JURIDICAL PROBLEMS TERMINATION OF EMPLOYMENT DUE TO FORCE MAJEURE (REFERRING DECISION NUMBER 30/PDT.SUS-PHI/2020/PN GRESIK)

Dwi Tatak Subagiyo¹, Hanung Widjangkoro²

¹Faculty of Law, Wijaya Kusuma Surabaya University, Indonesia, E-mail: tataksubagiyo@gmail.com
²Faculty of Law, Wijaya Kusuma Surabaya, Indonesia, E-mail: hanungwidjangkoro_fh@uwls.ac.id

Submitted: August 29, 2023; Reviewed: February 02, 2024; Accepted: May 07, 2024
DOI: 10.25041/iplr.v5i1.3156

Abstract

Termination of Employment Relations (PHK) is an event that is very unexpected for workers/laborers, in which with layoffs, work that is a person's livelihood will be cut off resulting in the economic factors of the worker/laborer, with various problems that are almost certain to occur, various conflicts arising from the layoffs, the state as a protector for its citizens, must be balanced with various regulations as a form of state protection for citizens of their rights. Problems that arise in the employment sector, especially related to termination of employment due to Force Majeure, the Covid-19 pandemic can be categorized in the Force Majeure group because Covid-19 is an unplanned disaster and beyond the power of both parties so that the company cannot fulfill its achievements here. Judge courage in deciding true employment cases can act fairly referring to decision Number 30/Pdt.Sus-Phi/2020/Pn Gresik.

Keywords: Problematic, Termination of Employment, Force Majeure.

A. Introduction

The progress of a country is greatly influenced by the state of the country's economy, with growth in advanced economic sectors, the prosperity and welfare of society will be achieved. In relation to economic growth, the sustainability of the business world is very much needed, both business actors, in this case entrepreneurs as company owners and workers/laborers as an important part of a company, two parties that are interrelated and inseparable, harmony and good relations between employers as company owners and workers/laborers will create positive synergy at work, which will create an increase in company productivity.

In practice, the relationship between employers as owners of companies and workers/laborers as work partners and important factors in production is not always harmonious, various problems often occur and arise even though this relationship has been anticipated by the existence of various work agreement rules between the two parties. Work
agreements have several meanings, as Article 1601a *Burgerlijk Wetboek*, in terms of labor agreements which are interpreted: Labor agreements are agreements whereby one party, the worker, binds himself to be under the orders of another party, the employer, for a certain time, to do work for a fee. From the existing understanding as in the BW, it can be concluded that the special feature of a work agreement is under the orders of another party so that it shows the relationship between subordinates and superiors, in this case, the relationship can be in terms of work and with the existence of this authority, the work agreement has a different meaning from other agreements.

Meanwhile, the definition of a work agreement according to Law Number 13 of 2003 concerning Manpower is more general in nature. It is said to be more general because it refers to the relationship between workers and employers which contains terms of employment, rights, and obligations of the parties. Terms of work related to recognition of labor unions, while the rights & obligations of the parties such as working time, social security, occupational safety and health, wages, and others.

Furthermore, it can be concluded if an employment agreement contains various provisions for workers in carrying out their obligations as well as rules for how the company's obligations are so that workers' rights can be fulfilled fairly so that it is hoped that a conducive working relationship will be created which is a prerequisite for the success of a business. As in article 1 number 16 of the Manpower Law it is stated that Industrial Relations is a system of relations formed between actors in the process of producing goods and/or services consisting of employers, workers/laborers and the government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. Industrial Relations cannot be separated from the elements of employers and workers/labourers, but in Industrial Relations conflicts often arise, in which conflicts between employers and workers/labourers lead to disputes, whether disputes regarding rights, disputes over interests, disputes over termination of employment or disputes between trade unions/labor unions within one company. Of all these industrial relations disputes, it is not uncommon for them to end in termination of employment.

Termination of Employment Relations (PHK) is an event that is very unexpected for workers/laborers, in which with layoffs the work that is a person's livelihood will be cut off resulting in the economic factors of the worker/laborer, with various problems that are almost certain to occur, the various conflicts arising from the layoffs, the state as a protector for its citizens, must be balanced with various regulations as a form of state protection for citizens of their rights, this is very important, especially Indonesia as a rule of law country, where it is very clear, many articles prioritize the rights of citizens as stated in the 1945 Constitution.

Normatively, the 1945 Constitution guarantees the right of every citizen to get a job (Article 27 paragraph 2). This was reaffirmed in the 1945 Constitution of the Republic of Indonesia (the result of the second amendment) ChapterXA on Human Rights (Articles 28A-28). Article 28 D mandates that "everyone has the right to work and receive just and proper compensation and treatment in work relations". Furthermore, Article 28 I paragraph (4) emphasizes that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government.

Termination of employment in labor law is a last resort after various steps have been taken but have not yielded the expected results, while Article 1 paragraph 25 of the Manpower Law states that layoffs are termination of the employment relationship due to certain matters which result in the end of the rights and obligations between the worker/laborer and the entrepreneur. The layoffs referred to in the Manpower Law require layoffs after the implementation of the labor dispute settlement institution as stipulated in Law Number 2 of 2004 concerning Industrial Relations Dispute Settlement which can be carried out outside the court through a mediator or

---

conciliator while settlements carried out through the courts are through the Industrial Relations Court (PHI).

Various reasons can be a factor in layoffs, where employers can also terminate the employment relationship with workers/laborers for various reasons including closing the company because the company has suffered continuous losses for 2 (two) years, or forceful circumstances, or also because of the efficiency of the company. This is clearly stated in Article 164 paragraph 1 of the Manpower Law:

Entrepreneurs can terminate the employment of workers/laborers because the company closes because the company suffers continuous losses for 2 (two) years, or force majeure, provided that the worker/laborer is entitled to severance pay of 1 (one) time the provisions of Article 156 paragraph (2) gratuity pay of 1 (one) time the provisions of Article 156 paragraph (3) and compensation pay in accordance with the provisions of Article 156 paragraph (4).

Meanwhile, in Article 164 paragraph 3 of the Manpower Law, it is stated that: Entrepreneurs can terminate the employment of workers/labourers because the company closes not because they experience losses for 2 (two) consecutive years or not because of force majeure, but because the company does efficiency, provided that the worker/labourer is entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2), gratuity pay of 1 (one) time of the provisions of Article 156 paragraph (3) and compensation for rights according to the provisions of Article 156 paragraph (4).

In practice, a layoff is a complex problem and creates disputes between the two parties, because of its relation to economic and psychological problems, on the one hand, layoffs for companies can be efficient so that they can continue to maintain the continuity of company operations, while for workers, layoffs cause a source of income and income for workers and their families, and this is where the role of law is very important in providing rules or solutions for the protection of companies and workers. The reasons for employers to terminate the employment relationship are increasing nowadays with events that we cannot all predict, where we are familiar with the Covid-19 pandemic, this is in line with the statement of the World Health Organization (WHO) which has stated that Covid-19 is a disease outbreak (pandemic). Covid-19 is also referred to as a non-natural event in Law Number 24 of 2007 concerning Disaster Management in Article 1 paragraph 3 it is stated that non-natural disasters are disasters caused by events or a series of non-natural events which include technological failures, modernization failures, epidemics, and disease outbreaks.

The spread of Covid-19 which is increasing day by day has an impact on various aspects, especially employment, this is due to a decline in the level of a country's economy due to the coronavirus outbreak. The stipulation of the Covid-19 pandemic as a non-natural national disaster has implications for many cancellations of agreements, especially in the world of employment, but this cannot be directly used as a basis for canceling agreements because it must be proven the inability of one of the parties to carry out their obligations.

