

Role of the State in Protecting Labor Rights during the COVID-19 Pandemic: Indonesian Legal Studies

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ABSTRACT

This article aims to examine the policies taken by the State, in this case the Government and what the government should do in order to protect the rights of Indonesian workers during the covid-19 pandemic. The research method used is normative juridical by reviewing the applicable laws and regulations. The results of the study indicate that in terms of protection of workers, steps or policies taken by the government are to issue several regulations as firm steps regarding legal protection efforts for workers and their implementation for workers. In addition to regulations and technical rules that are regulated for workers during the covid-19 pandemic, the government has also issued several policies to cope with the impact of covid-19, namely in the form of social policies that are expected to be felt directly for the workforce.

Keywords: Rights Protection, Manpower, State, Covid-19.

A. INTRODUCTION

At the end of 2019 the world was shocked by the emergence of an outbreak originating from the Covid-19 Virus which was first discovered in Wuhan City, Hubei Province, China. Then in early March 2020, the Indonesian people were shocked by the statement of the President of the Republic of Indonesia Joko Widodo who stated that there were 2 Indonesians who were infected with Covid-19 positive.

Globally, currently positive cases of Covid-19 reach 183,738,373 cases with the death rate due to Covid-19 disease reaching 3,955,756 people. Meanwhile, in Indonesia

as of July 6, 2021 alone, the total positive cases of Covid-19 have reached 2,284,084 cases with the death rate due to Covid-19 disease reaching 60,582 people. The rapid human-to-human spread caused this new type of virus (currently mutated into the Delta variant of Covid 19) to be designated as a global pandemic. As a result, not only the number of infections and deaths continues to increase, it has also affected almost all aspects of life including the economic aspect.

Among the community groups most affected by the crucial problems of the current pandemic, one of them is workers. The emergence of the Covid-19 pandemic brings with it negative implications for the world of work, especially with regard to the working relationship between employers and workers. Amnesty International Indonesia details several crucial points regarding the problem of workers during the pandemic that have the potential to neglect workers' rights, namely:

1. Wage cuts and layoffs from companies whose business sectors are affected by the Pandemic.
2. The dilemma of social distancing and work from home policies for workers, because not all fields of work can be done completely from home. Meanwhile, cutting salaries to leave of work by companies is the main consideration that forces workers to stay in work.
3. Not all workers are in the government's social security system.

Based on the above problems, of course this needs to be addressed immediately by the State because the legal protection of workers is the fulfillment of basic rights inherent and protected by the constitution as stipulated in Article 27 paragraph (2) of the 1945 Constitution which reads "Every citizen is entitled to work and livelihood worthy of humanity", article 33 paragraph (1) which states that "the economy is structured as a joint effort of kinship". The protection of workers is intended to ensure the rights of workers and ensure equality of opportunities and treatment without discrimination against anything to realize the welfare of workers and their families while still paying attention to the development of the progress of the business world and the interests of employers. Based on this, the author is interested in discussing the role of the state in protecting the rights of Indonesian workers, especially during the Covid-19 pandemic based on existing legal regulations.

B. RESEARCH METHOD

The type of research used is Normative Juridical, which is research that is focused on testing the application of rules or norms in applicable positive laws and the approach used is the Statute Approach.

Regarding the data sources used in this study using secondary data that are classified into three groups, namely primary legal materials, secondary legal materials and tertiary legal materials. Sources of primary legal materials used such as treatises, academic manuscripts of laws and regulations, and so on. Secondary legal sources used are textbooks, legal journals, legal magazines, expert opinions and various references related to this research. As well as the source of tertiary legal materials as a research supporting material in the form of legal dictionaries, internet media, encyclopedias and books on the terms used about this research. Data collection is carried out by literature studies, this technique is used by the author in order

to collect data to answer matters related to the problem to be discussed.

C. DISCUSSION

1. Labor Protection From an Employment Law Perspective

Employment is a legal regulation that regulates all matters related to labor, before during and after the working period with all its consequences. According to Article 1 paragraph 6 point a of Law No. 13 of 2003 concerning Manpower explains that the company is any form of business that is incorporated or not, belongs to an individual, belongs to an individual, belongs to a federal, or belongs to a legal entity, both privately owned and state-owned that employs workers / workers by paying wages or rewards in other forms. While labor according to Article 1 paragraph 2 of Law No. 13 of 2003 concerning Manpower is every person who is able to do work to produce goods and / or services both to meet their own needs and for the community.

