

NON-LITIGATION SETTLEMENT OF LABOR DISPUTES DUE TO LAYOFFS RESULTING IN TERMINATION OF EMPLOYMENT DURING THE COVID-19 PANDEMIC

Agus Mulya Karsona, Sherly Ayuna Putri, Holyness Singadimedja

Faculty of Law Padjadjaran University Indonesia

Abstract

The Coronavirus Disease 2019 (Covid-19) had become a global health problem by the first quarter of 2020, and it was later designated as a pandemic by the World Health Organization (WHO) on March 11, 2020. This pandemic has left almost no country unaffected, including Indonesia. It has also caused disturbances in the economic, social, and even legal sector. Mobility restrictions were put in place by the central and regional governments through various regulatory instructions, causing several activities, especially in the economic sector to not function properly, such as by implementing work from home policy, which ultimately forced several companies to stop operating completely and even lay off employees. In some instances, this layoff further resulted in termination of employment. Settlement of employment terminations has led to further polemics caused by different perceptions among the parties involved, in this case the company and workers, resulting in a dispute. This research is novel in nature and is in accordance with the expertise of the researchers, with the issues to be analyzed including protection for workers affected by layoffs resulting in termination of employment as a result of the Covid-19 pandemic, as well as solutions to labor dispute settlement that can provide justice and legal certainty for the parties involved, due to termination of employment during the Covid-19 pandemic. This article employs a normative juridical approach in its research, as well as a statutory approach and a conceptual approach. Workers experiencing termination of employment which has been carried out unilaterally by companies that suffer losses due to the Covid-19 pandemic need to have their rights protected, and a solution that resolves labor disputes related to layoffs as a result of the Covid-19 pandemic that can benefit and provide a sense of justice for all parties is needed, such as settlement of labor disputes through bipartite negotiations that can be utilized as an alternative by the disputing parties.

Keywords: Covid-19; Industrial Relations; Pandemic; Dispute Settlement.

Introduction

The Coronavirus Disease 2019 (Covid-19) had become a global health problem by the first quarter of 2020, and it was later designated as a pandemic by the World Health Organization (WHO) on March 11, 2020. This pandemic has left almost no country unaffected, including Indonesia. The spread of Covid-19 and its high number of positive cases and deaths is far reaching in almost every province in Indonesia. It certainly has an impact on the economic, social, political, cultural, defense, and security aspects, as well as the general welfare of the Indonesian people. As an effort to mitigate the spread of Covid-19, the Government of Indonesia has issued Presidential Decree No. 12 of 2020 Concerning the Stipulation of Non-Natural Disaster of the Spread of Covid-19 as a National Disaster.

The goods and services production sector, which is generally an activity in the pattern of industrial relations between employers and workers, is of course directly affected by the government's policy to restrict mobility and limit outdoor activities. According to Page 1 of the Circular Letter of the Ministry of Manpower No: M/3/HK.04/III/2020 Concerning Protection of Labor Workers and Business Continuity in the Context of Prevention and Control of Covid-19, this causes production cycles to stop partially or completely, which affects the income of the business, requiring the company to reconsider its payroll, especially regarding laid-off workers, whether to continue paying them full or partial wages, or even worse, termination of employment.

According to the data obtained from the Central Statistics Agency of the Republic of Indonesia, as reported in Page 4 of Chapter 1 (Introduction) of the Decree of the Minister of Manpower of the Republic of Indonesia No. 104 of 2021 Concerning Guidelines for Implementing Industrial Relations During the Corona Virus Disease Pandemic Period, in February 2021, there were 19.10 million people or 9.30% of the

working age population affected by Covid-19, including 1.62 million becoming unemployed due to Covid-19, 0.65 million people are not in the labor force because of Covid-19, 1.11 million people are temporarily absent from work/ not working because of Covid-19, and 15.72 million people have reduced working hours due to Covid-19.

