

**LABOR PROTECTION DURING THE COVID-19 PANDEMIC:  
AN INDONESIAN EXPERIENCE****Nur Hadiyati**International University of Batam  
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Telp./Fax: +62-778-7437111 E-mail: [hadiyati@uib.ac.id](mailto:hadiyati@uib.ac.id)*Submitted: Okt 08, 2021; Reviewed: Nov 20, 2021; Accepted: Dec 05, 2021***Abstract**

*In the dynamics of employment in Indonesia, the working relationship does not necessarily run optimally or can be said to experience problems that can be caused by the worker or the company. From these factors, it can allow for disputes between workers and employers in terms of termination of employment, especially during the Covid-19 Pandemic. This will cause several companies in Indonesia to lay off their workers. Some business actors have started to show concern, they think that the Covid-19 pandemic can be used as a justification for employers to reduce employees by considering it as force majeure. This is considered the urgency to conduct research. This research uses doctrinal law research or normative legal research. The research examines laws and regulations (law in books) or the rules/norms and principles contained in legislation, doctrines in legal science. Law is intended to refer to positive legal norms (ius constitutum). The results of this research show that the Covid-19 pandemic can be categorized as an unexpected event at the time the policy was made. That is, if there is a policy made during this pandemic and causes the termination of relations, it cannot be used as an excuse as a force majeure. Thus, there is a need for legal protection of Indonesian workers by the state to guarantee workers' rights and realize workers' welfare.*

**Keywords:** *Covid-19 Pandemic; Legal Protection; Labor***INTRODUCTION**

Indonesia is a legal state as stated in Article 1 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia. Indonesia is declared as a state of law, Indonesia should uphold justice and prosperity in society. The concept of the rule of law guarantees human rights that are owned

by everyone.<sup>1</sup> This is in line with the concept of the rule of law which he calls the term “*rechtsstaat*” which includes four important elements, namely the protection of human rights, the division of power, government based on the law, and the ex-

<sup>1</sup> Tan, W. (2016). Tinjauan Yuridis Perlindungan Tenaga Kerja Indonesia Di Malaysia. *Journal Of Judicial Review*, 18(2), 145-153, <https://journal.uib.ac.id/index.php/jjr/article/view/95>, p. 146.

istence of a state administrative court.<sup>2</sup>

Labor protection gets special attention in the concept of the rule of law relating to human rights. Citizens have the right to work and a decent living for humanity. The protection of workers in Indonesia is stated in Article 28D Paragraph 3 of the 1945 Constitution of the Republic of Indonesia - "every citizen has the right to work and receive compensation and fair and proper treatment in an employment relationship". Thus, the implementation of national development for the workforce has a very important role and position as actors and development goals. Labor development must be regulated so that basic rights and protections for workers are fulfilled which can create conditions conducive to the development of the business world.<sup>3</sup>

The world is facing a very crucial problem with the presence of Covid-19 or Coronavirus Disease 2019 which has

spread throughout the world.<sup>4</sup> This virus was first reported from Wuhan, China. The disease caused by Covid-19 is a highly contagious infection caused by the acute respiratory syndrome coronavirus which later spread to several other countries in the world.<sup>5</sup> In Indonesia itself, the spread of Covid-19 is very rapid, wherein a short period after many countries were exposed to this virus,<sup>6</sup> Indonesia was also exposed to a short period by residents who were positively infected with Covid-19.<sup>7</sup> As a result, the population was quickly infected with the virus, the government made various efforts, solutions as prevention or how to inhibit and reduce the spread and infection of the Indonesian people with Covid-19 which has been

<sup>2</sup> Taniady, V., Riwayanti, N. W., Anggraeni, R. P., Ananda, A. A. S., & Disemadi, H. S. (2020). PHK Dan Pandemi COVID-19: Suatu Tinjauan Hukum Berdasarkan Undang-Undang Tentang Ketenagakerjaan Di Indonesia. *Jurnal Yustisia-bel*, 4(2), 97-117, <https://doi.org/10.32529/yustisiabel.v4i2.701>, p. 98.

<sup>3</sup> Hatane, K., Alfons, S. S., & Matitaputty, M. I. (2021). Perlindungan Hukum Terhadap Pekerja Di Masa Pandemi Covid-19. *TATOHI: Jurnal Ilmu Hukum*, 1(3), 265-275, <https://fhukum.unpatti.ac.id/jurnal/tatohi/article/view/577>, p. 266.