As we know that labor law cannot be said to be only within the scope of private law, this is because in labor law there is also a state administration law which means that there is a state relationship that regulates it. The state relationship in this regard can be seen from the existence of strict regulations related to the Provincial Minimum Wage (UMP), District or City Minimum Wage and so on, the state also regulates clearly related to legal protection which are the rights that must be owned by each workforce that must be protected by the Company. This is based on Article 86 paragraph 1 of Law No. 13 of 2003 on Manpower which reads "Every worker or worker has the right to protection of occupational safety and health, morals and decency, treatment in accordance with human dignity and dignity and religious values".

The state in this case also plays a role to protect the laws of the workforce because of the difference in a socio-economic and bargaining position or commonly called bargaining position

between employers and workers who are usually in a weak party position. The purpose of labor protection is to ensure a system of working relationships in a solid and harmonious manner without any pressure from those who feel stronger and weaker.

In 2019, the world was shocked by the Covid-19 outbreak that spread so quickly throughout the country, one of which was Indonesia. Since the emergence of the Covid-19 virus in March 2020 until now Indonesia continues to experience an increase in positive cases of Covid-19 and of course this makes the Government and citizens feel threatened so that the Government campaigns to the community to stay at home and reduce activities in public.

According to data from the Ministry of Industry (2020), at least 60% of industries are affected by Covid-19. This number is a type of industry that is conventional (non-digitization), including small businesses whose activities require mass crowds. So in this case the world of E-commerce is one that gets blessings in this phenomenon. The problem is, most of people's efforts are not in the digital industry, but conventional industries that depend on mass crowds.

To cut the ropes of spreading the transmission of the virus to other communities, the Government, especially DKI Jakarta, which is the location with the highest spread of transmission cases, issued Circular Letter Number 14/SE/2020 concerning the Call to Work From Home which follows up on the Instruction of the Governor of DKI Jakarta Province No. 16 of 2020 on Increasing Awareness of the Risk of Transmission of Covid-19 Infection. In the Circular Letter contained in the first point explained that the Company Leadership is expected to take preventive measures related to the risk of transmission of Covid-19 infection and can do work at home.

With the circular letter, many of the companies engaged in the field other than Health, expedition services or distribution of

goods and logistics, grocery stores, retail and so on appeal and implement work at home gradually to their employees or workers. This step starts from a trial where workers are divided into rations of time per week to work in the office and a week of working at home, but the increasing number of positive cases of the impact of Covid-19 many companies are also applying Work From Home for months to their employees who are domiciled far from the office center. So the problem of this, whether every employee who works at home still gets his rights. As we understand that labor according to Law No. 13 of 2003 on Manpower has An Object of Protection, among others:

- a. Protection of rights in employment relations
- b. Protection of the basic rights of workers or workers to negotiate with employers and strikes
- c. Occupational safety and health protection
- d. Special protection for workers or workers of women, children and persons with disabilities
- e. Protections on wages, welfare and social security of the workforce
- f. Protection of the right of termination of labor

When viewed from the object of protection, it is natural for the company to fulfill the rights of labor even if the worker works at home. However, the workforce has become a worker in the company which means it is the responsibility of the company to guarantee and its nature is absolute and must be carried out as well as possible by employers who act as employers.

The company must continue to pay the health insurance contributions of workers to anticipate if the worker becomes one of the affected by Covid-19 so that workers get their right to health protection. And the company must not take arbitrary actions, namely increasing work time on the grounds that workers do it at home, because if based on Article 77 paragraph 2 of Law

No. 13 of 2003 which has now been amended in Law No. 11 of 2020 concerning Job Creation related to work time, namely 7 Hours 1 Day and 40 Hours 1 Week for 6 Working Days in 1 Week or 8 Hours 1 Day and 40 Hours 1 Week for 5 working days in 1 week. The provisions in Article 77 paragraph 2 do not apply specifically to certain sectors of work or business, If the company requires workers to work longer than on time, the company must issue overtime wages stipulated in Article 78 of Law No. 11 of 2020 concerning Job Creation. According to Soepomo, labor protection is divided into three types. Among others:

- a. Economic Protection, which is the protection of labor in the form of sufficient income, including if the workforce is not able to work against his will.
- b. Social Protection, i.e. protection of labor in the form of occupational health insurance and freedom of association and protection of rights for organizations.
- c. Technical Protection, i.e. protection of labor in the form of security and safety of work.

