

**PENERAPAN KETENTUAN FORCE MAJEURE TERHADAP
PERJANJIAN KERJA
DI MASA PANDEMI COVID-19**

***THE IMPLEMENTATION OF THE FORCE MAJEURE CLAUSULA
TOWARDS WORK AGREEMENTS
IN THE TIME OF COVID-19 PANDEMIC***

Yohana Puspitasari Wardoyo

Universitas Muhammadiyah Malang

Joanna.wardoyo@yahoo.com

Muhammad Luthfi

Universitas Muhammadiyah Malang

muhammadluthfi1313@gmail.com

Feranza Auriya Tiza

Universitas Muhammadiyah Malang

feanzatizatz@gmail.com

Khofifah Pawaransa Hadi

Universitas Muhammadiyah Malang

kpawaransa@gmail.com

Abstrak

Sejak ditetapkannya Peraturan Presiden Nomor 12 Tahun 2020 tentang Penetapan Bencana Non Alam Untuk Penyebaran Corona Virus Disease 2019 (Covid-19) Sebagai Bencana Nasional pada 13 April 2020 dan Kebijakan Pembatasan Sosial Berskala Besar (PSBB).) berdampak pada produksi barang dan jasa. menurun, yang juga terkait dengan nasib pekerja di Pemutusan Hubungan Kerja (PHK) pekerja. Rumusan masalah yang diangkat adalah 1. Apa implikasi Pandemi Covid-19 bagi Pekerja/Buruh, 2. Apakah tepat pengusaha memberhentikan pekerja dengan alasan force majeure di tengah Pandemi Covid 19? Metode pendekatan yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif, yaitu penelitian melalui studi kepustakaan yang meliputi bahan hukum primer, terutama yang berkaitan dengan masalah yang diangkat. Hasil dan pembahasan bahwa Implikasi Pandemi Covid-19 bagi Pekerja/Buruh menyebabkan 15,6 persen pekerja di Indonesia terkena PHK, bahkan 13,8 persen tidak mendapatkan pesangon. Pemutusan hubungan kerja tanpa pesangon merupakan bentuk kesepakatan dalam UU No. 13 tahun 2003 tentang ketenagakerjaan. PHK di tengah pandemi Covid-19 dengan alasan fore majeure atau kondisi siap pakai Pasal 1244 dan Pasal 1245 KUHPerdata jo Pasal 164 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan adalah beralasan dan benar secara hukum. . Pemutusan Hubungan Kerja (PHK) karena tindakan paksa dapat dilakukan dengan dua cara. Pertama, perjanjian pemberhentian dengan alasan penjaminan harus dituangkan dalam perjanjian kerja yang menyebutkan jenis-jenis tenaga kerja. Kedua, tidak berlaku untuk perjanjian kerja seperti pandemi Covid-19 yang berdampak pada pengusaha dan pekerja.

Kata Kunci : Force Majeure, Perjanjian Kerja, Pandemi Covid-19***Abstract***

Since the stipulation of Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster on April 13, 2020 and The Large-Scale Social Restriction Policy (PSBB) has an impact on the production of goods and services. decreasing, which is also related to the fate of the workers in the Termination of Employment (PHK) of the employees. The formulation of the problem raised are 1. What are the implications of the Covid-19 Pandemic for Workers / Laborers, 2. Is it right for employers to lay off workers on the grounds of force majeure in the middle of the Covid 19 Pandemic? The approach method used in this research is the normative juridical approach, namely research through literature studies which includes primary legal materials, especially those related to the issues raised. The results and discussion that the Covid-19 Pandemic Implications for Workers / Laborers have caused 15.6 percent of workers in Indonesia to be laid off, even 13.8 percent do not get severance pay. Termination of employment without severance pay is a form of agreement on Law no. 13 of 2003 concerning employment. Layoffs in the midst of the Covid-19 pandemic on the grounds of fore meajure or ready-to-use conditions Article 1244 and Article 1245 of the Civil Code in conjunction with Article 164 of Law Number 13 of 2003 concerning employment are legally grounded and correct. Termination of employment (PHK) due to forced action can be done in two ways. First, the dismissal agreement with the reason for guarantee must be stated in the work agreement stating the types of force force. Second, it does not apply to work agreements such as the Covid-19 pandemic which affects employers and workers.

