DISPUTES RESOLUTION OF WORK TERMINATION ON INDUSTRIAL RELATIONS THROUGH MEDIATION DURING THE COVID-19

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ABSTRACT

Companies efforts dealing with employment termination (PHK) in order to reduce losses due to the Covid-19 condition by the consideration of force majeure have caused conflicts between various parties, especially for the matter resulting in industrial relations disputes. In order to handle the disputes intensively and professionally, a third party is required as a mediator in solving the disputes through solutions. Furthermore, mediators must deal with various challenges when it happens. This study purposes to find out how to resolve disputes in industrial relations due to work termination by mediation during Covid-19. This study applies qualitative descriptive method. In addition, the literature study for this research generates data collection techniques. The results of the study show that the policy of massive work termination by companies with consideration of force majeure during the Covid-19 has created various conflicts that require more comprehensive criteria. The role of the mediator is not optimal due to various obstacles, as the employers and workers do not understand the labor regulations comprehensively, the employer and the workers have limited time to attend the trial, the technical delivery of letters has not been effective and the number of mediator human resources is still minimal. A reorientation of the contents of work agreements, company regulations and CLAs are highly required in addition to the need of administrative information technology transfer.

Keywords: *Dispute, work termination, industrial relationship, mediation, Covid-19*

INTRODUCTION

The phenomenon of Covid-19 in Indonesia has rapidly increased; that it has a negative impact on employment and the decreasing of the Indonesian economy condition. It appears to emerge real implications that must be dealt to various companies of deciding *work termination* in Indonesia (Muslim, 2020). This work termination leads to efforts of companies or entrepreneurs to take steps in reducing losses due to Covid-19 in addition to work efficiency, as well as company closures (Juaningsih, 2020: 3 in Aditya, 2021).

Data published in *Tempo* indicate that the number of workers who get work termination reached 3.05 million. *Bappenas* estimates that unemployment in 2020 will be about 4.2 million. According to a survey by the Central Statistics Agency (BPS), low-income residents and workers in the informal sector are the groups most affected by Covid-19. While in urban areas, the most affected sector is business or trading. (Ngadi, 2020). The wave of work termination emerges significantly over the last 9 months. During the Covid-19, termination of employment is commonly for major reasons as *force majeure* and efficiency (Muslim, 2020).

Based on data from the Ministry of Manpower in collaboration with the Indonesian Institute of Sciences (LIPI) and the Demographic Institute of FEB UI, shows that 96.5% of companies in Indonesia are affected by the Covid-19. It is specifically that 57.1% of companies experience a decreasing of revenue, then 39.4% stop their operational activity and only 1% of companies increase their income during the Covid-19. Meanwhile, approxiamtely 2.5% of companies do not experience the impact of the pandemic. Based on data, it is known that 13.9% of companies have reduced the number of employees and as many as 49.6% of workers receive work termination by the company (Bayu, 2020).

In addition, based on data from the Ministry of Manpower, more than 3.5 million workers in both formal and informal sectors have experienced the impact of being work terminated. There are approximately 2.8 million cases of work termination amid to the Covid-19 (Kurnia, 2020). Data from the KADIN in the sector of small and medium enterprises stated that approximately 15 million MSME workers were impacted. A total of 1.7 million formal workers get laid-off and approximately 749.4 thousand workers were terminated (Legalku, 2020 in Adytia, 2021).

Accordingly, the impact of the Covid-19, in addition to workers being terminated, some workers being laid-off, contracts severance before it expires, cutting wages and enforcing the principle of "*no work, no pay"* (Ngadi, 2020). Furthermore, the most essential matter to consider is that lay-offs are carried out due to *force majeure* without any reasons according to the provisions of labor regulations. This leads to conflict

escalation, which is not only come from the workers and the company, but also from confiderations or unions. Therefore, Article 151 paragraph (1) Number 11 of 2020 concerning *Cipta Kerja* (employment clusters) states that employers, workers, trade unions and government must strive to prevent lay-off; yet, it needs to be reaffirmation for entrepreneurs (Muslim, 2020).