Companies in ensuring the health of workers must meet the social security program created by the Government for the welfare of the People of Indonesia, In this case the company is obliged and routinely finances the program every month. This is to anticipate unwanted events against workers and companies are obliged to finance the health of their workers while still under the auspices of the company, not limited to those workers working at home or in the office. If based on the provisions of Article 5 paragraph 2 and Article 6 of Law No. 24 of 2011 which explains that BPJS can be divided into two types, namely:

1. BPJS Kesehatan, this serves in organizing a health insurance program.
2. BPJS Ketenagakerjaan, this serves in organizing work accident guarantee programs, old age guarantees, pension guarantees and death guarantees.

Thus the role of the company in fulfilling the rights of workers in the part of working time, health insurance, wages of company workers should not be arbitrary in hiring its workers even though the worker does it at home and related to the principle of applying labor provisions to all workers or workers, where it has been mentioned that all labor provisions apply to all workers without discriminating their status and place of work while still under the power of the employer.

2. Role of The State In Protecting Labor Rights During The Covid-19 Pandemic

Article 151 paragraph (1) of Law No. 13 of 2003 concerning Manpower affirms that: "Employers, workers/ workers, trade unions / trade unions, and the government, with all efforts must strive so that there is no termination of employment". If all efforts have been made, but layoffs are inevitable, then the purpose of layoffs must be negotiated by employers and trade unions/trade unions or with workers / workers if the workers/workers concerned do not become members of the trade union / trade union. The government in the Covid-19 pandemic situation asked employers not to make layoffs, especially in sectors that are vulnerable to the Covid-19 pandemic.

Based on the data that has been outlined earlier on the crucial impact of the Covid-19 pandemic on workers, the government has taken and decided on several regulative measures to overcome the negative effects of the pandemic in the labor sector as intended. Regulations that specifically regulate the protection of workers during the pandemic can be outlined into the following sections:

1. With regard to wages for workers/workers. This is stipulated in the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number: M/3/HK.04/III/2020 below:
 - a. For workers who are categorized as Monitoring Persons (ODP) related to Covid-19 based on doctor's information so that they cannot enter

- work for a maximum of 14 (fourteen) days or according to the standards of the Ministry of Health, the wages are paid in full;
- b. For workers/workers who are categorized as suspected cases of Covid-19 and quarantined / isolated according to the doctor's statement, the wages are paid in full during the quarantine/isolation period;
 - c. For workers/workers who do not enter work because of Covid-19 illness and are proven by a doctor's statement, the wages are paid in accordance with laws and regulations;
 - d. For companies that restrict business activities due to government policies in their respective regions for the prevention and countermeasures of Covid-19, thus causing some or all of their workers/workers not to enter work, taking into account business continuity, changes in the amount and way of payment of workers/workers' wages are carried out in accordance with the agreement between employers and workers/workers.
- In the description of the points above, it is strictly regulated about the protection of workers/workers from the aspect of wages. Points (a) to (c) outline the protection for workers who are indicated to have contracted Covid-19 to still be paid wages in full and in accordance with the mechanisms stipulated in the law. Even specifically, in point (d) it is mentioned that when there are restrictions on business activities due to government policies in tackling the negative excesses of Covid-19, the wage process is still carried out while still considering aspects of business continuity. In the author's understanding, this can also be understood as another alternative to the layoff decision. Where, to avoid layoffs the steps as mentioned in point (d) above can be taken by the company.
2. With regard to Termination of Employment (PHK). The most pronounced implication of the pandemic for workers is layoffs. If referring to the provisions of legislation before the pandemic but still relevant to be referred to as a procedure to read the reality of layoffs that occur en masse. Of the existing provisions, it almost completely makes no room for layoffs. This for example can be seen in the Circular Letter of the Minister of Manpower and Transmigration Number: 197/MEN/PHI-PPHI/V/2008 concerning prevention of job cuts (PHK), it is mentioned that before the company takes the steps of layoffs, the following steps are first taken:
 - a. Ask the company to carry out production cost efficiency, including the company's overhead;
 - b. Encourage the implementation of the follow-up agreement of the APINDO National Board of Executives based on the results of bipartite meetings with the Trade Unions / Trade Unions, so that each company can increase the cost of food and transportation costs to its workers, according to the capabilities of the company concerned;
 - c. Request that each employer act as a bipartite forum and prioritize dialogue between employers and trade unions / trade unions in their respective companies. If in the above ways layoffs cannot be avoided and employers are forced to make layoffs, then layoffs must be carried out in accordance with the provisions of applicable laws and regulations.
- Based on the description of several regulations relating to worker protection in the midst of a pandemic as specifically mentioned above, in fact, government policy in this case is fully in favor of the fate of workers. If studied carefully, the problem of workers in the midst of a

