



APPLICATION FOR TERMINATION OF EMPLOYMENT BY WORKERS / LABORERS BECAUSE THEY ARE LAID OFF WITHOUT WAGES MORE FROM MOON

Joni Hermanto^{*}, Romainur Rum^{**}

ABSTRACT

Government in November 2020 passed Law Number 11 of 2020 concerning Job Creation, then in February 2021 the Government stipulated implementing regulations from Law Number 11 of 2020, namely Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time, and Rest Time, and Termination of Employment. On March 11, 2020, the world health organization World Health Organization (WHO) declared COVID-19 as a Global Pandemic, and on April 13, 2020, the Government of Indonesia issued a Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters. People infected with the Covid-19 outbreak every day continue to increase, as well as the number of deaths due to the Covid-19 outbreak continues to grow. The Central Government and the Daerah Government issued policies to prevent and overcome the spread of the COVID-19 outbreak, namely by implementing Large-Scale Social Restrictions (PSBB) and the Implementation of Community Activity Restrictions (PPKM). With the existence of PSBB and PPKM by the Government, several sectors, especially the accommodation provision sector, tourism business, food and beverage business, real estate, and construction, have experienced a direct impact as a result of the Covid-19 pandemic and the existence of PSBB and PPKM. The tourism sector, especially hotels, has experienced a decrease in income due to the lack of guests staying, forcing employers to lay off their workers/workers without providing wages to reduce expenses and save company finances. This thesis research analyzes the impact arising from workers/workers being laid off without being given wages and legal considerations on the decision of the Industrial Relations Court at the Central Jakarta District Court with case number: 398 / Pdt. Sus PHI / 2021 / PN. JKT. PST. The purpose of this decision analysis is to find out the Request for Termination of Employment (PHK) by Workers / Workers because they were laid off for more than three months without wages based on Law Number 11 of 2020 concerning Job Creation.

Keywords: Wages of Workers' Rights, Laid off, termination of employment.

I. INTRODUCTION

Through the speech of the President of the Republic of Indonesia, Mr. Joko Widodo at the Plenary Session of the People's Consultative Assembly of the Republic of Indonesia (MPR RI) in the framework of the inauguration of the President and Vice President for the 2019 - 2024 period on October 20, 2019.

The President of the Republic of Indonesia conveyed the directions that will be carried out in the next five years, including:

1. Building hardworking, dynamic Human Resources;
2. The government will invite the House of Representatives (DPR) to issue the Job Creation Law which becomes the Omnibus Law to revise dozens of laws that hinder job creation and that hinder the development of MSMEs;

^{*} Universitas Nasional, Jakarta. email: jhermanto730@gmail.com

^{**} Universitas Nasional, Jakarta. email: romainur.civitas@unasic.id

3. Investment for job creation should be prioritized and lengthy procedures should be cut.¹

The government in November 2020 has passed Law Number 11 of 2020 concerning Job Creation, Law Number 11 of 2020 concerning Job Creation, in Article 80 of the Employment Cluster, one of which aims to amend, delete, or establish new regulations for several provisions regulated in Law Number 13 of 2003 concerning Manpower. Then the Government stipulates implementing regulations from Law Number 11 of 2020, namely Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a Global Pandemic, and on April 13, 2020, the Government of Indonesia issued a Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster. 2 People infected with the Covid-19 outbreak every day continue to increase, as well as the number of deaths due to the Covid-19 outbreak continues to grow.²

The Central Government, the Covid-19 Task Force, and the Daerah Government worked hand in hand to issue policies related to Large-Scale Social Restrictions (PSBB) and the Implementation of Community Activity Restrictions (PPKM) to overcome the spread of the Corona Virus Disease 2019 (Covid-19) pandemic outbreak to the community. The impact of the Large Scale Social Restrictions (PSBB) and the Implementation of Community Activity Restrictions (PPKM) by the Government, several sectors, especially the accommodation provision sector, tourism businesses, food and beverage businesses, real estate and construction, experienced a direct impact as a result of the Covid-19 pandemic. The tourism sector, especially hotels, experienced a decrease in revenue due to the lack of guests staying.