Affirmation is increasingly required considering that there are problems related to workers' compensation who are faced with the problem of ending the employment relationship before the employment contract ends. The pandemic matter, it is not only getting an impact on the weakening of the national economy, but also has an impact on workers. In other hand, during the Covid-19, workers experienced two vulnerabilities; physical, mental vulnerability and vulnerability in terms of not getting a decent income and source of livelihood (Izzati, 2020, in Adytia 2021).

This affirmation is stated in the work agreement in accordance with Article 1 number 14 of Regulation Number 13 of 2003 concerning to Manpower that *"a work agreement is an agreement between a worker or laborer and an entrepreneur or employer that contains the working conditions, rights and obligations of the parties."* As a legal relationship, work agreement which is the essence of industrial relations always have two aspects, rights and obligations. Rights are interests that are protected by law, while obligations are part of positive legal norms that instruct individual behavior by setting a punishment (Mertokusumo, 2005). This implies that by the existence of a comprehensive work agreement, it is expected that lay-offs will not occur on the basis of arbitrariness that can harm one party (Aditya, 2021) as a result that it will be creating the potential for industrial relations disputes.

Referring to the provisions of Law No. 2 of 2004 concerning the Settlement of Industrial Relations, it is explained that industrial relations disputes are differences of opinion which result in conflicts between entrepreneurs or a combination of entrepreneurs and workers/labor or workers/labor unions due to disputes regarding rights, conflicts of interest, disputes over termination of employment and disputes between trade unions/labor unions within a company. The settlement of problems related to industrial relations can be carried out by means of mediation, conciliation and arbitration. Regarding to mediation, it is specifically regulated in Article 8 of Regulation Number 2 of 2004 concerning to Settlement of Industrial Relations Disputes, which states that dispute resolution through mediation is carried out by mediators who are in each office of the agency responsible for the district/city manpower sector.

Seeing the many things that cause potential industrial relations disputes between employers and workers during Covid-19 as a result of termination of employment by employers, a mediator role is required to assist the disputing parties. The mediator is obliged to be able to bring together the two disputing parties, is required to have the ability to create conducive conditions and can guarantee the creation of compromises between the disputing parties in order to obtain mutually beneficial results or what is known as a win-win solution (Adytia, 2021). However, there are still various challenges should be overcome by mediators in completing their duties, as the cases are difficult to resolve in a short time. Based on the description above, the authors are interested to observe on how to resolve disputes in industrial relations due to lay-offs through mediation in the Covid-19.

THEORETICAL BACKGROUND

According to Article 1 of Regulation Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, industrial relations disputes refer to disputes arising from differences of opinion resulting in conflicts between employers and workers as well as between a combination of employers and workers unions due to disputes over rights, disputes over interests, disputes over termination of relations work, and trade union disputes or labor unions within a company.

During Covid-19, there is a potential for industrial relations disputes between employers and workers as a result of termination of employment by employers with the consideration that the company is experiencing *force majeure*, which is experiencing losses, so efficiency is required; so, the role of a mediator is essentially required to resolve these problems.

The mediator refers to the party that has a role in resolving the dispute; she/he is an employee of a government agency responsible for the field of manpower. The requirements as a mediator have been determined by the Minister. The mediator is ordered in mediating and has the obligation to make written recommendations to the disputing parties to settle disputes, whether rights disputes, interest disputes, termination disputes or disputes between trade unions or labor unions. The good or bad role of the mediator can be found from the good and bad implementation of mediation. The implementation of a good mediation is in accordance with the provisions of Regulation Number 2 of 2004 concerning to Dispute Settlement. Therefore, the mediator must own a good role in resolving industrial relations disputes between workers and employers. Work termination of employment based on Article 1 Paragraph 25 of Regulation Number 13 of 2003 concerning to Manpower, is defined as the termination of the employment relationship due to a certain matter which results in the termination of the rights and obligations between the worker and the company. Disputes over termination of employment are specifically regulated in Regulation Number 2 of 2004 concerning to Settlement of Industrial Relations Disputes (PPHI, along with the enactment of Regulation No. 2 of 2004 concerning PPHI.

Force majeure leads to a state of coercion, according to Subekti in the book of Law of The Agreement, *Force Majeure* refers to a condition that can make a defense to the debtor with the purpose of showing that the debtor cannot carry out according to the agreement because of unexpected circumstances or things and the position of the debtor is unable to do anything on what is the condition or event that comes unplanned (Tri Harnowo, dalam Khalda Fadilah dkk, 2021).