Referring to WHO's opinion on disasters, Covid-19 can be said to be a non-natural disaster that has a negative impact on people's lives, which can also kill human lives, lose people's livelihoods, disrupt distribution and availability of logistics, and can even disrupt people's psychology. A pandemic that hit all countries in the world, both developed and developing countries were all affected by the Covid-19 pandemic, including Indonesia. With the economic

---

situation starting to grow and develop our country is also experiencing its effects, the Indonesian economy is getting worse with the Covid-19 pandemic, and all business sectors are objects that are heavily affected due to the Covid-19 pandemic, the number of cases spikes in layoffs that have been carried out is based on the condition that companies are experiencing continuous losses which are the result of a lack of company production, decreased buyer demand for company production, company losses which have an increasing financial effect on companies The days are getting worse which is even impossible for a company to close its business, so in order to save the business the layoffs are carried out by the entrepreneur as the owner of the company.

Covid-19 has an economic impact, especially because it can exacerbate the inequality that affects most groups of workers, as a result of the life difficulties caused, it is expected that there will be social security protection and health insurance for this group. The outbreak of the coronavirus in Indonesia has had many effects on all sectors, especially the economic sector, this has made the country take many policy steps related to the presence of the coronavirus (Covid-19). The Indonesian government has declared Covid-19 as a type of disease that causes a public health emergency, which inhibits its spread.

The impact of the Covid-19 pandemic which affected the business sector, made it a strong consideration for employers to lay off workers/laborers, this was done as the last alternative taken by employers, which also happened to PT Tekun Karya Abadi, which is a service company engaged in the manufacture of odners where production is only based on orders from third parties namely buyers/buyers so that with the existence of the covid-19 pandemic the company experienced a very significant decrease in production because orders received from buyers also experienced a decrease, and the impact of this abnormal production was that the company PT Tekun Karya Abadi experienced losses and financial difficulties because PT Tekun Karya Abadi would only carry out production at the request of a buyer.

These conditions made PT Tekun Karya Abadi decide to terminate the employment relationship with 10 (ten) workers in the production section who had worked for the company for a long time until a lawsuit was filed by the company to the Gresik Industrial Relations Court which was registered in the lawsuit case number 30/Pdt.Sus-PHI/2020/PN Gsk, where PT Tekun Karya Abadi was the Plaintiff and Mukhamad Rojim, Supi'i, Suliatin, Herni, Dina Andriani, Dewi Sampi, Moch. Janu, Suteko, Arif Rahman, and Agus Sulidi as the Defendants.

The layoffs carried out by PT Tekun Karya Abadi against 10 (ten) workers in the production section have fulfilled the bipartite efforts that were previously carried out between the two parties on 11 June 2020 and 15 June 2020 wherein the bipartite efforts the parties agreed in substance to mutually terminate the employment relationship, but the main dispute is on the completion of the termination of the employment relationship between PT Tekun Karya Abadi and 10 (ten) workers. The settlement in question is about severance pay rights and other rights that must be fulfilled and given by PT. Tekun Karya Abadi to the 10 (ten) workers as mentioned above.

As PT Tekun Karya Abadi argued, layoffs of 10 (ten) workers would result in the provision of severance pay rights and other matters in the amount of 1 (one) times the provisions of the labor law and regulations as referred to in Article 164 paragraph 1 of the Manpower Law with a request for payment methods to be given in installments of 12 (twelve) times on the grounds that the company carried out the layoffs based on the condition of the company being unable to provide severance pay in accordance with the provisions of the labor law because it suffered losses during the continuous the Covid-19 pandemic, while the 10 (ten) workers asked for severance pay rights in the amount of 2 (two) times the provisions of labor laws and regulations

---

and other rights that were granted because the company made efficiency as stated in Article 164 paragraph 3 of the Labor Law.

In this lawsuit, it was finally decided by the Panel of Judges of the First Instance by granting part of the plaintiff’s claim. As a legal consideration, the Panel of Judges based that the layoffs of 10 (ten) workers/laborers by the company were based on the Covid-19 pandemic as a Force Majeure for the company.

The Covid-19 pandemic in relation to employment can be classified as a force majeure situation which is an unplanned disaster and beyond the power of both parties so that here the company cannot fulfill its achievements.\(^8\)

Based on this, the authors are interested in researching with the aim of knowing the Juridical Problems of Termination of Employment (PHK) due to Force Majeure carried out by PT. Tekun Karya Abadi for 10 (ten) workers/labourers on behalf of Mukhamad Rojim, Supi’i, Suliatin, Herni, Dina Andriani, Dewi Sampi, Moch. Janu, Suteko, Arif Rahman, and Agus Suladi with different years of service. Where PT. Tekun Karya Abadi as the Plaintiff based on having experienced a legal event of a force majeure or Overmacht or Force Majeure and or an unexpected legal event occurred beyond the Plaintiff’s fault which resulted in an obstacle to performing well in accordance with its obligations in an agreement/work relationship.

Therefore, it is interesting to study, in principle, to find out this issue in more depth, regarding: how are the juridical problems of termination of employment due to force majeure,

According to legal expert Soerjono Soekanto, legal research is a scientific activity, which is based on certain methods, systematics, and thoughts, which aims to study something or certain legal phenomena, by analyzing them.\(^9\)

In legal research, a researcher can take several approaches, as described by Peter Mahmud Marzuki “The approaches used in legal research are statute approaches, case approaches, conceptual approaches, historical approaches, comparative approaches.”\(^10\)

In this study, researchers used normative juridical research methods, which in the research process, referred to 3 (three) types of approach methods namely the statute approach, case approach, and conceptual approach.

1.1. The statute approach, in this study the researcher uses an approach by examining all laws and regulations related to the legal issues studied, where in this approach the researcher compares the applicable laws and regulates the provisions of labor laws in them

1.2. The case approach, in this study, the researcher uses a case study approach related to the issue at hand where in this case there are cases of termination of employment in employment that have been terminated in a court decision that has permanent legal force.

1.3. The conceptual approach, in this study the researcher uses an approach by analyzing problem solving from the aspects of the legal concepts behind it, or even can be seen from the values contained in the normalization of a regulation. This approach emphasizes the views and doctrines that develop in the science of law.

In this research, researchers obtained secondary data which was obtained from library materials this secondary data includes:

a. Primary legal materials:

"Primary legal materials are legal materials that have authority (authoritative)”. In this research, researchers used primary legal materials including Law Number 13 of 2003 concerning Employment (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279), Law Number

---

10 Peter Mahmud Marzuki, 2015, Penelitian Hukum Edisi Revisi, PT Kharisma Putra, Bandung, p.133.
2 of 2004 concerning Settlement of Relationship Disputes Industrial (State Gazette of the Republic of Indonesia of 2004 Number 6, Supplement to the State Gazette of the Republic of Indonesia Number 4356), Law Number 24 of 2007 concerning Disaster Management (State Gazette of the Republic of Indonesia of 2007 Number 66, Supplement to the State Gazette of the Republic of Indonesia Number 4723), District Court Decision/ Gresik Industrial Relations Number 30/Pdt.Sus- PHI/2020/PN.Gsk dated 3 December 2020.
b. Secondary legal materials: in the form of publications on legal issues consisting of legal books, journals and media articles on industrial relations dispute resolution
c. Tertiary (Non-Legal) legal materials: come from other supporting books and media on the internet.

In this research, researchers used literature study techniques (secondary data), namely by collecting various kinds of books and literature, as well as data from both journals and articles taken from internet media related to the resolution of industrial relations disputes.

The data analysis method used in this thesis is analytical – descriptive. Analytical in question is that the author in writing this thesis is intended to analyze legal issues between companies and workers/labourers as well as settlement of industrial relations disputes. The analysis carried out by the author also includes an analysis of legal theories and doctrines related to the subject matter which will then be used by the author in describing the problems in this study. Meanwhile, descriptive is for the next writer to then accurately describe the circumstances and symptoms that have been previously analyzed to then be elaborated and processed in a research result.

