



## Force majeure as the basis of termination of employment in securing company efficiency (Case study of Covid-19 pandemic in airline company)

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### Abstract

The occurrence of Covid-19 pandemic forces airlines to experience prolonged economic crisis. In the middle of crisis, several companies are carrying out efficiency by terminating employment (PHK) on the pretext of the Covid-19 pandemic as one of the force majeure categories. The purpose of this study is to analyze mass layoffs by airlines on the basis of Covid-19 pandemic as a force majeure. The research method used is the normative legal method by prioritizing secondary data. The result of this study shows that layoffs carried out by several airlines resulted in the loss of laborers' income and the layoffs carried out by several airline companies were not in accordance with Law Number 13 of 2003 concerning Manpower. Therefore, this study shows that the layoff carried out is not a win-win solution for workers and thus, workers can make several efforts to maintain their jobs by showing some evidence that shows that the layoffs carried out by the company are illegal.

**Keywords:** termination of employment, force majeure, company

### Introduction

The workforce has an important function and position as an individual to embody the vision of developing a country. With this vision, the scope of manpower can increase its capacity and participation and provide protection for their rights and interests. To guarantee the protection of the rights and obligations of workers in several parts, namely work, wages, and orders, both have been regulated in Law Number 13 of 2003 concerning Manpower (UUK). The work agreement that has been agreed upon means that the parties agreed to each other to carry out their performance in accordance with the work contract and the rules that have been regulated by the UUK.

The working relationship that occurs does not always go according to what was agreed. Sometimes there is disharmony between workers and business actors. There are various disputes, one of which is termination of employment (PHK). Layoffs are not only often seen as a condition that workers do not want but also losing their livelihoods to meet the needs of themselves and their families.

Layoffs are very difficult matters because they are related to economic issues. In the economic aspect, it will result in the loss of workers' livelihoods. On a more general basis, it can cause poverty, unemployment, and increased crime. This contrasts with the ideals of the state in accordance with Article 27 paragraph (2) of the 1945 Constitution which delegates "every citizen has the right to work and a decent living for humanity".

The termination of a work contract means the loss of a job with all its consequences, which then weakens comfort in life. The result of certain conditions occur so that layoffs are unavoidable. The current Covid-19 pandemic has become one of the problems that impact, one of which is the economy, which is considered a force majeure by businessmen arguing that this can be their benchmark for layoffs.

Almost all companies in various sectors experienced an

economic downturn during the Covid-19 pandemic, one of which are companies engaged in the aviation service sector. The implementation of the Large-Scale Social Restrictions (PSBB) has reduced the number of people to travel. This causes the company to experience a decrease in revenue which impacts on the interests of the airline itself. The reduced desire and activity of the community to travel due to the Covid-19 pandemic has led companies to take steps to protect companies amid the Covid-19 pandemic, namely by carrying out efficiency to reduce massive operational costs that are incompatible with financial income caused by the Covid-19 pandemic, one of which is to terminate the work relationship (PHK).

Several companies in the aviation service sector, for example several airlines in Indonesia, namely PT Lion Mentari Airlines (Lion Air), have laid off 2,600 (two thousand six hundred) employees including 135 (one hundred and thirty-five) pilots and copilots.

Layoffs were also carried out by the airline PT Garuda Indonesia (Garuda Indonesia). A total of 287 (two hundred eighty-seven) employees of the company were laid off during the Covid-19 pandemic. This is also done by Air Asia airlines. This company made layoffs to various levels of positions; Layoffs were carried out by the airlines as much as 10 (ten) percent due to the Covid-19 pandemic.

Regulations regarding termination of employment due to force majeure are regulated in Article 164 UUK. The company can lay off workers if the company closes due to losses for 2 (two) years with successive phases, for that the worker is entitled to severance pay.

In this Covid-19 pandemic situation, several airlines are faced with a difficult condition. This situation is also used as a cause for force majeure by entrepreneurs to reduce company expenses, such as layoffs. A new problem occurred in the middle of Covid-19, namely the assumption that the Covid-19 pandemic was a force majeure situation because there was no legal certainty whether a pandemic

could qualify as force majeure.