Thus the elements of *force majeure* can be described as follows: unexpected events, cannot be held accountable to the debtor, there is no bad faith from the debtor, the existence of circumstances that are not intentional by the debtor, the situation prevents the debtor from achieving If implemented, it will be subject to a ban, circumstances beyond the debtor's fault, the debtor does not fail to perform (deliver goods, the incident cannot be avoided by anyone (both debtors and other parties), the debtor does not commit errors or omissions. The analysis of the Covid-19 which is the basis for the company's reason for mass lay-offs of workers deals with forced conditions where the company suffers a loss which is called *force majeure*; it is still able to be carried out because it is considered to be in accordance with articles 1244 and 1245 of the Civil Code concerning *force majeure* which is still questioned in various circles.

In the Article 61 of Regulation no. 13 of 2003 concerning to Employment, the employment agreement is completed when the employee passed away or adopts the result of a collective labor agreement between the employee and the company. If the company lays-off before the end of the contract period, the company has an obligation to give compensation in the form of wages until the deadline is completed within the time period of the work agreement. Workers should have received proportional wage to be able to meet basic needs.

As a result of the Covid-19, many companies have to deal with permanent closing or taking large-scale of lay-offs. Workers obtain the negative impact since they basically do not want to get laid-off which will lose their livelihood and cannot meet the requirements of themselves and their families. Article 1601a of the Civil Code explains that an agreement, the worker, binds themself to surrender his energy to another party, which refers to the entrepreneur or company, with wages for a certain period of time. By this means, it relates to human resource that reachs a level of satisfaction related to a sense of security in working with guaranteed life necessities, and there are opportunities to communicate with each other socially. Therefore, in accordance with the direction given by the Ministry of Manpower, work termination should be the *last resort*, but in fact, employers choose the opposite path, while the company chooses lay-offs.

The direction given by the Ministry of Manpower is in line with the concept of a "modern welfare state" from Marbun which explains that in the "welfare state", the government's task must be actively promote the welfare of the community (Marbun and Mahfud, 2006); and it relates to Jeremy Bentham in the utilitarian school of “the greatest happiness for the people, greatest number of people” (Mariana Molnar Gabor, 2012 in Nina Conscience 2017). Meanwhile, according to the theory of M.G. Levenbach Levenbach, explained that employment refers to all things both law and behavior related to work relations, where the work is carried out under a leader and is related to the livelihoods of workers who are bound in working relationships (Setiawan, 2014, 36-37 in Aditya, 2021).

Previous researchers who have conducted research related to work termination disputes in industrial relations through mediation are as follows: Aditya Triwijaya, “Settlement of Disputes on Termination of Employment”, Moh. Maruf, “work termination during Covid-19 through mediators”, Moh. Muslim, “work termination during Covid-19 situation, impact of covid-19 on termination of employment and company non-cooperative in providing employee rights after disclaimer”, Fatisia Laia, “the role of mediators in industrial relationship dispute resolution process (a case study on work termination in North Sumatra province).”

RESEARCH METHODOLOGY

This study applies a qualitative descriptive analysis method. Secondary method is data collection techniques and databox. The analysis was implemented to complement the existing data exposure by taking several cases published in electronic media. Conclusions are inferred after going through an inductive qualitative analysis, which initiates from various cases, classification and analysis carried out and then descriptive conclusions are created. Data collection techniques to support qualitative descriptive analysis were carried out by qualitative normative juridical analysis carried out by literature studies to collect and compile data related to the problem under study referring to secondary and tertiary data sources as well as primary data as supporters. This research is expected to be able to examine how to resolve lay-off disputes in industrial relations through mediation as an effort to resolve problems during the Covid-19.

