Legal Protection for Hospitality Workers Who Experience Unilateral Employment Termination Due to the COVID-19 Pandemic

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ABSTRACT
When Covid-19 pandemic has forced the government to implement policy of limiting community mobility. This policy has negative impact on the hospitality sector, which is labour-intensive business. With pandemic reason, the hotel carried out temporary layoff, reduced wages and even reduced employees which resulted in employment termination. This pandemic situation has impact on the employers and workers, but the most difficult impact is for the workers. In this paper, we will discuss how the legal protection for hospitality workers who experience unilateral employment termination due to the pandemic will be discussed. The method in this paper is normative research method with statute approach. Referring to the employment agreement of the two parties, if there are conditions that cause one of the parties to default, then a new employment agreement can be made which is agreed by both parties. Referring to the Manpower Law, then the workers who experience employment termination will receive severance pay. Furthermore, workers can also take legal action through mediation up to the industrial relations court so that their rights can be fulfilled.

Keywords: *Migrant Workers, Responsibility, Pandemic Era.*

1. INTRODUCTION

The Covid-19 is global pandemic that has negative impact on all dimensions of human social life. After being first discovered and spread from Wuhan city in China, the pandemic quickly spreads to 210 countries including Indonesia. This pandemic has impact on the global economy, including the Indonesian economy. During this covid-19 pandemic, the government made policy to limit the mobility and movement space of the community due to the covid-19 spread through human mobility. All economic activities are closed for certain period of time, only the essential sectors that get relaxation. This of course also has impact on the tourism sector, where tourism relies on tourists from outside the region and abroad.

The COVID-19 pandemic has prevented tourists from traveling because they were worried about being affected. The reduction in tourist trips and tourist visits has made the hotel occupancy rate decrease. The decline in the tourism sector had an impact on MSME businesses, which increased the number of people who lost their jobs. Whereas tourism is a labour-intensive sector employing more than 13 million workers. This figure does not include derivative impacts where other sectors are under it. The economic impact results in reduction in income in some industrial sectors and also reduction in employees in several workplaces on the grounds of decrease in company income and decrease in profits. This creates misalignment for entrepreneurs and for workers, especially in the hospitality sector, which is also affected by the current covid-19 pandemic.

The hospitality industry in tourist destinations as well as in big cities in Indonesia experience the same problems in dealing with workers due to the declining incomes. There are several policies taken to deal with the pandemic period, starting with reducing wages, temporarily laying off workers, making shifts of work, all of them are done to avoid employment termination. For workers this is also a problem because even though they are not terminated, the reduction in wages, temporary layoff and alternating working hours all reduce their income. Not to mention the workers status such as casual workers and contract workers whose status is easier to get laid off. In them, one of the most important rights for workers is their wages. Wages are the rights for workers who have done their works. This is in accordance with the provisions that have been in force and it is the obligation of employers to

establish a working relationship.[1] Where it explained that the working relationship is the employment relationships has elements of work, employer orders and salaries based on employment agreement between the employer and worker. [2]

The concept of working relationship involves the entrepreneur as the company owner as well as the wages provider, and workers who provide services in the form of labor to the company. From the aspect of employment law, it is private law field that has public aspect, because even though the working relationship is made based on the freedom of the parties, there are a number of provisions that must be subject to government provisions in the sense of public law. Working in the absence of protection, such as sick leave or unemployment benefits, allows workers to choose between health and income, which puts their health, the health of others and their economic well-being at risk. [3] As well as employers are obliged the employer obligation is to pay wage while the worker's right is to complete his work, which means that employers should not be arbitrarily absent or late in paying workers' wages. [4]

In Law No. 13 of 2003 concerning Manpower (herein after referred to as the employment law) the basic standard for wages has for a decent living, to increasing productivity and economic growth. The standard wage is set with the aim that the wages of workers can produce decent life for workers. Meanwhile, the purpose of manpower sector is to guarantee the protection of the fulfilment of the right of workers in order to realize prosperity, as well as improving the welfare of their families. [5]

Therefore, employers are prohibited from paying workers' wages below the standard that has been set. This is explained in Article 90 of employment law. Companies are required to pay wages in accordance with the district/city minimum wage standard. Many permanent workers who have worked at the hotel for more than 20 years have experienced a reduction in wages and even lost their wage rights from companies who argue that hotel income has decreased or can be said who are affected by the pandemic, the lack of hotel guests has resulted in many of permanent workers and contract workers are terminated unilaterally by the employers.