With hotel occupancy rates that only reach the range of 10 – 15 % some even close because there are no guests or visitors, of course, this also has an impact on the welfare of workers/workers in the tourism sector, even to the termination of employment (PHK) or laying off workers/workers by the Company without providing wages or Salary This is done to save company finances (cash flow) to prevent bankruptcy.

The records of the Ministry of Manpower, convey the current labor challenges, especially the outbreak of the Corona Virus Disease 2019 (COVID-19) pandemic, which are the still high unemployment rate and the number of layoffs. Based on data from the Ministry of Manpower, the number of layoffs in Indonesia has continued to decline since 2014. In 2018, the number of layoffs can be reduced to 3,400 workers, down 95.67 percent from 2014. However, in 2019, the figure rose again to 45,000 layoffs.

During the pandemic, the number of layoffs rose again. According to several statements from the Minister of Manpower Ida Fauziah, the number of layoffs until August 2020 reached 3.6 million people.

¹ Coordinating Ministry for Economic Affairs of the Republic of Indonesia, Speech of the President of the Republic of Indonesia at the plenary session of the People's Consultative Assembly of the Republic of Indonesia in the framework of the Inauguration of the President and Vice President of the Republic of Indonesia for the 2019-2024 period. Jakarta: Coordinating Ministry for Economic Affairs of the Republic of Indonesia, 2020, p. 2.

² Indonesia, Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters. Jakarta: <https://peraturan.bpk.go.id>, (accessed April 13, 2020).

Table 1.1 Number of layoffs in Indonesia, 2014 – 2022



Source: Ministry of Manpower "Reprocessed"³

Meanwhile, according to data from the Ministry of Finance, the COVID-19 pandemic has caused an increase in the number of unemployed people by 2.67 million people. So that as of November 2020, the total number of unemployed people has reached 9.77 million people.⁴ The steps taken by the Government, especially the Ministry of Manpower of the Republic of Indonesia in dealing with the COVID-19 pandemic outbreak to reduce the number of Termination of Employment and to maintain business continuity, the steps taken are to issue a Ministerial Circular

Manpower of the Republic of Indonesia Number M/3/HK.04/III/2020 concerning Worker/Labor Protection and Business Continuity in the Framework of Covid-19 Prevention and Control. The contents of the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M / 3 / HK.04 / III / 2020, namely in Roman letter II number 4 states: "For companies that restrict business activities due to government policies in their respective regions for the prevention and control of COVID-19 to cause some or all of their workers/workers not to come to work, taking into account business continuity, changes in the amount and method of payment of workers' wages/laborers are made by the agreement between employers and workers/workers ", meaning that in the Covid-19 pandemic for changes in the amount and method of payment of wages to workers/workers by the company, there must be an agreement by both parties, namely between workers/workers and employers.

In addition to issuing the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M / 3 / HK.04 / III / 2020, the Ministry of Manpower of the Republic of Indonesia in collaboration with the Social Security Organizing Agency (BPJS) of Manpower organizes Wage Subsidy Assistance (BSU) for workers / workers at the bottom layer or on average earning equivalent to the Provincial Minimum Wage (UMP) to provide purchasing power resilience in the face of the Covid-19 pandemic, apart from the Ministry of Manpower of the Republic of Indonesia, The Ministry

³ Shinta, Layoff Rate in Indonesia, 2014 – 2020. 2020, <https://lokadata.beritagar.id>. (accessed April 6, 2020).