FINDINGS AND DISCUSSION

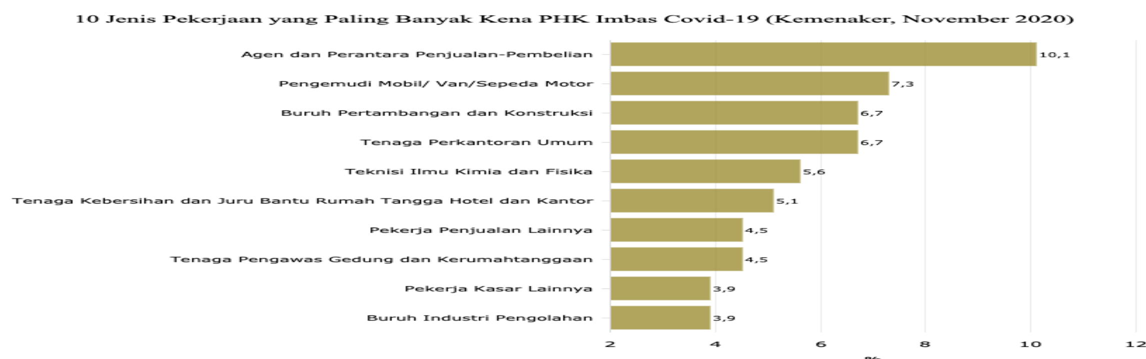
1. Settlement of Work Termination Disputes in Industrial Relations through Mediation as an Effort to Resolve Problems During the Covid-19

a. Work Termination of Employment in Industrial Relations During Covid-19 Condition

The impact of Covid-19 on the issue of work termination in Indonesia is very complex. The latest data for April 2020 is from the results of a survey conducted on April 24 to May 2, 2020 with a total of 1,112

workers who experienced that condition of 15.6 percent consisting of 1.8 percent work termination with severance pay and 13.8 percent percent without severance pay (research conducted by LIPI-LD-UI Research and Development Agency of the Ministry of Manpower in Ngadi et al, 2020).

According to data processed by Databoks sourced from the Ministry of Manpower which was launched in November 2020, it shows that the work sector that carried out a lot of work termination during Covid-19 was more in the service sector, such as sales agents and intermediaries reaches 10.1%, while drivers is 7.3%, mining and construction workers 6.7%, general offices 6.7%, chemical and physical science technicians 5.6%, hotel cleaning staff and office housekeepers 5.1 % (Muslims, 2021). Further details can be seen in the following graph:



Graphic 1. *Jobs with the Most Lay-offs Due to Covid-19*

Source: Moh Muslim, "Lay-off During the Covid-19 Pandemic", ESSENCE: Journal of Business Management, Vol. 23 No. 3 / 2020

The Ministry of Manpower stated that the impact of the covid-19 caused various challenges for more complex employment development (Julaika, 2020:1 in Aditya, 2021). Manpower development which should be able to empower the workforce optimally and humanely, realizes equal distribution of employment opportunities, providing protection and welfare of workers, in accordance with the philosophical values of Pancasila which points out the value of balance between the interests of employers and the interests of workers to create general welfare so as to create a just democratic character to create order and welfare of the wider community, as an effort to accelerate economic growth according to Marbun's concept with the theory of "modern welfare state" (Marbun and Mahfud, 2006 in Nina Nurani, 2017) and according to Jeremi Bhentham's utilitarianism "the greatest happiness for the greatest number of people" (Jeremy Bentham, 1977).

Data show that the impact of the COVID-19 has caused complex problems related to lay-offs in various economic and business sectors. The complexity of the problem can be analyzed from the names of companies that carried out mass lay-offs based on information from several media, including (Moh Muslim, 2020) as follows;

(1) In 2020, Disney laid-off approximately 32,000 workers and it is in the first half of the 2021 fiscal year plus about 28,000 workers previously announced in September, considering the Covid-19 has stopped the Disney theme park industry from moving. Thousands of Disney employees will be majority of workers affected by lay-offs came from the playground divisions and product divisions. It was reported by the CNBC page, Thursday (11/26/2020 in Moch Muslim, 2020) in the 14th Journal.

(2) Several companies in Bekasi which are located around the Jabodetabek industrial city have laid-off 1,543 workers and have the potential to increase, considering that there are still employees who are at odds with the company.

(3) The company in Tangerang has laid-off 1,800 workers in one shoe factory and 22 workers in another company

(4) PT Garuda Indonesia (Persero) Tbk. as a state-owned company terminated the employment contracts of around 700 workers starting November 1, 2020, after previously, the company workers were laid-off without being paid salary since May 2020.

(5) PT Garuda Indonesia accelerated the contract period of pilots and co-pilots by 1,400

(6) *Gojek* start-up business laid-off 430 employees, from Go- Message service division, Go-Life and Go-food.