In the situation during this pandemic, employers should try to make efforts to renew the agreement, namely making new agreement regarding the employment agreement. This is done because the existing employment agreement is employment agreement made during normal circumstances or before the pandemic. Meanwhile, during pandemic with different company conditions, it is better for employers and workers to make new agreements regarding all things that can be regulated in the employment contract. The renewal of this employment contract is carried out so that employment termination not easily carried out by employers.

2. RESEARCH METHOD

In this study, normative legal research will be used, as has been stated that legal science is not behavioral science. [6] The law science is very different from the others, the meaning of being different is to have characteristic that reflected in the normative nature. [7] So this research type has referred to the legal norms obtained from derived from primary legal materials and secondary legal materials.. Normative legal research is to get validity based on a system or procedure of scientific research to find its normative aspect. The approach in this research is the statute approach. Analysis of legal materials is analysis that presented in systematic research to answer and examine general problems leading to specifics. In this study, it can be interpreted that systematics is something that makes it easier to analyze legal materials.

3. RESULT AND DISCUSSION

1) Employment agreement

The working relationship in employment law article 1 number 15 is a legal relationship between employer and workers has elements of work, employer orders and salaries based on employment agreement.[8] Juridically, the position between the entrepreneur and the worker/labourer is the same, although socially and economically the two are different. This happens because everything related to the working relationship is left to both parties, to fulfill a sense of justice, laws and regulations are needed that contain the rights and obligations of both parties.[9] In this context, the entrepreneur is the hotelier and the worker is the employee who works for the hotel.

A working relationship occurs because of agreement agreed between the worker/laborer and the entrepreneur. Article 50 of the Manpower Law explains that "the working relationship occurs because of employment agreement between the entrepreneur and the worker/laborer".[10] The provisions in the Employment Law Article 1 number 14 explain the employment contract between workers and the employers which regulates the terms of work and the rights and obligations of the parties. The agreement made between the entrepreneur and the worker/laborer can be in written or oral form.

An agreement is agreement made by one or more people with the aim to do certain thing. An agreement can be in the written or oral form.[11] A written agreement is an agreement made in written by the parties, while an oral agreement is an agreement made by the parties in oral form (only agreement of the parties). One form of agreement in this case is employment agreement.

Employment agreements made by employers with workers must not conflict with the applicable laws. An employment agreement is declared valid if it fulfills the following 4 conditions:

1. The is an agreementbetween the two parties parties;
2. Have skills to perform legal actions;
3. There is an agreed work;
4. The agreed work must not conflict with public order, decency, and the provisions of the applicable laws and regulations.

All of these four conditions must be met, because there are cumulative. Regarding the agreement between two parties and the ability to enter into an agreement are referred to as subjective conditions because they involve the parties who making the agreement, while the conditions for the existence of the agreed work and the agreed work must be lawful, referred to as objective conditions because it involves the object of the agreement. In employment agreement, the agreement can be canceled if the subjective conditions are not fulfilled and are null or void if the objective conditions are not met. [12]

Employment agreements can be grouped into two types, namely certain time agreements and unspecified time agreements. A certain time agreement (PKWT) is a work agreement between employer and workers to establish a working relationship for a certain work and certain period of time. Meanwhile, unspecified time agreement (PKWTT) is a work agreement between employer and worker to establish permanent working relationship. [13]

The PKWT agreement has basic term of limitation that the term of the employment agreement has been determined from the beginning, limited by special basis. The employment agreement for certain time must be made in written in Latin letters using the Indonesian language. The obligation to make this employment agreement in written aims to protect one of the parties if there are other demands after the expiration of the employment agreement.[14] PKWT can only be made for work whose type and nature of work is completed once in a certain time, such as;

1. Work that can be completed on a one time basis or on a temporary basis
2. Completion of work not more than 3 years.
3. Seasonal work, namely work whose implementation depends on the season or weather, so that it can only be done for one work in a certain season, or
4. Work that is new activity, prodices new goods or product that are still being tested.

A certain time employment agreement (PKWT) can be held for a maximum of 5 (five) years and may only be extended 1 (once) for a maximum period of 1 (one) year and can be renewed once for a period of 5 years. The employment agreement that has been agreed and signed by both parties cannot be withdrawn or changed without the consent of both parties, except for certain reasons regulated by law.

The principle of the selfdetermination is governed by article 1339 Indonesia Civil Code which states that the substance of the contract stipulates explicitly in its articles, but also for something that exists according to custom or law. Etymologically, fairness can be interpreted as appropriateness, appropriateness or all of our behavior is adjusted to the limitations or prohibitions that exist in society. The substance of the agreement adheres to the principle of justice which in self-determination is also regulated in the terms of the contract.[15]

In hospitality sector, there are several types of worker status, namely daily/casual workers, contract workers/PKWT and permanent workers/PKWTT. During this pandemic, casual daily workers are workers who affected at the beginning because they will be hired and paid if there are certain events that require extra staff at the hotel. For example, when there is a wedding, to entertain guests whose number can reach thousands, the hotel employs daily workers. Then contract workers/PKWT are workers who employed for the agreed period in the contract. Meanwhile, permanent workers are workers who are permanent hotel employees. Both contract workers and permanent workers are at the same risk during pandemic.