Keywords : *force majeure, employment agreement, covid-19 pandemic.*

A. Introduction

Work is an economic activity carried out by someone to earn income in order to fulfill both physical and spiritual needs with the aim of getting a decent life. Work is the right of every citizen as stipulated in article 27 of the 1945 Constitution. The achievement of the objectives stated by Article 27 paragraph (2) of the 1945 Constitution, is something that is difficult to achieve and implement, considering the

large population that is not in accordance with economic development, especially the provision of employment. International labor migration is a global phenomenon and occurs in almost all countries in the world, including Indonesia.

However, in recent times the world is facing a very crucial problem with the presence of Covid-19 which has spread throughout the world, including Indonesia. Since the stipulation of Presidential Decree

Number 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease-2019 (Covid-19) as a National Disaster on April 13, 2020, it has disturbed all sectors of society's lives. The dilemma of various countries in overcoming covid-19 has made the government and even the society feel unrest and losses that have an impact on health and the economy. Therefore, the government needs to issue a policy regulated in Government Regulations (PP) Number 21 of 2020 concerning PSBB (Large-Scale Social Restrictions) to break the chain of the spread of Covid-19. This policy has led several companies to take steps to reduce losses due to Covid-19. Previously, big cities like DKI Jakarta had implemented PSBB 4 (four) times, most recently with the issuance of Governor of DKI Regulation Number 88 of 2020 concerning the amendment to Regulation of the Governor of DKI Number 33 of 2020 concerning Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (COVID- 19) in the Province of the Special Capital City Region of Jakarta, this also results in a decline in the production of goods and services, which is also related to the fate of the workers.

One of the steps taken by several companies in Indonesia is that they have to

terminate their employees who work at the employer. This is in line with Articles 164 and 165 of Law No. 13 of 2003 concerning Manpower which more or less the article states that a employer has the right to terminate employment relations with employees if a employer experiences a loss. Based on data reported by the Ministry of Manpower, there are 2.8 million workers who have been directly affected by Covid-19. They consist of 1.7 million formal workers laid off and 749.4 terminated (Employment). However, the unfortunate thing is that the employer that has terminated the relationship from working is arguing that it is based on "force majeure ". This reason is becoming a debate among workers and experts who question the reasons for force majeure to be accepted or not in terminating work relations during the Covid-19 pandemic. Thus it is interesting for researchers to raise research with the title The Implementation of the Force majeure Clausula Towards Work Agreements in the Midst of Covid-19 Pandemic. Based on the background that has been described previously, the formulation of problem is important in order to obtain a clear picture of the problem to be studied, therefore the formulation of the problems to be discussed in this study are as follows:

1. Implications of the Covid-19 Pandemic for Workers / Laborers
2. appropriate for employer to terminated workers for reasons of force majeure in the midst of the Covid 19 Pandemic.

B. Research Methods

The methods used by the authors in this study are Approach Method, The approach method used by the author in this study is a normative juridical approach, namely research through literature studies which includes primary legal materials, especially those related to the problems in this research. The legal materials used by the authors in this study were obtained from primary legal materials, namely Primary Legal Materials. In writing this research, the authors used legal materials there are Code of Civil law, Law Number 11 of 2020 Concerning Job Creation In The Employment Chapter, Law No.13 of 2003 concerning Employment.

Secondary Legal Materials
Secondary legal materials are library materials that contain information about secondary data relevant to this research, such as legal dictionaries, research journals, articles from mass media, both printed and online.