<sup>4</sup> Fransisco, W. (2020). Interaktif Masyarakat Terhadap Hukum Dalam Kehidupan Normal Baru Pasca COVID-19. *Journal of Judicial Review*, 22(2), 151-164, <http://dx.doi.org/10.37253/jjr.v22i2.1483>, P. 152

<sup>5</sup> Disemadi, H. S. (2021). Stimulus Kredit Perbankan: Kebijakan Penanggulangan Risiko Kredit Akibat Coronavirus Disease 2019 (COVID-19) di Indonesia. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 10(3), 563-577, <https://doi.org/10.24843/JMHU.2021.v10.i03.p10>, p. 564.

<sup>6</sup> Disemadi, H. S. (2021). Fenomena Predatory Lending: Suatu Kajian Penyelenggaraan Bisnis Fintech P2P Lending selama Pandemi COVID-19 di Indonesia. *Pandecta Research Law Journal*, 16(1), 55-67, <https://doi.org/10.15294/pandecta.v16i1.26860>, p. 58.

<sup>7</sup> Nugraha, A. S. D., Sanggarwati, E. P., & Al-Fatih, S. (2021). Government Legal Policy: Dampak Pembebasan Bersyarat Narapidana selama Pandemi COVID-19. *Indonesia Law Reform Journal*, 1(2), 209-227, <https://doi.org/10.22219/ilrej.v1i2.17185>, p. 211.

written and explained in Law Number 6 of 2018 concerning Health Quarantine. This law clearly explains the existence of restrictions in terms of the exit and entry of individuals to an area that has been declared the source of the outbreak, including it also regulates the existence of orders for isolation, regional quarantine, vaccination and so on to stop the spread of outbreaks that occur. in Indonesia.<sup>8</sup>

In the dynamics of employment in Indonesia, the working relationship does not necessarily run optimally or can be said to experience problems that can be caused by the worker or the company. From these factors, it can allow for disputes between workers and employers in terms of termination of employment, especially during the Covid-19 Pandemic which has spread throughout the world, including Indonesia. So that some companies issue policies to cut off employment relations with some workers which are felt to increase the company's losses.<sup>9</sup> The Covid-19 pandemic has resulted in most entrepreneurs being forced to stop or reduce their business activities. This means

that there will be Termination of Employment or reduction of its workers. It also forces workers to work from home or not work at all. This means reduced or stopped sources of income for workers.<sup>10</sup> Indonesia is one of the countries affected by the Covid-19 pandemic. This pandemic has had a huge impact on various sectors, one of which is the employment sector, which can be seen in the impact of company performance, declining community productivity, to the operational needs of workers.<sup>11</sup>

The dilemma of various countries in tackling Covid-19 has made the government and even the public feel anxiety and losses that have an impact on health and the economy.<sup>12</sup> The government issued a policy regulated in Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions to handle the spread of Covid-19. The limitation in question is to limit community activities that can gather large numbers of people in

<sup>8</sup> Nugraha, A. S. D., Sanggarwati, E. P., & Al-Fatih, S. (2021). *Loc.Cit.*

<sup>9</sup> Sembel, C. D. (2021). Perlindungan Hukum Terhadap Pemutusan Tenaga Kerja Di Tengah pandemi Covid-19. *Lex Administratum*, 9(4), 88-98, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/33318>, p. 88.

<sup>10</sup> Prajnaparamitha, K., & Ghoni, M. R. (2020). Perlindungan Status Kerja Dan Pengupahan Tenaga Kerja Dalam Situasi Pandemi COVID-19 Berdasarkan Perspektif Pembaharuan Hukum. *Administrative Law and Governance Journal*, 3(2), 314-328., <https://doi.org/10.14710/alj.v3i2.314-328>, p. 316.

<sup>11</sup> Hatane, K., Alfons, S. S., & Matitaputty, M. I. (2021)., p. 267.