During this pandemic, the entrepreneur, in this case the hotel, has actually made various efforts to prevent employment termination occurred, namely by doing temporary layoff and working shifts or alternately. Temporary layoff is carried out indefinitely, because it depends on government policy. If the government determines PSBB/PPKM which makes a policy of stopping economic activities for non-essential sectors, the hospitality sector will result in reduced occupancy and of course a decrease in profits. Temporary housing here means that workers do not receive wages within a certain period of time. Meanwhile, with alternating shifts, workers also only receive wages when working for a limited time. So that both options are still detrimental to the workers. Even in certain cases, workers receive wages but in amounts that are not in accordance with the employment agreement due to pandemic reasons.

The occurrence of wage payments that are not in accordance with the employment agreement means that the employer has violated the contract and is in default. The employer should inform the workers beforehand if they are unable to pay wages according to the contract so that the employers and workers need to renew wages.

This is done so that employers do not default and workers can also negotiate regarding the arrangement of rights that will be accepted if the worst condition occurs, namely employment termination.

2). Employment Termination (PHK)

Employment termination can occur automatically when the term of working relationship determined by the employer and worker has ended. However, it can also occur due to a dispute between workers/labor or for other reasons. According to the employment law, employment termination (PHK) is the completion of an employment relationship between the employer and the employee for certain reasons resulting in the completion of the fulfillment of rights and obligations. Termination of employment can occur for several reasons, namely the termination of the contract, resignation and termination by the company.

The employment termination as regulated in chapter XII, Article 150 stipulates that the provisions concerning employment termination as regulated in the law include employment termination that occurs in business entity that is legal entities, which are privately owned or state-owned as well as social institutions and other businesses that employ workers and receive compensation in the form of wages or other forms.[16] After the employment termination, the worker has no obligation to work for the employer and the employer have no obligation to pay wages

Article 61 of employment law explains that employment agreement can end if the worker dies, the contract expires, there is a decision from the industrial relations court and there is a reason for the termination of the agreement. if the term of the work agreement has not ended, but there is a party who wants to end it, then he is obliged to pay compensation to the other party in the amount of the worker's salary until the end of the contract.

Companies can do employment termination to workers if the workers violate employment agreements, company regulations, or collective labor agreements (PKB). Before the company conducts employment termination (PHK), the company must issue a warning letter 3 (three) times in a row. For workers who have been terminated, they are entitled to severance pay or compensation as regulated in Article 156. Legal protection for workers for employment termination is regulated in Article 156 of the Manpower Law, if there is employment termination the entrepreneur obliged to pay severance pay, gratuities and compensation for entitlements that must be received by workers.

With the existence of Law No. 11 of 2020 concerning Job Creation, the provisions of Article 156 Paragraph (1) of Job Creation Law confirms that in the employment termination event, employers are obliged to provide severance pay or award money as well as replacement money which is the right of workers.. [17] Based on Article 156 paragraph (1), the definition of severance pay can be drawn. Severance pay is payments amount given by employers to workers/laborers due to employment termination. The severance pay amount is closely related to the amount of wages. The amount of wages is related to the length of work period. The longer the work period, the higher the wage amount will received.

If the worker does not get the rights that should be obtained, then the worker can make a complaint to the industrial relations institution, which as regulated in Law No. 2 of 2004 concerning Settlement of Industrial Relations, it can be done by civil or administrative efforts.

In through administrative efforts, it can be resolved in a bipartite manner carried out by workers and employers. If in the bipartite negotiation process an agreement is reached, then the results of the negotiation have legal force, but if an agreement is not reached, the settlement process can be through the Local Manpower Office. In addition, civil law efforts can be carried out by workers if the employer terminates the working relationship because efficiency cannot be justified. Then the workers can apply for compensation to the District Court based on article 1365 BW, "Every unlawful act that brings harm to another person, obliges the person who because of his fault caused the loss, compensates for the loss".

3). Legal Protection for Workers That Unilaterally Terminated In Hospitality

Legal protection for workers aims to avoid discriminatory actions between strong parties or employers and weak parties or workers. This has been explained in employment law, article 6, that "every worker has the right to receive equal treatment without discrimination from employers". The form of legal protection for workers is regulated in Constitution Law article 27, which states guarantee that every citizen has the right to have a job. In addition, it is also emphasized in Article 28 D which explains that "everyone has the right to work and receive fair and proper remuneration and treatment in an working relationship".