⁴ Nurcholis Ma'arif, 9.77 Million People Laid Off, MPR Highlights Human Resources and Technology Literacy. 2020, <https://news.detik.com>. (accessed December 2, 2020).

of Finance of the Republic of Indonesia also provides relaxation regarding the payment of taxes and loans to banks, in addition to that for Regional Governments also provide financial assistance to companies to maintain their business continuity as carried out by the DKI Jakarta Provincial Government Decree of the Governor of the Special Capital Region of Jakarta Number 1264 of 2020 concerning Hotels and Restaurants Receiving Tourism Grants for Fiscal Year 2020. This is done both by the Central Government and Regional Governments to maintain purchasing power, especially for workers/workers and for business continuity for companies/entrepreneurs.

However, the COVID-19 pandemic has lasted for quite a long time, so the company's financial level is depleting and even running out the company has suffered losses, even many companies have closed, especially in the Tourism sector, and even though they can run their businesses, it is still not optimal so that many workers/laborers are still laid off without wages and have not been called back to work.

This is the reason that encourages workers/laborers to apply for Termination of Employment (PHK) so that they can become business heroes or switch to companies that are not affected by COVID-19. Workers' guidelines for applying for Termination of Employment (PHK) are based on the provisions of Law Number 13 of 2020 concerning Manpower Article

169 paragraph (1) point c, the hope is that workers/workers get their rights based on Article 169 paragraph (2), namely severance pay 2 (two) times the provisions of Article 156 paragraph (2), service period award money 1 (one) time the provisions of Article 156 paragraph (3) and reimbursement money by the provisions of Article 156 paragraph (4), because if guided by Law Number 11 of 2020 concerning Job Creation, the right to Termination of Employment (PHK) is based on the provisions in the implementing regulations of Law Number 11 of 2020, namely Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment whose value is smaller than Law Number 13 of 2020 concerning Manpower.

From the description above, the author conducted research on Requests for Termination of Employment by Workers / Workers for Being Laid Off for More Than Three Months Without Pay (Analysis of Decision Number: 398 / Pdt.Sus PHI / 2021 / PN. JKT. PST). The purpose of writing a thesis journal that we will discuss is how the legal considerations and court decisions Number: 398 / Pdt.Sus-PHI / 2021 / PN. JKT. PST is by Law Number 13 of 2003 concerning Manpower or by Law Number 11 of 2020 concerning Job Creation.

II. RESEARCH METHODS

In writing this thesis, the author uses normative juridical methods and normative descriptive research consisting of literature data, which includes secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials, and data from the field, namely obtaining primary data in the form of Minutes of Bipartite Negotiations, Recommendations from Mediators, and Court Decision Number: 398 / Pdt.Sus-PHI / 2021 / PN. JKT. PST. The nature of research in thesis writing is descriptive by describing the facts studied and connected with laws and regulations.

Descriptive Research / Method is a method of fact-finding the status of a group of people, an object, a condition, a system of thought, or an event in the present with appropriate interpretation.⁵ Understanding research or research included in the scientific method the method of scientific is a way

⁵ Taufani Galang "et al.", *Research Methodology of Philosophical Law, Theory and Practice*, Raja Grafindo Persada, 2018.

of finding and expressing truth with the characteristics of objectivity, because here the truth obtained conceptually or deductively is not enough, but must be tested empirically.⁶

III. DISCUSSION AND RESULT

3.1 Problems That Appear Until Filed Lawsuit by Worker/Laborer

Termination of employment (PHK) is not only the will or initiated by employers or companies, but termination of employment (PHK) can be initiated by workers/workers of their own volition or employers commit violations.⁷ Case position in Case No: 398/Pdt.Sus- PHI/2021/PN. JKT. PST plaintiff consisting of 3 (three) workers/laborers

PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) where of the three workers/laborers as permanent employees who have an average working period of around 10 years, and of the three workers laid off during the Covid-19 pandemic lasting more than three months without being paid their wages, the three workers, namely Hariyanto, Tusando Garnoval, and Istikhori, then filed an Industrial Relations Dispute lawsuit in the Industrial Relations Court at the District Court Central Jakarta Jl. Bungur Besar Raya No. 24,26,28 Central Jakarta on September 6, 2021, hereinafter referred to as the Plaintiff against PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) located at Jl. Pintu Satu Senayan, Jakarta, hereinafter referred to as the Defendant. It is often found that more than one plaintiff is called "plaintiff".⁸ Bipartite Negotiations which were held three times, namely on March 23, 2020, March 26, 2020, and March 29, 2020, by the Trade Union in this case were also attended by Hariyanto with the Management of PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) no agreement was reached. As stipulated in Article 151 paragraph (3) of Law Number 13 of 2003 concerning Manpower and Article 151 paragraph (4) of Law Number 11 of 2020 concerning Job Creation of Employment Clusters, states: "In the case of bipartite negotiations as referred to in paragraph (3) not getting an agreement, termination of employment is carried out through the next stage by the industrial relations dispute resolution mechanism".⁹

After no agreement was reached at the Bipartite Negotiations, Hariyanto, Tusando Garnoval, and Istikhori, the three workers registered an Industrial Relations Dispute at the Manpower, Transmigration and Energy Office of the Central Jakarta Administration City on February 9, 2021, then after being agreed upon by both parties to resolve industrial relations disputes through mediation, mediation was carried out by a Mediator at the Manpower Office Tribe, Transmigration and Energy of Central Jakarta Administration City. Industrial Relations Mediation, hereinafter referred to as Mediation, is the settlement of rights disputes, interest disputes, termination disputes, and disputes between Trade Unions / Trade Unions in only one company through deliberations mediated by one or more neutral mediators.¹⁰

The difference between mediation and bipartite settlement lies in the inclusion of external elements in dispute resolution. In bipartite efforts, negotiations are carried out only by parties who have Disputes, while in mediation there are outsiders (mediators) who enter and try to resolve disputes.¹¹

⁶ *Ibid.*, p. 33.

⁷ Abdul Khakim, *Legal Aspects of Termination of Employment (PHK) After the Enactment of the Job Creation Law*, Bandung: PT. Citra Aditya Bakti, 2022, p.101.

⁸ Faizal Kamil, *Principles of Civil Procedure Law*. Jakarta: Iblam Publishing Board, 2005, p. 42

⁹ Indonesia, Law Number 11 of 2020 concerning Job Creation of Employment Clusters, L.N.No.245 of 2020, Article 151.

¹⁰ Indonesian Industrial Relations Association, *Industrial Relations Dispute Resolution Mechanism*, Jakarta: Indonesian Industrial Relations Association, 2007, p. 8.

¹¹ Mathius Tambing, *Himpunan Pokok – Pokok – Pokok Perjuangan Hukum Ketenagakerjaan Indonesia*, Jakarta: Lembaga Pengkajian Hukum Ketenagakerjaan Indonesia, 2013, p. 304.

However, the mediation was not reached by both parties, so the Mediator issued a recommendation from the Tribal Mediator of the Manpower, Transmigration, and Energy Office of the Central Jakarta Administration City Number 1709/-1.835.3 dated July 19, 2021, which stated that the company rehired laid-off workers and paid wages from June 2020 to July 2021 but the company ignored the recommendation.