<sup>12</sup> Juaningsih, I. N. (2020). Analisis Kebijakan PHK Bagi Para Pekerja Pada Masa Pandemi Covid-19 di Indonesia. *Adalah*, 4(1), 189-196, DOI: [10.15408/adalah.v4i1.15764](https://doi.org/10.15408/adalah.v4i1.15764), p. 190.

one place, and limit community mobilization in and out of an area. The central and regional governments are also trying to minimize the existence of hoax news that adds to public panic, by providing website services related to the Covid-19 pandemic that can be accessed and monitored for progress.<sup>13</sup>

This policy has prompted several companies to take steps to reduce losses due to the Covid-19 pandemic. One of the steps taken by several companies in Indonesia is to terminate the employment of employees who work at the company.<sup>14</sup> This is in line with Articles 164 and 165 of Law Number 13 of 2003 concerning Labor (Labor Law) which states that a company has the right to terminate the employment relationship of workers if a company suffers a loss, including women who are the most vulnerable in the termination of employment. The state, which should be the guarantor of the rights of its citizens, has deliberately allowed various

cases of violations against the workers to continue to occur. However, in general, several companies that cut their work relationship during the Covid-19 pandemic often use force majeure reasons, even though the company is still producing as usual. Whereas in the constitution there are guarantees for the rights of citizens to have the right to work and a decent living.<sup>15</sup>

Previous research has been carried out by Kanyaka Prajnaparamita who studied the protection of child labor in Indonesia, in particular, the rules that protect child labor both in industrial areas and in entertainment such as child artists and the like;<sup>16</sup> Syaifuddin Zuhdi, Wisnu Tri Nugroho, and Roudlotul Jannah who studied the protection of local workers. This research shows that there is a need for a harmonization process between legal instruments so that existing legal products do not have weaknesses, as well as the need for effective supervision in the realization of existing provisions so that the protection of local workers can be realized

<sup>13</sup> Khasanah, R. P., & Purwaningsih, T. (2021). Analisis Collaborative Governance dalam Implementasi Kebijakan Psbb Pada Penanganan Pandemi Covid-19 di DKI Jakarta Tahun 2020. *Jurnal Pemerintahan dan Kebijakan (JPK)*, 2(3), 155-169, <https://doi.org/10.18196/jpk.v2i3.12792>, p. 159.

<sup>14</sup> Ramlan, R., & Fitri, R. R. (2020). Perlindungan Hukum Bagi Tenaga Kerja Dari Tindakan Phk Perusahaan Dimasa Covid-19. *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, 8(2), 58-73, <https://doi.org/10.29103/sjp.v8i2.3067>, p. 60.

<sup>15</sup> Putri, C. P. (2020). Perlindungan Hukum terhadap Hak Pekerja Perempuan Di Masa Pandemi Covid-19. *Legalitas: Jurnal Hukum*, 12(2), 226-230, <http://dx.doi.org/10.33087/legalitas.v12i2.210>, p. 226

<sup>16</sup> Prajnaparamita, K. (2018). Perlindungan Tenaga Kerja Anak. *Administrative Law and Governance Journal*, 1(2), 215-230., <https://doi.org/10.14710/alj.v1i2.215-230>, p. 215.

(15);<sup>17</sup> by Kanyaka Prajnaparamitha and Mahendra Ridwanul Ghoni which aims to find out the protection of work status and wages of workers in the Covid-19 Pandemic situation based on the perspective of legal reform. The results of the study indicate that in terms of wage protection and protection for workers in the workplace, employers can defer the payment of wages by negotiating. The suspension of payment of the minimum wage by the employer to the worker does not necessarily eliminate the employer's obligation to pay the difference in the minimum wage during the suspension period (16);<sup>18</sup> and research by Otti Ilham Khair aims to find out how they form of labor protection is due to the enactment of the Job Creation Law. This study shows that justice has not been achieved in obtaining better protection for all Indonesian workers so that there is a need for rules that can balance the position between the two parties.<sup>19</sup> Based on the description above and sever-

al previous studies, the focus of this research is to examine the protection of workers during the Covid-19 Pandemic.

