leis trabalhistas pós-Covid-19.

Resultados e conclusões: O estudo mostra que o acordo salarial legal para trabalhadores repatriados é *lex specialis derogate lex generalis*. Portanto, concluiu-se que, se houver um caso de Covid-19 em um trabalhador, ele deve se isolar e ser pago integralmente. Se as condições se normalizarem e a produção se estabilizar, os trabalhadores terão de ser recontratados.

Implicações para a pesquisa: Esta pesquisa explicou o papel da legislação trabalhista na sociedade. Originalidade/valor: As leis existentes forneceram garantias aos trabalhadores, por isso são consideradas aplicáveis e, posteriormente, é necessário continuar a análise por meio do Artigo 86, parágrafo (1), a letra da lei Número 13 de 2013 referente à mão de obra, em que todo trabalhador/trabalhadora tem o direito de obter proteção para a segurança e saúde ocupacional.

Palavras-chave: Proteção Legal, Trabalhador Paga, em Casa, COVID-19, na Indonésia.

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1 INTRODUCTION

Starting in early 2020, the coronavirus is rapidly spreading throughout ¹⁰ the world, creating a global health crisis with an impact on the economy (Ghebreyesus, 2020 ; Flores & da Cruz, 2021). The government has certainly struggled in facing the economic slowdown caused by the current global health crisis (On the latter point, 2020). 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 (SAIC, 2014). Therefore, it is important to know the legal context regarding the regulation based on regulations in laying ²⁴ workers by employers due to the pandemic situation. From a legal perspective, it appears that little attention has been paid to addressing these iss¹⁰ (Buckley and Myers, 2020).

Since the advent of the coronavirus, more than 1 million people have lost their jobs and more than 3 million ³⁵ve experienced reduced working hours in some countries (Lundy, 2021). As for the status of younger workers, women and workers with low-wage positions are more often housed even in stop (Sniffen, 2000). So that the unemployment rate has risen fr²⁰ 5.6 percent to 7.8 percent (On the coronavirus specifically, 2022). This shows that the virus has had a major impact on the economic sector of society, especially the lower middle class. This inequality has also increased discrimination rates in the workplace every year (Pearson, 2020).

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 ¹⁵ f 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 Terminati²⁹ of Employment ("SE 907/2004"). By temporarily laying off workers it is believed to be able to reduce the spread of the Corona Virus and suspected corona must be p²⁵ in full. Even so, society and businessmen did not really comply with legal requirements during the fight against the COVID-19 emergency (Anonim, 2021; Zengyi, 2016).

Employers can also lay off their workers and are obliged to re-hire after the situation stabilizes (Istanto, 2007; Oktavira, 2021). 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 (Ezcurra-Zavaleta et al., 2023). 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 (Marzuki, 2005).

2 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 (Siekpe & Greene, 2006; Bintang et al., 2022). 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 (Amjad, 2001; Manurung et al., 2021). Another method used is a qualitative review of labor laws that focus on employment discrimination, workers compensation, workplace standards, and work safety (French, 2004).

3 RESULT AND DISCUSSION

3.1 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 (Fusaro, 2015). 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. So that the workforce needs to be provided with protection and increased welfare, so as to increase national productivity. as worker protection plays an important role in making labor market outcomes (Kahana, 2014).

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 (Sarkar, 2018). 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 (Suarez-Potts, 2012). 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 (Subrahmanya, 2013).

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 (Woloch, 2015).

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 ¹³ or regulations, including labor protection. Occupational health and safety aim to ensure ⁹ 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 (OECD, 1986). The state must protect its citizens. Their basic rights must be fulfilled by protecting them where they work.

One form of agreement that is often practiced in the commun¹⁷ is a work agreement between employers and workers. According to Law no. 13 of 2003, a work agreement is an agreement between a worker and a company or employer that is contained in the rights and obligations of the related party. A work agreement is basically made to anticipate problems and prevent disputes that may occur between the parties involved in an employment relationship. In making a work agreement, a work agreement must be made, so that the text can have legal force, including fulfilling the provisions concerning the recording of work agreements for the government and the local labour office (Blake, 1960). ³²

Wages are paid for the work don¹¹y 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 Indonesi¹¹ 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. F¹² 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 ³⁴titutional context that provides a way for related parties to obey the law (Enriques, 2015). So, on the other hand, during the Covid-19 pandemic, companies were allowed to lay off workers if their production was not as usual.

3.2 Legal Protection of Pays of Workers Who are Sent Home by Employers

Many developing countries do not have effective and efficient institutions, so their macroeconomic management is always bad (Yuliana et al., 2018). 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 (Bertola et al., 2000). 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 (F. Winarni, 2006). 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 (Brisse, 2017).

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 (Duesenberry et al., 1999).

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 (Legal Information Institute, 2003). 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 (Asikin, 2008). 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.

On the contrary it will make workers weak, because they will not prosper. However, the regulation of decent living needs by the government is an emphasis on business actors to balance the position between employers and workers (Tutik, 2006). 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 (Putra, 2015).

The government establishes a policy on wages ¹⁸ to protect workers so that their income can meet their daily needs. This policy is regulated in article 88 paragraph (3) of Law no. 13 of 2003 concerning Manpower which in substance regulates the Wage for not going to work to carry out other activities outside of work, proportional wage structure and scale, severance pays, minimum pays, overtime pays, forms and methods of payment, fines and deductions from pays, pays for the calculation of income tax and pays to use the right to rest from work (Yani et al., 2019).

Workers' rights are pays in accordance with the pays they received ²⁶ 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 ³ between the two parties, namely the employer and the worker by means of an agreement. Protection provided ³ 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 ⁵ is not only provided by law, but by judges through their decisions. Protection is provided so that they can ⁵ 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 (Khairani & Yurikosari, 2018). 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 ³⁰ be seen as an industrial relations problem (Rahardjo, 2014).

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 (Kahfi, 2016). 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 (Hadjon, 1983).

Entrepreneurs who employ workers outside of working hours as referred to in paragraph ⁵ 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 (Salasa, 2013).

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 (Poy, 2019). Article 50 of Law no. 13 of 2003 states that an employment relationship occurs when a work agreement has been made between workers. Workers are free human beings who are guaranteed by the constitution that every citizen has the right before the law to decent work and income. So that employers are morally obliged to provide guarantees of wage protection, health with the Social Security card, occupational safety and health (Suhartoyo, 2019).

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 (Priyadi et al., 2013).

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 (Lord, 2020). 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 (Tobing, 2020; Wantu et al., 2021) :

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 COVID-19 illness must receive a claim for compensation under the law (Polii et al., 2023). 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.



4 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. So, if there is a covid-19 case in a worker, then the worker must carry out independent isolation and be fully paid. In addition, if conditions are normal and production results are stable, workers must be reinstated.

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