B. Discussion

1. Juridical Problems Termination of Employment Due to Force Majeure


The progress of a country's economy will affect national development which will ultimately bring prosperity to the community, in this case it is necessary to maintain a harmonious business world between employers and workers/labourers. In addition, the role of the government is very important in setting regulations in the field of employment in order to provide legal protection for entrepreneurs and workers/labourers. As stated by Djoko Heroe Soewono, the purpose of labor law is to maintain order in the working relationship between workers and employers. In order to maintain order, it is necessary to guide behavior in the form of normative law (legal certainty), and directed at the ideals of law, namely justice and expediency. These three values underlie the upholding of labor law, besides that Indonesia as a rule of law enforces equal caste before the law (Equality before the Law). Labor law in the legal constitution (Indonesia) is an implementation of the basic philosophy, namely Pancasila and the basic theory (1945 Constitution).\(^{11}\)

In practice, the implementation of working relations between employers and workers/labourers does not always run harmoniously, there are many problems/conflicts that give rise to disputes between the two, hereinafter in manpower it is known as industrial relations disputes and when viewed from the type, industrial relations disputes as in Law Number 2 of 2004 there are several types, namely:

1. Rights dispute

Rights disputes are disputes that arise due to non-fulfillment of rights, due to differences in the implementation or interpretation of statutory provisions, work agreements, company regulations or collective bargaining agreements (Article 1 number 2 Law Number 2 of 2004)

2. Interest disputes
Disputes of interest are disputes that arise in work relations because there is no conformity of opinion regarding the making, and/or changes to work conditions stipulated in work agreements or company regulations or collective bargaining agreements (Article 1 point 3 Law Number 2 of 2004)

3. Layoff Disputes
Disputes on termination of employment (PHK) are disputes that arise because there is no conformity of opinion regarding termination of employment by one of the parties (Article 1 point 4 of Law Number 2 of 2004)

4. Disputes between trade unions/labor only within one company.
Disputes between trade unions/labor are disputes between trade unions/labor unions and other trade unions/labor unions only within one company because there is no conformity in understanding regarding membership, implementation of rights and obligations of the unions (Article 1 point 5 of Law Number 2 of 2004).

Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law) in practice is a rule that regulates the rights and obligations of both employers and workers/labourers, and in essence, labor law is to protect workers from arbitrary actions by the authorities, because legally the positions of workers and employers are the same (Article 27 of the 1945 Constitution).

Djoko Heroe Soewono explained that legal rights and protection for workers stem from the Labor Law, including (legal aspects): a. Rights and protection of occupational safety and health, b. Welfare rights and protection (Jamsostek), c. Rights and protection of freedom of association, d. Rights and protection of covert or unilateral termination of employment, Rights and protection of wages, f. Rights and protection of working time (includes: overtime work); g. Rights and protection of the interests of worship, childbirth, menstruation, annual leave, rest between working hours, weekly rest; h. and other normative protection.

In the Manpower Act, there are a number of problems that give rise to many legal issues in employment, including work agreement issues, problems with the wage system and protection of workers, as well as problems with termination of employment.

1. Work Agreement
Work agreements are inseparable from the workers/workers, employers/employers, labor/workers organizations, employers’ organizations, and the government, the five parties are mutually influential and interrelated elements in industrial relations. In an employment relationship, it cannot be separated from a work agreement, the condition for an employment relationship is that there must be a work agreement.

As part of a work agreement, in general, you must meet the requirements for the validity of the agreement as stipulated in Article 1320 of the Civil Code and Article 52 paragraph (1) of the Manpower Law, namely:

a. Both sides agree
b. Ability or ability to carry out legal actions
c. There is an agreed job
d. The agreed work must not conflict with public order, decency, and the provisions of the applicable laws and regulations.14

---

In a work agreement there are several important elements that support each other, namely:

1. There is an element of work or work
   In a work agreement, there must be work agreed upon and carried out by the worker himself where an employer can order another person to do it, and the work must be based on and guided by the work agreement.

2. There is an element of service or service
   In a work agreement, workers will obey the employer/employer as agreed.

3. There is an element of time or a certain time
   In carrying out a work relationship, it must be in accordance with the time specified in the work agreement or statutory regulations, so that it is not done at will, the time specified in this case means the period agreed in the work agreement.

4. There is an element of wages
   The element of wages plays a very important role in an employment agreement, even the main purpose of workers/laborers who do work in a company that incidentally is owned by the entrepreneur is to get wages it can be said that without wages, the relationship is not an employment relationship.\footnote{Broto Suwiryo, 2017. \textit{Hukum Ketenagakerjaan (Penyelesaian Perselisihan Hubungan Industrial Berdasarkan Asas Keadilan)}, LaksBang PRESSindo. Surabaya. p.71-73.}

Based on the form, agreements can take the form of written and oral agreements, normatively written agreements guarantee more certainty about the rights and obligations of the parties, so that if unwanted things occur such as disputes, they can be very helpful in the process of proving the parties. Even so, there are still many companies that have not entered into a written agreement due to various reasons, including a lack of human resources or because of habit only based on trust from both parties.

The Manpower Law uses the term Collective Labor Agreement (PKB) as in Article 1 point (21) which states that PKB is an agreement that is the result of negotiations between trade/labor unions or several trade unions/labor unions registered with the agency responsible for manpower affairs and employers or several employers or associations of employers which contains working conditions, rights and obligations of both parties.

The Collective Labor Agreement (PKB) is a form of deliberation to reach a consensus so that harmonious and ethical industrial relations are built, within the PKB it includes and provides clarity on the following matters: (a) clarifies the rights and obligations of employers, trade unions and workers, (b) stipulates terms and conditions of work, (c) improves and strengthens work relations, (d) determines ways of settling differences of opinion between trade unions and employers, (e) maintains and improves work discipline.\footnote{R. Joni Bambang S, 2013, \textit{Hukum Ketenagakerjaan}, CV. Pustaka Setia, Bandung. p.122.}

An agreement is very important especially in the world of manpower because there are still many problems in work agreements that become conflicts between employers and workers where there are still many unequal agreements between the two parties, even though with the existence of the Labor Law as expected by all parties, this regulation can be used as a guideline for the world of work so that it can provide security, protection, and comfort for workers as well as the rights and obligations of both parties, both employers and workers.

b. System of wages and work protection

The definition of wages as set forth in Article 1 paragraph 30 of the Manpower Law is the rights of workers/laborers who are received and expressed in the form of money as compensation from employers or employers to workers/laborers who are determined and paid according to a work agreement, agreement, or laws and regulations, including benefits for workers/laborers and their families or for work and/or services that have been or are performed. According to Yeni Nuraeni, the wage system in Indonesia uses the minimum wage concept which is intended as a safety net and guarantees that there are no poor workers. The minimum
wage is the lowest wage in the economy. The existence of a minimum wage is expected to protect workers from exploitation in the labor market which is usually experienced when there is a surplus of labor, such as in Indonesia. Minimum wages are set to ensure workers can meet their daily needs.\textsuperscript{17}  

As we all know, the Manpower Law has regulated wages which are listed in Chapter I-General Provisions Article 1 and Chapter X-second part of Articles 88 to Article 98 as well as special regulations regarding wages.

According to R Joni Bambang S in the world of employment, wages and severance pay are crucial issues, policies that are unfair, reasonable, and professional towards wages and severance pay can lead to instability in the work environment which leads to industrial conflict between workers and companies. On the other hand, fair, reasonable, and professional policies regarding wages and severance pay will increase motivation, which in turn will increase worker productivity so as to create good and harmonious relations between workers and companies. Therefore, it is necessary to enact laws and regulations that regulate wages and severance pay in a fair, reasonable, and professional manner. The regulation of wages and severance pay is not only limited to technical calculations and payments but must also discuss the process and mechanism for implementing wages and severance pay\textsuperscript{18}.

There are several problems in the remuneration of workers, including the first in the field of wages, in general, different understandings and interests regarding wages because, for employers, wages can be seen as a burden because the more wages issued, the smaller the company's profits, while for employees only perceive wages as income in the form of money, the second relates to the diversity of the wage system, third the low level of wages or community income, the fourth level of wages can differ according to the level of efficiency and company management, fifth differences in the ability or strength of trade unions can result in differences in wage levels, sixth wage rates can also differ due to scarcity factors, seventh the size of the risk and the possibility of getting an accident in the work environment.\textsuperscript{19}.

The law as a guide in setting wages should be guided by employers as company owners in terms of improving the welfare of workers/laborers.