Legally, the position between workers and employers is the same. However, in practice, the relationship between employers and workers is not only seen from a juridical perspective but also from a socio-economic perspective. This socio-economic view causes the position of employers and workers to be unequal, so that it can lead to arbitrary actions between employers and workers that lead to layoffs. Article 158 of the Manpower Law explains that "employers can terminate the employment if the worker makes a serious mistake". This means that companies can terminate workers if workers take actions that are not in accordance with the employment agreement or PP. However, the provisions

of Article 158 of the Manpower Law have been abolished in Law No. 11 of 2011 concerning Job Creation, so the understanding of the reasons for employment termination due to serious errors does not apply. This means that employment termination can be carried out by the employer without any further serious errors, if the worker makes mistake, it is already a reason for being terminated. Furthermore, articles 163-165 of the Manpower Law explain that companies can terminate workers if there is a change in the ownership status of the company, the company suffers continuous losses for 2 years, and the company is declared bankrupt. The provisions of this article have also been removed based on the Job Creation Law.

Several cases of unilateral employment termination are employers doing employment termination without a warning letter given to workers. The company terminates the workers without giving a warning letter or warning beforehand. This is contrary to the provisions of the employment law article 161 paragraph 1 which explains, in the case of workers in violation of the employment agreement, company regulations or collective bargaining agreement, the employer can terminate the employment relationship, after the workers concerned given warning letters first, second and third. Not only that, in giving SP (warning letter) the company is considered to have violated the provisions of Article 161 paragraph 1 that SP is given 3 (three) times, if the company only gives SP 1 (one) time SP to its workers. This provision based on the Job Creation Law has been removed.

The omission of several articles of the Employment Law in the Job Creation Law, especially those that regulate employment termination, namely article 158, article 159, article 161-article 172 and article 184 makes the employment termination procedure easier for employers to carry out. If you refer to this time, namely during a pandemic, the enactment of the Job Creation Law will actually harm hospitality sector workers. So that the efforts that can be made by workers by renewing the agreement are expected by mutual agreement of both parties so that the rights of workers can be fulfilled by employers.

The legal efforts for workers who have been terminated unilaterally can be through litigation (court) or non-litigation (outside court). In Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, it is explained that legal efforts in the event of employment termination can be taken outside the court, namely:

a) Through bipartite, it is a deliberation between the parties, namely workers and employers to reach agreement
b) Mediation is a deliberation mediated by a third party or a neutral mediator
c) Conciliation, namely deliberation mediated by a neutral third party or conciliator

Such legal effort can be taken through the local Manpower Office (Disnaker). The Manpower Office in industrial relations has 3 (three) roles, namely: establishing policies, providing services and guidance, taking action against violations of the Manpower Law.

The authority of Manpower Office in employment termination matters is to provide a service forum/place to conduct deliberations between workers and employers or employers and labor unions to reach an agreement or can be called a bipartite process. If the bipartite stage has reached an agreement, a employment agreement will be made.

If the bipartite effort does not found an agreement, Manpower Office will delegate the dispute to the Provincial Manpower Office. Before the dispute is transferred to the center, the Manpower Office has the right to offer the parties to agree on choosing a settlement through conciliation or arbitration. This has been clarified in Law No. 2 of 2004 concerning PPHI article 4 paragraph 3. If an agreement is not reached through conciliation, then one of the parties can apply to the Industrial Relations Court. The fact that occurs in the field is that many workers experience employment problems, which rarely go to court or report to Manpower Office. This happens because if workers report to Manpower Office about problems that exist in the company, then these workers tend to be afraid of being terminated by the company and losing their jobs. After reporting, the Manpower Office will summon workers who have been terminated to conduct bipartite negotiations. In bipartite negotiations, employers and workers will find a middle point so that both can reach agreement, then they will make new employment agreement. The contents of the employment agreement will of course regulate new things that have been agreed upon by the employer and the worker.

4. CONCLUSION

The situation of hospitality workers who are temporarily laid off, employed in shifts, do not receive wages according to the employment agreement and even unilaterally terminated is certainly very detrimental. For this reason, the thing that can be done by the employer's workers before reducing wages is to inform the workers in advance if they are unable to pay wages according to the contract so that the employers and workers need to renew the work contract which regulates changes in wages. Furthermore, it can be re-arranged regarding the rights of workers which will be received in the event of employment termination. Furthermore, if there is a unilateral employment termination, the worker can ask the Manpower Office to mediate so that workers' rights such as wages and severance pay can be provided. If there

is no agreement, the worker can proceed to the industrial relations court.

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