



Workers legal protection in the implementation of "No Work No Pay" principles wages in furlough off status during Covid-19 pandemic

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ABSTRACT

The emergence of the Covid-19 pandemic caused an unstable economic sector in various fields, one of which is the field of employment. The impact of Covid-19 spreading throughout the world has been felt by workers and employers in Indonesia. One of the labor problems faced during the Covid-19 pandemic is the company's operational problems, where employers leave their workers temporarily by implementing a "no work no pay" wage. However, the implementation of remuneration can only be carried out sometimes for workers. The problem in this journal article is about how workers' legal protection on wage problems with the "no work no pay" system when workers were put on leave during the Covid-19 pandemic and the solution to resolve labor disputes situation during the Covid-19 pandemic. The method used by the researcher is normative juridical research. The research results show that Workers can apply for the settlement of industrial relations disputes both in non-litigation and litigation following the Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes

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1. INTRODUCTION

At this time, such in other countries in the world, Indonesia is facing the Covid-19 pandemic. The first case of Covid-19 (hereinafter referred to as Coronavirus) was known in December 2019, a mysterious case of pneumonia first reported in Wuhan, Hubei Province, China. The source of this case transmission is still not known for certain, but the first case was attributed to a fish market in Wuhan (Rothan & Byrareddy, 2020).

This disease was initially named as 2019 novel coronavirus (2019-nCoV), then WHO announced a new name on February 11, 2020, as Coronavirus Disease (COVID-19) caused by the Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2) virus (WHO, 2020b). The virus can be transmitted from human to human (Yuliana, 2020) and has spread widely in China and more than 190 other countries and territories (WHO, 2020a). On March 12, 2020, WHO declared Covid-19 a pandemic (World Health Organization, 2020).

Covid-19 has obstructed the several sectors mobility of people's lives. In Indonesia, one of the sectors that has been greatly affected by this pandemic is the employment sector. The widespread of the Covid-19 in almost all regions of Indonesia greatly affects the performance,

productivity, company finances, and the obligation of entrepreneurs to meet the needs of operational costs, one of which is paying for normative workers' rights, such as wages.

In preventing the transmission of Covid-19, the Government issued several rules in responding to changing times and also those related to employment. This will be discussed in the discussion section of this research. The crisis is started from the health dimension due to the Covid-19 pandemic is now spreading to the economic sector. Economic activity has continuously decreased in intensity to a level unprecedented in the current era (Anwar, 2020).

There are various efforts made by the company to maintain its workforce even though the company's activities are affected by the Covid-19 pandemic. The survey results by the Central Statistics Agency show that reducing working hours is a relatively more taken step by companies than other options. Meanwhile, there are other options, such as being laid off unpaid and partially paid, as well as laying off workers in a short period of time. The laid-off workers with very little full pay are 3.69% (Jayani, 2020).

In carrying out their work, the workers will first have an employment relationship with the employer. The employment relationship is based on an employment agreement. Employment problems actually contain economic, social, political, and welfare dimensions (Adrian Sutedi, 2011).

Indonesian Labor Law recognizes a principle of *no work, no pay* which means that if the worker does not work, they will not get wages. This is also as contained in Law No. 13 of 2003 concerning Manpower, article 93 paragraph (1), and Government Regulation Number 36 of 2021 concerning Wages, Article 40 paragraph (1). This article is intended to foster a sense of responsibility in workers for the mandate of the work they have in the workplace (Irfan *et al.*, 2021).

According to an ILO report in October 2020, the global garment trade had collapsed in the first 6 months of 2020 due to the Covid-19 pandemic. Imports from Asian countries in buyer countries fell by 70%. The hit to the garment industry due to the Covid-19 pandemic also threatened its workers. Garment factories have been forced to lay off, give leave, reduce working hours, not renew contracts, and cut middle wages due to the Covid-19 pandemic crisis.

Since the beginning of the pandemic, more than 162 export-oriented garment factories registered with the ILO's Better Work have had to temporarily close as well as reduced working time, days, or wages for a period of time due to Covid-19 restrictions or orders cancellation from buyers. According to ILO, as of May 7, 2021, more than 237,216 workers were affected, while 22,840 people. "Laid-off workers have to endure wage reductions, while some employers have experienced *No Work No Pay* which is very detrimental to the worker's main source of income (BetterWork, 2020).