The company's policy to terminate workers on a large scale with the consideration of *force majeure* as the company suffers a very significant loss is something controversial. This is a burden as well as a problem for the country because the unemployment gap is getting bigger and the supply of job opportunities is getting

smaller and even the potential for businesses experiencing bankruptcy is very potential in various business sectors.

The existence of a mismatch of expectations and reality between workers and employers underlies the occurrence of industrial relations disputes. Although industrial relations disputes between workers and employers can be resolved in accordance with the provisions for the settlement of industrial relations disputes as regulated in Regulation Number 2 of 2004. However, industrial relations disputes between workers and employers need to be minimized in order to reduce the impact of disputes that will harm various parties. Therefore, preventive measures are needed in the form of improvements to work agreements, company regulations or *Collective Labor Agreements* which are more comprehensive in substance, able to accommodate various rights and obligations that are balanced between workers and employers, able to maintain conducive conditions to deliver harmonious industrial relations between employers and workers.

In a company agreement between workers/labourers, the existence of Covid-19 that has an impact on company losses, cannot necessarily be a *force majeure* situation. In article 164 of Regulation no. 13 of 2003 concerning to employment of a company can be said to be as *force majeure* when it has been in continuous loss for 2 years. According to Sri Soedewi Masjchoen Sofwa, a state of *force majeure* or *overmacht* is a situation when the debtor is very unlikely to fulfill the debt (absolute overmacht) or a situation where someone is still able to pay the debts, yet requires large unbalanced sacrifices or mental strength beyond human potential or potentially emerging a very large loss (relatively overmacht). In this time of crisis caused by Covid-19, lay-offs are assumed as something terrible; unwanted circumstances by employees or workers. Covid-19 is something that has a relative nature because achievements can be carried out through maximum effort. Coordinating Minister for Political, Legal and Security Affairs Moh. Mahfud MD said that the circumstances caused by Covid-19 could not be used for *force majeure* reason.

Referring to Article 164 Paragraph (1) of Regulation Number 13 of 2003 concerning to Manpower, it states that company may execute work termination when the company is closed due to *force majeure*. Then, Article 164 Paragraph (3) of Regulation Number 13 of 2003 also states that company may also lay-off workers because the company is closed not because of losses for two consecutive years or not because of coercive circumstances or *force majeure* but the matter of efficiency. Workers should get one-time severance payment (salary). The Minister of Manpower, regarding *force majeure*, states that consequences for workers by terminating the employment relationship does not support the company's reasons.

This may be in line with the argument of the Minister of Manpower who appealed to companies to make efforts to avoid lay-offs, among others through the following steps: reducing wages and facilities for managers and directors, reducing work shifts, limiting overtime work or temporarily laying off workers. This is in accordance with the Circular Letter No: SE – 907/MEN/PHI – PPHI/X/2004 concerning to the Prevention of Mass Lay-offs.

Likewise, the issuance of the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers and Business Continuity in the Context of Prevention and Control of Covid-19, can be used as a basis for making efforts to overcome problems related to work termination. Employers can make changes to the amount and method of payment of wages for workers/laborers who are temporarily laid-off due to Covid-19 with a permanent record based on the agreement of both parties. This is carried to avoid work termination by prioritizing social dialogue between employers and workers in order to maintain the continuity of business activities and workers still have jobs during the pandemic. This is also what the mediator always strives to do in resolving industrial relations problems, for example that the decisions taken do not burden one party, either the workers or the employers.

Furthermore, several companies have issued policies to terminate employment on the grounds that the company does not have sufficient funds to pay severance pay or wages for workers. This is contrary to the labor regulations which state that a company may close if it has reached a loss for two years. While Covid-19 at that time had not yet reached or entered a year. The reasons for *force majeure* that are used as the basis for consideration by some companies are unacceptable to some groups.

Subekti stated that *force majeure* is a reason to be released from the obligation to pay compensation. In the Civil Code, the term *force majeure* is not found, accompanied by an explanation of the criteria for coercive circumstances. However, there are terms which in the Civil Code which regulates compensation, the risk for unilateral contracts is then taken for the term force majeure (Suadi in 1). With the existence of *force majeure*, it cannot be used as an excuse for the company to take refuge from reasons of coercive circumstances because it is only to avoid its responsibilities, then there must be several measurable conditions or criteria that are fulfilled, so that this does not happen. In order to the court to grant it, the reason for the *force majeure* given must be accompanied by sufficient evidence, for example regarding the real impact by the debtor during the overmacht condition.