The Government has enacted policies to prevent further spread of Covid-19, such as by implementing restrictions on outdoor activities in communities, including business activities in many regions throughout the country. This reality has surely affected several aspects in the manpower sector, especially those related to adjustments to the implementation of industrial relations and protection for workers/ laborers. Policies to control the spread of the Covid-19 pandemic that affect industrial relations have been perceived, interpreted, and applied varyingly. For example, regarding the implementation of the *Work from Office* (WFO) policy, specifically on its limits and threshold on the percentage of workers allowed to work on-site at their workplace, the implementation *Work from Home* (WFH) policy, as well as layoffs and how it has affected wage payment and other workers' rights.

The spread of the Covid-19 pandemic has also increased the trend of termination of employment in many companies, which is understandable considering the sluggishness of the industrial world in general, forcing these companies to reduce cost and increase efficiency. So far, thousands of employees have 'fallen victim' to this employment termination wave. In addition, some other workers who have not been terminated or laid off, are forced to take unpaid leave. These workers are spread across several big cities in Indonesia, predominantly in Java Island.

The following are data related to termination of employment and layoffs by companies as a result of the pandemic:

1. Workers in Jakarta are the ones most affected. According to the Department of Manpower and Transmigration of the Special Capital Region of Jakarta, 88,835 workers reported they were either laid-off or terminated. These workers are from 11,104 different companies, where 9,096 companies laid-off 72,770 workers, and 2,008 companies terminated 16,065 of their workers. This number might have increased as data had been obtained before reporting was closed on April 3, 2020.
2. 40 Companies in Central Java halted production; The Central Java Chapter of the Indonesian Employers' Association reported that there were around 40 companies in Central Java temporarily halting production due to the Covid-19 pandemic.
3. Pilots and flight attendants are among the professions that have been worst affected; The General Chairperson of the Indonesia National Air Carriers Association (INACA) revealed that the current conditions had made many employees, especially pilots and flight attendants unable to work, so they chose to take leave.

The International Labor Organization (ILO) reports that 81% of the global workforce of 3.3 billion, or 2.67 billion workers, are currently affected by workplace closures (Anugrahadi, 2020). This is a direct result of several government's measures and policies to curb the spread of Covid-19, such as carrying out social distancing measures, self-quarantine, WFH, and even implementing lockdowns when cases spread massively.

Several companies were forced to laid off their workers in order to reduce force and attain efficiency, as production could not commence in full swing due to restrictions in place. These restrictions were applied considering the fact that the transmission of Covid-19 can occur through direct contact with the infected, and even through air (aerosol). Workers who have not been laid off were asked to work from home. This has affected all workers, regardless of position and power. In certain places, WFH policy only applies to certain managerial level staffs, while others, for example factory employees, marketing employees, sales and promotion employees, drivers, etc. were laid off (Tobing, 2013).

From one perspective, it can be said that by laying off employees at this time of crisis, the company complies with the laws and regulations enacted by the government, cares about the mental health and safety of its workers. prioritizes interests of the public, the nation, and the state. Based on that

logic, companies that have implemented work from home policy or even laid off workers, from a labor law perspective, cannot be blamed and held accountable for their actions. It is a different story when the element of laying off workers due the pandemic is used as a guise by the company to simultaneously terminate employment altogether without any specific, definite, and justifiable cause.

The term 'layoff' is actually not stipulated in Law No. 13 of 2003 Concerning Manpower (hereinafter referred to as the Manpower Law), thus, its definition refers to the Circular Letter of the Minister of Manpower of the Republic of Indonesia No. SE-907/MEN/PHI-PPHI/X/2004 Concerning the Prevention of Mass Layoffs (Section F), which classifies "temporarily laying off workers/laborers in rotation" as one of the measures that can be taken before terminating employment altogether.

Regarding the obligations of employers and workers, Article 155 paragraph (2) of the Manpower Law stipulates that before a decision is made by the industrial relations dispute settlement agency regarding the termination of employment, both employers and workers/ laborers must continue to carry out all their obligations. Employers' obligations include paying workers' wages, and workers' obligations, among other things, include carrying out their work.