2. RESEARCH METHOD

The research method used in the preparation of this research is a normative/doctrinal legal research method (law as it is in books). It is a normative juridical research on the basis of law conceptualized which is developed on the basis of the doctrine of the postivism school. This basis is characterized as *lex* or *lege* instead of *as ius* (Soetandyo Wgnosoebroto, 2016). The type of research was carried out from the point of view of prescriptive research. It aims to obtain suggestions on what should be done to overcome certain problems. Referring to the concept of title and problem formulation, this research article used secondary data sources or literature, namely the writing that was carried out by examining library materials or secondary data in the form of laws and regulations, court decisions, legal theories, and the opinions of scholars. Research is a basic means in the development of science and technology. Therefore, the research aims to reveal the truth systematically, methodologically, and consistently through the research process, analysis, and construction of the data that have been collected and processed (Soerjono Soekanto and Sri Madmuji, 2009). The data used in making this research was obtained from secondary data used in legal research (Soerjono Soekanto and Sri Madmuji, 2009), namely: a) primary legal materials sourced from laws governing labor and also all implementing regulations related to labor. b) secondary legal materials, which consist of secondary legal materials sourced from legal science books and other legal writings (Muhammad, 2004) c) tertiary legal materials, namely legal materials that provide a guide or an explanation of primary legal materials and secondary legal materials which include dictionaries and encyclopedias related to this writing (Soerjono Soekanto

and Sri Madmuji, 2009). In literature research, technical data collection was used by tracing primary legal materials, namely tracing several kinds of laws and regulations, such as the Civil Code, Laws, Government Regulations, Presidential Regulations, Presidential Decrees, Ministerial Regulations related to the application of *No Work No Pay* during the Covid-19 pandemic and secondary materials related to literature, namely books, papers, and scientific papers related to research, as well as tertiary legal materials in the form of legal dictionaries.

3. RESULTS AND DISCUSSIONS

Wages from the worker/labor side are a right that is generally seen from the amount, while from the employer's side it is generally associated with productivity (Uwiyono, 2014). Article 93 paragraph (1) of Law Number 13 of 2003 concerning Employment states that wages are not paid if a labor worker does not perform his work. The article is a legacy of Article 1602b of the Civil Code (*BW*) which states that "no wages shall be paid for a period of time as long as the laborer does not perform his work.

The wage policy is based on the Civil Code (article 1602) which mentioned that wages are based on an agreement between the employer and the worker, at a specified time. Generally, workers get protection from the government, but the amount of wages that will be given by workers/laborers is adjusted to the agreement (Bahri, 2020). An employment agreement that forms the basis of labor law in principle is a civil agreement. However, the Labor Law governing such contracts must be incorporated into public law. Thus, to the agreement that applies the general rules of civil law (Agreement), as stipulated in the Civil Code as well as the rules of public law of a coercive nature regulated in the Manpower Law, it can be stated that the Manpower Law combines provisions in the realm of civil law and public law (Agusmidah, 2012). This means that the government or the state does not interfere in terms of the amount of wages that will be obtained by workers/ laborers. This industrial relationship leads a contractualist model (between employers and workers/unions)

Wages are not paid if the worker/laborer does not do the work. This provision is strengthened by Government Regulation (PP) Wage No. 36 of 2021, Article 40 paragraph (1): Wages are not paid if the worker/laborer does not come to work and/or does not do work. So, when a worker does not come to work or fails, the legal provisions expressly regulate this principle, so that the company cannot be considered as not following the rules if it does not pay the wages of employees who do not come to work for no reason.

During the Covid-19 pandemic, many companies laid off their workers, even though these workers wanted to work and this was not actually categorized as absent (Language Development and Development Agency, 2016). Of course, it was the meaning by 'No Work No Pay' above that has an exception contained in article 40.2 PP No 36/2021. However, article 40.2.d says that workers are willing to do the work that has been promised but the Employers do not hire them because of the Employer's own fault or obstacles that employers should be able to avoid (Republic of Indonesia, 2021). This is also regulated in Law 13/2003, article 93 paragraph 2.F which is not mentioned for explanation. Therefore, in the situation of the Covid-19 pandemic, the workers assess that they are willing to do the work that has been promised but the employers do not hire them so they do not get a wage.