## METHOD

This research uses doctrinal law research or normative legal research, namely research that examines laws and regulations (law in books) or the rules/norms and principles contained in legislation, doctrines in legal science. Law is intended to refer to positive legal norms (*ius constitutum*). Thus, research that examines the provisions of positive law, legal principles, and legal doctrine to answer the issues at hand. This study will explore the legal rules that are discussed in this study regarding the applicable labor law rules to explain legal events that occur in the protection of workers during the Covid-19 Pandemic. The problem approach in this study uses a statute approach. The legal materials used in this study are primary, secondary, and tertiary legal materials. The technique of collecting legal materials in this study uses a literature study research technique. After the legal materials are processed, then the legal material analysis technique is carried out with the qualitative descriptive method, namely conducting a discussion of the legal materials that have been obtained by referring

<sup>17</sup> Zuhdi, S., Nugroho, W. T., & Jannah, R. (2019). Meninjau Peraturan Presiden Nomor 20 Tahun 2018 Sebagai Rangka Perbaikan Hukum Perlindungan Tenaga Kerja Indonesia. *Law and Justice*, 4(1), 1-11, <https://doi.org/10.23917/laj.v4i1.8061>, p. 1.

<sup>18</sup> Prajnaparamitha, K., & Ghoni, M. R. (2020). *Op.Cit.*, p. 314.

<sup>19</sup> Khair, O. I. (2021). Analisis Undang-Undang Cipta Kerja Terhadap Perlindungan Tenaga Kerja Di Indonesia. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, 3(2), 45-63, <https://doi.org/10.37631/widyapranata.v3i2.442>, p. 45.

to the theoretical basis in the literature review to obtain answers to the problems studied in a directed and systematic manner. So, that it can be said that the processing of legal materials is carried out deductively, namely by concluding a problem that is general to the existing concrete problems.

## ANALYSIS AND DISCUSSION

### Protection of Indonesian Workers during the Covid-19 Pandemic

Basically, everyone has the right to get a job, so that he is able to meet the needs of his life and his family fairly, which includes food and drink, clothing, housing, education, health, recreation and old-age insurance. The purpose of workers doing work is to be able to meet these needs. As the 1945 Constitution of the Republic of Indonesia Article 27 Paragraph (2) states that “every citizen has the right to work and a decent living for humanity”. The work can be obtained by everyone through their own business or by binding themselves with other parties, such as agencies or companies. Law Number 13 of 2003 concerning Labor also provides an understanding of Labor as contained in Article 1 number 2 that Labor is anyone who is able to do work to produce goods and/or services both to meet their own needs and for the commu-

nity. The definition of Labor in Law Number 13 of 2003 concerning Labor has perfected the notion of Labor in Law Number 14 of 1969 concerning the Basic Provisions of Labor.

Employment law clearly provides protection and social justice for workers who are the main actors in employment.<sup>20</sup> However, there are still frequent occurrences of social injustice against workers, one of which is the occurrence of the termination of employment.<sup>21</sup> In labor law, companies and workers have rights and obligations that must be granted and protected. A company has the responsibility and obligation to ensure the health, safety, wages, and fair treatment of workers. Because employees are one of the most important assets in influencing the success of a company. This statement has become a logical consequence that a company must protect and guarantee the needs of its workers in accordance with the constitutional mandate of Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia stating that “every citizen has the right to work and a decent living” with

<sup>20</sup> Al-Fatih, S., Ahsany, F., & Alamsyah, A. F. (2020). Legal Protection Of Labor Rights During The Coronavirus Disease 2019 (Covid-19) Pandemic. *Jurnal Pembaharuan Hukum*, 7(2), 100-115, <http://dx.doi.org/10.26532/jph.v7i2.10975>, p. 102.

<sup>21</sup> Hatane, K., Alfons, S. S., & Matitaputty, M. I. (2021)., p. 267.

due observance of Human Rights.<sup>22</sup>

The legal protection of labor as regulated in the Labor Law aims to ensure a harmonious working relationship between workers/laborers and employers without being accompanied by pressure from the strong party to the weak party. The law determines the interests of society that can be upgraded to legal rights that can be fully enforced. Legal protection is important because it is an element that must exist in a country and is no exception in terms of legal protection for workers. In the life of the state, it is certain that there will be a good relationship between fellow citizens and between the state and its citizens. This relationship can then give rise to rights and obligations, legal protection is the right of citizens and providing legal protection is the state's obligation.<sup>23</sup> Legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.<sup>24</sup> This legal protection

exists to provide protection for dignity and worth as well as the recognition of human rights possessed by legal subjects based on legal provisions.<sup>25</sup> So legal protection exists as an illustration of the function of the law itself that is to provide justice, certainty, benefit, and peace.<sup>26</sup> The balance between rights and obligations for the parties is an important factor in an employment relationship because, in essence, the rights of workers are an obligation that needs to be fulfilled by employers, and on the other hand, what are rights for employers are obligations that need to be fulfilled by workers.<sup>27</sup>

The problem of mass layoffs is not a new story. This is due to the weak macroeconomy in Indonesia. Indonesia itself still relies on foreign investment to support the domestic economy.<sup>28</sup> Article 1 Number 15 of the Law on Labor states that "employment relationship is a relationship between an entrepreneur and a worker based on a work agreement that

<sup>22</sup> Juaningsih, I. N. (2020). p. 192.