C. Result and Discussion

1. The Impact of the Covid-19 Pandemic on the Employer

Article 1 Number 2 of the Manpower Law states that "manpower is any person who is capable of doing work to produce goods and/or services either to fulfill his own needs or for the society". The definition of manpower in the Manpower Law enhances the definition of it in Law No. 14 of 1969 concerning Basic Manpower Provisions which states that the definition of manpower is "everyone who can do work both inside and outside the working relationship to produce goods or services to meet the needs of the society."¹ Payaman Simanjuntak stated that manpower is "residents who are already or currently working, who are looking for work, and who carry out other activities such as going to school and taking care of the household."²

In general, the population of a country is divided into two groups, namely workers and non-workers. The population is categorized as the manpower if the

¹Lalu Husni, *Pengantar Hukum Ketenagakerjaan, Ed-Revisi*, (Jakarta: Raja Grafindo Persada, 2014) Hlm.28

²Sendjun H. Manulang, *Pokok-Pokok Hukum Ketenagakerjaan Di Indonesia*, (Jakarta: Bhineka Cipta, 2001) Hlm. 3

population has entered the working age. The working-age limit that applies in Indonesia is 13 (thirteen) to 15 (fifteen) years old for children to do light work as long as it does not interfere with their development and physical, mental, and social health. Meanwhile, the definition of 8 workers according to the provisions of Article 1 Number 3 of the Manpower Law is "everyone who works and receives wages or other forms of remuneration".

Regarding workers'/laborers' rights means discussing human rights, as well as non-human rights. Human rights are rights inherent in the worker/laborer themselves which are carried from birth if the right is separated from the worker's self, their dignity will degenerate as a human being.³ Manpower rights regulated in the Manpower Law are as follows:

1. Every worker has the same rights and opportunities to obtain a decent job and livelihood regardless of gender, ethnicity, race, religion, and political orientation in accordance with the interests and abilities of the workforce concerned, including equal treatment of persons with disabilities.
2. Every worker has the right to acquire, improve and develop work competencies in accordance with their

talents, interests, and abilities through job training.

3. Workers are entitled to obtain job competency recognition after attending job training organized by the government, private job training institutions, or training in the workplace.
4. Workers who have participated in the apprenticeship program are entitled to recognition of work competency qualifications from the employer or certification body.
5. Every worker has the same rights and opportunities to choose, get, or change jobs and earn decent income at home country or abroad.
6. Every worker has the right to get time to rest and paid leave, and is entitled to have the opportunity to carry out the worship required by his religion.
7. Female workers/laborers who feel pain during menstruation and inform the entrepreneur are not obliged to work on the first and second day of menstruation.
8. Female workers/laborers have the right to get rest before and after childbirth, as well as for workers who experience a miscarriage according to a doctor's or obstetrician's certificate.
9. Every worker/laborer has the right to receive protection over:

³ A. Ridwan Halim, *Hukum Perburuhan Dalam Tanyak Jawab*, (Jakarta: Balai Akasara, 1990), Hlm. 45

- a. Occupational Health and Safety;
 - b. Morality and Decency; dan
 - c. Treatment in accordance with human dignity and religious values.
10. Every worker/laborer has the right to earn an income that fulfills a decent life for humanity, meaning that the income or receipt of the worker/laborer from their work can meet the basic needs of the worker/laborer and his family which includes food and drink, education, health, recreation, and security pension time.
 11. Every worker/laborer and his family has the right to obtain labor social security to improve welfare for workers/labor and their families.
 12. Every worker/laborer has the right to form and become a member of a worker/labor union.
 13. Workers/laborers and trade/labor unions have the right to carry out a legally, orderly, and peaceful strike if an agreement is not reached for the settlement of industrial relations because the employer does not want to negotiate or the negotiations are deadlocked.⁴

Meanwhile, workers' obligations are:

1. Obligated to perform work in accordance with the contents of the agreement agreed upon by the parties. In carrying out the contents of the agreement, workers do their work. However, with the employer's permission/employer, the job can be replaced by someone else.
2. Must obey the rules and instructions from the corporate leaders/ employer, the regulations that must be obeyed are set out in employer rules and regulations. Instructions given by the employer must be obeyed by workers as long as they are regulated in the employment agreement, local laws, and customs.
3. The obligation to pay compensation and fines if the worker in doing his job cause loss, damage, loss, or other events which are unfavorable or detrimental to the employer as a result of intentional or negligent, then the worker is obliged to bear the risks that arise.
4. Obligation to act as a good worker. Workers are required to carry out their obligations properly as stated in the work agreement, employer regulations, and in the collective working agreement. Besides, workers are also obliged to do what should or

⁴ Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia*, (Bandung :PT. Citra Aditya Bakti, 2007) Hlm. 103.

should not be done according to statutory regulations, propriety, or custom.

Various ways have been done by the Government, both Central and Regional, to overcome problems regarding COVID-19 by issuing policies that aim at preventing the transmission of COVID-19. One of these arrangements is Government Regulation (PP) Number 21 of 2020 concerning Large-Scale Social Restrictions. PSBB requires every business actor or education provider to temporarily close their respective activities.

The spread of the coronavirus can be categorized as a public health emergency that is unsettling the world, so the government has reasons to carry out quarantine in Indonesian territory by implementing Law Number 6 of 2018 concerning Health Quarantine.⁵ Based on Article 59 paragraph (3) letter a of Law Number 6 Year 2018 concerning Health Quarantine, it is stated that Large-Scale Social Restrictions at least include school

and work discontinuation.⁶ However, there are still many workplaces that have not yet closed their workers. When office workers in Jakarta start working from home due to the spread of the coronavirus, informal workers still have to continue their activities in factories, go around the city carrying deliveries, and meet many people every day.⁷

In this position, there are aspects of the issue of justice. On one side, the law has stipulated that community activities, both at school and work, must be closed during this pandemic, but only part of the workplace or companies that provide off work to their workers, and some apply to work from home. While on the other side is that there are people who still have not got their right to off work because of employer policies that do not allow off work and this is contrary to the law and government policies. In this case, the government does not endeavor that all people are treated with equal rights at work so that there is social inequality during the Covid-19 outbreak. This made the law only applied to some parts of the

⁵ Wilfridus Setu Embu, "PKS Minta Pemerintah Tegas Jalankan UU Tentang Kekeharantinaan Kesehatan", accessed on <https://www.merdeka.com/politik/pks-minta-pemerintah-tegas-jalankan-uu-tentang-kekeharantinaan-kesehatan.html>, on 05 June 2020, 10.00 o'clock

⁶ Article 59 paragraph (3) letter a Law Nomor 6 Tahun 2018 concerning Health Quarantine

⁷ BBC, "Virus corona: Kisah para pekerja yang tak punya hak kerja dari rumah, kalau belum meninggal diminta terus kerja", accessed from <https://www.bbc.com/indonesia/indonesia-52018257>, Acces on 28 Dec 2020, 14.00 o'clock

society so that the implementation of justice and equality in Indonesia during the Covid-19 pandemic was not very effective.

Another problem after the PSBB was implemented by the Government, was regarding the decline in people's income which was caused by decreasing consumer purchases. This has been going on for several months, resulting in some people being unable to fulfill their needs, including paying off loans. If the PSBB is implemented as tightly as possible to minimize disease transmission, the mobility of the community will be increasingly limited, which will only make it difficult for society to earn income. The short-term economic problem that the regional government must prepare for its mitigation strategy is that the people's ability to access foodstuffs, especially staple food that is very weak and even runs out.