On August 2, 2021, laid-off workers/laborers submitted a letter to the company to implement Recommendation Number 1709/-1.835.3 dated July 19, 2021, but the company did not respond to the letter. Furthermore, Hariyanto, Tusando Garnoval, and Istikhori, the three workers filed a lawsuit for Industrial Relations Dispute Termination of Employment (PHK) based on the provisions of Law Number 13 of 2020 concerning Manpower in the Industrial Relations Court at the Central Jakarta District Court Jl. Bungur Besar Raya No. 24,26,28 Central Jakarta on September 6, 2021, hereinafter referred to as Plaintiffs against PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) located at Jl. Pintu Satu Senayan, Jakarta, hereinafter referred to as the Defendant. The Plaintiffs ask for a Provision to be decided regarding the non-payment of wages while laid off since June 2020 and termination of employment for reasons of more than 3 (three) months not being paid their wages based on the provisions of Law Number 13 of 2003 concerning Manpower Article 169 paragraph (1) point c, requesting His Excellency the Panel of Judges who examined, adjudicating and deciding cases a quo regarding giving decisions based on the provisions of Law Number 13 of 2003 concerning Manpower Article 169 paragraph (2) and Collective Labor Agreement (PKB) Article 65, the Plaintiffs are entitled to severance pay 2 (two) times the provisions of Article 156 paragraph (2), service period award money 1 (one) time the provisions of Article 156 paragraph (3), and reimbursement money by the provisions of the Article 156 paragraph (4), Annual Leave that has not fallen for the period 2020 – 2021, in the form of Holiday Allowance (THR) for the period 2021 and requests the Panel of Judges who examined and tried this case to Impose an Interim Judgment to sentence the Defendant to pay wages to the Plaintiffs while laid off, namely during June 2020 until the case a quo is decided for more than (15 months). A Provisional Judgment is an interim judgment that does not concern the subject matter.¹² So this interlocutory judgment was taken by the judge before he handed down the final judgment.¹³¹⁴

As for the petite as follows:

3.1.1 IN PROVISIONING

Granting the Plaintiffs' Claim for Provision in its entirety;
Punish the Defendants to pay the Plaintiffs' fixed wages and benefits during the Termination of Employment process from June 2020 to the present (15 months) amounting to:

(1) HARIYANTO

Process Wage 15 x Rp 4.690.168,- = IDR 70.352.520,-
(*Seventy million three hundred and fifty-two thousand five hundred and twenty rupiah*);

(2) TUSANDO GARNOVAL

Process Wage 15 x Rp 4.690.168,- = IDR 70.352.520,-
(*Seventy million three hundred and fifty-two thousand five hundred and twenty rupiah*);

¹² Herri Suwanto, *The Dilemma of Execution*, Jakarta: Rayyana Komunikasindo, 2018, p. 192.

¹³ Ministry of Finance, Recognizing Interim Decisions and Their Types, Jakarta: <https://www.djkn.kemenkeu.go.id>.

(3) ISTIKHORI

Process Wage 15 x Rp 4.590.168,- = IDR 68.852.520,-
(*Sixty-eight million eight hundred and fifty-two thousand five hundred and twenty rupiah*);

3.1.2 IN THE SUBJECT MATTER

Granting the Plaintiffs' Claim in its entirety;
State the Employment Relationship Judgment between the Plaintiffs and the Defendants since this judgment was read;

Punish the Defendant to pay severance pay 2 (two) times the provisions of Article 156 paragraph (2), service award money 1 (one) time the provisions of Article 156 paragraph (3), and compensation money by the provisions of Article 156 paragraph (4) with the following details:

A. HARIYANTO

Severance Money 2 x 9 x Rp.4.690.168,-	= Rp. 84.423.024,-
Service Period Award Money 1 x 4 x Rp.4.690.168,	= Rp. 18.760.672,-
	= Rp. 103.183.696,-
Right Replacement Money 15/100 x Rp.103.183.696,	= Rp. 15.477.554,-
Total	= Rp. 118.661.250,-

(*One hundred eighteen million six hundred sixty-one thousand two hundred and fifty rupiah*);

B. TUSANDO GARNOVAL

Severance Money 2 x 9 x Rp.4.690.168,-	= Rp.84.423.024,-
Service Period Award Money 1 x 5 x Rp.4.690.168,	= Rp.23.450.840,-
	= Rp.107.873.864,-
Entitlement Replacement Money	
15/100 x Rp.107.8738.864,-	= Rp.16.181.080,-
Total	= Rp 124.054.944,-