Every worker/laborer has the right to earn income that fulfills a decent living for humanity (Article 88 paragraph (1) of the Manpower Law). government policies regarding wages that protect workers/laborers include:

1. Minimum wage
2. Overtime pay
3. Wages do not come to work due to absence
4. Wages are absent from work due to other activities outside of work.
5. Wages for exercising the right to rest time
6. The form and method of payment of wages
7. Things that can be calculated with wages
8. Proportionate structure and scale of wages
9. Wages for severance pay
10. Wages for income tax calculation\textsuperscript{20}

In addition to the issue of wages, job protection is also very important in the world of employment where a regulation is needed to protect workers so that they can work as well as possible.

Occupational protection in terms of worker health is needed in an employment relationship, health care is intended to increase labor productivity so that with this health insurance workers

\textsuperscript{17} Yeni Nuraeni, “Analisis terhadap Undang-Undang Ketenagakerjaan Indonesia dalam menghadapi tantangan Revolusi Industri 4.0” Jurnal Ketenagakerjaan, Vol 15, No.I, Januari-Juni 2020, p.8.
\textsuperscript{20} Ibid.
can carry out their duties properly. There are many risks at work faced by workers so employers as owners of the company are obliged to provide protection, and maintenance for the sake of increasing the welfare of workers in order to create a sense of security and comfort at work. As time went on, in reality, work protection efforts did not work as expected, there were many cases of demonstrations, and strikes by workers/labourers as evidence of labor conflicts which resulted in termination of employment as the company's last alternative in solving the problem.

According to Zaeni Asyhadie as quoted by R. Joni Bambang theoretically, there are three types of job protection, namely as follows: (1) social protection, namely protection related to community efforts, which allows workers/laborers to live and develop their lives as humans in general, and especially as members of society and family members. Social protection is also called occupational health, (2). Technical protection, namely the type of protection related to efforts to protect workers/laborers from the dangers of accidents caused by work tools or materials being worked on. This protection is more commonly referred to as work safety, (3) Economic protection, which is a type of protection related to efforts to provide workers/laborers with sufficient income to meet their daily needs and their families, including in the event that workers/laborers are unable to work because of something against their will. This type of protection is usually referred to as Social Security.

Protection of workers is intended to guarantee the basic rights of workers and guarantee equality without discrimination for the welfare of workers, this must also be based on progress in the business world and the interests of employers.

c. Termination of employment

Termination of Employment Relations (PHK) is an event that is very unexpected for workers/labourers, in which with layoffs the work that is a person's livelihood will be cut off resulting in the economic factors of the worker/laborer, with various problems that are almost certain to occur, various conflicts arising from the layoffs, the state as a protector for its citizens, must be balanced with various regulations as a form of state protection for citizens for their rights, this is very important, especially Indonesia as a rule of law, where it is very clear, many articles prioritize the rights of citizens as stated in the 1945 Constitution.

As mentioned by Yeni Nuraeni, several adjustments to the Labor Law in Indonesia that are needed in relation to the issue of layoffs are as follows:
1. The form of compensation for layoffs is provided with severance pay and compensation for years of service. compensation money is no longer included because there are already other benefits with the same content
2. The amount of layoffs is adjusted to the causes of layoffs, not all of them can be equated but must be adjusted to the reasons for workers being laid off.
3. Merging company ownership cannot be linked to layoffs
4. Currently, the concept of severance pay on paper exists and can be paid, but in reality only 20% receive severance pay because it is too high to pay 32 months' wages, so it is unrealistic.

It is necessary to reduce severance pay compensation, not abolish it but transfer it to other programs, namely social security in the form of job loss benefits (unemployment benefits), certification training guarantees. Workers are more likely to get benefits, it could be bigger than severance pay because there is development. Not everything is in the form of money such as training and certification. Contributions for social security are sought not to add to the burden on entrepreneurs. There is a need to restructure the existing contributions into 2 new programs.

---

22 Yeni Nuraeni, “Analisis terhadap Undang-Undang Ketenagakerjaan Indonesia dalam menghadapi tantangan Revolusi Industri 4.0” Jurnal Ketenagakerjaan, Vol 15, No.I, Januari-Juni 2020, p.11.
In the Manpower Law in Article 1 point 25 it is stated that Termination of Employment (PHK) is the termination of an employment relationship due to a certain matter that results in the end of the rights and obligations between the worker/worker and the entrepreneur. In labor/manpower law, it is known that there are several types of Termination of Employment (PHK), namely:

1. Termination of employment by the employer/employer
Termination of employment carried out by employers is considered to be able to cause fatal problems from the employer to the workers, from the employer's point of view, layoffs are seen as a way to maintain the company's balance in terms of company operations, saving business costs. However, on the other hand, workers view layoffs as ending their livelihood, which is the beginning of misery for workers.

2. Termination of employment by laborers/workers
As with layoffs carried out by employers, on the other hand, on the part of workers, it is in accordance with the principle that workers should not be forced to work continuously, and if a worker does not want it, the worker has the right to end the employment relationship, but this must be done according to the rules.

3. The employment relationship is terminated by law.
If a work agreement is made for a certain time, then such employment relationship will terminate automatically when the work has been completed, so the layoff is a type of termination of termination by law, this termination of termination of employment for the sake of law can also occur if a worker dies.

4. Termination of employment by the court
In principle, both the worker and the employer at any time, even before work begins, based on important reasons, can submit a written request to the District Court that is in accordance with their domicile to declare layoffs.23

As a result of termination of employment, there will be obligations that must be fulfilled by the employer to the worker/labourer, namely paying severance pay and/or other rights such as gratuity pay and compensation pay for workers/labourers. For workers who have been laid off, they are entitled or not entitled to severance pay, award money, and compensation money. Regulations regarding severance pay, award pay, and compensation pay are regulated in Article 156, Article 160 to Article 169 of Law No. 13 of 2003 concerning Manpower.24

From this, we can all know that there are many juridical problems in the Manpower Law, including the problems that must often occur in society, for example, problems with work agreements where there are still many unequal agreements, problems with the wage system, and work protection, and problems with the termination of employment. Therefore, in an employment agreement, it is hoped that it will contain rules regarding the rights and obligations as well as the interests of both parties, both employers and workers, in a balanced manner as a guideline for the implementation of employment relations. It is also necessary to have laws and regulations that regulate wages and severance pay in a fair, reasonable, and professional manner so as to create good and harmonious relations between employers and workers.

b. Juridical Problems in Decision Number 30/Pdt.PHI/2020/PN Gsk.
In the lawsuit case Number 30/Pdt.PHI/2020/PN Gsk, the dispute between PT Tekun Karya Abadi and its 10 (ten) workers, when viewed from its type, is included in the type of Termination of Employment (PHK) dispute, but basically the problem of the layoff dispute has occurred in an agreement between the two parties as in the bipartite minutes carried out by the Plaintiff and the Defendants, this is also based on the evidence submitted by the Defendants, namely the Defendants' response, which accepted the advice of the Industrial Relations Dispute

Mediator of the Service Gresik Regency Work with letter number 567/1151/437.58/2020 dated 24 August 2020, and in essence the problem in this case is regarding the settlement of terminating the working relationship between the Plaintiff and the Defendants. The settlement referred to is regarding the right to severance pay and other rights that must be fulfilled and given to the Defendants by the Plaintiff where the Plaintiff in terminating the employment relationship will provide severance pay rights in the amount of 1 (one) time the provisions of the Labor Law as referred to in Article 164 paragraph (1) of the Labor Law, as well as other rights by means of payment being given in installments of 12 (twelve) times, while the Defendants are asking for severance pay rights in the amount of 2 (two) times the provisions of the laws and regulations employment invitations and other rights as referred to in Article 164 paragraph (3) of the Manpower Law.

Various reasons can be a factor in layoffs, where employers can also terminate the employment relationship with workers/laborers for various reasons including closing the company because the company has suffered continuous losses for 2 (two) years, or forceful circumstances, or also because of the efficiency of the company. This is clearly stated in Article 164 paragraph (1) of the Manpower Law that: Entrepreneurs can terminate the employment of workers/laborers because the company closes because the company suffers continuous losses for 2 (two) years, or force majeure, provided that the worker/laborer is entitled to severance pay of 1 (one) time the provisions of Article 156 paragraph (2) gratuity pay of 1 (one) time the provisions of Article 156 paragraph (3) and compensation pay in accordance with the provisions of Article 156 paragraph (4).