The regulations imposed by the government such as the PSBB certainly cause employees to carry out their work at home. However, it is different for workers such as grocery businesses, motorcycle drivers, taxis, and so on, who cannot do their work in the house and are the ones who are the most affected. PSBB has disrupted many people's jobs, travel bans, school closings have had negative effects on many employers. In this case, the

people most affected by the PSBB effect are workers or employers who carry out income-earning activities that cannot be carried out at home. Meanwhile, other impacts were found in several companies that had to close down because they were unable to comply with the PSBB policy and had to terminate their workers. On the other hand, many people make a living by working but do not get protection. In this situation, society must be faced with a choice between health and income.⁸

COVID-19 also harms the economy so that it can worsen the circumstances and make the situation unstable which affects workers, such as:

1. Labor;
2. Unemployed youth;
3. Workers who are senior and vulnerable to disease;
4. Medical personnel who are at the forefront of treating COVID-19 patients;

The issue with the economy is worsening and uncertain, including uncertainty in income, working time, and the absence of health insurance. The laborers and workers who are helpless are increasingly being disadvantaged by a deadly virus that is sweeping the entire

⁸ Salim dan Budi sutrisno, *Hukum Investasi di Indonesia*, (Jakarta: Rajawali Pers, 2008). Hlm. 21

region. The work of laborers whose income is daily income may not get income on that day also due to the PSBB which forces the entire community to stay at home.

Apart from suffering from economic problems, laborers and workers must sacrifice their health interests in order to support their families. So that it can make it easier for them to be infected by COVID-19. Like it or not, they have to work outside the home because if they don't, there will be no income to support their household life.

The negative impact on laborers and workers in the COVID-19 situation shows clearly that their condition is very fragile, both from an economic and health perspective. For those who live in urban areas, especially DKI Jakarta, it will be easier for them to be infected by COVID-19. Even so, they still have to work for a bite of rice and other primary needs, including food and clothing.⁹ Meanwhile, some workers no longer have an income because the employer has terminated their employment relationship, therefore many workers/laborers have to return to their respective hometowns.

The results of research by the Population Research Center LIPI

⁹ Syahrial, Dampak Covid-19 Terhadap Tenaga Kerja Di Indonesia. Jurnal Ners Volume 4 Nomor 2 Tahun 2020. Hlm21 – 29

(Indonesian Institute of Sciences) together with the Demographic Institute of the University of Indonesia (LD-UI) and the Research and Development Agency of the Ministry of Manpower regarding the impact of COVID-19 on the workforce stated that:

"... on April 24 - May 02, 2020, with a respondent total of 1,112 workers/employees/staff, it was shown that there was a wave of termination of employment and a decrease in labor/employee/staff income during the PSBB period in Indonesia. The percentage of workers/employees/staff layoffs in Indonesia at the end of April 2020 was 15.6 percent consisting of 1.8 percent of layoffs with severance pay and 13.8 percent of layoffs without severance pay. The COVID-19 pandemic also affects reducing the income of workers who are not affected by layoffs. Of the respondents surveyed, there was 31.0 percent of workers admitted their income had decreased by less than 50 percent, and 8.6 percent of workers whose income had decreased by more than 50 percent."¹⁰

During the COVID-19 period, many areas have been affected, including the

¹⁰ Ngadi, Ruth Meliana, Yanti Astrelina Purba "Dampak Pandemi Covid-19 Terhadap Phk Dan Pendapatan Pekerja Di Indonesia", Jurnal Kependudukan Indonesia, Edisi Khusus Demografi dan COVID-19, Juli 2020, Hlm. 43

DKI Jakarta area, especially in the manpower sector. Some of the effects, such as the following¹¹:

- The rate of layoffs reached 11.8% of the total number of workers
- There are 30.8% of workers whose income is reduced and does not reach 50% of their usual income
- Workers whose income is still above 50% of income are usually recorded at 6.8%

2. FORCE MAJEURE AS REASON FOR TERMINATION OF EMPLOYMENT

The Covid-19 pandemic had a major impact on the decline in Indonesia's economic growth. The decline in economic growth has resulted in a worsening financial system due to declining state revenues and global economic uncertainty. Therefore that many companies reduce their business activities or temporarily suspend them until normal conditions. The reduction in business activities has implications for termination of employment (PHK). The reasons that companies use in terminated their employees include: first, the availability of raw materials is running low. This is because traffic is stopped, as a result of the Large-Scale Social Restrictions (PSBB)

which results in a decrease in industrial productivity and the manufacturing sector must cut 30%, so there is the potential for a reduction in workers to maintain the stability of the employer's cash flow (Yunianto, 2020).