pandemic is specifically related to two things.

First, related to work wages, where the current pandemic situation has a great effect on the company's income. This will certainly also have impacts on the quantity of workers' wages themselves. And the second, it has to do with continuity of work. As a continuation of the problem from the first point, of course, the consequence is the policy of layoffs, if economically the company's expenditure is high, while income is low.

In addition to the regulations and technical rules arranged for workers during the Covid-19 pandemic, the Government has also issued several policies to reduce the number of Covid-19 spread, namely in the form of social policies. Social policies issued by the government have a great impact on entrepreneurs and industries, especially on production whose raw materials and markets come from abroad. This resulted in a weakening of the economy in Indonesia.

The incident resulted in many companies or industries experiencing a decrease in income and even suffers losses, this will also increase the possibility of companies to take a policy of termination of employment (PHK) on a large scale. For this reason, in order to overcome this problem, the government issued a policy with the aim to provide protection for the sake of justice for workers who experience layoffs, some policies issued by the government are:

a. Issuance of Policies and Protections to Workers

The Minister of Manpower has issued various policies and programs to protect the safety and rights of workers while maintaining business continuity or business continuity. These policies and programs were issued to realize a new normal order of employment during the Covid-19 pandemic. The first policy issued by the Ministry of Labor is to issue a Circular Letter (SE) of the Minister of

Manpower Number M/3/HK.04/III/2020 concerning Worker/Labor Protection and business continuity in the framework of Covid-19 prevention and countermeasures.

This policy aims to prevent the spread and handling of cases related to Covid-19 in the work environment and wage protection for workers / workers related to Covid-19. Second, the Ministry of Manpower issued SE Minister of Manpower No. M/8/HK.04/V/2020 concerning Protection of workers/workers in the Work Accident Guarantee Program (JKK) in cases of occupational diseases due to Covid-19. The circular emphasizes the granting of rights to workers who are at risk and exposed to Covid-19 to get protection from the JKK (Work Accident Guarantee) Program in accordance with the Law. The third formed the Covid-19 Occupational Health and Safety Post (K3). The post is an active effort by the Ministry of Labor by opening information and consulting services related to complaints for workers related to occupational safety and health in the company. The circular mentions workers who have special / specific risks that can cause occupational diseases due to Covid-19 are divided into 3 categories. First, medical and health personnel who are in charge of treating and treating patients in hospitals, health facilities, and other places designated by the government as places to treat / treat patients infected with Covid-19. Both health support workers, health facilities, and other places designated to deal with patients infected with Covid-19, namely workers in their work are at risk of contracting/being exposed to Covid-19 in the work environment. Third, the volunteer team includes health and non-health workers who are in charge of Covid-19 countermeasures that can be placed directly in hospitals, health facilities, and other places stipulated in the Covid-19 response.

b. Incentives for Medical Workers

The Covid-19 pandemic that has hit Indonesia since March 2020 has caused changes in various aspects of life, especially

for health aspects in the community. Thus, the implementation of health programs is now more focused on emphasizing the spread of Covid-19 in Indonesia. The next challenge is to change the way of thinking and the way it behaves in order to improve the degree of public health and be resilient from the threat of the Covid-19 virus that is spreading now. Public health workers must have the ability to understand the patterns of spread and prevention of Covid-19 in the community needed to design programs and policies to accelerate the handling of Covid-19 in Indonesia.