Regarding this matter, whether the making of the UUK gives hope and has a vision to prosper and provide justice for workers. In terms of employers, they feel burdened by the problem of layoffs to workers and the severance pay that is required to be given to workers is too large. This has been described in Article 1 number 15, Article 151 paragraphs (1), (2) and (3) to Article 156 paragraphs (1), (2) and (3), (4) and (5). The complexity of the requirements for layoffs is considered detrimental to employers, but on the other hand the regulations contained in the UUK do not satisfy workers.

The focus in this study is to analyze the legal construction with regard to termination of relations to workers in several airlines during the Covid-19 pandemic, considering that there is protection for workers whose contracts have been terminated unilaterally as an injustice even though there is a guarantee of severance pay due to layoffs. This study uses a normative juridical method. The data were obtained from several binding legal materials such as regulations, books, and literature in accordance with this research.

Starting from this condition, there should be attention from the government in protecting the interests of the parties in the work relationship so that the existence of the UUK can create justice and comfort for workers and employers in accordance with the mandate of the 5th principle of Pancasila which describes the realization of social justice for all Indonesian people and Article 33 paragraph 4 of the 1945 Constitution which states that "The national economy shall be carried out based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining balance, progress and national economic unity."

## Discussion

### **The Covid-19 Pandemic as the Basis for Force Majeure in Termination of Employment by Employers Reviewed in Law Number 13 of 2003 Concerning Manpower**

The whole world, one of which is Indonesia, was hit by the Covid-19 pandemic so that several regions in Indonesia are included in the Large-Scale Social Restrictions (PSBB). Several months after the Covid-19 pandemic, some workers' status changed, some were cut wages and some others even laid off. The Ministry of Manpower said that nearly 6 (six) million workers were laid off.

Central Bureau of Statistics (BPS) conducted a Social Demographic Survey of the Impact of Covid-19. From the results of a survey conducted by BPS, it was shown that 2.52 percent of respondents were laid off because companies suffered losses due to the Covid-19 pandemic, while 18.34 percent of others were laid off. Based on gender, 1.87 percent of female workers were victims of layoffs, while 3.18 percent of male workers claimed to have been laid off.

Termination of employment (PHK) is a problem because it is one of the processes that make layoffs a source of problems in the relationship between companies and employees and not because layoffs violate existing laws. Layoffs in the view of Umar Kasim are a problem that always occurs in industrial relations because they result in workers losing their livelihoods, which means that they are initially unemployed with all the consequences. It is appropriate to guarantee legal certainty for workers to ensure the peace of their lives. Thus, there should be no

layoffs.

In Law Number 13 of 2003 concerning Manpower (UUK), it is stated that layoffs occur because of a specific purpose, which causes the termination of a working relationship. Various types of companies in each sector have experienced economic downturns during the Covid-19 pandemic which made companies make efficiency efforts to reduce massive operating costs, one of which is to terminate their work relations.

The company's conditions became increasingly difficult when the Covid-19 pandemic occurred. This condition is also used as an excuse as a state of force or force majeure by business actors to get diminished responsibility for performance that should be done in accordance with agreements or regulations, such as terminating employment for employees. A new problem occurred in the middle of Covid-19, namely the assumption that the Covid-19 pandemic was a force majeure situation.

The businessmen laid off their employees for reasons of force majeure. Force majeure in Subekti's view is an excuse to avoid the obligation of either party or both to make compensation. Subekti continued that force majeure was a coercive situation that occurred outside the control of employers and this situation was never expected to occur which caused workers to experience layoffs.

There is no explicit regulation regarding force majeure, but it is explained in Article 1244 of the Civil Code that the debtor will be subject to penalties in the form of fees, losses and interest, if one of the parties is unable to provide evidence that the agreement was not carried out on time or in the implementation of his performance, something happened that unpredictable and cannot be held accountable to him even in the absence of duplicity.