(*One hundred twenty-four million fifty-four thousand nine hundred and forty-four rupiah*);

C. ISTIKHORI

Severance Money 2 x 9 x Rp.4.590.168,-	= Rp.82.623.024,-
Service Period Award Money 1 x 5 x Rp.4.590.168,-	= Rp.22.950.840,-
	= Rp.105.573.864,-
Replacement Money 15/100 x Rp.105.573.864,-	= Rp.15.836.080,-
Total	= Rp. 121.409.944,-

(*One hundred twenty-one million four hundred nine thousand nine hundred and forty-four rupiah*);

Punish the Defendant to pay Annual Leave that has not fallen for the period 2020 - 2021 which has been regulated in Article 9 of the Collective Labor Agreement (PKB), with the following details:

A. HARIYANTO

Annual Leave: Rp 4.690.168,-/24 = Rp 195.423,- x 15 days = Rp. 2.931.345,-
(*Two million nine hundred thirty-one thousand three hundred and forty-five rupiah*);

B. TUSANDO GARNOVAL

Annual Leave: Rp 4.690.168,-/24 = Rp 195.423 x 18 days = Rp. 3.517.614,-
(*Three million five hundred seventeen thousand six hundred and fourteen rupiah*);

C. ISTIKHORI

Annual Leave: Rp 4.590.168,-/24 = Rp 191.257 x 18 days = Rp. 3.442.626,-
(Three million four hundred forty-two thousand six hundred twenty-six rupiah);

Penalize the Defendant to pay Holiday Allowance (THR) for the 2021 period as follows:

A. HARIYANTO

Holiday Allowance (THR) = Rp. 4.690.168,-
(Four million six hundred ninety thousand one hundred sixty-eight rupiah);

B. TUSANDO GARNOVAL

Holiday Allowance (THR) = Rp. 4.690.168,-
(Four million six hundred ninety thousand one hundred sixty-eight rupiah);

C. ISTIKHORI

Holiday Allowance (THR) = Rp 4.590.168,-
(Four million five hundred ninety thousand one hundred sixty-eight rupiah);

1. Punish Declaring the actions committed by the Defendants against the Plaintiffs are contrary to Law Number 13 of 2003 concerning Manpower junction Law Number 11 of 2020 concerning Job Creation, Employment Cluster;
2. Punish the Defendant to pay *dwang* some money to the Plaintiff for Rp 1,000,000 (one million rupiahs) every day for delay in implementing the decision of the Industrial Relations Court at the Central Jakarta District Court;
3. Declaring that the judgment can be implemented in advance even if there are resistance and Cassation legal remedies on the part of the Defendant (*Uit Voer bar bij voorraad*);
4. Declare the confiscation of security for Defendant's assets, or assets belonging to Defendant, both movable assets in the form of cars or other vehicles or immovable assets in the form of a plot of land and buildings of PT. Lingga Hamparan Krida (Hotel Atlet Century Park) on Jl. Pintu Satu Senayan, Jakarta;
Sentencing the Defendant to pay the costs of the case;

Or if the panel of judges thinks otherwise, ask for a verdict that is as fair as possible (*exaequo et bono*).

3.2 Defendants' Answers, Exeptions, and Reconviction Claims

Article 184 paragraph (1) HIR, explains that including the defendant's answer does not have to be a whole sufficiently concise, just take the main and relevant to the conditions, and must not eliminate the true meaning of the answer. Understanding answers in a broad sense, including replicas and duplexes and conclusions. Failure to include it results in an ineligible judgment.¹⁴

In the exception submitted by the defendant in his answer, it was stated that the plaintiff's claim was vague/obscure libel because it used a legal basis that was no longer valid. The exception regarding the plaintiffs' claim is blurred / obscure libel, it is explained that the plaintiffs registered a PHI dispute with the Central Jakarta Administrative City Manpower, Transmigration, and Energy Office on February 9, 2021, so that the applicable legal provisions are Law Number 11 of

2020 concerning Job Creation which has been legally effective since its promulgation, namely on

November 2, 2020. The lawsuit filed by the plaintiff uses several articles in Law Number 13 of 2003 concerning Manpower which have been abolished based on the provisions of Law Number 11 of 2020 concerning Job Creation.