Second, the weakening of the Rupiah against the Dollar. The employer in this case feels burdened because the Rupiah has almost touched a value of IDR 17,000 per the United States Dollar (Indonesia, 2020), if this continues, the production costs for companies using imported materials will continue to increase not in proportion compared to the employer's income.

Third, Indonesian tourism visitors have experienced a decline as a result of social distancing implemented in various countries to reduce the spread of the Covid-19 virus curve. This has implications for the dismissal of workers in the tourism sector.

Fourth, the composite stock index experienced a drastic decline as a result of Indonesia's revenue from oil exports and the cumulative stock index decreased. The Jakarta Composite Index (JCI) fell 2.78% to 5,006.22 on August 3, 2020 (Utami, 2020). The weakening of the stock index was overshadowed by the release of Indonesia's macroeconomic data this week. This resulted in pressure on the

¹¹ *Ibid.*, Hlm. 46

financial sector of the State Budget (APBN) so that the state and employer revenues decreased.

Fifth, Indonesia in July 2020 experienced deflation of 0.10%, and annual inflation reached 1.54% (Avisena, 2020). In conclusion, the cause of deflation in July 2020 was due to weakening public consumption due to COVID19 and social restrictions. So that companies have to reduce prices in order to maintain sales stability even though production costs increase.

Several companies also terminated their employment due to force majeure or coercive circumstances. However, the meaning of force majeure is still not explicitly stated in the Civil Code. On the other hand, 2 articles are often used as references in the study of force majeure in Indonesia, namely Article 1244 and Article 1245 of the Civil Code, which are written as follows:

Article 1244 Civil Code

The debtor must be punished to reimburse costs, losses, and interest, if they cannot prove that the contract was not carried out or the timing of the contract was not carried out due to an unforeseen matter which could not be borne by them.

Article 1245 Civil Code

There is no compensation for costs, losses, and interest if due to coercive circumstances or because of something that happens by chance, the debtor is prevented from giving or doing something that is required, or from committing an act that is forbidden to them.

In addition, if refer to Law Number 13 Year 2003 concerning Manpower which has been amended by Omnibus Law Number 11 Year 2020, two articles are directly related to force majeure which gives companies the right to terminate employment (PHK), namely article 61 and Article 164 plus Article 154 of Law No. 11 of 2020. Article 61 of Law No. 13 of 2003 in conjunction with Article 61 of Law No. 11 of 2020 on Omnibus Law regulates that work agreements end when certain conditions or events are stated in work agreements, employer regulations, or joint work agreements which can lead to the end of the employment relationship. Based on this article, force majeure or coercive circumstances as a reason for termination of employment must first be stated in an agreement. That way, the work agreement automatically ends. However, article 164 of the Act stated:

"Employer can terminate the employment relationship of workers/laborers because the employer is closed because the employer has suffered continuous

losses for 2 (two) years, or a force majeure, with provisions the worker/laborer is entitled to provided severance pay of 1 (one) times as stipulated in Article 156 paragraph (2), then the reward money for the period of service is 1 (one) time as stipulated in the provisions of Article 156 paragraph (3) and compensation for rights according to the provisions of Article 156 paragraph (4) ”.

Based on the provisions of this article, a coercive situation does not have to be included in a work agreement so the termination of employment can be carried out on the condition that the elements of the coercive condition must be met. Meanwhile, in article 154 of Law No.11 of 2020 concerning Omnibus Law, it is also stated *that termination of employment can be carried out if the employer closes due to forced circumstances (force majeure).* Based on this article, to be able to do termination of employment, the employer must first close. If the employer is still operating, then termination of employment cannot be done.

