



## Juridical analysis of termination of employment due to the Covid-19 pandemic In the context of Indonesian employment law and citizenship education

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### Abstract

The Indonesian government has declared Covid-19 a pandemic, leading to restrictions such as working from home and room capacity limits. These restrictions have resulted in numerous layoffs, and the pandemic has been deemed a national disaster, with laws and regulations like Presidential Decree No. 12 of 2020 strengthening the reasons for entrepreneurs to consider it a force majeure event. The economic sector's decline has direct implications for employees, both in formal and informal sectors, due to decreased production, depletion of industrial raw materials, weakening of the Rupiah against the Dollar, decline in Indonesian tourism, and the fall of the composite stock index. Employers have been forced to lay off their workers. Legal protection for workers includes termination of employment (PHK) and layoff provisions regulated by Articles 150-172 of Law 13/2003. This descriptive analysis aims to provide an overview of legal protection for workers during the pandemic, including the analysis and interpretation of laws and regulations related to the problem under study.

**Keywords:** COVID-19; Termination of Employment (PHK), Legal Protection

### Introduction

The outbreak of a new type of corona virus disease (Sars-Cov) virus pandemic, also known as COVID-19 and the increasing number of cases and the continued development of new variants of COVID-19 which has been going on for the past 2 years, to be precise at the end of 2019, resulted in changes in all aspects of people's lives. Zhao & Akhter (2023) He added that COVID-19 has had a major impact on various aspects of society around the world. A pandemic



is an epidemic that spreads simultaneously everywhere, covering a wide geographical area. To improve the application of lessons learned from the COVID-19 pandemic, it is important to foster dialogue between different viewpoints, recognize shared priorities, and draw on evidence coming from different disciplines (Auerbach et al., 2023). A pandemic is an epidemic that spreads across almost an entire country or continent. It usually affects large numbers of people.

The number of victims of COVID-19 continues to increase, both in Indonesia and in the world. Among the Indonesian population, which recorded 268,074,600 people, on August 29, 2020, there were 169,195 people who tested positive for COVID-19. Those who managed to recover 122,802 people, and 7,261 people died or 0.0027% of the Covid-19 death rate. Meanwhile, at the world level, out of 216 countries in the world, or 7,594,000,000,000 people in the world, there are 17,660,523 people who have been confirmed to have COVID-19 and 680.894 people have died.

The COVID-19 pandemic has produced significant negative impacts on social justice (Xi et al., 2023). The Covid-19 pandemic has caused a huge impact and significant financial stress (George et al., 2023). Communities and economies are facing major challenges due to pathogens unprecedented in world history. The outbreak, better known as COVID-19, is a novel coronavirus that has impacted on a global level the health and economies of almost all countries around the world (Zahid et al., 2023). The COVID-19 pandemic or outbreak that soared significantly brought a real negative impact with the decline of economic sectors throughout the world, including Indonesia. The impact of the decline in the economic sector has direct implications for the working community (employees) both in the formal and informal sectors.

Institutions and academics are focusing on economic recovery strategies to mitigate the short- and long-term impacts of the COVID-19 crisis (García-Pérez-de-Lema et al., 2022; F. Liu et al., 2022; Ranjbari et al., 2021). To achieve a strong and sustainable recovery, short-, medium-, and long-term policies are needed. Quantitative and qualitative information about company behavior is crucial for understanding needs and imbalances, and efficiently managing resources to boost the economy (García-Pérez-de-Lema et al., 2022; Ranjbari et al., 2021). This information must be agile and constant, as uncertainty about the health crisis's duration remains. Decisions must be made quickly, as they will have significant consequences in the future. This information is crucial for a swift and effective recovery.

Socio-economic vulnerability has a central role in countries affected by disasters and emergency situations (Fatemi et al., 2023). Termination of employment is a condition that employees are very worried about. Gaffar et al. (2021) add if the agreed collective agreement has legal force. This concern arises because the impact of a slumping economy has made many companies have to go out of business and will linearly have an impact on termination of employment which is carried out unilaterally by employers. Termination of employment is often a shortcut for business owners to cut their company expenses. In a wide scope. de Miranda et al. (2023) states if layoffs occurred in 29.26% of workers. Along with the rate of development of the business industry as well as the increasing number of the workforce working in an employment relationship, the issue of termination of employment is a problem topic because it involves problems of human life.

