



COVID-19 Fulfilling Workers 'Economic Rights Positive

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ARTICLE INFO

ABSTRACT

Keywords:

Workers;
Covid 19;
Labor;

P-ISSN: 2746-4555

E-ISSN: 2746-4563

Article history

Submitted: 2020-12-01

Accepted: 2020-12-01

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How to Cite: Ruslan. R., (2020). COVID-19 Fulfilling Workers 'Economic Rights Positive,1(2): 113-121 (doi: 10.20961/jmail.17i1.41087)

This study aims to analyze the fulfillment of workers' rights, which are favorable for Covid. This research is a normative study that uses a statutory approach. The research data used is secondary data with primary, secondary, and tertiary legal materials. The results show that efforts to protect labor rights are carried out through a regulation of the Ministry of Manpower of the Republic of Indonesia, which requires companies to pay full wages to workers with the status of people under surveillance, suspected COVID-19 who must be quarantined, and salaries according to the law for workers/laborers. Who missed work because of COVID-19.

1. INTRODUCTION

Pandemic Corona Virus Disease 2019 (COVID-19) has had an impact on all lines of life. Not only health but also hitting the economy. The imposition of Large-Scale Social Restrictions (PSBB) based on Government Regulation Number 21 of 2020 which was then imposed in several economic center areas such as DKI Jakarta, West Java, East Java caused restrictions on business activities and affected the company's economy. Termination of employment is one way that many companies choose to save finances. Data from the Ministry of Manpower as of April 20, 2020, as quoted from the <https://money.kompas.com/> page, on November 14, 2020, there were 2,084,593 workers from 116,370 companies laid off and

laid off, both from the formal, informal sectors, including MSMEs. The Indonesian Migrant Workers Protection Agency (BP2MI) recorded that in the last three months, 100,094 Indonesian migrant workers (PMI) from 83 countries returned to their homeland. The open unemployment rate in the second quarter of 2020 according to CORE, reached 8.2% under a mild scenario. This figure can increase by 9.79% in the medium scenario and 11.47% in the severe scenario. Another projection from the International Monetary Fund (IMF) states that the unemployment rate in Indonesia in 2020 will increase by 2.2% to 7.5% compared to 2019 at 5.3%.

On the other hand, during the COVID-19 pandemic, cases were found that showed the

decision to lay workers off and even unilaterally layoffs could occur due to employers' concern over the presence of workers who were confirmed positive for COVID-19 or close contact. It is feared that the presence of these workers will be a source of the spread of COVID-19 so that it can disrupt the company's business operations (Adillah, S.U., et. al. 2020). Even though it doesn't appear much in the news, the phenomenon of termination of employment due to a positive diagnosis of Covid-19 still occurs.

An interview with workers at a fish file company in Surabaya conducted by the author on November 13, 2020, found the fact that the company was unilaterally dismissed due to being positive for Covid-19. Workers are drivers with permanent employee status. He was funded by the company to carry out a rapid test after a lot of reactive pressure from his work (Yuniyanti, S.S. 2020). This worker took the initiative to do an independent swab test which then came out positive. The company made a policy to stay home for two weeks and asked to carry out a repeat swab test with the Mobile PCR facility of BIN-Surabaya City Government. After two weeks of negative results, the company never asked him to return to work. When confirmed to the company, the company located in the North Surabaya area stated that it could not employ positive people. The company was later found to have employed someone else in the driver's position without giving severance pay (Nuryanto, A. D. 2019).

The Covid-19 pandemic has created a new vulnerable group, namely workers who have either confirmed positive or have become close contacts. National data on positive confirmed cases of COVID-19 based on age groups shows the majority are in the productive age between 19 - 59 years of 78.3%, with details of 24.7% in the 19-30 years age group, 30.5% aged 31-45 years, and 23.1% aged 46 - 59 years (<https://covid19.go.id/peta-sebaran>, citation 18 November 2020).

Although there is no definite data regarding the percentage of cases at the productive age who are workers, the existence of this group of

workers deserves attention to fulfill their economic rights. The wave of termination of employment due to disruption of the company's business wheels and the concern of employers about the spread of the Covid-19 case are not necessarily reasons for violating workers' rights. The government has made legal protection measures. One of these efforts is through the issuance of a Circular of the Minister of Manpower of the Republic of Indonesia Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers / Laborers and Business Continuity in the Context of Prevention and Overcoming of COVID-19. This paper focuses on the special efforts made by the regions to ensure the fulfillment of health and economic rights in cases of confirmation and close contact of Covid-19 from unilateral layoffs from companies. One area that has a high commitment to ensuring legal certainty for workers who have been confirmed positive or as close contacts is Tabanan Regency, Bali Province (Ahsany, F., et. al 2020).