There are regulations regarding wages when workers do not come to work. However, the regulation of conditions during the Covid-19 outbreak is different from the previous rules when there is no normal state of illness. Basically, the term of "laid off" is not known in Law Number 13 of 2003 concerning Manpower. However, this does not mean that there is no legal umbrella that accommodates this term. Until now, the matters related to the term of "laid off" can refer to item of the Circular Letter of the Minister of Manpower to Company Leaders throughout Indonesia No. SE-907/MEN/PHI-PPHI/X/2004 concerning Prevention of Mass Termination of Employment (SE Menaker 907/2004) as well as in the Circular Letter of the Minister of Manpower Number SE-05/M/BW/1998 of 1998 concerning Wages of Laid-Off Workers Not in the Direction of Termination of Employment (SE Menaker 5/1998). In SE- 907/MEN/PHI-PPHI/X/2004, it is stated that if in the company experience difficulties that can have an effect on employment, then termination must be a last resort. After an effort has been made, such as 1) reducing the wages and facilities of top-level

workers, for example the level of managers and directors; 2) reducing shifts; 3) restricting/abolishing overtime work; 4) reducing the working hours; 5) reducing the working day; 6) applying temporarily leave or lay off workers/laborers; 7) not extending contracts for workers who have expired their contracts; and 8) providing pensions for those who are already eligible.

Meanwhile, in the Circular Letter of the Minister of Manpower Number SE-05/M/BW/1998 concerning Wages of Laid-Off Workers Not Towards Termination of Employment (SE Menaker 5/1998), it is stated that there is no law that regulates the wages of workers during layoffs, in the event of an employer's plan to lay off workers. Wages during layoffs are carried out as follows: a) Employers continue to pay wages in full, namely in the form of basic wages and fixed benefits as long as the worker is laid off, unless stipulated in the company's regulatory Employment Agreement or Collective Labor Agreement. b) If the employer is going to pay the wages of the worker not in full in order to negotiate with the union and or the workers regarding the amount of wages during the layoff and the length of time laid off. c) If negotiations through the services of intermediary employees are not reached an agreement, so a letter of recommendation is issued immediately and if the recommendation is rejected by one or both parties to the dispute, then the matter should be immediately transferred to the Regional P4, or to the Central P4 for Mass Layoffs.

The existence of the Covid-19 pandemic not only has an impact on health from the human side but also on various sectors, including employment. Through the existence of Covid-19 in Indonesia, it has a massive impact on human life. The definition and implementation of the practice of being "laid off" during the Covid-19 pandemic has become dilemmatic, because no one both for employers and workers want this situation happens, even the Covid-19 pandemic can be said to be a very surprising thing. It spread into an outbreak immediately and so that this pandemic comes and at the same time is accompanied by a wave of workers that became the victims of being laid off until they were laid off.

At the beginning of the pandemic, the Circular Letter of the Ministry of Manpower No. M/3/HK.04/III/2020 did not expressly prohibit companies from implementing the "No Work No Pay" scheme. Nonetheless, the circular (part II. 4) refers to the possibility of a "change in then value and method of payment" which in the view of this paper, an indication that wages can be renegotiated but not stopped at all.

Furthermore, in 2021, the Government issued a regulation, namely the Minister of Manpower Regulation Number 2 of 2021 concerning the Implementation of Wages in Certain Labor-Intensive Industries during the Covid-19 pandemic (Issued on February 15, 2021 and valid until December 31, 2021). Article 5 (1) stated companies affected by the Covid-2019 pandemic are certain labor-intensive industrial companies that restrict business activities due to government policies to prevent and overcome Covid-19 pandemic. In article 2, it is said that the restriction on business activities as referred to in paragraph (1) results in part or all of the Workers/Laborers not entering work and affects the Company's ability to pay wages. It is also stated in article 6 (1) for certain labor-intensive industrial companies affected by the Covid-19 pandemic, they can make adjustments to the amount and method of payment of Workers/Labor Wages. Adjustments as referred to in paragraph (1) are regulated based on an agreement between employers and workers/laborers (*Ketenagakerjaan & Indonesia*, 2021). In addition, the Government also issued a Decree of the Minister of Manpower Number 104 of 2021 concerning Guidelines for the Implementation of Employment Relations during the COVID-19 pandemic period (Issued on August 13, 2021). In Chapter II B.2, it is stated that in the event that the worker/laborer is temporarily laid off, the efforts that can be made by the employer are as follows: a) Continue to pay the wages that workers/laborers usually receive. b) The company has regulated the implementation of wages for workers/laborers laid off in the Work Agreement (*PK*), Company Regulation (*PP*) or Collective Labor Agreement (*PKB*), then the applicable *PK*, *PP* or *PKB*. c) For companies that are financially unable to pay the wages that are usually received by workers/laborers due to the impact of the Covid-19 pandemic, employers and workers/laborers can agree on adjustments to the amount and method of payment of wages provided, that there are still wages paid in that month (Ministry of Manpower, 2021).