According to Article 1244 of the Civil Code, it is stated that debtors are obliged to accept penalties to compensate for costs, losses and interest. If the parties are unable to bring evidence of not carrying out the bond or at the wrong time when the bond is carried out due to something outside the plan, they are unable to be responsible for it. If the agreement ratified by the party has not been stated in the contract regarding the force majeure clause, then the party can use article 1245 of the Civil Code.

The provisions in Article 1245 of the Civil Code state that there is no compensation for costs, losses and interest. If due to forced conditions or because of things that happen outside the plan, the debtor is prevented from working as he should, or doing what he should not do. Article 1245 of the Civil Code is not sufficient, the company must obtain evidence that there are obstacles that have an impact on achievements that cannot be carried out. Covid-19 cannot be directly referred to as a situation that has an impact on *force majeure* policies, unless the company's circumstances do not allow it to carry out its achievements because the core of *force majeure* is all or nothing, such as the closure of the company. Termination of employment can be categorized as *force majeure* if the company closes permanently due to continuous losses or forced circumstances. If the company suffers a loss, the company must provide evidence based on the results of the public accountant's examination.

According to Subekti, a situation is said to be *force majeure* when; the situation is beyond the control of the company and forced, and the situation must be a condition that could not be known at the time this agreement was made, at least the risk is not borne by the laid-off workers. Thus, it is necessary to have several conditions that must be met, so that it is not by one's own volition that someone says he is experiencing *force majeure*. In Article 47 paragraph (1) section **j** of Regulation 2/2017 concerning Construction Services, it is explained related to *force majeure* situation. According to the provisions of the article, *force majeure* can be interpreted as an event that occurs against the will and ability of the parties that causes harm to one of the parties. This state of compulsion includes the following: 1. An absolute state of coercion, that it is impossible for the parties to carry out their rights and obligations.

Meanwhile, absolute (relative) coercion refers to some condition that the parties are still allowed to carry out their rights and obligations. In this case of Covid-19, can be called as an unexpected event when the agreement or policy was made. This means that if there is an agreement made when COVID-19 is spreading and the work termination of employment cannot be used as an excuse as a *force majeure*. Thus, it is necessary to protect the workforce to guarantee the basic rights of workers and to realize the welfare of workers while still prioritizing the development of the company's interests (Adisu & Jehani, 2007). Article 164 paragraph (1) states that employers are able to enforce employment relations decisions to employees or workers due to the company sustaining losses for 2 (two) years, or *forced majeure* conditions, through regulations, employees or workers have the right to severance pay with the value of 1 (one) time which equals to Article 156 paragraph (2) of the reward for service period with the value of 1 (one) time which refers to Article 156 paragraph (3) and the compensation for the same rights as Article 156 paragraph (4). The condition for the company to provide lay-offs to employees or workers who are employed by the company has a *force majeure* reason with the intent of Article 164 paragraph (1) must be carried out at the same time as the closing of the company. If the company carries out activities as usual or does not close the company for more longer periode, it cannot carry out termination of employment for employees using the reason that covid-19 becomes a *force majeure* situation.

The outbreak of the Covid-19 virus does not make the company terminate the employment relationship of workers on the base of absolute *force majeure* since there is no reason for compulsion or loss but with *force majeure* efficiency contained in Article 164 paragraph (3) of Law No. 13 concerning Manpower states that if the lay-off is carried out by the company, the employee or laborer has the right to severance pay in the amount of 2 (two) times as stipulated in Article 156 paragraph (2) of the Manpower Regulation, the reward for the period of service is 1 (one)) times that have been determined by Article 156 paragraph (3) of the Manpower Regulation, as well as the compensation for entitlements that have been determined by Article 156 paragraph (4).