This paper is a normative juridical study which is a descriptive study using legal norms and literature as secondary material, supported by informant interviews as primary materials. The analysis uses a qualitative approach. The legal materials used are legal norms binding on Law Number 13 of 2003 concerning Manpower, Decree of the Minister of Health Number HK.01.07/Menkes/413/2020 concerning Guidelines for the Prevention and Control of Coronavirus Disease 2019 (COVID-19), and Circular of the Minister of Manpower.

2. RESEARCH METHODS

This research includes a doctrinal/normative legal research that is descriptive, in the form of diagnostic research that aims to get information about the causes of the onsets and symptoms. Secondary data comes from the primary legal material in the form of Law No. 32 of 2009 on Environmental Protection and Management and Government Regulation of the Republic of Indonesia No. 41 of 1999 on Air Pollution Control, secondary legal materials consisting of books, research results, scientific findings, and

tertiary legal materials in the form of materials from internet media. The data collection technique is done with literature studies, qualitative, with a problem approach, *namely Statute approach*.

3. RESULTS AND DISCUSSION

Environmental law or "*environmental law*," Tabanan Regency is one of 9 regencies / cities in Bali Province. Tabanan has an area of 839.33 km² which consists of mountainous and coastal areas. Tabanan area is 14.90% of the total area of Bali province. A total of 23,358 hectares or 28.00% of the land area in Tabanan Regency is rice fields, so that Tabanan Regency is known as an agricultural area (Budiman, H. et. al. 2020). Livelihoods are predominantly agricultural. Tabanan Regency consists of 10 subdistricts, namely Tabanan, Kediri, Kerambitan, Selemadeg, West Selemadeg, East Selemadeg, Penebel, Pupuan, Marga, and Baturiti.

The 2011 census showed the Tabanan population was 431,162 with a natural growth rate of 0.15. The gender composition is quite balanced, as many as 214,264 (49.69%) male residents and 216,898 (50.31%) female residents (<https://tabanankab.go.id/home/mengenal-tabanan/demography>, citation 18 November 2020).

The results of the National Labor Force Survey (SAKERNAS) of the workforce in Tabanan Regency were 261,534 people. Of the existing workforce, 254,402 people (97.27%) of them are working residents, and the remaining 7,132 (2.73%) are open unemployed. The population of the labor force residing in Tabanan Regency, the population works in the agricultural sector, which is around 43.96 percent. The population of the workforce who work in the trade sector is 44,250 people (17.39%), in the industrial sector as many as 35,313 people (13.88%), and the rest is spread across the other six sectors. The number of people who are not in the labor force in Tabanan Regency is 82,354 people, of which 19,249 people (23.37%) are still attending school,

48,697 people (59.13%) are taking care of households and 14,408 (17.05%) for other reasons (Siregar, H. 2020).

The population of Tabanan Regency is mostly Hindu. This is reflected in the number of places of worship for Hinduism as many as 1,163, 43 for Islam, 6 for Catholicism, 3 for Buddhism, and 9 for Protestantism. (Tabanan in Figures of 2011, published by BPS Tabanan). When compared to Denpasar City and Badung Regency, Tabanan Regency is demographically more homogeneous. This can be seen from the livelihoods, religion and culture of the people. Agricultural societies are characterized by high homogeneity.

The basic principle of overcoming Covid-19 rests on efforts to find suspected or probable cases, followed by isolation efforts, and laboratory tests. When the laboratory test results are confirmed positive, therapy must be carried out according to the management (Suartha, I.D.M. 2020). Close contact tracing is carried out as soon as a case is discovered. Close contacts are quarantined for 14 days. If symptoms do not appear during quarantine, monitoring can be stopped. However, if symptoms occur during monitoring, it should be immediately isolated and checked for swabs. Self-quarantine or self-isolation is carried out in close contact, confirmatory cases without symptoms, and cases of confirmation of mild symptoms without comorbidities. (Guidelines for the Prevention and Control of Coronavirus Disease 2019 p. 46, 2020). Throat and nose swab specimens are collected only in suspected or probable symptomatic cases. Retrieval was done on day 1 and 2 for diagnosis, and swab on the seventh day as a follow-up examination and assessed recovery.

Isolation is mandatory in this confirmation case to prevent the spread of the virus. Isolation in confirmed cases is carried out for a minimum of 10 days from specimen collection. Isolation for confirmatory or probable cases with symptoms for 10 days from the onset of symptoms plus at least 3 days after symptoms of fever and respiratory distress have disappeared.