<sup>23</sup> Hadi, A. (2019). Perlindungan Hukum Terhadap Karyawan Yang Mengalami Pemutusan Hubungan Kerja Setelah Putusan Pengadilan Berkekuatan Hukum Tetap. *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*, 9(2), 53-70, <http://dx.doi.org/10.32493/jdmhkdmhk.v9i2.2285>, p. 57.

<sup>24</sup> Pesulima, T. L., & Hetharie, Y. (2020). Perlindungan Hukum Terhadap Keselamatan Kerja Bagi Tenaga Kesehatan Akibat Pandemi Covid-

19. *Sasi*, 26(2), 280-285, <https://doi.org/10.47268/sasi.v26i2.307>, p. 283.

<sup>25</sup> Hatane, K., Alfons, S. S., & Matitaputty, M. I. (2021)., p. 269.

<sup>26</sup> Hatane, K., Alfons, S. S., & Matitaputty, M. I. (2021)., p. 271.

<sup>27</sup> Rohendra Fathammubina, S. H. (2018). Perlindungan Hukum Terhadap Pemutusan Hubungan Kerja Sepihak Bagi Pekerja. *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, 3(1), 108-130, <https://doi.org/10.35706/dejure.v3i1.1889>, p. 120.

<sup>28</sup> Taniady, V., Riwayanti, N. W., Anggraeni, R. P., Ananda, A. A. S., & Disemadi, H. S. (2020)., p. 101.

has elements of work, wages and orders". From the understanding of the working relationship, it can be concluded that an employment relationship is a form of the legal relationship that was born or created after the existence of a work agreement between the worker and the entrepreneur. However, the termination of employment is a way for employers to avoid significant losses during the Covid-19 Pandemic.

Juridically, the position between employers and workers is the same following the provisions of Article 5 and Article 6 of the Law on Labor. Article 5 states that every worker has the same opportunity without discrimination to get a job. Article 6 states that workers/ laborers are entitled to equal treatment without discrimination from employers. In practice the relationship between employers and workers is not only viewed from a juridical perspective but also a socio-economic perspective. From a socio-economic perspective, the position between employers and workers is not the same, especially for workers who have minimal skills or are unskilled so that they need attention. In essence, the important legal protection in termination of employment is regarding the correctness of the status of workers in the employment relationship and the truth of the reasons for termination of employ-

ment.<sup>29</sup>

According to the Labor Law, the company/employer may terminate the employment relationship on the following grounds:<sup>30</sup>

**First**, good resignation at the worker's own will for workers who resign in good faith are not entitled to severance pay following the provisions of the Labor Law Article 156 paragraph (2). The person concerned is also not entitled to receive a period of service award following the provisions of the Labor Law Article 156 paragraph (3) but is entitled to a one-time reimbursement of the provisions of the Labor Law Article 156 paragraph (4); **Second**, written resignation of their own will due to termination of employment relationship for contract workers who resign due to the expiration of the contract period, the worker does not receive severance pay following the provisions of Article 156 paragraph (2) of the Labor Law and is not entitled to receive a period of service award, following the provisions of Article 156 paragraph (3) of the Labor Law as well as split money but is entitled

<sup>29</sup> Hadi, A. (2019). *Op.Cit.*, p. 66.