Meanwhile in Article 164 paragraph (3) of the Manpower Law it is stated that: Entrepreneurs can terminate employment of workers/labourers because the company closes not because they experience losses for 2 (two) consecutive years or not because of force majeure, but because the company does efficiency, provided that the worker/labourer is entitled to severance pay of 2 (two) times the provisions of Article 156 paragraph (2), gratuity pay of 1 (one) time the provisions of Article 156 paragraph (3) and compensation for rights according to the provisions of Article 156 paragraph (4).

In the case of industrial relations dispute lawsuit Number 30/Pdt.PHI/2020/PN Gsk there is a problem of termination of employment based on the existence of the Covid-19 pandemic as a reason for Force Majeure in terminating the employment relationship between employers and workers. Meanwhile, determining the Covid-19 pandemic as a reason for Force Majeure in Termination of Employment is not easy because it must be proven with evidence that can be justified by an Independent financial audit, and in case number 30/Pdt.PHI/2020/PN Gsk this is corroborated by evidence in the form of financial reports and profit and loss issued by an independent financial audit party, namely the Accounting Services Office (KJA) PT Sinergy Ultima Nobilus in the form of:

1. Evidence P-1.A, namely the Teka Ordner Shipment Report Chart, PT Tekun Karya Abadi Tah un 2019-2020 (in box units) which decreased;
3. Evidence P-2.A.1, namely the financial statements of PT Tekun Karya Abadi, the balance sheets for January 2020 to August 2020 which were loss-making, prepared by the Accounting Services Office (KJA) of PT Sinergy Ultima Nobilus;
4. Evidence of P-2.A.2, namely PT Tekun Karya Abadi’s Profit and Loss for the period ending August 31, 2020 which made a loss, made by the Accountant Services Office (KJA) of PT Sinergy Ultima Nobilus;
5. Evidence P-2.B.1, namely the Financial Statements of PT Tekun Karya Abadi, the balance sheets for January 2019 to December 2020 which were in deficit, made by the Accountant Services Office (KJA) of PT Sinergy Ultima Nobilus;
6. Evidence of P-2.B.2, namely the Commercial and Fiscal Profit and Loss of PT Tekun Karya Abadi for the period ending August 31, 2019 which was a loss, made by the Accounting Services Office (KJA) of PT Sinergy Ultima Nobilus;

From the report made by the Accounting Services Office (KJA) of PT Sinergy Ultima Nobilus as the party that audited the company's finances, it was stated that the company PT Tekun Karya Abadi experienced a financial deficit/loss. Article 151 paragraph (1) of the Manpower Act states that employers, workers/labourers, trade unions/labor unions and the government must make every effort to ensure that there is no termination of employment.

From the above article it is clearly stated that in employment relations, as much as possible there is no termination of employment relations, with efforts that must be made in advance in a family manner between employers, workers/labourers, trade unions/labor unions and the role of the government, it is hoped that this can prevent termination of employment relations, as we all know with termination of employment all factors are affected, especially workers/labourers and even the families of these workers/labourers are also affected by the worst of the termination of employment of the worker/laborer concerned.

However, with the rapid spread of the corona virus in Indonesia and even throughout the world, it cannot be denied that it has had an impact on the sustainability of the business world, entrepreneurs as company owners have been affected by the presence of Covid-19, many companies have experienced losses, finances have experienced a deficit due to sales of goods that have decreased due to reduced purchasing power of consumers, the community's economy has declined where people with conditions that are increasingly difficult to make a living with the existence of policies restricting the movement of people such as Large-Scale Social Restrictions, and with the increasingly high rate of spread of Covid-19, through its role the government has issued many policies in the form of several regulations and guidelines for handling corona virus disease 2019 (Covid-19). With Presidential Decree Number 12 of 2020 concerning the Stipulation of Non-Natural Disasters regarding the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, and Covid-19 also being referred to as a non-natural event as in Law Number 24 of 2007 concerning Disaster Management in Article 1 paragraph 3 it is stated that non-natural disasters are disasters caused by events or a series of non-natural events which include technological failures, modernization failures, epidemics and disease outbreaks.

In the case of the lawsuit Number 30/Pdt.PHI/2020/PN Gsk, where in its decision the Panel of Judges granted a portion which essentially granted termination of employment by employers against workers/labourers on the grounds of force majeure which was associated with the existence of the Covid-19 pandemic which had an impact on the company.

In the decision on case Number 30/Pdt.Sus-PHI/2020/PN Gsk dated 30 December 2020, the Panel of Judges decided as follows:

JUDGE:

In Convention
1. Partially granted the Plaintiff's lawsuit;
2. Declaring the termination of the working relationship between the Plaintiff and the Defendants since June 11, 2020;
3. Sentenced the Plaintiff to pay severance pay to the Defendants in the amount of 1 (one) time the provisions of Article 156 Paragraph (2) gratuity pay in the amount of 1 (one) time the provisions of Article 156 Paragraph (3) and compensation pay in accordance with the provisions of Article 156 paragraph (4) of Law Number 13 of 2003 concerning Manpower which is detailed as follows:
   1. Mukhamad Rojim, an amount of IDR 93,305,105.00 (ninety-three million three hundred five thousand one hundred and five Rupiah);2. Supi'i, in the amount of IDR
83,651,936.00 (eighty-three million six hundred fifty-one thousand nine hundred thirty-six Rupiah);
3. Suliatin, an amount of IDR 78,825,352.00 (seventy-eight million eight hundred twenty-five thousand three hundred fifty-two Rupiah);
4. Herni, amounting to Rp93,305,105.00 (ninety-three million three hundred thousand one hundred and five Rupiah);
5. Dina Adriani, an amount of IDR 78,825,352.00 (seventy-eight million eight hundred twenty-five thousand three hundred fifty-two Rupiah);
6. Dewi Sampi, amounting to Rp93,305,105 (ninety-three million three hundred five thousand one hundred and five Rupiah);
7. Moch. Janu, in the amount of IDR 78,825,352.00 (seventy-eight million eight hundred twenty-five thousand three hundred fifty-two Rupiah);
8. Suteko, an amount of Rp. 78,825,352.00 (seventy-eight million eight hundred twenty-five thousand three hundred fifty-two Rupiah);
9. Arif Rahman, amounting to Rp93,305,105.00 (ninety-three million three hundred fifty-two Rupiah);
10. Agus Suliaidi, amounting to Rp78,825,352.00 (seventy-eight million eight hundred twenty-five thousand three hundred fifty-two Rupiah);

4. Sentenced the Defendant to pay the remaining 2020 Religious Holiday Allowance (THR) to the Defendants in the amount of Rp. 2,097,000.00 (two million ninety-seven thousand Rupiah) each;
5. Rejecting the Plaintiff's claim for other than and the rest;

In Reconvension
- Reject the lawsuit of the Convention Plaintiffs/Convention Defendants in its entirety;

In Conventions and Reconventions
Punish the Convention Defendants/Counterclaim Plaintiffs to pay the court fee which until today is set at Rp. 1,881,000.00 (one million eight hundred and eighty-one thousand Rupiah)

As the judge's considerations have described in the case decision Number 30/Pdt.PHI/2020/PN Gsk, the author can conclude that the juridical problems in this decision are as follows:

1. Whereas the Manpower Act mandates that the parties in industrial relations, namely employers and workers/labourers, try and prevent Termination of Employment (Article 151 paragraph (1) of the Manpower Act it is stated that Employers, workers/labourers, trade unions/labor unions, and the government, must make every effort to avoid termination of employment) but precisely with the Covid-19 pandemic and it was declared a national disaster by the government (Law Number 24 of 2000) 7 Concerning Disaster Management, as well as Presidential Decree Number 12 of 2020 concerning Stipulation of Non-Natural Disasters with the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster) on the other hand, instead open opportunities for employers to have Termination of Employment based on the existence of the Covid-19 pandemic as a reason for Force Majeure in terminating the working relationship between employers and workers/labourers.