(Guidelines for the Prevention and Control of Coronavirus Disease 2019 p. 46, 2020).

In the Circular of the Minister of Manpower, the Circular of the Minister of Manpower of the Republic of Indonesia Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers / Laborers and Business Continuity in the Context of Preventing and Overcoming COVID-19, it is mentioned in Roman I number 6 that in If there are workers / laborers or employers who are at risk of being suspected or experiencing illness due to COVID-19, then steps are taken according to the health standards issued by the Ministry of Health. This circular was prepared as an appeal to all Governors in Indonesia to take steps to protect workers or laborers as well as business continuity due to the global pandemic COVID-19 (Wijaya. M.M.S. 2020).

In terms of wage protection for workers / laborers related to the COVID-19 pandemic, it is mentioned in Roman II number 1 for workers / laborers categorized as People Under Monitoring (ODP) related to COVID-19 based on a doctor's statement so that they cannot come to work for a maximum of 14 (fourteen) days or according to Ministry of Health standards, the wages are paid in full. For workers/laborers who are categorized as suspected cases, in Roman II number 2, if quarantine or isolation must be carried out according to the doctor's statement, the wages are paid in full during the quarantine/isolation period. Meanwhile, workers/laborers who are unable to come to work due to being sick with COVID-19 according to the wage protection regulations in Roman II number 3 states that their wages are paid in accordance with statutory regulations if it can be proven by a doctor's certificate (Najicha, F. U. et. al. 2020a).

Still from the circular of the Minister of Manpower, the Circular of the Minister of Manpower of the Republic of Indonesia also regulates an appeal related to preventing the spread and handling of cases related to COVID-19 in the work environment, in Roman I number 4 instructs every company leader to anticipate the spread of COVID-19 to workers / laborers

with carry out preventive actions such as clean and healthy living habits by integrating in the K3 program, empowering the Occupational Safety and Health Committee (P2K3) and optimizing the function of occupational health services. As well as encouraging company leaders to immediately make a preparedness plan for the COVID-19 pandemic with the aim of reducing the risk of transmission in the workplace and maintaining business continuity (Handayani. O. 2020).

In accordance with the health management regulations for workers/laborers who are people under surveillance (suspected and probable) for COVID-19, close contact, and confirmed positive for COVID-19 must undergo isolation or quarantine for a minimum of 10 - 14 days. Companies are not allowed to deduct their wages during their absence from work because they have to undergo isolation or quarantine, let alone terminate their work unilaterally without severance pay. In addition to fulfilling the right to wages, the company's obligation is to anticipate the spread of COVID-19 in the workplace through preventive measures such as integrating clean and healthy living habits in the K3 program, empowering the K3 team, and optimizing the function of occupational health services (Leonard. T, 2020). Maintaining business continuity from the spread of COVID-19 is done by minimizing the risk of transmission and making preparedness plans in the face of a minimal pandemic, not by sharing data and layoffs for workers who confirm positive (Sarjiyati. S., et. al 2020).

During the COVID-19 pandemic, employers, workers / laborers, trade unions / labor unions and the government must do everything they can to prevent layoffs from occurring. Article 151 paragraph (1) of Law Number 13 Year 2003 concerning Manpower affirms that employers, workers / laborers, trade / labor unions, and the government must make every effort to prevent termination of employment. If all efforts have been made, but dismissal cannot be avoided, then the purpose of dismissal must be negotiated by the entrepreneur and the trade / labor union or with the workers / laborers if the worker /

laborer is not a member of a trade / labor union (Najicha, F. U. et. al. 2020b).

To avoid layoffs, employers are allowed to make changes in the amount and method of payment of wages for workers / laborers who have been temporarily laid off due to the COVID-19 outbreak. Everything is based on the agreement of the parties. If the employer is unable to pay the wage according to the minimum wage as a result of COVID-19, the employer can postpone the payment of wages, by first conducting negotiations with the worker / laborer or trade / labor union regarding the suspension.

Postponement of payment of minimum wages by employers to workers / laborers does not automatically eliminate the obligation of employers to pay the difference in minimum wages during the suspension period (Poerana, 2020).