<sup>30</sup> Lihat Juga Fathammubina, R., & Apriani, R. (2018). Perlindungan Hukum Terhadap Pemutusan Hubungan Kerja Sepihak Bagi Pekerja. *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, 3(1), 108-130, <https://doi.org/10.35706/dejure.v3i1.1889>, p. 115-118.



to compensation following the provisions of Article 156 paragraph (4) of the Labor Act; **Third**, resignation due to reaching retirement age regarding the retirement age limit, it is necessary to agree between employers and workers and set out in a collective labor agreement or company regulations. Retirement age limit in question is the determination of age based on age of birth and based on the number of years of service; **Fourth**, workers make serious mistakes. The errors included in the category of serious errors are as follows (a). Workers have committed fraud, theft, embezzlement of goods and or money belonging to the company; (b). Workers provide false or falsified information to the detriment of the company; (c). Drunken workers, drinking alcohol, using or distributing drugs in the work environment; (d). Perform immoral acts or gambling in the work environment; (e). Attacking, persecuting, threatening, or intimidating, co-workers or companies in the work environment; (f). Persuading a coworker or company to perform an act that is contrary to the law; (g). Recklessly or intentionally damage or leave in a state of danger the company's property that causes losses to the company; (h). Recklessly or intentionally leaving a co-worker in danger at work; (i). Disclosing or di-

vulging company secrets except for the interests of the State; (j). Doing other acts within the company which is punishable by imprisonment of 5 years or more; **Fifth**, workers are detained by the authorities the company can terminate the employment of workers after 6 months of not doing work because they are still in criminal proceedings. In the stipulation that the company is obliged to pay the worker or bird a period of service award of 1 time plus compensation for entitlements. For the termination of this employment relationship without having to have a decision from the industrial relations settlement institution, but if the court decides on the criminal case before 6 months and the worker is found not guilty, the company is obliged to re-employ; **Sixth**, the company suffers losses If the company goes bankrupt and is closed due to continuous losses for 2 years, the company can terminate the employment relationship of the workers. The condition is that they must prove the loss with financial statements for the last 2 years that have been audited by a public accountant and the company is obliged to provide severance pay for 1 time as well as compensation for entitlements; **Seventh**, workers who are continuously absent from work the company can terminate the employment relationship if the

employee is absent for 5 consecutive days without a written statement accompanied by valid evidence even though he has been properly summoned twice and in writing by the company. In such a situation the worker is deemed to have resigned. Legal information and evidence showing the reason for the worker not coming in must be submitted no later than the first day the worker enters work and for a summons, it should be interpreted that the call with a grace period of no longer than 3 working days is addressed at the address of the worker concerned or the address registered with the company; **Eighth**, workers died. The employment relationship will automatically end when the worker dies. The company is obliged to provide money in the amount of 2 times the severance pay, 1 time the service award, and compensation for entitlements. As for the heirs of the widow/widower or if there are no children or there is also no straight line descent up/down, as long as it is not regulated in work agreements, company regulations, collective work agreements; **Ninth**, workers commit violations. In the employment relationship, there is a bond between workers and the company in the form of work agreements, company regulations, and collective labor agreements made by the company or jointly

between workers/labor unions and the company, which contains at least the rights and obligations of each party. and working conditions, with an agreement that has been agreed by each party, it is hoped that in its implementation it is not violated by either party. Violation of the existing agreement, of course, there are sanctions in the form of verbal warnings or written letters, until there is also a warning letter, while for written warning letters 1st, 2nd, 3rd warning letters can be made and each warning letter is valid for as long as 6 months so that if workers have been warned up to 3 times in a row in 6 months for the same violation, then based on existing regulations unless otherwise stipulated in the work agreement, company regulations, collective work agreement, the company can terminate the employment relationship. The company is obliged to provide severance pay, gratuity for years of service, and compensation for entitlements, the amount of which is determined in the existing regulations; **Tenth**, change of status, merger, consolidation or change of ownership for workers whose employment relationship is terminated for the reasons mentioned above, then: (a). Workers who are not willing to continue their working relationship are entitled to 1-time severance pay following

the provisions of Article 156 paragraph (2) of Labor and receive one-time service award according to the provisions of Article 156 paragraph (3) of the Labor Law and receive compensation for entitlements following the provisions of Article 156 paragraph (4) of the Labor Act and are not entitled to separate money, (b). Companies that are not willing to accept workers in their companies are entitled to 2 times severance pay following the provisions of Article 156 paragraph (2) of the Labor Law and receive a period of service award following the provisions of Article 156 paragraph (3) of the Labor Law and receive compensation for entitlements following the provisions of Article 156 paragraph (3) of the Labor Law. the provisions of Article 156 paragraph (4) of the Labor Law and are not entitled to severance pay; and, **Eleventh**, termination of employment due to efficiency reasons for workers who terminate their employment relationship because of efficiency, the worker is entitled to severance pay twice the provisions of Article 156 paragraph (3) of the Labor Law and compensation for entitlements following the provisions of Article 156 paragraph (3) and period awards. Worked 1 time as stipulated in Article 156 paragraph (4) of the Labor Act but is not entitled to split money.