Regarding the subject matter in the answer, the defendant said that currently, the tourism sector is one of the industries most affected by the COVID-19 pandemic, plus the government's policy on limiting community activities has greatly impacted the decline in hotel occupancy rates. Government policies regarding restrictions on community activities ranging from Large-Scale Social Restrictions (PSBB) to the Implementation of Community Activity Restrictions (PPKM), thus making the occupancy rate of hotels in Jakarta which only reaches 10 to 15 percent is certainly very affected by the welfare of workers/laborers and the presence of employees who are still laid off. The defendant in his answer to the subject matter submitted that the use of Article 169 paragraph (1) and paragraph (2) of Law Number 13 of 2003 concerning Manpower postulated by the plaintiff in point 27 and the last paragraph of page 13 and on page 14 point 27 of the Subject Matter section on which the Plaintiffs based the application for layoffs based on Article 169 paragraph (1) and paragraph (2) of Law Number 13 of 2003 concerning Manpower is very inappropriate and grounded because, based on Law Number 11 of 2020 concerning Job Creation Chapter IV Part Two of Manpower Article 81 number 43, it states unequivocally that the provisions in Article 155 of Law Number 13 of 2003 have been deleted, so it is clear and clear that the arguments of the plaintiffs are incorrect and erroneous because they use a legal basis that has been deleted and therefore this argument should be rejected and set aside. In this case the defendant

File a reconvention suit or counterclaim where the defendants in the convention should be called plaintiffs in the reconvention while plaintiffs 1, plaintiff 2, and plaintiff 3 in the convention should further be called defendants 1, defendants 2, and defendants 3 in the reconvention who are collectively named defendants in the reconvention.

In this reconvention lawsuit, the plaintiff in the reconvention conveys that he has suffered a loss, then the plaintiff in the reconvention will lay off with provisions referring to Article 43 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment which has been effective on February 2, 2021 where it is stated that: Employers can terminate employment of workers/workers for the reason that the company makes efficiency caused by the company experiencing losses, then workers/workers are entitled to: 1. Severance pay of 0.5 (zero point five) times the provisions of Article 40 paragraph (2); 2. Service award money of 1 (one) time the provisions of Article 40 paragraph (3); and 3. Money reimbursement rights by the provisions of Article 40 paragraph (4).

Meanwhile, in the petition in the reconvention lawsuit, the plaintiff in the reconvention against the defendants in the reconvention for layoffs based on Article 43 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment whose calculations are as follows: For defendant 1 in the reconvention with the following details:

- (1) Severance pay = 0.5×9 months wages = Rp 21.105.756,-
 - a. Years of service award money = 14,070,504,-
 - b. Right replacement money = Rp 9.771.183,- Total = Rp 44.947.443.00
 - c. Which will be paid in installments 2 times;
- (2) For defendant 2 in the reconvention with the following details:
 - a. Severance pay = 0.5×9 months wages = Rp 21.105.756,-
 - b. Years of service award money = 14,070,504,-
 - c. Right replacement money = Rp 9.771.183,- Total = Rp 44.947.443.00
 - d. Which will be paid in installments 2 times;

- (3) For defendant 3 in the reconvention with the following details:
- a. Severance pay = 0.5×9 months wages = Rp 20.655.756,-
 - b. Years of service award money = 22.950.840,-
 - c. Right replacement money = Rp 9.562.850,- Total = Rp 53.169.446.00

Which will be paid in installments 2 times; The rest of the petition sentenced the defendants of the reconvention to pay the entire cost of the case. Or if Your Excellency the Panel of Judges who examined and tried this case thinks otherwise, please give a verdict that is as fair as possible (*ex aequo et bono*). To corroborate his rebuttal arguments, the defendant submitted evidence of letters marked as T-1 to T-17 which had been sufficiently stamped and after matching with the original, some matched and some could not be shown the original.