If one of the parties ends the working relationship before the end of the stipulated period or the termination of the working relationship is not due to the provisions referred to in Article 61 paragraph (1) of Law 13/2003, the party who terminates the employment relationship is obliged to pay compensation to the other party in the amount of the workers' wages. / labor until the deadline of the working agreement period. Article 61 paragraph (1) of Law 13/2003 reads:

- a. worker dies;
- b. the expiration of the working agreement period;
- c. there is a court decision and / or decision or determination of an industrial relations dispute settlement institution that has permanent legal force; or
- d. There are certain circumstances or events that are stated in the work agreement, company regulations, or collective working agreement that can cause the termination of the working relationship.

Article 164 Paragraph (1) of Law Number 13 Year 2003 concerning Manpower states that employers can terminate workers / laborers because the company closes due to force majeure. Article 164 Paragraph (3) of Law 13/2003 employers can also lay off workers or laborers because the company has closed down not because of losses for 2 consecutive years or not due to force majeure but due to efficiency (Iswantoto. I. (2020).

COVID-19 cannot be accepted as a force majeure because it has not met the requirements for a policy stating this. With a number of conditions, a person cannot say that he is experiencing force majeure at will. The termination of layoffs due to COVID-19 violates labor regulations which state that a company can close if it has incurred a loss for 2 years. Meanwhile, COVID-19 has not reached or entered 1 year. (Sajou, D.M., et.all, 2020). The government urges companies to take steps that can be taken, such as; reducing wages and facilities for managers and directors, reducing work shifts, limiting overtime work or laying off workers temporarily (Juaningsih, 2020).

Breakthroughs in ensuring the fulfillment of economic and health rights for the working community / laborers have been made in Tabanan Regency. Interview with the Head of the Surveillance and Immunization Section, I Nengah Suarma Putra, on November 12, 2020, this was through the issuance of a Certificate of Implementing Self-Quarantine or Self-isolation. This certificate is issued by the Village Government and sent to the workplace for confirmation cases or close contact. I Nengah stated:

"This Certificate of Implementing Self-Quarantine or Self-Isolation can be used as a basis (implementing quarantine or self-reliance and as a non-work permit). In fact, his boss did not allow him to enter the office".

COVID-19 has been understood together as a dangerous pandemic that the transmission must be controlled for. The community understands that if a confirmed case is declared, a swab and RT-PCR examination must be carried out immediately. Confirmed cases and their close

contacts need isolation and quarantine. I Nengah said:

"From the start, if it was known that today's swab would be, as a close contact and a positive one, we were not allowed to enter the office,".

Through these breakthroughs, I Nengah admitted that there were no workers in Tabanan Regency who had experienced layoffs because they tested positive for COVID-19. Fulfillment of basic rights in cases of confirmation of COVID-19 and close contact is of great concern in Tabanan district. When a positive case is reported, a coordination meeting is immediately held between the Tabanan District Health Office by inviting the Head of Regional Office, traditional officials, Babinkamtibmas, Babinsa, regional / hamlet heads, village midwives, the Village Level Gotong Royong Task Force, and pecalang. Come down together to confirm positive cases accompanied by the head of the region and the village midwife to carry out epidemiological investigations and close contact tracing (Handayani. O. 2020).

Close contacts are asked to self-quarantine for 14 days. They must not come and be visited by other people. Therefore, their needs are met, so they are not motivated to leave the house, come and be visited by other people who have the potential to spread COVID-19. The village government provides basic food needs, increased body resistance, disinfection of houses and the environment in collaboration with traditional officials. In collaboration with the local Puskesmas, every day during the quarantine or independent isolation period, surveillance officers monitor the condition and if symptoms or complaints arise, the Village Midwife will examine and provide treatment. Supervision of quarantine and independent isolation is carried out by the Head of the Hamlet, the Mutual Cooperation Task Force, and the Pecalang (Sulistya. E, 2020).

If the self-quarantine period is over, a Certificate of Completion of Self-Quarantine is issued issued by the local Puskesmas. This person is still required to carry out a clean and healthy lifestyle, carry out physical distancing and other provisions for the prevention and

control of Covid -19 and immediately go to health personnel/facilities if there are complaints.

Protection of economic rights and basic rights in Tabanan Regency is a collaboration between the official government and customary stakeholders. So that legal certainty and fulfillment of rights in positive confirmation cases and close contacts are guaranteed.

4. CONCLUSION

The fulfillment of economic rights for positive confirmation workers and close contact with COVID-19 needs to be guaranteed. This is because workers have been confirmed positive and have close contact with COVID-19 as a new vulnerable group that has arisen due to the pandemic. The government has taken protective measures through the issuance of a Circular of the Minister of Manpower of the Republic of Indonesia Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers / Laborers and Business Continuity in the Context of Prevention and Overcoming of COVID-19

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