In recent years, we have witnessed rapid and significant changes in the organizational structure of work and the types of work that exist. These changes include the adoption of new schemes that focus more on economic and employment aspects. One striking example is the rapid increase in outsourcing practices or the use of sub-contra labor (Navajas-Romero et al., 2017). The Covid-19 pandemic has resulted in increased costs in raw materials of natural resources, which in turn hampers production and harms economic growth (Fan et al., 2023). Countries' economies endured a year of challenges by the impact of Covid-19 (Abid et al., 2022).

Employment relationship is a relationship in which one party is the employer and the other party is the person receiving a particular job. Imam Soepomo explained that the

employment relationship occurs after an employment agreement exists between the worker and the employer in which the worker commits himself to work by receiving wages and the other party binds himself to employ a worker by paying wages (Soepomo, 2003). In the 1945 Constitution of the Republic of Indonesia as *staatsfundamentalnorm* in Article 27 paragraph (2) states that "every citizen has the right to work and a decent living for humanity".

The mandate of the 1945 Constitution of the Republic of Indonesia clearly emphasizes that every individual has the right to get a decent job. It is also an instrument of embodiment of justice and welfare. It is the law. Through this law, the state seeks to regulate relations between individuals or between people and legal entities. This regulation is intended so that there is no oppression from the stronger party to the weaker party to create justice and peace. The problem of manpower or labor is a typical problem that we hear for developing countries, including Indonesia. One of these problems is the termination of employment by companies, as is the case with unilateral termination of employment by companies in Indonesia.

Parametric models state that observable differences between labor markets in different countries can be explained primarily by variations in income earned by informal entrepreneurs and the length of time work is performed by informal workers (Flabbi & Tejada, 2023). One of the regulations made by the government is a regulation that regulates a person's relationship in the world of work. The facts show that there are so many people who work for the company, therefore the working relationship between a worker and the company needs to be regulated in such a way that there is no arbitrariness that can harm one party. What is the role of the law in regulating the massive termination of employment that occurred during the COVID-19 pandemic?

## Method

The legal research in this article uses a normative study approach (Soekanto, 1983) with an emphasis on the use of normative legal rules and principles related to the topic of the problem that is the object of research. The normative approach will be elaborated with secondary data through books, concepts, theories, and expert opinions as well as findings that are closely related to the main issues discussed. In the discussion of this article, the statute approach (relevant legislation approach), comparative approach (comparative approach) and sociology approach (sociological approach) (Ibrahim, 2005) are also used.

The analysis process is descriptive analytical, with the aim of obtaining an overview of the forms of legal protection for workers from the shadow of layoffs during the pandemic. It is descriptive because this research does not only collect, compile and present the data obtained during the research, but also includes the analysis and interpretation of laws and regulations with data related to the problem under study. Secondary data obtained from library materials in the form of books, papers, journals, research results and laws and regulations related to this research, with an inventory of documents through library research.

## Results and Discussion

The Covid-19 pandemic is a common problem because the impact of this pandemic can be felt by the entire community. Wilson Dib et al. (2023) states if Infection prevention and control measures increase contact awareness. During the COVID-19 pandemic, people face complex challenges (Siltag et al., 2023). The economic sector is one of the sectors that will get a direct effect from the pandemic. The chaotic economic conditions have implications for many companies closing because they cannot carry out their obligations, causing various problems related to labor. This happens because the company's activities can not run normally or even stop completely. Li et al. (2023) stated that the COVID-19 pandemic has resulted in a significant impact on the economic development sector in the marine sector, air pollution, and energy consumption levels. Various restrictions imposed by the government such as work from home and regulations regarding capacity limits in a room also contributed to the weaknesses that occurred causing many terminations of employments. In the context of an economy rich in natural resources, we often see strong economic growth in this country. However, this is not always true in all situations. Moreover, the importance of an efficient financial system in the

management of natural resource exports also has a significant positive impact on the country's economy (Wenjuan et al., 2023)

According to survey data compiled by the Central Statistics Agency (commonly referred to as BPS), there are only at least 2.55% of companies in Indonesia stating that their income had increased during the Covid-19 pandemic, around 14.6% of companies said they had neither decreased nor increased revenue during the pandemic, and the remaining about 82.85% of companies experienced a decline in revenue during the pandemic. This is due to the decrease in the amount of production produced by the company. In addition, the depletion of the availability of industrial raw materials, the weakening of the Rupiah against the Dollar, the decline in Indonesian tourism visitors, and the fall of the composite stock index have forced employers to lay off their workers. Facing emergency situations in the health sector requires work-related policies (J. Liu et al., 2023).