2. Settlement of Disputes on Work Termination in Industrial Relations through Mediation During Covid-19

The essential matter in Industrial Relations related to lay-offs during Covid-19 is that not all companies comply with applicable regulations; companies are not allowed to arbitrarily treat their workers. The general explanation of Regulation Number 13 of 2003 states that Manpower development as an integral part of national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia, is carried out in the context of developing Indonesian people as a whole and developing society as a whole to increase dignity, value, prosperous and equitable society both materially and spiritually. According to theory M.G. Levenbach that employment refers to all things both law and behavior relating to work relations, where the work is carried out under a leader and is related to the livelihoods of workers who are bound in work relationships (Setiawan, 2014, 36-37 in Aditya, 2020).

The dynamics of employment in Indonesia have not been able to run optimally and always experience problems caused by differences in interests between workers and companies. These problems are caused by company policies that are considered detrimental to workers and companies. The company feels aggrieved by the performance and negligence of the workers (Maringan, 2015). The disagreement of the two interests between workers and the company can be overcome by making work agreements or company regulations and collective work agreements to align the interests of both parties so as to prevent industrial relations disputes,

especially during the current Covid-19 which has the potential to have an impact on lay-offs; considering the company suffered a very significant loss.

Industrial relations disputes turn to be the most essential issues when it is not resolved properly and professionally. Therefore, the role of a third party as a mediator in an industrial relations dispute is required. Mediators in industrial relations have a strategic role in fostering and developing industrial relations and resolving industrial relations disputes according to their skills and abilities. Therefore, it is required to be able to master the regulations in the field of employment. One of the obligations of the mediator is to provide written recommendations to the parties. From the written recommendation, it can be forwarded to the parties for approval and rejection. It can be seen that the nature of this written recommendation is not binding on the parties. However, a written recommendation can be binding if both parties agree and are willing to be included in a collective agreement. Thus, in an industrial relations dispute, lay-offs between workers or trade unions and employers, the mediator can act as a mediator, a conciliator for the disputing parties.

Dispute resolution by mediation is a stronger form of settlement because the mediator is allowed to offer settlement proposals to the disputing parties. Weaknesses in mediation problems are often delays due to the frequent absence of the disputing parties, both employers and employees or workers, and difficulties in implementing the results of the settlement. Industrial relations disputes that can be resolved through mediation are among others related to: (1) Rights disputes, (2) Interest disputes, (3) Disputes over termination of employment and (4) Disputes between labor unions

In term of dispute condition, it is necessary to know in advance what things in each dispute have not been fulfilled. If there is one party who does not understand what is the problem then the effort that can be taken is through mediation. However, if mediation cannot be resolved, the next step is to go through the courts. Furthermore, in the settlement of industrial relations disputes, if problems are found and difficult to resolve, the mediator needs to act, among others, as follows (Budiono, 2011 in Adytia, 2021):
(a) open and become a non-block towards one of the parties,
(b) release from the wishes of the parties and then strive to become a solver or a solution provider and
(c) encourage the problem solver process by relevating the problem according to the provisions of the legislation, skilled in reading the situation and conditions of the disputing parties so as to be able to control the mediation session, even though the parties continue to strengthen the defense.

The important role of the mediator in the mediation session is to protect the parties so that the disputing parties are comfortable and can mediate properly. Therefore, the mediator requires to formulate problem solving in the form of alternative solutions by considering the limitations and potentials of the parties to be offered and implied by the parties being able to create conducive conditions in order to guarantee the creation of a compromise between the disputing parties as an effort to resolve the dispute. the right way to realize a win-win solution through a half-room mediation system or lobbying. (Adytia, 2021).

Industrial relations related to disputes over work termination during the Covid-19 increased sharply in various regions in several industrial center provinces in Indonesia, such as Jakarta, West Java and Banten, as well as Central Java. Case Investigation Information System (SIPP) at Serang District Court, Banten, since the beginning of the year until now there have been 107 cases of unilateral dismissal disputes. Meanwhile, at Central Jakarta Industrial Relations Court, cases of unilateral lay-offs dominated with a total of about 300 cases. In Bandung District Court, disputes over unilateral lay-offs and unpaid wages during August 2021 totaled 6 cases registered, while the total number of disputes over unilateral lay-offs was 220 cases. In Karanganyar, disputes over lay-offs during the Covid-19, from March 2020-February 2021, amounted to 58 cases with consideration of company efficiency, which were handled by mediators from the Karanganyar Manpower Office of a total of 60 cases (Adytia, 2021).