Similar regulation can also be found in the Circular Letter of the Minister of Manpower No. SE-05/M/BW/1998 of 1998 Concerning Wages for Laid-off Workers Not Leading to Termination of Employment, which basically stipulates that:

1. Employers continue to pay wages in full, namely in the form of basic wages and fixed allowances as long as workers are laid off, unless otherwise stipulated in the Work Agreement, company regulations, or Collective Labor Agreement.
2. If the employer will not pay the worker's wages in full, it must be negotiated with the trade union and/ or the workers regarding the amount of wage during the time off and the length of time they are laid off.

There are a series of procedures that must be followed by employers to terminate employment. These procedures are stipulated in Article 152 of the Manpower Law. The length and complexity of the procedures that must be followed to terminate employment according to the Manpower Law have led many companies to lay off their workers instead.

Laying off workers, as a way to circumvent termination of employment as stipulated in Article 152, requires the company to still pay wages along with other rights normally received by workers/laborers. In labor law, there is 'no work, no pay' principle. This principle is observed by the Manpower Law, and it is stipulated in the elucidation of Article 93 which states that all workers/laborers who do not work, shall not be paid (Tobing, 2013).

Frequently, workers who have been laid off for a long period of time will face termination of employment. Before carrying out termination, a company should pay attention to what underlies the legal relationship between employer and workers as regulated in Article 1 Section 15 of the Manpower Law regarding industrial/ employment relations which is defined as the relationship between employer and workers/laborers based on a work agreement, which has elements of work, wages, and orders. For workers whose employment relationship is based on an indefinite work agreement, normatively, severance pay must be given as a right that must be received by workers, but with the slumping economic conditions as a result of the Covid-19 pandemic, the presence of an institution that can bridge the interests of the company and workers is needed so that these layoffs that may lead to terminations do not result in further disputes.

According to Articles 38 and 39 of the Government Regulation No. 35 of 2021 Concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, a worker may accept or deny his/ her termination, provided that:

1. If the worker who has received a notification letter (of the termination) is being terminated, the employer must report the termination to the ministry which administers

government affairs in the manpower sector and/ or the office in charge of the provincial and district/ city government affairs in the manpower sector.

2. If the worker refuses to be terminated, he/ she must make a rejection letter accompanied by reasons for rejection no later than seven working days after receiving the notification of termination. Then, he/ she must undergo the mechanism for settling industrial relations disputes, in this case the dismissal dispute, in accordance with the provisions of the laws and regulations.

Companies can only perform termination of employment based on legal reasons as stipulated in Article 36 of the Government Regulation No. 35 of 2021 above, so that terminating workers who have been previously laid off must be done based on the reasons stated in the provisions of Article 36. Laws on manpower have regulated legal provisions regarding the rights of workers who have experienced termination, such as Article 81 Section 44 of Law No. 11 of 2020 Concerning Job Creation which states that in the event of termination of employment, the employer is required to pay Severance and/or Service Period Rewards, as well as Rights Compensation. Severance pay is a payment in the form of money from the employer to the worker as a result of termination, and the amount of which is adjusted to the period of service of the worker concerned (Husni, 2004).

The act of laying off workers has the potential to cause differences of opinion, even disputes between the two parties involved. Normatively, the laws and regulations governing disputes between employers and workers are stipulated in Law No. 2 of 2004 Concerning Settlement of Industrial Relations Disputes. The most important aspect of the many incidents of conflict or dispute is how they can be resolved objectively and fairly. Basically, dispute settlement can be resolved by the parties themselves, and if the parties cannot resolve it themselves, only then it will be resolved by the presence of a third party, either provided by the state or chosen by the parties.

Industrial relations disputes can be resolved through court (litigation) and out of court (non-litigation) as regulated in Law No. 2 of 2004 Concerning Settlement of Industrial Relations Disputes. The parties are free to determine the alternative settlement method to be used in resolving industrial relations disputes. Dispute resolution through the Court is known to hold many weaknesses so that many people try to avoid settlement in court and opt for settlement out of court.