According to the Indonesian Dictionary, termination of employment (which is usually referred to as layoffs) means the termination of the employment relationship due to a certain matter. These result in the termination of the rights and obligations between the worker and the company/employer. This condition can happen due to resignation, termination by the company, or expiration of the contract. According to the Manpower Act, the definition of termination of employment is the termination of the employment relationship caused by a certain matter which results in the termination of the rights and obligations between the worker/laborer and the entrepreneur.

Kasmir (2016) explained that termination of employment is the official termination of the engagement or agreement between the company and the employee since the letter of termination of employment is issued which results in the termination of the rights and obligations of each party. Thus, it can be understood that a layoff is the termination of a working relationship due to a certain matter which results in the termination of the rights and obligations between the worker/laborer and the business owner. Layoffs make the agreement between the employee and the company null and void, the employee or worker no longer has obligations to the company and the company no longer gives his rights to the employee except for rights related to compensation due to leaving reasons regulated by applicable regulations, such as pensions that must be paid. paid monthly for civil servants, military, and police.

The state is required to continue to provide protection for workers before, during, and after work. Covid-19 which is an infectious disease that attacks the respiratory tract has spread to all corners of the world, so everyone who has not, is currently and has completed a period of work must be protected by the state for his life, freedom, and property. There is a need for worker protection along with protection for employers. This form of legal protection contains two elements, namely the existence of the principle of the rule of law and guarantees of human rights. Legal protection for workers in Indonesia has been regulated in Law 13/2003 jo. Law 2/2004 jo. Law 21/2000 and its implementing regulations. One form of legal protection for workers is the existence of legal rules related to the termination of employment. Termination of Employment (PHK) is the termination of employment due to certain reasons which result in the termination of the rights and obligations between the worker/laborer and the business owner (Article 1 number 25 of Law 13/2003). The provisions governing layoffs are further regulated in Articles 150-172 of Law 13/2003). Layoffs should be avoided. It is forbidden for employers to lay off their workers if the worker is sick, carrying out state duties, practicing worship, getting married, pregnant, giving birth/abortion, related to marital relations, right of association, discrimination, or disability (Article 153 of Law 13/2003).

Basically, termination of employment is not allowed to be carried out unilaterally, in terms of its implementation, it must be carried out as carefully as possible because the effects resulting from the layoff can also have a direct impact and can become new problems for family members. The implementation of layoffs should not be desired in an employment relationship as explained in the provisions of Article 151 paragraph (1) of Law Number 11 of 2020



concerning Job Creation which emphasizes "Business owner, workers/laborers, labor unions, and the government must strive to avoid termination of the work relationship."

In carrying out a business activity, the company cannot know the extent of the problems it will receive. Companies that ultimately cannot avoid the implementation of layoffs based on Article 37 of Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, an entrepreneur is required to notify the purpose and reasons for the layoff in the form of the notification letter and submitted legally and properly to Workers/Labourers and/or Trade Unions/Labour Unions within the Company if the Worker/Labourer concerned is a member of a Trade Union/Labour Union no later than 14 (fourteen) working days prior to the dismissal and if Layoffs are carried out in a probationary period, the notification letter is submitted no later than 7 (seven) working days.

If termination of employment is forced, the business owner is required to pay severance pay and/or long service pay and compensation for entitlements that should be given in accordance with the provisions of Articles 156 – 157 of Law 13/2003. There are several reasons for the termination of employment initiated by the business owner with the consequence of giving rights to workers, namely the worker makes a minor/serious mistake; bankrupt company; the existence of force majeure; there is efficiency.

Termination of employment due to force majeure, regulated in Article 164 paragraph (1) of Law 13/2003, i.e. employers may terminate the employment of workers/laborers because the company is closed due to the company experiencing continuous losses for 2 (two) years, or force majeure, provided that the worker/laborer is entitled to severance pay of 1 (one) time as stipulated in Article 156 paragraph (2), a period of service award of 1 (one) time as stipulated in Article 156 paragraph (3) and compensation rights in accordance with the provisions of Article 156 paragraph (4).