The existence of an external factor that states a situation is a force majeure becomes a question of whether the Covid-19 pandemic is included in a force majeure situation or whether workers can raise objections legally because of layoffs carried out by companies that focus on agreements agreed upon by employers and workers. In Article 1245 of the Civil Code, which applies to several parties in an agreement, there are several conditions that apply, namely submitting to the law and force majeure has been specifically regulated in the contract that has been made.

**Based on the explanation of Article 1244 and Article 1245 of the Civil Code above, it can be concluded that there are several characters that give rise to this situation as force majeure, namely**

- a. Unforeseen circumstances;
- b. Presence of obstacles that make an obligation unworkable;
- c. Helplessness apart from the debtor's mistakes;
- d. The helplessness that occurs to the debtor should not be subject to a risk.

In general, force majeure must be included in the clause of the agreement with several events or evidence that can be used as a reason when a force majeure occurs to achieve legal certainty. Furthermore, viewed in terms of the performances written in a contract, a force majeure can be distinguished, namely:

**a. Absolute force majeure**

Force majeure that arises so that the obligations in the clause in the contract that are agreed upon cannot be carried out properly.

**b. Relative force majeure**

Force majeure that arises so that an obligation that must be done normally cannot be done.

If it is related to the Covid-19 pandemic as an unknown event will occur during the contract making, then the contract making is done during the Covid-19 pandemic, then, this will result in an increase in workers being laid off if force majeure is the reason airline companies make layoffs for company efficiency.

There are several conditions for a company to lay off its employees, these conditions are explained in Article 164 Paragraph (3) of the UUK, namely if the company finds a decrease in losses for 2 (two) consecutive years. It is obvious that the company has experienced a decrease in income, not due to a force majeure situation but the company's efforts to make efficiency. Basically, efficiency is a measure of success which is assessed in terms of the number of sources or costs to achieve the results of the activities carried out. Efficiency problems are related to the stability of expenditures or costs incurred.

The Covid-19 pandemic that has occurred so far not to be counted for 2 (two) years as a force majeure reason for layoffs, in fact, has broken the law. Indeed, the Covid-19 pandemic is an unwanted condition when a work agreement is made by the parties. Later, if the contract made during the Covid-19 pandemic occurs, the layoffs carried out by the company cannot use that reason as force majeure. Thus, there is a need for legal certainty to realize the protection of workers, so that workers' right (a form of the state in creating workers' welfare) still concern to company effectiveness.

People have the right to get the justice they deserve, including the rights of workers to get their rights to work and fulfillment of their lives. For this reason, the UUK was made to create workers' welfare and provide protection to workers, one of which is arbitrary termination of employment.

Some airline companies are faced with a complicated situation. This situation forced those companies to take the best decision amidst the pressure of a significant decrease in income to inevitably do layoffs on the pretext of the Covid-19 pandemic which they consider to be the category of a force majeure to minimize operating costs that continue to decline. However, layoffs are decisions that have an economic and psychological impact on workers. The UUK explains that layoffs should be the last step that can be taken.

**Layoffs cannot be implemented if they violate the rules that have been stipulated in the UUK, that terminations can be carried out for reasons, such as**

- a. In Article 158, if there is misappropriation by workers in the form of embezzlement, deception, theft, drugs, drinking alcohol, committing acts that are commendable to other workers, or inducing other workers to do things that are not permitted by law, and destroying company properties that are at risk of causing losses, namely:
  - b. In Article 161, if the worker violates the work contract.

- c. In Article 162, if the worker resigns from the company.
- d. In Article 164, if the entrepreneur wants to terminate the employment relationship, the company shows that the company has experienced losses in succession, which will result in the closure of the company.
- e. In Article 165, the company carries out layoffs as a result of bankruptcy.
- f. In Article 166, if a worker has passed away, layoffs are allowed.
- g. In Article 167, if a worker enters retirement, layoffs are allowed.
- h. In Article 168, if the worker is absent for 5 years.