This research is essential and novel in nature, and it is in line with the field of expertise of the researchers. It is crucial to review the settlement of industrial relations disputes and see whether they provide justice and legal certainty in fulfilling the rights of workers who have been laid off as a result of the Covid-19 pandemic which has severely impacted the Indonesian economy. This article will answer the following questions: How is the protection for workers affected by layoffs that resulted in employment termination due to the Covid-19 pandemic? What are the solutions for settlement of labor disputes caused by termination of employment due to the Covid-19 pandemic that can provide justice and legal certainty for the parties?

Literature Review Or Previous Studies

The specific objectives of this research are as follows:

1. Describes the role of the Court of Industrial relations in the settlement of employment disputes in practice.
2. Describe the mechanism of dispute resolution through industrial relations courts in its role in the justice system in Indonesia.

The results of this research are expected to be one of the contributions and knowledge in the field of legal sciences in general, and in the field of civil law, especially related to the field of employment Dispute resolution field. In addition, the results of this research are expected to provide one of the donation of thought and knowledge in the field of civil law, especially in the field of civil proceedings.

The results of this research are expected to provide practical uses and benefits, among others:

1. Provide input and reference for practitioners related to the settlement of disputes and for general employment practitioners, as well as for practitioners of employment law in particular with regard to aspects related to the mechanisms Settlement of disputes in industrial relations courts.
2. Provide input and reference for the government in determining the plan or direction of legal and civil development, especially in relation to the development of employment law in Indonesia in the future.
3. Also expected the results of this research can be used as reference or literature material for similar research in the future.

Research Materials And Methods

This research is a normative juridical study of legal research on legal principles, legal regulations as well as comparative legal inventory of positive law. Normative legal research researched is a library material or secondary data in the form of primary, secondary and tertiary legal materials needed to discuss legal issues in the study. The main research is the literature research backed by field research.

As is the opinion of Terry Hutchinson: *Doctrinal Research: Research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts Future developments; Theoretical Research: Research which fosters a more complete understanding of the conceptual bases of legal principles and of the combined effects of a range of rules and procedures that touch on a particular area of activity.* (Terry Hutchinson,2002)

The relevance between doctrinal research with the legal research paradigm was further advanced by Terry as follows: *"Paradigm forms a model or pattern based on a set of rules that defines boundaries and specifies how to be successful within those boundaries"*.(Terry Hutchinson,2002)

According to Sunaryati Harotono, legal research is a daily activity of law scholars. Normative legal research can only be done by law scholars as a person who is deliberately educated to understand and master the legal discipline.(Sunaryati Hartono,2006) Furthermore, it is mentioned that the normative research methods can be used also together with social research methods.(Sunaryati Hartono,2006)

Result And Discussion

A. Protection for Workers Affected by Layoffs that Resulted in Employment Termination due to the Covid-19 Pandemic

Legal protection for workers is becoming more crucial, especially during the Covid-19 pandemic, where the extraordinariness of the circumstance may severely impact workers, employers, and even the government as regulator. Employers may experience financial difficulties, forcing them to cut back or even completely halt their business activities, which may lead to layoffs and terminations of employment, and in terms of termination of employment as the side effect of the Covid-19 pandemic, it will also affect the government because there will be an increase in the unemployment rate which can cause social unrest, and for the workers themselves, this pandemic may affect their source of livelihood due to termination of employment, thus, affecting their welfare and quality of life.

Legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive, in both written and unwritten forms. According to Wirjono Prodjodikoro, legal protection is an effort to protect legal subjects about what they can do to defend or protect their interests (Prodjodikoro, 1983). Legal protection for workers is one of the objectives of manpower development, which is to provide protection to workers/ laborers in materializing their welfare. Layoffs and terminations, for workers, are the beginning of all endings, the beginning of the end of having a job, the beginning of the end of having the ability to pay for their and their families' daily needs, the beginning of the end of the ability to send their children to school and so on. Therefore, legal protection for workers is

paramount. It is necessary to ensure fulfillment of their legal rights by their employers, as well as by the government. However, it is not always rainbows and butterflies in the land of industrial relations. Its developments vary widely, where it is often the case that workers experience layoffs and even terminations, a scenario that is very much avoided by both employers and their workers. The definition of the term 'layoff' is still disputed between employers and workers which often leads to multiple interpretations and then impacts on the rights and obligations that must be fulfilled by each party. Some view the term 'layoff' as analogous to termination of employment, while others view it differently.

Essentially, the term 'layoff' is not recognized, nor it is regulated in available legislations regarding manpower, such as Law Number 13 of 2003 Concerning Manpower, and Law Number 11 of 2020 Concerning Job Creation. However, this does not mean that there is no legal umbrella that accommodates this term. To this day, matters relating to layoff may refer to Section F of the Circular Letter of the Minister of Manpower to the Heads of Companies throughout Indonesia No. SE-907/MEN/PHI-PPHI/X/2004 Concerning Prevention of Mass Layoffs, as well as the Circular Letter of the Minister of Manpower Number SE-05/M/BW/1998 of 1998 Concerning Wages of Laid-Off Workers Not Leading to Termination of Employment. These legal umbrellas ensure companies not to take arbitrary measures in laying off their workers due to effect of the Covid-19 pandemic.

Circular Letter of the Minister of Manpower to Company Leaders throughout Indonesia No. SE-907/MEN/PHI-PPHI/X/2004 concerning Prevention of Mass Layoffs classifies the intention of the employers to take action to lay off their workers into two, namely:

1. Leading up to termination of employment; As long as the workers experience periods of uncertainty while waiting for the termination of their employment to be carried out by their employer, the employer shall still fulfill all of the workers' rights.
2. Not leading up to termination of employment; In this scenario, workers still need to have their rights fulfilled until they are re-employed by their employer.

However, in reality, workers do not get their wages when they are being laid off, as mandated by the Circular of the Minister of Manpower above, on the grounds of the Covid-19 pandemic that has caused the company to suffer losses and, is threatened with the prospect of ceasing operation. Workers who have been laid off are not paid their wages on the grounds of the principle of 'no work no pay', so there is no obligation for the company to continue to paying wages to their workers who have been laid off. The Government, in their efforts to provide wage protection for workers, has addressed this issue, through the Ministry of Manpower of the Republic of Indonesia, by issuing Circular Letter No. M/3/HK.04/III/2020 Concerning Protection of Workers and Business Continuity in the Context of Prevention and Control of Covid-19. This circular letter states that: "For companies that limit their business activities due to government policies in their respective regions in order to prevent and mitigate Covid-19, thereby causing some or all of their workers to be absent from work, considering business continuity, changes in the amount and method of payment of wages for workers shall be made in accordance with the agreement between the employer and the workers."

This circular letter mandates both parties to communicate on their rights and obligations, as well as their fulfillments. It considers the detrimental condition that has been brought upon by the pandemic, one that has to be faced by both workers and employers. Employers have been faced with severe loss of income, which has surely affected their ability to do payroll. Moreover, certain regions have implemented large-scale social restrictions which inevitably required employers to temporarily close their businesses to comply with government regulations in their respective regions, and each region has its own timeframe in implementing large-scale social restrictions. Meanwhile, workers have to endure a lengthy period of uncertainty because of the pandemic.