However, the settlement of industrial relations disputes with the mediator's role in resolving disputes in several areas has not been optimal. The criteria for the success of the mediator's role are being able to resolve the disputes between the parties when the mediation session is carried out by producing a collective agreement, not only in the form of written recommendations from a number of disputed cases that have been resolved. Referring to the comparison between the number of disputes entered at the Manpower Office of Karanganyar Regency and the settlement efforts produced either through a collective agreement or written recommendation, it has not shown optimal. The data from the research show that the settlement of industrial relations disputes is dominated by written recommendations as many as 35 (thirty-five) cases, while in order to reach a collective agreement there are only 21 (twenty-one) cases (Aditia, 2021).

Likewise, the settlement of industrial relations disputes at the Gresik Regency Manpower Office from January to September 2020, there were 58 cases of Termination of Employment. The mediator has resolved the dismissal dispute through a Collective Agreement as many as 18 cases, and through written recommendations as many as 33 cases. From these data, it can be concluded that dispute resolution is dominated by dispute resolution through written recommendations. Settlement of disputes through Collective Agreements is only 18 cases (Khikmatul Fikriyah, 2021).

There are various things that become obstacles so that the settlement of industrial relations disputes is not optimal through mediation mainly during the Covid-19 pandemic by producing collective agreements in various regions, including: (1) The procedure for resolving industrial relations disputes by entrepreneurs and

workers is not yet understood, so that creates the impression of a convoluted procedure in addition to not understanding the provisions of the labor legislation, so that during the mediation process the parties find it difficult to understand the right things. (2) Limited time for the parties, especially businessmen to attend the trial, which has an impact on the length of the mediation process, (3) The technical delivery of letters is not yet effective because it has an impact on delays in receiving letters and the mediation trial (4) The nature of the benefits of the results of the collective bargaining mediation decision has not been interpreted. by the parties, there is a reluctance to provide a chronology of the problem so that written recommendations and bipartite minutes are only based on unilateral data (5) the lack of mediator human resources so that the mediator has multiple positions which has an impact on the length of the mediation process.

CONCLUSION AND SUGGESTION

Conclusion

The companies' policy to carry out work termination with consideration of *force majeure* due to the company experiencing very significant losses as a result of Covid-19 has caused serious argumentations. The policy will not be in line with the labor regulations so that it cannot be accepted by various groups, if it does not fulfill the predetermined criteria. If the work termination is carried out by the company by meeting the criteria, among others, if the company closes permanently, continues to suffer losses for two consecutive years, and has made various optimizations through high efforts to prevent it from making a loss, and has been able to prove the loss according to the results of the examination. public accountant, then the worker has the right to be given severance pay in the amount of 2 (two) times, the award money for the period of service in the amount of 1 (one) time that has been determined, as well as compensation for entitlements.

With the extreme escalation in cases of industrial relations disputes, work termination in various regions in several provinces as a result of the Covid-19, the role of good and professional mediators is increasingly required in resolving industrial relations disputes. However, there are still various obstacles to be able to optimally resolve cases by producing a maximum product in the form of a collective agreement as a criterion for the success of the mediators' role. Constraints in the form of lack of understanding of labor laws and regulations as well as procedures for resolving disputes by employers and workers, in addition to the limited time for employers to be able to attend the trial, as well as the ineffectiveness of technical letter delivery as well as the lack of mediator human resources, impacting the length of the trial process of mediation.

Suggestion

There is a necessity for reorientation and revitalization for entrepreneurs and workers regarding the importance of work agreements, company regulations or collective labor agreements that contain clauses and criteria to be able to carry out layoffs with *force majeure* considerations. In addition to this, it is also necessary to have a more optimal role support from the Manpower Office and related agencies in each region in various provinces to disseminate employment legislation, especially related to work termination arrangements with consideration of *force majeure*; so that employers and workers can understand comprehensively. It is more adequate when making decisions when the problem emerges. Likewise, socialization related to the regulation of technical procedures for resolving disputes and the role of mediators so that employers and workers can get trust from the mediation; which is the most effective way to resolve disputes in order to generate disputes with win-win solutions.

In order to further optimize the role of mediators in resolving industrial relations disputes, the Manpower Office in several regions requires to seek technological transfer, primarily in the delivery of information related to mediation hearings, and sending electronic mail, so that services will be more effective and efficient.

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