2. There are differences of opinion regarding the amount of severance pay rights argued by employers and workers/labourers. Where the employer gives the right to severance pay in the amount of 1 (one) time the provisions of labor laws and regulations and other rights as a result of Covid-19 as a reason for force majeure the company has experienced a decrease in production which results in the company experiencing a financial loss/deficit, while workers/labourers ask for severance pay rights in the amount of 2 (two) times the provisions of labor laws and regulations and other rights. The two arguments put forward by employers and workers/labourers are 2 (two) arguments based on different articles in the Manpower Law, in which one party bases them on Article 164 paragraph (1) of the Manpower Law while the other party on the
basis of Article 164 paragraph (3) of the Manpower Law. As in the legal considerations of this decision which ultimately decided that the amount of severance rights as a result of the employer's obligation to terminate employment relations with workers/laborers is 1 (one) times the provisions of the labor laws and regulations, which is based on strong evidence that has been proven in court which stated that if indeed the company experienced a decrease in orders and a decrease in production so that the business sector run by the Plaintiff experienced a state of financial deficit/loss for months but less than 2 (two) consecutive years as a result of the covid-19 pandemic, and layoffs carried out by the company were a form of efficiency the company in preventing the company from closing due to force majeure so that the company's business continuity can continue.

3. There is an employer's request for the payment of worker/labourer's rights, namely severance pay, gratuity pay and compensation for rights to be carried out in installments, then in legal considerations the judge's decision expressly rejects the employer's obligations that must be given to workers/labourers as a result of termination of employment relations, because in Law Number 13 of 2003 on Manpower and other regulations on Manpower, in principle payment of severance pay compensation must be made all at once in cash because it does not regulate the payment mechanism in installments unless there is an agreement between the two parties, but because the payment of severance compensation is the right of the worker/laborer, so for the sake of legal benefits for the worker/laborer who is affected by the termination of employment it must be paid in cash.

Of the several juridical problems contained in the decision Number 30/Pdt.PHI/2020/PN Gsk, a decision must be based on the principles of justice, legal certainty and expediency where these three principles must be used as a basis in legal considerations, however there is a time when a judge is more concerned with one principle, as in the decision on the lawsuit of PT Tekun Karya Abadi, the author is of the opinion that the principle of expediency is prioritized besides justice for both parties on the basis of a force majeure decision, it is implied that workers are harmed by the amount of severance pay and other rights received by the employer so that unfair justice appears to the laid-off worker, but this is done on the basis of providing legal benefits to all parties, where for the employer this can greatly help the continuation of the company so that permanent closure can be avoided, as well as other losses that may not clearly have an impact, such as the employment of workers with the PKWT system with the casual daily employee system, is still providing opportunities for benefits to these workers.


In Article 164 paragraph (1) of the Manpower Law it is stated that the employer can terminate the employment relations of the workers/laborers because the company is closed due to the company suffered continuous losses for 2 (two) years, or the state of force replacement in accordance with the provisions of Article 156 paragraph (4).

It is indeed not easy to define a situation that can be categorized as a Force Majeure, especially in the Labor Law the term Force Majeure has not been clearly spelled out what is meant, even though on the contrary it is clear that Force Majeure as stated in Article 164 paragraph (1) of the Manpower Law provides an opportunity for employers to terminate employment relations based on Force Majeure reasons.

Several opinions of legal experts in Indonesia, interpreting the concept of force majeure include:

a. R. Subekti: The debtor indicated that the promised was not carried out due to things that were completely unpredictable, and where he could not do anything about the circumstances or events that arose beyond the expectation.
b. Sri Soedewi Masjhoen Sofwan, who quoted H.F.A Vollmar: overmacht is a condition in which it is absolutely impossible for the debtor to fulfill his debt (absolute overmacht) or it is
still possible to fulfill his debt, but requires a great unequal sacrifice or mental strength beyond human ability or and causes very large losses (relative overmacht).

c. Purwahid Patrik interprets overmacht or coercive circumstances to mean that the debtor does not carry out the performance because there are no mistakes, so he will be faced with a coercive situation which he cannot be held accountable for.

Based on some of the opinions of these experts, it can be concluded that a force majeure is a situation where one of the parties in an engagement cannot fulfill all or part of its obligations in accordance with what was agreed, due to an event beyond the control of one of the parties that cannot be known or cannot be expected to occur when making the engagement, where the party that does not fulfill this obligation cannot be blamed and does not have to bear the risk.\textsuperscript{25}

Force Majeure / Overmach is a situation that occurs after the agreement is made, which prevents the debtor from fulfilling the achievement, the debtor in this case cannot be blamed and does not bear the risk and cannot predict when the agreement is made.\textsuperscript{26} Various reasons can be the reasons for layoffs, where employers can also terminate the employment relationship with workers/laborers for various reasons including closing the company because the company has suffered continuous losses for 2 (two) years, force majeure/forced circumstances, or also because of the efficiency of the company. The Covid-19 pandemic in relation to employment can be classified as a force majeure situation which is an unplanned disaster and beyond the power of both parties so that here the company cannot fulfill its achievements.\textsuperscript{27}

Article 1244 BW states: If there is a reason for this, the debtor must be punished with compensation for costs, losses and interest if he cannot prove that the matter was not or was not carried out at the right time, due to something unexpected, and cannot be held accountable to him. All of that even if bad faith is not on his side. Furthermore, in article 1245 BW it is stated that: There is no loss and interest, it must be reimbursed, if due to coercive circumstances or due to an accidental event the debtor is unable to provide or do something that is required, or because of the same things he has committed a prohibited act. As the Articles of BW mentioned above, the basis governing force majeure is stated in articles 1244 and 1245 BW, from the two articles it can be interpreted that Force Majeure is a force majeure where what is promised is not carried out due to things that are completely unpredictable, and the debtor cannot do anything about the circumstances or events that arise beyond these expectations.

According to the Civil Code, there are 3 (three) elements that must be met in the category of force majeure, namely:

a. Does not meet performance

b. There are reasons that lie beyond the fault of the debtor, as well

c. The factors that cause this cannot be foreseen and cannot be accounted for by the debtor.\textsuperscript{28}

The provisions in these two articles relating to force majeure ultimately provide protection for parties who cannot carry out their obligations according to the agreement not because of negligence or on purpose and instead occur because of losses caused by unforeseen circumstances such as floods, sinking ships, volcanic eruptions, tsunamis, storms, wars, coups.\textsuperscript{29}


\textsuperscript{26} Rasuli Daryl John "Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 dan Pasal 1245 Kitab Undang-Undang Hukum Perdata" \textit{Lex Privatum}, Vol.IV/No.2/Feb/2016, p.173.


According to Putri Andrianti's Waras, Budi Santoso, Mujiono Hafidh Prasetyo, it was stated that based on the possibility of implementing contractual achievements, the Covid-19 pandemic can be categorized as a reason for relative overmacht/force majeure. Based on the cause, the Covid-19 pandemic can be categorized as a reason for overmacht/force majeure due to government policies or regulations. Based on the subject, the Covid-19 pandemic can be categorized as a subjective reason for overmacht/force majeure. Based on its nature, the Covid-19 pandemic can be categorized as a reason for temporary/temporary overmacht/force majeure. In addition, based on other criteria in contract law, the Covid-19 pandemic can be categorized as a force majeure due to impracticability.30

From several formulations of articles in BW relating to force majeure, there are at least 3 (three) elements that must be met for force majeure, namely:

1. Not fulfilling the achievement
2. There is a cause that lies beyond the fault in question
3. The causal factor was not suspected beforehand and cannot be accounted for to the person concerned.

In addition, in a force majeure event, it must be proven by the person or party concerned regarding:

1. That he is innocent
2. That he cannot fulfill his obligations in any other way
3. He cannot take risks.31

Furthermore, according to Munir Fuady as quoted by Broto Suwiryo, it is stated that force majeure can be divided into various types, when viewed from the point of view of the target affected by force majeure, force majeure is often distinguished into:

1. Objective Force Majeure, namely force majeure that occurs over the object which is the object of the contract. That is, the condition of the object is such that it is no longer possible to fulfill the performance according to the contract, a sign of an element of error on the part of the debtor. For example, if the object is burnt, it is absolutely impossible to fulfill the achievement because it is the object that is the object of the contract that is affected. Force Majeure like this is also called physical impossibility.