Referring to article 1244 and article 1245 of the Civil Code, an understanding can be drawn that *force majeure* must meet the following elements:¹²

1. An unexpected event;

¹² Tri Harnowo. Wabah Corona sebagai Alasan Force Majeur dalam Perjanjian. Acces in Januar, 15 2021, from Hukum Online.com website: <https://www.hukumonline.com/klinik/detail/lt5e81ae9a6fc45/wabahcorona-sebagai-alasan-forcemajeur-dalam-perjanjian>

2. Some obstacles cause an achievement/job cannot be done;
3. The inability is not the result of the debtor's fault; and
4. The incapacity that occurs should not impose a risk on the debtor.

According to Soebakti, the condition of force majeure is that the situation itself is outside of the employer's control and forcefully as well as conditions that were never predicted before when the agreement was made, at least the risk that occurs is not borne by workers which results in them having to experience termination of employment.¹³ When connected with the COVID-19 pandemic, it can be said to be an unexpected event during the agreement. So that if there is an agreement made when the plague attacks Indonesia and results in termination of employment, it cannot be used as an excuse for force majeure . This means, referring to Article 64 of the Manpower Law which requires a work termination agreement because force majeure cannot be carried out during a pandemic. This agreement must not be made during the Covid-19 pandemic because the condition that something can be said as a force majeure, must be something unexpected. When referring to

¹³ Agri Chairunisa Isradjuningtias. Force Majeure (Overmacht) Dalam Hukum Kontrak (Perjanjian) Indonesia. Veritas et Justitia, 1(1), 2015. Hlm 136–158.

article 164 of the Manpower Law which does not require an agreement that specifies the type of force majeure, it can be said that the Covid-19 pandemic can be said to be a force majeure. Reporting from the hukumonline.com site, Professor of the Faculty of Law, University of Indonesia (FHUI) Prof. Aloysius Uwiyono view the Covid-19 pandemic had an impact on workers, employers, and the government. Companies that are completely unable to face the impact of Covid-19 can take the termination of employment (PHK). Aloysius assessed that the employer can do termination of employment. One of them is because of the force majeure. He emphasized that if the impact of Covid-19 causes companies to loss, so they cannot run production, then termination of employment can be carried out because of force majeure, Aloysius said in an online seminar entitled "Legal Aspects of Termination of Employment, Unpaid Leave, WFH, THR, as well as employers' obligations towards workers during the Covid-19 Pandemic Situation" in Jakarta, Wednesday (22/4/2020).¹⁴

¹⁴ Ady Thea DA, Guru Besar Ini Bicara PHK Alasan Force Majeure Dampak Covid-19. Acces in Januar, 15 2021, from Hukum Online.com website: <https://m.hukumonline.com/berita/baca/lt5ea02c57c5dc8/guru-besar-ini-bicara-phk-alasan-force-majeure-dampak-covid-19>

Indeed, if refer to the prevailing laws and regulations, there is absolutely no definition of force majeure. The law only states that *force majeure* can be used as a reason for termination of employment. In this case, the Covid-19 pandemic can be called a force majeure so that termination of employment can be carried out. But even though it is allowed, the employer where it works is obliged to pay severance pay equal to the length of work (Article 154 of Law 11 of 2020 concerning Omnibus Law) and this has been violated by many companies during the termination of employment by taking advantage of the Covid-19 Pandemic.

D. Conclusions

Based on the description above, it can be concluded that the following are the implications of the Covid-19 Pandemic on Workers / Laborers which has caused 15.6 percent of workers in Indonesia to be terminated, even 13.8 percent do not get severance pay. The majority of terminated workers are young workers aged 15-24 years. Some of the worst affected sectors that need special attention are the construction sector (29.3 percent), the trade, restaurants, and services sector (28.9 percent), and the transportation, warehousing, and communications sector (26.4 percent). Termination of

employment without severance pay is a form of violation of Law No.13 of 2003 concerning manpower.