In 2021, the Ministry of Manpower issued regulations for Employment/Industrial Relations during the Covid-19 Pandemic, especially during the Enforcement of Community Activity Restrictions. The

regulation is stipulated in the Decree of the Minister of Manpower No. 104 of 2021 Concerning Guidelines for Implementing Industrial Relations During the Corona Virus Disease 2019 (Covid-19) Pandemic which essentially states that in companies that are forced to lay off workers due to the impact of the Covid-19 pandemic, their workers are still entitled to salary/ wages while laid off, and companies that are financially unable to pay wages for their workers, then the employers and workers of that company can enter into agreement on wage adjustment. In the provisions of this Ministerial Decree, layoffs are the last and only way that can be taken if the Covid-19 pandemic has an impact on business continuity, and regarding severance pay, and other workers' rights which are calculated with wages, must refer to wages before adjustment, meaning the arrangement of wages returns to the provisions of the applicable law regarding manpower.

Legal protection for workers is the fulfillment of basic rights inherent and protected by the constitution as regulated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads: "Every citizen shall have the right to work and to earn a humane livelihood", as well as Article 33 paragraph (1) which reads: "The economy shall be organized as a common endeavor based upon the principles of the family system." Violation of basic rights protected by the constitution is a violation of human rights.

B. Solutions for Settlement of Labor Disputes Caused by Termination of Employment due to the Covid-19 Pandemic that Provide Justice and Legal Certainty for the Parties

Termination of employment may occur due to the expiration of a certain time that has been previously agreed upon, due to disputes between workers and employers, the death of the worker, or due to other reasons (Asikin & et.al., 2010, p. 173). Generally, termination of employment that occurs due to expiration of the time specified in an agreement does not result in any disputes between both parties (employers and workers), because both are aware and have consented to this expiration. Unlike the termination that occurs due to a dispute, this situation will surely have an impact on both parties, psychologically, economically, and financially (Asikin & et.al., 2010, pp. 173 - 174).

The Covid-19 pandemic is a challenge for the government, employers, and workers, so handling it requires the commitment from and cooperation of all parties. The Covid-19 pandemic and the policy of limiting business activities in order to prevent the transmission of Covid-19 have impacted the implementation of industrial relations between employers and workers which consequently affected the implementation of the work system, payment of wages, continuity of work, as well as business continuity; To ensure that the implementation of industrial relations in companies affected by the Covid-19 pandemic can take place in favorable conditions, guidelines for implementing industrial relations during the Covid-19 pandemic are required.

The Decree of the Minister of Manpower of the Republic of Indonesia Number 104 of 2021 concerning Guidelines for Implementing Industrial Relations During the Corona Virus Disease Pandemic regulates the following measures to prevent termination of employment:

1. Employers, workers/ laborers, trade unions/ labor unions, and the Government must seek dialogue to find the best solution in maintaining business and work continuity. Termination of employment is the last resort that can be taken after going through various efforts in addressing industrial relations problems due to the Covid-19 pandemic.
2. For companies that are truly experiencing the impact of the Covid-19 pandemic so that it affects business and work continuity, efforts to prevent termination of employment can be carried out as follows:
 - a. workplace adjustments; To reduce the cost of the production process in the company, as well as reduce work activities and mobility, WFH policy is applied for work that can be done at home.

- b. adjustment of working time; In the event that WFH policy has been implemented, but the company still has difficulties in overcoming the costs of the production process, the following measures can be taken:
 - 1) adjustment of working days;
 - 2) eliminate/ limit overtime;
 - 3) reduce working hours; and,
 - 4) reduce working days.
 - c. temporarily and rotationally lay off workers;
 - d. adjust the amount and method of payment of workers' wages;
 - e. reduce worker facilities and/or allowances gradually, for example starting from the managerial level and so on;
 - f. not extend expired term of work agreement for a certain period of time, carried out selectively; and/ or,
 - g. retire workers who have met the requirements and/or offer early retirement.
3. The selection of alternative preventive measures as referred to in number 2 requires a bipartite dialogue to obtain an agreement between employers and workers and/ or the trade union/ labor union, so that termination of employment can be avoided.
 4. In the event that efforts to prevent termination of employment have been carried out, but termination of employment cannot be avoided, the settlement of disputes over termination of employment shall be carried out in accordance with the provisions of laws and regulations.