Termination of employment is a crucial step in addressing company problems. Article 36 of Government Regulation Number 35 of 2021 outlines reasons for layoffs, specifically "the company is closed due to force majeure." Force majeure can be classified into absolute and relative types. Absolute force majeure occurs when a company's achievement is impossible to fulfill, while relative force majeure occurs when an agreement is still possible but with significant debtor sacrifices. Force majeure can be divided into two types: permanent force majeure, where the achievement cannot be carried out at any time, and temporary force majeure, where the achievement cannot be completed within a certain time frame. These conditions can be based on Article 164 paragraph (1) of Law 13/2003, which states that layoffs occur due to force majeure reasons. Therefore, it is essential to consider the validity period of agreements when implementing layoffs.

Hence, the company closed because the company experienced continuous losses for 2 (two) years. Furthermore, workers get rights in the form of severance pay in the amount of 1 (one) time as stipulated in Article 156 paragraph (2), long service pay in the amount of 1 (one) time as stipulated in Article 156 paragraph (3) and compensation for appropriate entitlements. However, based on the results of a survey from the Center for Population Research LIPI together with the Demographic Institute of the University of Indonesia and The Research and Development Agency of the Ministry of Manpower, there are 13.8% of workers in Indonesia who do not receive severance pay from 15.2% of workers who have been laid off due to the Covid-19 pandemic. In the Manpower Act, layoffs without providing severance pay to workers are included in the form of violations.

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One of the layoff cases without severance pay occurred at the Garden Palace hotel. More than 100 employees were laid off unilaterally without severance pay. Most of them were permanent employees. One of the employees affected by the layoff, Arif Harianto, said that the hotel had not provided any wages since March 2020. He had only received his March wages on October 1, 2020. So far, the management has not given the wages from April 2020. Arif added that he had worked for 21 years with permanent employee status. He was laid off suddenly in April, and not long after that, he was terminated unilaterally without severance pay.

The Indonesian government has declared the Covid-19 pandemic as a national disaster and issued several laws and regulations such as Presidential Decree No. 12 of 2020 concerning the Determination of Non- Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) to strengthen the reasons for entrepreneurs declaring a pandemic. This is an event that creates a force majeure. Efficiency carried out by companies by carrying out layoffs can only be done as a last resort as in the Criminal Law concerning (ultimum remidum). In the Circular Letter of the Minister of Manpower and Transmigration Number SE-907/MEN/PHIPPHI/X/2004 concerning the Prevention of Mass Layoffs, it is explained that before making layoffs there are efforts that must be made, namely:

1. Reducing wages and facilities for top-level workers, for example at the level of managers and directors;
2. Reduce shifts;
3. Limiting/eliminating overtime work;
4. Reduce working hours;
5. Reduce working days;
6. To temporarily lay off or lay off workers/laborers;
7. Not or extending the contract for workers whose contract period has expired;
8. Provide pensions for those who have met the requirements.

Termination of Employment (PHK) toward workers causes an obligation to give the rights as compensation for carrying out the policy. Article 40 paragraph (1) emphasizes that "In the event of Termination of Employment, the Employer is obliged to pay severance pay and/or long service pay, and compensation for entitlements that should have been received" [13]. Further provisions regarding severance pay, service pay, and compensation for entitlements that should be received are further explained in paragraphs (2), (3), and (4).

However, layoffs carried out because of force majeure become a very heavy burden on workers. This is because in Article 45 paragraph (1) if the Termination of Employment is carried out because the company is closed due to force majeure, the percentage that can become the rights of workers or workers regarding severance pay is only 0.5% (zero point five) and 1 (one) long service pay. The percentage obtained by workers who get layoffs due to force majeure that did not result in the company closing is also not much better with the provision that only 0.75% (zero point seventy-five) severance pay and award money working period of 1 (one) time.

Layoffs without severance pay are industrial abuse. Employers cannot use the Covid-19 pandemic as a justification for forming policies that legally deviate from the human rights of workers in obtaining severance pay. In the Manpower Act, employers must grant several rights after terminating their workers, including compensation for rights, gratuities for years of service, and severance pay as stipulated in Article 156 of the Manpower Act. If it is related to the reasons for employers to lay off during the Covid-19 period, the rights that employers must give to their workers include:

1. Layoff due to the reason the company closed, caused the company to lose money or due to force majeure reasons. If a business owner performs layoffs for these reasons, he must

provide compensation for entitlements, 1 x term of long service pay 1, and severance pay in the amount of 1 x provisions.