Apart from the termination of employment as regulated in the Labor Act above, the large-scale social restriction policy during the Covid-19 Pandemic has still not been able to stop mass layoffs in Indonesia. Seeing the increasing number of victims of unilateral termination of employment amid the Covid-19 Pandemic, it is necessary to have clear protection, justice, and legal certainty for workers and workers. During the Covid-19 Pandemic, legal protection for workers is very important, considering that this situation is an outside normal situation that can have an impact on workers and employers, and even the government.

Termination of employment is a problem for some workers in Indonesia. However, what has become a concern is starting to be shown by some business actors, they think that the Covid-19 pandemic can be used as a justification for entrepreneurs to reduce employees in their business as an effort to launch their company's new strategy because what is happening now is considered force majeure. and termination of employment for reasons of efficiency.<sup>31</sup>

<sup>31</sup> Sajou, D. M., Putri, K. M. T., & Dwi, N. F. (2020). Peran Negara Atas Perlindungan Hukum Tenaga Kerja Indonesia Pada Masa Pandemi Covid-19. *Jurnal Syntax Transformation*, 1(8), 445-452,

Force majeure is a reason for the debtor to free himself from the obligation to pay compensation based on default. Force majeure is regulated in Articles 1244 and 1245 of the Burgerlijk Wetboek (B.W.) or the Indonesian Civil Code.<sup>32</sup> Force majeure is a reason to be released from the obligation to pay compensation. Then, in the Civil Code, the term force majeure is not found by not explaining what kind of coercive circumstances can explain the term force majeure. However, there are some terms which in the Civil Code which regulates compensation, the risk for unilateral contracts is then taken for the term force majeure. The existence of force majeure does not necessarily become a reason for the company to take refuge from reasons of coercive circumstances because they only want to run away from their responsibilities, so there must be several conditions so that this does not happen.<sup>33</sup>

The Covid-19 pandemic can be said to be an unexpected event at the time the agreement or policy was made. This means that if there is an agreement made

when the epidemic is spreading and the termination of employment can not be used as an excuse as force majeure. Thus, it is necessary to protect the workforce to guarantee the basic rights of workers and to realize the welfare of workers while still prioritizing the development of the company's interests.<sup>34</sup>

Article 164 Paragraph (1) of the Labor Law states that employers can terminate workers' relations because the company is closed due to force majeure. Article 164 Paragraph (3) of the Labor Law, employers can also terminate employment for workers because the company is closed not because of losses for 2 consecutive years or not because of coercive circumstances or force majeure but due to efficiency. The Minister of Labor, in his statement regarding force majeure which has consequences for workers by terminating the employment relationship, does not support the company's reasons. The reason for the Force Majeure is not a valid reason or can not be justified by the government because according to law article 164 paragraph 3 concerning employment. In this case, the contents of the law have no legal force, in the sense that the Covid-19 pandemic cannot be categorized as force majeure because the Constitutional

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<https://doi.org/10.46799/%25J.Vol1.Iss8.137>, p. 446.

<sup>32</sup> Sugiarti, Y. (2020). Keabsahan Pemutusan Hubungan Kerja Karena Force Majeur Di Masa Pandemi Covid-19. *Justitia Jurnal Hukum*, 4(2), 221-373, <http://dx.doi.org/10.30651/justitia.v4i2.6187>, p. 156.

<sup>33</sup> Juaningsih, I. N. (2020). p. 194.

<sup>34</sup> Juaningsih, I. N. (2020). p. 194.