During the Covid-19 outbreak, the Indonesian Government issued several regulatory policies related to the Covid-19 situation. The government in this case is the Ministry of Manpower

which has the authority granted by law to issue policies on provisions (*beschikking*) to regulate labor policy. During the pandemic, the Ministry of Manpower issued Circular Letter (SE) Number M/3/HK.04/III/2020 of 2020 concerning Worker/Labor Protection and Business Continuity in the Context of Prevention and Control of COVID-19 Protection of Workers/Workers and Business Continuity in the Context of Prevention and Control of Covid-19 (Arifinal *et al.*, 2020). Basically, the SE regulates the protection of rights and obligations between workers and companies during the Covid-19 pandemic, including about wages.

Item 4 of the Ministry of Manpower Circular Letter No. M/3/HK.04/III/2020 opens up the possibility for companies, which must limit business activities due to Covid-19, and workers to dialogue and make agreements regarding wage reductions during the pandemic (Minister of Manpower, 2022).

In accordance with the Circular Letter and Decree of the Minister of Agriculture No. 104/2021, it is recommended to conduct a dialogue at the company level include representatives of all elements within the company of management, trade union representatives, and workers who do not have trade unions. In addition, it is recommended that: a) The agreement is created on the basis of the actual situation and conditions of the company and that there is full transparency for the company's financial information and data; b) The Agreement is entered into in good faith and is full of responsibility and takes into account the rights, obligations, and interests of the parties, business continuity, and welfare of workers; c) All agreements concluded between employers and workers are submitted to the local labor office.

Therefore, it is recommended that all companies, during dialogue with workers, avoid "No Work No Pay" during the period of termination of activities. This is to ensure workers can meet their basic needs during a crisis. It should also be viewed within the framework of strong national efforts to deal with the health and economic impacts of the Covid-19 pandemic.

Furthermore, the Government in 2021 issued a regulation, the Minister of Manpower Regulation Number 2 of 2021 concerning the Implementation of Wages in Certain Labor-Intensive Industries During the Covid-19 pandemic (issued on February 15, 2021 and valid until December 31, 2021). Article 5 (1) reads that companies affected by the Covid-19 pandemic are certain labor-intensive industrial companies that restrict business activities due to government policies in efforts to prevent and overcome the Covid-19 pandemic. In article 2, it is mentioned that the restriction on business activities as referred to in paragraph (1) results in part or all of the Workers/Laborers not entering work and affects the Company's ability to pay wages. It is also stated in article 6 (1) For certain labor-intensive industrial companies affected by the Covid-19 pandemic, they can make adjustments to the amount and method of payment of Workers/Labor Wages. Adjustments as referred to in paragraph (1) are set based on an agreement between employers and workers/laborers (*Ketenagakerjaan & Indonesia*, 2021).

The wage adjustment agreement is created in writing and contains: The amount of wages; A method of payment of wages that can be made in a lump sum or in stages; and the period of entry into force of the agreement (Ministry of Manpower, 2021). Therefore, employers cannot immediately cut workers' wages or not pay their wages at all. The bipartite process needs to be carried out by producing an agreement between employers and workers/unions regarding wages as long as workers/laborers are temporarily laid off due to the Covid-19 pandemic situation.

How is the settlement of disputes regarding wages for laid-off workers?

Legal protections related to wages during the pandemic can be seen by the existence of related regulations that the government has late issued so that workers still get wages according to the agreement when temporarily laid off. In addition, protection if in industrial relations between employers and workers that there is a dispute related to wages, then the party who feels aggrieved can take legal channels, such as bipartite, mediation, and courts.

Industrial Relations is basically a process of fostering communication, deliberative consultation, and negotiation supported by the ability and high commitment of all elements in the company. The direction is to create an ideal system and institution, so as to create productive, harmonious, dynamic and equitable working conditions.

The Dispute Resolution Procedure is contained in Article 2 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, namely: Rights disputes, Disputes of

interest, Disputes over termination of employment, and Disputes between trade unions/trade unions in only one company (Republic of Indonesia, 2004).

In this study, the authors wanted to focus on rights dispute. It is the disputes that arise due to non-fulfillment of rights and differences in the implementation or interpretation of the provisions of laws and regulations, employment agreements, company regulations, or collective labor agreements (Republic of Indonesia, 2004).