There are a series of procedures that have to be followed by employers in order to terminate employment. These procedures are stipulated in Article 151 of Law No. 11 of 2020 Concerning Job Creation. The length and complexity of the procedures that must be followed to terminate employment according to the Manpower Law have led many companies to lay off their workers instead. Laying off workers, as a way to circumvent termination of employment as stipulated in Article 151, requires the company to still pay wages along with other rights normally received by workers/ laborers.

A solution for resolving labor disputes related to layoff and termination of employment due to the Covid-19 pandemic that can benefit and provide a sense of justice for all parties is required, considering financial difficulties faced by the company and the employers, as well as the mechanism for resolving dismissal disputes which procedure is lengthy and complex in nature. Settlement of labor disputes through bipartite negotiations can be used as an alternative by the disputing parties. In bipartite negotiations, the disputing parties sit together to discuss their problems and try to resolve problems by means of deliberation, a more familiar method to the Indonesian cultural value. In Indonesian culture, deliberation is an effort to resolve disputes that have been known for a long time, it lives in and is practiced by traditional communities across the nation. Thus, dispute resolution through deliberation is not a novelty.

The procedure for bipartite negotiations is stipulated in the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. Per. 31/Men/XII/2008 Concerning Guidelines for Settlement of Industrial Relations Disputes through Bipartite Negotiations. Bipartite negotiations are negotiations between workers/ laborers or trade unions/ labor unions and employers to resolve industrial relations disputes within one company. In conducting bipartite negotiations, the parties must:

- a. be in good faith;
- b. be polite and not act in anarchy; and,
- c. comply with the agreed negotiation rules.

Furthermore, in carrying out negotiations, it is necessary to take the following steps:

- 1) both parties take inventory of and identify the problems;
- 2) both parties draw up and agree on written rules and a negotiation schedule;
- 3) in the rules of the negotiations, the parties can agree that as long as the negotiations are carried out, both parties will continue to carry out their obligations as they should;
- 4) the parties carry out negotiations according to the agreed rules and schedule;
- 5) in the event that one of the parties is not willing to continue the negotiations, the parties or one of the parties may register their dispute with the agency responsible for manpower affairs in the regency/ city where the workers/laborers are employed, even though it has not reached 30 (thirty) working days since the negotiations;
- 6) after reaching 30 (thirty) working days, bipartite negotiations can still be continued as long as it is consented by the parties;
- 7) at each stage of the negotiation, minutes must be made, signed by the parties, and if one of the parties is not willing to sign, then the case of unwillingness is recorded in the said minutes;
- 8) the final results of the negotiations are made in the form of final minutes which at least contain:
 - a) full names and addresses of the parties;
 - b) date and place of negotiation;
 - c) subject matter or object of dispute;
 - d) the opinion of the parties;
 - e) conclusion or outcome of negotiations;
 - f) date and signature of the parties conducting the negotiations.
- 9) The final draft of the minutes is made by the employer and signed by both parties, or one of the parties if the other party is not willing to sign it.

As for other solutions to deal with the problems caused by the Covid-19 pandemic, employers, workers/ labor unions, and the government must be able to establish cooperation in anticipating layoffs and terminations.

1. Dialogue of the Parties in Industrial Relations

Employers and workers/ labor unions need to have a transparent dialogue early on in anticipating labor conditions due to the Covid-19 pandemic. Companies which because of the nature of the industry require the presence of workers, must regulate the work system by prioritizing occupational safety and health. In addition, the bipartite dialogue also needs to discuss the anticipation of the worst-case scenario in the industrial relations between them, such as efficiency, working hours adjustment, and division of labor. This dialogue is the main gateway to build a common understanding to deal with the impact of the Covid-19 pandemic for all parties involved.