2. Layoffs for efficiency reasons, not because the company is losing money or forced circumstances. If the entrepreneur does layoffs, for this reason, he is obliged to provide compensation for entitlements, reward money for 1 x terms of service, and severance pay for 2 x provisions.

Workers can take legal action to fight for their rights. Legal remedies that can be taken by workers who have been laid off due to force majeure reasons during the COVID-19 pandemic if they have not received their rights are to take non-litigation or litigation efforts with the following steps:

1. Conducting deliberation to reach an agreement through bipartit negotiations between workers and employers.
2. If the result of the agreement in the form of a Collective Agreement is successful, it can be registered at the District Court.
3. If bipartite negotiations fail, you can make tripartite efforts through a mediator at the local Manpower Office.
4. If an agreement is not reached, you can file a lawsuit with the Industrial Relations Court.

The calculation of the rights that must be granted by the employer by a worker who is laid off following the provisions of Article 156 of the Manpower Act is as follows:

1. The provisions for calculating the minimum amount of severance pay are as follows as regulated in Article 156 paragraph (2): Working period of less than a year is 1 month's wages.
  - a. Working period of 1 (one) year or more but less than 2 (two) years equal to 2 months wages.
  - b. Working period of 2 (two) years or more but less than 3 (three) years equal to 3 months wages.
  - c. Working period of 3 (three) years or more but less than 4 (four) years amounting to 4 months wages.
  - d. Working period of 4 (four) years or more but less than 5 (five) years for 5 months wages.
  - e. Working period of 5 (five) years or more but less than 6 (six) years equal to 6 months wages.
  - f. Working period of 6 (six) years or more but less than 7 (seven) years equal to 7 months wages.
  - g. Working period of 7 (seven) years or more but less than 8 (eight) years amounting to 8 months wages
  - h. Working period of 8 (eight) years or more but less than 9 (nine) years amounting to 9 months of wages.
2. Provisions for calculating service pay, as stipulated in Article 156 paragraph (3) in which those who have the right to receive service pay are workers who, if laid off, have worked for 3 (three) years or more with the following calculation:
  - a. Working period of 3 (three) years or more but less than 6 (six) years amounting to 2 (two) months wages.
  - b. Working period of 6 (six) years or more but less than 9 (nine) years amounting to 3 (three) months wages.
  - c. Working period of 9 (nine) years or more but less than 12.
3. Provisions for calculating compensation for entitlements. There are various types of compensation payments that workers receive when they are laid off, including:

- a. Annual leave that has not been taken and has not fallen.
- b. The cost or cost of returning the worker and his family to the place where the worker is accepted for work.
- c. Replacement housing, as well as treatment and care, are set at 15% of the severance pay and/or service pay for those who meet the requirements.
- d. Other rights stipulated in the work agreement, company regulations or cooperation agreements.

The components of wages used as the basis for calculating severance pay, service pay, and compensation for entitlements that should have been received pending, consist of:

Base wage All fixed allowances are given to workers and their families, including the purchase price of supplies given to workers/laborers free of charge, which if the workers have to pay for the supply with subsidies, the wage is considered to be the difference between the purchase price and the price to be paid by the worker.

### Conclusion

The Covid-19 pandemic has harmed several companies. The data of the Central Statistics Agency (commonly referred to as (BPS) showed that only at least 2.55% of companies in Indonesia stated that their income had increased during the Covid-19 pandemic. Around 14.6% of companies said they had neither decreased nor increased revenue during the pandemic. And the remaining about 82.85% of companies experienced a decline in revenue during the pandemic.

Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) states that employers may be allowed to terminate their employment using the Covid-19 pandemic be a force majeure. However, before the employer determines the layoff policy for his workers, he must carry out other measures based on the regulation of the Circular Letter of the Minister of Manpower and Transmigration Number SE- 907/MEN/PHIPPHI/X/2004 concerning Prevention of Mass Layoffs.

Layoffs that occur have implications for the obligations in Article 40 of Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment such as severance pay, gratuity pay, and compensation for entitlements. Due to the force majeure of the COVID-19 pandemic, the laid-off workers can take other legal remedies if they have not received their rights. They can arrange a deliberate meeting to reach an agreement through bipartite negotiations between workers and employers, mediation at the local Manpower Office, or filing a lawsuit to the Court of Industrial relations.

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