Employment disputes are basically resolved in the Industrial Relations Disputes Court (PHI Court). Before reaching the stage or level of the PHI Court can go through the initial or alternative stages consisting of Bipartite Institutions, Mediation, Conciliation, and Arbitration (Sudjana, 2005). Basically, Pancasila labor relationship are the correlation between elements in the production process, namely workers, entrepreneurs, and the government, which are based on the values contained in Pancasila. Thus, the essence of this Pancasila labor relationship pattern is that every labor dispute that occurs must be resolved by deliberation (Uwiyono, 2014). There are three principles that are used as a foundation to achieve this goal as follows: a) Basics Partner in Production, here workers and entrepreneurs are obliged to work together in increasing production results for the betterment of the company, as well as increasing the level of workers and their families' welfare. Therefore, each party is a partner or friend, not an opponent who is often hostile. b) Partner in Profit Principles, here workers and entrepreneurs are obliged to work together to increase profits. The results of the company's progress must be enjoyed together in accordance with the work achievements of the actors of the production process in proportio. c) Partner in Responsibility Principles, here workers and employers must be responsible for what is their respective obligations in achieving the progress of the company. So that the more responsible the workers in carrying out their work, and the more responsible the employers are in carrying out their obligations, the faster the company's progress is achieved (Uwiyono, 2014).

The best dispute settlement is the settlement by the parties to the dispute themselves. Because through negotiations, a settlement will be reached that is most beneficial to both parties. Therefore, any dispute that occurs, must be resolved first through bipartite negotiations, without interference by any party. In order to prevent long negotiations, the settlement of disputes through bipartite, limited in time, is carried out no later than 30 working days from the date of commencement of the negotiations (Indonesia, 2003; Republic of Indonesia, 2004) .

Settlement of Industrial Relations Disputes Through Bipartite Negotiations

The definition of Bipartite as a mechanism is an ordinance or negotiation process carried out between two parties, namely the employer parties and the workers if there is a dispute between the two parties in the company. Bipartite negotiations are essentially deliberative efforts for consensus between employers and workers. The scope of industrial relations dispute resolution through bipartite includes all four types of disputes. Efforts to resolve industrial relations disputes through deliberative negotiations to reach consensus between employers and workers based on a sense of family (Pradima, 2013).

Settlement of Industrial Relations Disputes through Mediation

Mediation of employment relations hereinafter referred to as Mediation is the resolution of disputes of rights, interest, over termination, and between trade unions in only one company brokered by one or more neutral mediators. So, this mediation is an institution that is authorized to resolve all kinds of disputes. Dispute resolution through mediation is carried out in the field of district/city labor, or in other words, the mediator is an employee of the Manpower Office. In the agency responsible for employment, several employees are appointed as mediators who functioned to mediate resolving disputes between employers and workers. The settlement through mediation is carried out after the parties have registered their dispute with the local labor agency. Dispute resolution through mediation is carried out by a mediator located in each office of the Regency/City employment agency. In the event that a settlement through conciliation or mediation does not reach an agreement, then either party can file a lawsuit with the Industrial Relations Court (Republic of Indonesia, 2004).

4. CONCLUSION

The latest regulation related to wages during the pandemic issued by the Government is the Decree of the Minister of Manpower No. 104 of 2021 concerning Guidelines for the Implementation of Employment Relations during the Covid-19 period. This regulation directs companies to carry out Bipartite agreements with workers, including the aspect of wages when workers are laid off due to the pandemic so that workers continue to earn wages according to the agreement and the business continuity of the company continues. The implementation of workers' wages or withholding wages by applying the principle of "No Work No Pay" unilaterally by the company due to the reasons of the Covid-19 pandemic is not based on law, because in Article 93.1 of Law No. 13 of 2003 concerning Manpower stated that wages are not paid if the worker/laborer does not do work, while in the explanation of the relevant article mentioned that this provision is a principle that basically applies to all workers/laborers, except if the their concerned is unable to do the work through no fault. Then, in article 63 of the Government Regulation of the Republic of Indonesia Number 36 of 2021 concerning Wages, it does not contain the reasons for the outbreak or pandemic, wage cuts can be set and can cause rights disputes because in essence when workers/laborers do not enter work during the Covid-19 pandemic. This cannot be categorized as the fault of the worker/laborer. Dispute resolution regarding wages for laid-off workers is a form of rights dispute due to unilateral wage cuts or the implementation of "No Work No Pay" on the grounds of the Covid-19 pandemic. Workers can apply for the settlement of industrial relations disputes both in non-litigation and litigation following with the Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. The Legal Politics of Industrial Relations Dispute Resolution, influenced by the Employment Relations Model, namely: Coalitie Model, if there is agreement on wages when workers are laid off for a while during the pandemic. But if it becomes a dispute to PHI, it will change to a Conflict Model. The research results show that Workers can apply for the settlement of industrial relations disputes both in non-litigation and litigation following the Law of the Republic of Indonesia Number 2 of 2004 concerning Settlement of Industrial Relations Disputes. This research implies that it can be input into the employment law under certain conditions. Future research is expected to be able to examine more related regulations governing employment.

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