**Employers also have an obligation to fulfill workers' rights if the company makes layoffs of its workers, one of which is the right to receive severance pay, this is explained in Article 165 of the UUK that**

1. Severance pay, namely money to workers due to the end of the work relationship in the form of money.
2. Long Service Payment, which is the right in the form of money which is given as a form of appreciation for employees in working terms.
3. Compensation rights pay, namely the power given to workers in the form of monetary payment to replace annual rest periods, long breaks, travel expenses to work locations, medical accommodation, housing, and others resulting from termination of work relations. Things that need to be considered in granting rights to workers:
  - a. Unused annual leave.
  - b. Return travel expenses to workers and their families to the place where workers are employed.
  - c. Transfer of housing as well as medication and care 15% of the eligible severance pay.
  - d. Other things that have been made in work agreements, company regulations or collective working agreements.

**Layoffs on a large scale resulted in negative impacts, not only from a financial perspective, but also psychological as well for these workers. Some of the effects of layoffs on workers include**

- a. Causing workers to lose their livelihoods in fulfilling their life.
- b. Difficulty to find a new job in which workers spend time and money.
- c. The loss of his livelihood resulted in reduced costs for workers and their families' livelihood.

**The elaboration in Article 151 of the UUK states that entrepreneurs should not lay off their jobs as much as possible, therefore there are limitations for companies to do layoffs. There are reasons for prohibiting layoffs, namely**

- a. Workers cannot attend due to illness, according to the doctor's statement for 12 consecutive months.
- b. Workers cannot carry out their work in fulfilling obligations to the State in accordance with the prevailing laws and regulations;
- c. Workers perform worship that is ordered by their religion;
- d. Workers getting married;
- e. Female workers who are pregnant, giving birth, miscarriage or breastfeeding;

- f. Workers are related by blood or marital relations with other workers in the same company, unless this has been regulated in a work agreement, company regulations, or collective working agreement;
- g. Workers build or become members or administrators of a labor union to carry out activities of the Workers / Laborers' union outside working hours, or during working hours based on an employer agreement, or based on regulations stipulated in the work agreement.
- h. Workers report employers to the authorities (police) about the crimes they have committed.
- i. There is a disparity in understanding, religious ideology, political orientation, group (ethnicity / race), skin color, class, gender, body condition, or marital position;
- j. Workers are physically disabled due to work accidents, or illness due to work, proven by a doctor's certificate for an indeterminate period.

In terms of statutory regulations, it is stated in Article 151 of the UUK, that employers are advised to avoid layoffs as a reason for efficiency which aims to alleviate economic problems that occur within the company so as not to harm the sustainability of workers' lives in obtaining decent living needs. Layoffs unilaterally are not the right solution to the problem.

The Covid-19 pandemic has created economic instability, which should have made the government and entrepreneurs try not to lay off workers by providing protection that presents a solution outlined in the Circular of the Minister of Manpower and Transmigration SE-907 / MEN / PHI-PPHI / X / 2004 which remains based in SE Menaker 3/2020 concerning Protection of Workers / Laborers and Business Continuity in the Context of Prevention and Overcoming COVID-19.

The solutions are in the form of reducing workers' wages by looking at the level, imposing limits and eliminating overtime work (overtime), cutting working hours, leaving and laying off these workers by alternating with the specified time, terminating the contract and not adding to the contract period, and carry out retirement to elderly workers. After various methods have been taken to stay away from layoffs, however, layoffs must be carried out, then this cannot be done unilaterally.

The next stage is deliberation efforts to reach consensus between workers and workers. If the negotiations do not produce results, the entrepreneur can terminate the employees by obtaining a decision through the industrial relations dispute settlement agency. This is included in the provisions of Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes. If the dismissal is carried out when there is no stipulation, then it is declared null and void.

Several aspects of the clause in a contract cover several aspects of the force majeure clause on the performance of workers, explicitly such as the occurrence of wars, demonstrations, violent crimes, or natural phenomena such as earthquakes, floods, typhoons, and others. Whether it's a pandemic, an epidemic or a quarantine, there are no clear rules regarding this matter. According to the rules, in entering a valid contract, if a rule is made, then it is not allowed to enter it because only the court can make the decision.

### **Legal Consequences for Business Actors for the Use of Force Majeure during the Covid-19 Pandemic as A Reason for Termination of Employment**

In demanding civil justice, resolving problems between the parties, namely employers and workers through industrial relations, is basically a claim about whether the employer's decision regarding termination of employment can be accepted legally or not in accordance with the law.