2. Subjective Force Majeure, namely Force Majeure that occurs in connection with the actions or abilities of the debtor himself, for example if the debtor is seriously ill so that it is impossible for him to excel again. When viewed in terms of the period of time when the circumstances causing the Force Majeure to occur, Force Majeure can be divided into:

   1. Permanent Force Majeure, that is, if at all times an achievement issued from a contract is no longer possible to do. For example, if the goods which are the object of the contract are destroyed beyond the fault of the debtor.

   2. Temporary Force Majeure, if it is temporarily impossible to fulfill the performance of the contract. Or in other words, because a certain event occurs, then after the event stops, the achievement can be fulfilled again. For example, if the goods that are the object of the contract cannot be delivered due to social upheaval. However, when conditions are safe, the item can be sent back.32

According to Fuady, as mentioned by Waras Putri Andrianti, Budi Santoso, Mujiono Hafidh Prasetyo, based on the possibility of performance implementation in the contract, it is said that force majeure can be classified into two types, namely:

32 Munir Fuadi, 2015. Hukum Kontrak (Dari Sudut Pandang Hukum Bisis), Bandung, PT. Citra Aditya Bakti, p.115.
a) Absolute force majeure, a force majeure is said to be absolute if at any time an achievement issued from a contract is no longer possible. For example, if the goods which are the object of the contract have been destroyed due to burning beyond the fault of the debtor.

b) Relative force majeure, meaning that it is a force majeure where the fulfillment of achievements normally is not possible, even though it is still possible to do so. For example in an import-export contract where after the contract is made there is a ban on the import of the goods. In this case it is no longer possible for the goods to be delivered (imported), even though in fact they can still be sent via smuggling routes, for example. In this case it can be said that the contract is still possible to implement, but it is no longer practical. This is also commonly referred to as impracticability).\(^{33}\)

From the lawsuit case between PT Tekun Karya Abadi and Mukhammad Rojim, et al., the author can conclude that there are several juridical problems that were used as the reason for the company terminating employment related to Force Majeure, including:

1. Termination of employment by the company for 10 (ten) workers/laborers as a result of the COVID-19 pandemic.

In this case, the company PT Tekun Karya Abadi has terminated the employment of 10 (ten) workers/laborers namely on behalf of Mukhammad Rojim, Supi’i, Suliatin, Herni, Dina Andriani, Dewi Sampi, Moch. Janu, Suteko, Arif Rahman, and Agus Suljadi, here the company postulates that the existence of the Covid-19 pandemic has had an impact on the company, where PT Tekun Karya Abadi is a service company which only produces at the request of buyers, the Covid-19 pandemic which is a national disaster that cannot be predicted in advance when it will come and when it will end, the company PT Tekun Karya Abadi as a company that manufactures other which with the existence of the Covid-19 pandemic has had the worst impact, so that conditions that are very unexpected by the company will layoffs of employees still cannot be avoided, financial deficits have made the company adopt a layoff policy for its permanent employees, while the company is still trying to be able to operate by only hiring employees with a certain time work agreement (PKWT) with the agreement that if production does not run due to reduced orders, they are willing to be laid off without being paid wages until things return to normal. This is evidenced by the existence of several work agreements between the company and several PKWT employees as proposed by the company as follows:

1. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Adi’in dated 16 June 2020, then marked with proof P-5.1;
2. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Agung Dwi Prasetyo dated 15 June 2020, then given proof of P-5.2;
3. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Andrianto dated August 4, 2020, then given proof P-5.3;
4. Photocopy according to the original, the Specific Time Work Agreement and the Joint Agreement on behalf of Ahmad Naghib dated 16 June 2020, then given proof of P-5.4;
5. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Devin Nandra Permata dated 4 August 2020, then given proof of P-5.5;
6. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Deni Suryanto dated 16 June 2020, then given proof of P-5.6;
7. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Heri Santoso dated 6 July 2020, then given proof P-5.7;
8. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Irwan dated 15 June 2020, then given proof P-5.8;

---

9. Photocopy of the original, Specific Time Work Agreement and Joint Agreement in the name of Muhammad Angga Alfatiq Rahman dated 15 June 2020, then given proof of P-5.9;
10. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Mohammad Alfan Efendi dated 4 August 2020, then given proof of P-5.10;
11. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Suparjan dated 4 August 2020, then given proof P-5.11;
12. Photocopy of the original, Specific Time Work Agreement and Joint Agreement on behalf of Suparmi dated 4 August 2020, then given proof P-5.12; 13. Photocopy according to the original, the Specific Time Work Agreement and the Joint Agreement on behalf of R. Bambang Wisnu TW dated 16 June 2020, then given proof P-5.

13. As we know that there are 3 (three) elements that must be met for force majeure, namely:
   a. Does not meet performance
   b. There is a reason that lies beyond the fault in question;
   c. The causal factors were not suspected beforehand and cannot be accounted for to those concerned.

   Furthermore, based on the limitations of the elements of an event, it can be said as a Force Majeure, the Covid-19 pandemic with the issuance of Presidential Decree Number 12 of 2020 concerning the Stipulation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, is something that can justify its existence as a Force Majeure because Covid-19 is a non-natural disaster that occurred outside the company's fault where it appeared and we don't know the cause, the Covid-19 pandemic with its rapid spread so that the government made efforts to overcome and suppress its spread where many policies have been issued such as the PSBB, quarantine, and vaccination programs, this is proof that the Covid-19 pandemic is not an ordinary disease but an outbreak or pandemic that cannot be predicted when it will disappear and end. Is a causal relationship, where covid-19 is a cause that results in the company experiencing losses so it adopts a policy of terminating employment for its employees.

2. The decline in the company's production had an impact on the termination of employment by the company for 10 (ten) workers/laborers.

   As a service company, PT Tekun Karya Abadi is an owner manufacturing company whose production is only based on orders from third parties/buyers/orderers with the presence of Covid-19, this has had a very significant impact due to a decrease in the order orders so that the production of goods does not run normally as before the Covid-19 pandemic. This is evidenced by the existence of a public accountant audit which in this case was carried out by the Accounting Services Office (KJA) of PT Sinergy Ultima Nobilus which obtained reports and results as follows
   a. Evidence of P-1.A, namely the Chart of Teka Ordner Delivery Reports, PT Tekun Karya Abadi for 2019-2020 (in box units) which has decreased;

From the evidence from the results of the accounting service office's report, it was obtained that PT Tekun Karya Abadi experienced a decline in production and as a company that was directly affected by the Covid-19 pandemic, an unexpected legal event which occurred not due to the fault of the company or workers/laborers so that this resulted in obstacles for the company to perform well according to its obligations in a work agreement.

3. Losses experienced by the company as a result of Covid-19 as a basis for force majeure.
According to Broto Suwiryo, in a force majeure event, the person or party concerned must be able to prove: a. That he is innocent; b. That he could not fulfill his obligations in any other way c. He couldn't take the risk.34

As an element of proof that must be proven by the party concerned, in this case PT Tekun Karya Abadi, which has terminated employment of 10 (ten) of its employees, the company must be able to prove that it is not guilty of the losses suffered by the company because the covid-19 pandemic is something that is not wanted by everyone, especially the business world, which is definitely directly affected, that with the existence of covid-19, the company PT Tekun Karya Abadi experienced a financial deficit, which can be proven by the existence of a public accountant audit which in this case was carried out by the Accountant Services Office (KJA) PT. Sinergy Ultima Nobilus which reports and results are as follows:

a. Evidence P-2.A.1, namely the financial statements of PT Tekun Karya Abadi, the balance sheets for January 2020 to August 2020 which were loss-making, made by the Accountant Services Office (KJA) of PT Sinergy Ultima Nobilus.

b. Evidence P-2.A.2, namely PT Tekun Karya Abadi's Profit and Loss for the period ending August 31, 2020 which made a loss, made by the Accountant Services Office (KJA) PT Sinergy Ultima Nobilus.

c. Evidence P-2.B.1, namely the Financial Report of PT Tekun Karya Abadi, the balance sheet for January 2019 to December 2020 which was a deficit, made by the Accountant Services Office (KJA) of PT Sinergy Ultima Nobilus.

d. Evidence P-2.B.2, namely the Commercial and Fiscal Profit and Loss of PT Tekun Karya Abadi for the period ending August 31, 2019 which was a loss, made by the Accounting Services Office (KJA) of PT Sinergy Ultima Nobilus.