2. Role of the Government as Mediator

The government must be the party that is able to mediate the dialogue between employers and workers and trade unions to prevent layoffs and terminations. The role of the government is as a mediator in finding a solution that can be agreed upon by both parties, especially regarding

the fulfillment of workers' rights, if layoffs are inevitable. In this case, the government can form a task force that specifically handles layoffs so that it can be more responsive to the problems of employers and workers during this pandemic, so that the effects can be anticipated and resolved early on.

3. Employment Policy in the Midst of Covid-19 Pandemic

This policy must respond to any changes that occur due to the Covid-19 pandemic on the employee work system. These changes include the implementation of a work from home policy system, social distancing, restrictions on public transportation facilities, and lockdowns that are currently being carried out by several regional governments. The government, in this case the Ministry of Manpower, must act proactively in providing information regarding its policy on work and mobility, as well as in conducting periodic policy reviews. These policies may include reducing working days and hours, layoffs, and so on. Furthermore, the government also needs to carry out an employment mitigation plan in the face of a deteriorating work situation due to the economic crisis as a result of the Covid-19 pandemic. This can be done by implementing government programs that can absorb a large workforce and skills development support programs such as the provision of Pre-Employment Cards for people who have just graduated from school and are in the job market.

The International Labor Organization (ILO) said the Covid-19 pandemic will have an impact on certain groups who are vulnerable to the labor market and a decrease in the number of jobs, as well as the quality of work, including wages and social protection. It even predicts that in the worst-case scenario, this pandemic will add 25 million people into the unemployment line. Layoff and termination of employment should only be taken as a last resort measure, since it will surely put everyone involved at a disadvantage, especially workers, their personal and family financial situation, and overall, their welfare. On the other hand, employers are also put in a difficult position because they have to fulfil their obligations to the employees who have been laid off and terminated. A long, rocky hill awaits ahead of us, especially the government in tackling the Covid-19 pandemic. Citizens' health and wellbeing, as well as containing the spread of the virus must be the main focus at this time. Only when the pandemic is completely under control the government can fully restore the economy.

Conclusion

The Covid-19 pandemic is a challenge for the government, employers, and workers, so handling it requires the commitment from and cooperation of all parties. Legal protection is required for workers due to unilateral termination of employment (PHK) by companies that suffer losses due to the Covid-19 pandemic. Protection is given to workers to ensure that employers still fulfill their obligations to their workers' material rights, such as payment of severance, Service Period Rewards, Rights Compensation such as housing and medical compensation, etc.

A solution for resolving labor disputes related to layoff and termination of employment due to the Covid-19 pandemic that can benefit and provide a sense of justice for all parties is required, considering financial difficulties faced by the company and the employers, as well as the mechanism for resolving dismissal disputes which procedure is lengthy and complex in nature. Settlement of labor disputes through bipartite negotiations can be used as an alternative by the disputing parties. In bipartite negotiations, the disputing parties sit together to discuss their problems and try to resolve problems by means of deliberation, a more familiar method to the Indonesian cultural value.

References

1. Anugrahadi, A. (2020, April 10). *Headline: Ancaman Gelombang PHK Massal Akibat Pandemi Corona, Apa Antisipasi Pemerintah?* Retrieved from Liputan6.com: <https://www.liputan6.com/bisnis/read/4223898/headline-ancaman-gelombang-phk-massal-akibat-pandemi-corona-apa-antisipasi-pemerintah>
2. Asikin, Z., & et.al. (2010). *Dasar-Dasar Hukum Perburuhan*. Jakarta: Raja Grafindo Persada.
3. Husni, L. (2004). *Pengantar Hukum Ketenagakerjaan Indonesia*. Jakarta: Raja Grafindo Persada.
4. Prodjodikoro, W. (1983). *Asas-Asas Hukum Perdata*. Bandung: Penerbit Sumur Bandung.
5. Tobing, L. (2013, March 25). *Surat Dokter dan Prinsip 'No Work No Pay'*. Retrieved from hukumonline.com: <https://www.hukumonline.com/klinik/detail/ulasan/lt5146a1c1c9e7e/surat-dokter-dan-prinsip-no-work-no-pay>