Termination of employment in the midst of the Covid-19 pandemic with the reason of force majeure or coercive circumstances based on Article 1244 and Article 1245 of the Civil Code in conjunction with Article 164 of Law Number 13 of 2003 concerning manpower are legally and correct. Termination of employment (PHK) for reasons of force majeure can be done in two ways. First, the termination of employment agreement on the grounds of force majeure must be stated in the work agreement by mentioning the types of force majeure. Second, there is no mention in the work agreement such as the Covid-19 pandemic which affects the employer and workers.

References

Books:

- A. Ridwan Halim, *Hukum Perburuhan Dalam Tanyak Jawab*, (Jakarta: Balai Akasara, 1990)
- Abdul Khakim, *Pengantar Hukum Ketenagakerjaan Indonesia*, (Bandung :PT. Citra Aditya Bakti, 2007)
- Ady Thea DA, *Guru Besar Ini Bicara PHK Alasan Force Majeure Dampak Covid-19*. Acces in Januar, 15 2021, from *Hukum Online.com* website:
<https://m.hukumonline.com/berita/b>

<aca/lt5ea02c57c5dc8/guru-besar-ini-bicara-phk-alasan-force-majeure-dampak-covid-19>

- Agri Chairunisa Isradjuningtias. *Force Majeure (Overmacht) Dalam Hukum Kontrak (Perjanjian) Indonesia*. *Veritas et Justitia*, 1(1), 2015.
- Lalu Husni, *Pengantar Hukum Ketenagakerjaan*, Ed-Revisi, (Jakarta: Raja Grafindo Persada, 2014)
- Ngadi, Ruth Meliana, Yanti Astrelina Purba “Dampak Pandemi Covid-19 Terhadap Phk Dan Pendapatan Pekerja Di Indonesia”, *Jurnal Kependudukan Indonesia*, Edisi Khusus Demografi dan COVID-19, Juli 2020
- Salim dan Budi sutrisno, *Hukum Investasi di Indonesia*, (Jakarta: Rajawali Pers, 2008).
- Sendjun H. Manulang, *Pokok-Pokok Hukum Ketenagakerjaan Di Indonesia*, (Jakarta: Bhineka Cipta, 2001)
- Syahrial, *Dampak Covid-19 Terhadap Tenaga Kerja Di Indonesia*. *Jurnal Ners Volume 4 Nomor 2 Tahun 2020*.

Regulations:

- Kitab Undang-Undang Hukum Perdata
Undang-Undang No.13 Tahun 2003
Tentang Ketenagakerjaan
Undang-Undang No.11 Tahun 2021
Tentang Cipta Kerja
Keputusan Presiden Nomor 12 Tahun 2020
Tentang Penetapan Bencana Non-alam Penyebaran Corona Virus Disease- 2019 (Covid-19) Sebagai Bencana Nasional

Internet:

- Wilfridus Setu Embu, “PKS Minta Pemerintah Tegas Jalankan UU Tentang Kekarantinaan Kesehatan”, accessed on
<https://www.merdeka.com/politik/p>

ks-minta-pemerintah-tegas-jalankan-uu-tentang-kekarantinaan-kesehatan.html, on 05 June 2020, 10.00 o'clock

BBC, "Virus corona: Kisah para pekerja yang tak punya hak kerja dari rumah, kalau belum meninggal diminta terus kerja", accessed from <https://www.bbc.com/indonesia/indonesia-52018257>, Acces on 28 Dec 2020, 14.00 o'clock

Tri Harnowo. Wabah Corona sebagai Alasan Force Majeur dalam Perjanjian. Acces in Januar, 15 2021, from Hukum Online.com website:
<https://www.hukumonline.com/klinik/detail/lt5e81ae9a6fc45/wabahcorona-sebagai-alasan-forcemajeur-dalam-perjanjian>