Disharmony regarding layoffs is a civil dispute. It can be underlined that the aspect of the initiative that proposes a case originates from parties who want justice with evidence that can prove the performances that must be made to prove who can be subject to the burden of the evidence that has been issued.

In practice in court, in the interests of a legal relationship that has the power to defend civil rights on the basis of wanting to file a claim, the judge must first consider whether or not there is a legal relationship between the parties so that there is a judge's consideration regarding whether or not the lawsuit is proven.

When workers are unable to prove that there is a binding legal relationship between workers and employers, they do not have the right to file lawsuits. Therefore, workers are not entitled to legal protection. On the other hand, if the worker can prove it, the judge will consider the claims submitted substantially both in terms of labor law protection, which is the benchmark for workers in filing the lawsuit.

In relation to the behavior of workers who think that layoffs by employers are caused by the Covid-19 pandemic as a pretext for illegal layoffs, there are legal exceptions which indicate that the obligation to prove termination of employment is based on valid reasons that can prove for employers.

Subekti states that the basis of proof is to confirm the truth of the argument or evidence when the evidence is presented in a dispute. Meanwhile, proof, according to Achmad Ali, shows the limitations of evidences in providing the parties efforts to solve the problem so that they can produce results in the form of a court ruling. According to Yahya Harahap, the law of proof in proceedings at the court of evidence is closely related to the power to reconstruct a past event as truth even though the truth is manifested in a civil court proceeding.

### **Termination of employment can qualify as an illegitimate reason, if it is based on valid reasons but cannot be proven as follows**

1. There has been a change in the status of a company such as a merger, consolidation, transfer of ownership of the company, but these conditions cannot be proven by the company or the absence of a modification mechanism to the status of a merger, consolidation or transfer of company ownership.
2. Employers lay off workers on the grounds of company efficiency due to the Covid -19 pandemic, but the company continues to carry out its operations. Thus, this is categorized as an illegal reason for layoffs, including for companies to make efficiency by closing the company. This is because the closure was not preceded by steps according to the Constitutional Court Decision Number 19 / PUU-IX / 2011 dated June 20, 2012.
3. The company carried out layoffs due to bankruptcy but,

there is no decision from the court so what is legal is that the company is bankrupt due to the impact of the Covid-19 pandemic.

### **Termination of employment illegally as a reason for force majeure due to the Covid-19 pandemic**

- a. The company is closed due to losses due to the Covid-19 pandemic, meanwhile in the elaboration of Article 164 paragraph (1) of the UUK, the conditions for the company to be laid off are if the company loses earnings for 2 consecutive years, while the Covid -19 pandemic as a non-natural classification disaster has not reached 2 years. .
- b. The state of force majeure is a condition caused by natural disasters while the Covid-19 pandemic is a non-natural disaster described in Presidential Decree No.12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease 2019 (COVID19) as a National Disaster.

### **Employees, when making a lawsuit facing termination of employment based on these causes, can make alternative claims, namely**

- a. Asking to be rehired.
- b. Asking for workers' rights according to their portion in the UUK, so that workers get their rights if they are forced to be laid off.

### **Conclusion**

Based on research, several airlines have laid off their workers on the pretext of carrying out efficiency due to the impact of the Covid-19 pandemic and as a category of force majeure. Based on this research, the company has violated the rules in the UUK, Article 151 that employers, government, and employees are obliged to try to stay away from layoffs, especially since there are many reasons for companies to lay off due to Covid-19 which they consider to be force majeure, whereas in Article 164 it explains that employers can layoffs if the losses plaguing the company gradually over 2 (two) years, which is not yet 2 (two) years the Covid-19 pandemic has occurred in Indonesia.

Evidence that cannot be proven by employers as a legal consequence of layoffs due to the impact of the Covid-19 pandemic gives workers the right to file a lawsuit that contains alternative provisions. These provisions are in the form of requesting to be re-employed or requesting workers' rights under the provisions of the UUK, so that workers get their rights if indeed dismissal is unavoidable.

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