From the report made by the Accounting Services Office (KJA) of PT Sinergy Ultima Nobilus as the party that audited the company's finances, it was stated that the company PT Tekun Karya Abadi experienced a financial deficit/loss.

Furthermore, with the existence of Covid-19, companies that experienced a decrease in orders and resulted in a decrease in production resulting in a financial loss/deficit, the company could not avoid which under difficult conditions ended up terminating the employment relationship which was a form of efficiency to reduce losses suffered by the company in order to avoid closing permanently if it suffered a loss of 2 (two) consecutive years due to force majeure experienced by the company.

From the many juridical problems that occur in the Manpower Act, especially the juridical problems regarding termination of employment based on the reasons of the Covid-19 pandemic to determine layoffs due to force majeure, it can be concluded that this can be justified as long as the truth can be proven with accurate and accountable evidence. As in the PT Tekun Karya Abadi lawsuit in which 10 (ten) workers were terminated on behalf of Mukhamad Rojim, Supi’i, Suliatin, Herni, Dina Andriani, Dewi Sampi, Moch. Janu, Suteko, Arif Rahman, and Agus Sulidi on the grounds of covid-19 as a Force Majeure, which was decided by the Panel of Judges by granting the Termination of Employment carried out by PT Tekun Karya Abadi against 10 (ten) workers on the basis of Covid-19 as a reason of Force Majeure. As emphasized in Law Number 24 of 2007 Concerning Disaster Management in Article 1 paragraph (3) that non-natural disasters are disasters caused by events or a series of non-natural events which include technological failures, modernization failures, epidemics and disease outbreaks.

Furthermore, we all know that Covid-19 is as stated by the World Health Organization (WHO) which has stated that Covid-19 is a disease outbreak (pandemic), then with Presidential Decree Number 12 of 2020 concerning Disaster Stipulation Non-Natural Spread of Corona Virus Disease 2019 (COVID-19) As a National Disaster and the issuance of various other

policies in terms of handling and controlling the spread of Covid-19, including Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19), Presidential Decree Number 11 of 2020 concerning Stipulation of Public Health Emergency Corona Virus Disease 2019 (COVID-19), Minister of Health Regulation 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), Presidential Decree Number 12 of 2020 concerning Stipulation of Non-Natural Disasters of the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, the authors are of the opinion that the Covid-19 pandemic is a strong reason to be categorized as a Force Majeure because in the case of Termination of Employment it is a form of efficiency to reduce losses suffered by the Plaintiff to avoid the closing of the company if it suffers losses for 2 (two) consecutive years due to adverse circumstancescoercion (force majeure) suffered by the Plaintiff, where the circumstances at the company PT Tekun Karya Abadi can be declared to have experienced a legal event of a force majeure or force majeure or overmacht or force majeure and or an unexpected legal event occurred outside of the Plaintiff's fault resulting in an obstacle to performing well in accordance with its obligations in an agreement/work relationship. So that the existence of force majeure or overmacht or force majeure due to the existence of an unexpected legal event and occurring beyond the fault of the parties is unfair if one party is subject to an aggravating punishment due to things that cannot be avoided especially if that party is also directly affected by losses from conditions due to the force majeure.

As stated by Frederikus Fios that as a supporter of utility theory, Bentham said that the purpose of law must be useful for individuals in society in order to achieve as much happiness as possible.35

The author is of the opinion that from the PT Tekun Karya Abadi case, as a legal result of applying the force majeure basis in terminating employment relations on the amount of severance pay and other rights for workers, this is a matter that brings benefits even though justice does not seem to be carried out because it is unfair for both parties, but this is the best solution because the enormity of workers/laborers' rights based on Article 164 paragraph (3) of the Labor Law is smaller in nominal terms when compared to the basis of Article 164 paragraph (1) of the Labor Law, but the benefits are greater for saving everything (the best option in the most difficult circumstances), then the decision on the amount of severance pay for workers/labourers and other rights should be acceptable to both parties.

C. Conclusion

Based on the previous analysis and discussion, it can be concluded as follows: that with the many problems that have arisen in the employment sector, especially related to termination of employment due to Force Majeure, the Covid-19 pandemic can be categorized in the Force Majeure group because Covid-19 is an unplanned disaster and beyond the control of both parties so that here the company cannot fulfill its achievements, so in this case the Covid-19 pandemic has fulfilled the Force Majeure element where the incident was unexpected and beyond the fault of the company so that this could not be prevented by the employer in fulfilling their obligations, here is also based on the argument with the many policies that have been issued by the government regarding covid-19, as Presidential Decree Number 12 of 2020 concerning the Establishment of Non-Natural Disasters Spread of Corona Virus Disease 2019 (covid-19) as a National Disaster, however, in determining the covid-19 pandemic as a reason for Force Majeure in termination of employment is not easy because it must be proven by proof that the inability of a party to carry out its obligations is caused directly by a force majeure which in

this case is the covid-19 pandemic, where The truth of this evidence must be accounted for by the auditing public accountant, which states that the company has experienced financial losses and deficits as a result of being directly affected by the Covid-19 pandemic.

D. Suggestion

The suggestions for the problems in this study are as follows:
1. For the government, it is hoped that there will be clearer rules/regulations regarding the Force Majeure formulation so as not to cause different interpretations in interpreting it.
2. So that there are no differences of opinion in interpreting a labor case so as to minimize the existence of industrial relations disputes, it is advisable that before being bound in a work relationship, the parties include any clauses that can be categorized as force majeure in a collective labor agreement.
3. The decision in case Number 30/Pdt.Sus-PHI/2020/PN Gsk, can be an example in legal considerations of a decision where the Judge determines the Covid-19 pandemic as the basis for Force Majeure in termination of employment because so far the term Force Majeure is only an interpretation.
4. The decision in case Number 30/Pdt.Sus-PHI/2020/PN Gsk can be used as jurisprudence for judges in other jurisdictions in similar cases later.

References

A. Buku
Marzuki, Peter Mahmud, 2015, Penelitian Hukum Edisi Revisi, PT Kharisma Putra, Bandung.

B. Jurnal

Nuraeni, Yeni “Analisis Terhadap Undang-Undang Ketenagakerjaan Indonesia Dalam Menghadapi Tantangan Revolusi Industri 4.0” Jurnal Ketenagakerjaan, Vol 15, No.I, Januari-Juni 2020.


Soewono, Djoko Horoe, “Analisis Hukum Ketenagakerjaan Di Indonesia” https://hukum.unikkediri.ac.id., diakses pada tanggal 19 Juni 2022

C. Regulation

KUH Perdata (Kitab Undang-Undang Hukum Perdata), Cetakan I 2019, Pustaka Buana.

Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39, Tambahan Lembaran Negara Republik Indonesia Nomor 4279).

Undang-Undang Nomor 2 Tahun 2004 Tentang Penyelesaian Perselisihan Hubungan Industrial (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 6, Tambahan Lembaran Negara Republik Indonesia Nomor 4356).

Undang-Undang Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana (Lembaran Negara Republik Indonesia Tahun 2007 Nomor 66, Tambahan Lembaran Negara Republik Indonesia Nomor 4723).


Keputusan Presiden Nomor 11 Tahun 2020 Tentang Penetapan Kedaruratan Kesehatan Masyarakat Corona Virus Disease 2019 (COVID-19),


Surat Edaran Mahkamah Agung Republik Indonesia Nomor 8 Tahun 2011 Tentang Perkara Yang Tidak Memenuhi Syarat Kasasi Dan Peninjauan Kembali.