Court Decision No.19/PUU IX/2011 states that Article 164 paragraph (3) is contrary to The 1945 Constitution of the Republic of Indonesia as long as the phrase “company closes” does not mean “permanently closed company or temporarily closed company”. Therefore, this article has no legal force for reasons of efficiency, it can only be used if the company is permanently closed.<sup>35</sup>

Companies that terminate employment must be able to prove that the Covid-19 pandemic has affected the company’s turnover to experience a drastic decline so that the company is no longer able to continue the production process and carry out its obligations to fulfill what are the rights of workers. If the company cannot prove that the company is affected by the Covid-19 Pandemic, then the company must not terminate the employment relationship for reasons of force majeure. The Labor Act prohibits companies from terminating employment without reasons justified by law.<sup>36</sup>

Termination of employment on the grounds of force majeure during the Covid-19 pandemic cannot invalidate the

employer’s obligation to workers’ rights. Some force majeure circumstances are relative (temporary) and some are absolute. Termination of employment by employers during the Covid-19 Pandemic including termination of employment on the grounds of force majeure which is relative (temporary) and does not include force majeure which is absolute. Termination of employment during the Covid-19 Pandemic does not free the company to provide what are the rights of workers, including severance pay.<sup>37</sup> Termination of employment during the Covid-19 Pandemic on the grounds of force majeure violates the labor provisions which state that the company may close if it has reached a loss for 2 years. While Covid-19 Pandemic has not reached or entered 2 years. The reason for the force majeure used by some companies cannot be accepted by some groups, so there must be some conditions so that this does not happen. With the existence of several conditions, a person cannot arbitrarily say that he has experienced force majeure.<sup>38</sup>

Workers whose work relationships are permanently terminated due to the Covid-19 pandemic, workers can take le-

<sup>35</sup> Sajou, D. M., Putri, K. M. T., & Dwi, N. F. (2020). *Op.Cit.*, p. 447.

<sup>36</sup> Syafrida, S., Safrizal, S., & Suryani, R. (2020). Pemutusan hubungan kerja masa pandemi Covid-19 perusahaan terancam dapat dipailitkan. *Pamulang Law Review*, 3(1), 19-30, <http://dx.doi.org/10.32493/palrev.v3i1.6532>, p. 26.

<sup>37</sup> Syafrida, S., Safrizal, S., & Suryani, R. (2020). *Loc.Cit.*

<sup>38</sup> Sajou, D. M., Putri, K. M. T., & Dwi, N. F. (2020). *Op.Cit.*, p. 447.

gal efforts to fight for their rights. Legal remedies that can be taken by workers who are terminated if they have not received their rights are to take non-litigation or litigation legal remedies with the following steps: 1). Conducting deliberation to reach an agreement through bipartid negotiations between workers and employers; 2). If successful, the result of the agreement in the form of a Collective Agreement can be registered at the District Court; 3). If bipartid negotiations fail, a tripartite effort can be made through a mediator at the local Labor Office; 4). If an agreement has not been reached, you can file a lawsuit with the Industrial Relations Court.<sup>39</sup>

The Labor Act was born to protect every worker's rights against exploitation by employers both before and during the Covid-19 Pandemic. Every worker has the right to guarantee work and a decent living in the world of employment and the government is here to uphold and create justice in the sustainability of the business world, especially during the Covid-19 Pandemic that is being experienced. For the normative rights of workers to be fulfilled, it is hoped that the parties in the employment relationship, namely employers and workers, both understand and ac-

cept the current situation because both parties are equally affected so that fulfilling the normative rights of workers must be adjusted to their company abilities.<sup>40</sup>

## CONCLUSION

The Covid-19 Pandemic can be categorized as an unexpected event at the time the policy was made. That is, if there is a policy that was made during this pandemic and caused the termination of the relationship, it cannot be used as an excuse as force majeure. Thus, there is a need for legal protection of Indonesian workers by the state to guarantee the rights of workers or workers and realize the welfare of workers. The Covid-19 Pandemic is only temporary, the work agreement is still there if the Covid-19 Pandemic has passed, then the work agreement can be resumed. It is better if during the Covid-19 Pandemic the company does not terminate the permanent employment relationship, but performs the temporary termination of employment to fulfill the rights of workers. Legal remedies that can be taken by workers who have terminated their employment due to force majeure during the Covid-19 Pandemic is to conduct deliberation to reach

<sup>39</sup> Sugiarti, Y. (2020). *Op.Cit.*, p. 256.

<sup>40</sup> Hatane, K., Alfons, S. S., & Matitaputty, M. I. (2021). *Op.Cit.*, p. 274.

an agreement through negotiations or file a lawsuit with the Industrial Relations Court.

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