The government issued a policy to provide incentives for medical personnel. The incentive to medical personnel is different, such as between practicing doctors in Covid-19 referral hospitals, of course, it is different from midwives and nurses. If health workers are exposed to Covid-19, the government will provide free health services to medical personnel and also to medical personnel who have died due to Covid-19 disease, the government will provide death compensation of approximately Rp 300,000,000.

However, the implementation of this incentive fund is too late to reach the hands of medical personnel, because it is constrained by administrative affairs that require approval from the ministry of health. So that as of July only about 8.36% of the total government budget for medical personnel incentives is disbursed. Due to the delay in disbursement of funds, this caused conflict among medical personnel. Many medical personnel are wondering about this and demanding the transparency of incentives and personal protective equipment (APD) to the government for work safety, vitamin intake needed by medical personnel immediately.

c. Issue a Pre-employment Card

The pre-employment card program has been planned by the government since the beginning to eradicate poverty and reduce unemployment in Indonesia. This Pre-employment Card Program aims to

develop the competence of the labor force, increase productivity and competitiveness of the labor force. Pre-employment cards are a way for the government to provide assistance to small workers/workers who experience layoffs (PHK) and also micro and small businesses affected, so that they can work and work again. Unstable economic conditions due to this pandemic, making work based on soft skills more needed compared to those with diploma capital. So, through this program, it is hoped that workers who get facilities from the government can have new skills to be able to open their own business / business, can be independent so that they can open new jobs for many people to reduce unemployment.

The pre-employment card program can also be accessed easily because the registration can be done online so that the process becomes faster and more practical. The pre-employment card program provides assistance to each cardholder of IDR 3,550,00.00 which is sent in stages over 4 months. In addition, the government also cooperates with BP Jamsostek to provide additional incentives of Rp 600,000 to every worker who is a victim of Termination of Employment (PHK) who has been registered with BP Jamsostek. The pre-employment card program collaborates with online service providers, such as teacher rooms, maubelajarapa.com, pintaria, sekolah.mu, bukalapak, and others. Initially, this pre-employment card program will be implemented directly/offline but due to the state of the Covid19 pandemic this program cannot be implemented directly/offline. Initial planning, the government issued a budget of Rp 10 Trillion, but in order to overcome the Covid-19 virus pandemic, the government is currently making a decision by increasing the budget to Rp 20 Trillion.

D. CLOSING

The Covid-19 pandemic that has occurred to date has impacted almost all sectors of life including the economic field, especially for the workforce. In terms of

protection of labor, the steps or policies taken by the state in this case the government by issuing several regulations as a firm measure related to legal protection efforts for workers, such as the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number: M/3/HK.04/III/2020 which specifically regulates wages for workers/workers, as well as the Circular Letter of the Minister of Manpower and Transmigration Number: 197/MEN/PHI-PPHI/V/2008 on Prevention of Job Cuts (PHK) as well as other technical policies such as the JKK Program (work accident guarantee), Incentives for medical workers, and Pre-employment cards that are expected to help workers affected by Covid-19 itself.

Policies related to legal protection for workers during the current pandemic continue to require massive control, high commitment and firmness from the government. Conceptually, the regulations set by the government in protecting workers have been very good, but not yet maximal and significant, especially with regard to the issue of layoffs against workers. On the other hand, workers must also be proactive in fighting for their rights while still relying on laws and regulations.

For this reason, according to the author, there needs to be a formulation of strategic steps in terms of comprehensive protection, especially related to the rights of workers in force majeure circumstances. This becomes important so that workers can still make ends meet in difficult times like this. In addition, in this case the Ministry of Manpower needs to invite other relevant Ministries to discuss comprehensively in order to find solutions regarding the protection of labor rights during this pandemic. Each ministry and related state institutions is no longer the time to run independently, because this labor problem is not a stand-alone problem, it is necessary to handle holistically under the coordination of the President just like the handling of the Covid 19 pandemic itself.

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