3.3 Juridical Analysis of Legal Considerations of Court Decision Number: 398/Pdt.Sus-PHI/2021/PN. JKT. PST

Industrial Relations disputes in this case are between Hariyanto, Tusando Garnoval Istikhori, and PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta). PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) has approximately 230 (two hundred thirty) employees or workers, related to the spread of the Covid-19 pandemic that began to hit throughout Indonesia and implementing Government Regulations related to the 2019 Covid Pandemic, namely the Implementation of Community Activity Restrictions (PPKM) to break the chain of spread of Covid-19, the defendant decided at the end of March 2020 to lay off some employees except staff Security and Engineering Staff as many as approximately 40 (forty) people to continue working as usual to maintain company assets. Furthermore, PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) laid off employees from the end of March 2020 to May 2020 and will be operational again in June 2020.

On March 23, 2020, March 26, 2020, and March 29, 2020, the Trade Union chaired by Hariyanto with the Management of PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) held a Bipartite negotiation to discuss the mechanism and acquisition of employee rights while at home based on the Collective Labor Agreement (PKB). However, at the bipartite negotiations, no agreement was reached between the two sides.

Furthermore, Hariyanto, Tusando Garnoval, and Istikhori recorded this Industrial Relations Dispute in the Central Jakarta Administrative City Manpower, Transmigration, and Energy Office Tribe, and then the Central Jakarta Administrative City Manpower, Transmigration and Energy Office Tribe called both parties, namely Hariyanto (et al) with PT. LINGGA HAMPARAN KRIDA (Hotel Atlet Century Park Jakarta) is offered to choose the type of dispute handling i.e. whether by Mediation, Conciliation, or by Arbitrator.

Both parties chose the type of dispute handling with Mediation at the Central Jakarta Manpower, Transmigration and Energy Office of the Central Jakarta Administration City, after mediation by the Mediator no agreement was reached and then the mediator issued a letter of Recommendation Number 1709/-1.835.3 dated July 19, 2021, stating that the company rehired laid-off workers and paid wages from June 2020 to July 2021 but the company ignored the recommendation. It is precisely the company in August 2021 that it offered to workers who filed disputes to accept the offer of Termination of Employment with severance compensation of IDR 50,000,000.00 (fifty million rupiah) per person.

Upon the offer from the company, the laid-off workers refused and filed a lawsuit for termination of employment in the Industrial Relations Court at the Central Jakarta District Court based

on the provisions of Law Number 13 of 2003 concerning Manpower Article 169 paragraph (1) letter c junction Law Number 11 of 2020 concerning Job Creation, Employment Cluster Article 154A Paragraph (1) letter g Number 3 then *posita* The Plaintiffs asked to be terminated for reasons of more than 3 (three) months of non-payment of wages.

A. In the *petite* of the lawsuit, Haryanto (et al) as the Plaintiffs filed as follows:

1. Request the panel of judges to terminate the employment relationship between the plaintiffs and the defendants since the judgment is read;
2. Sentencing the defendant to pay process wages while laid off from June 2020 until the case is decided or for 15 (fifteen) months;
3. Punish the defendant to pay severance pay 2 (two) times the provisions of Article 156 paragraph (2), service period award money 1 (one) time the provisions of Article 156 paragraph (3), and compensation money in accordance with the provisions of Article 156 paragraph (4) of Law Number 13 of 2003 concerning Manpower Article 169 paragraph (2) and Collective Labor Agreement (PKB) Article 65;
4. Punish the defendant to pay annual leave that has not been lost for the period 2020 – 2021;
5. Sentencing the defendant to pay Holiday Allowance (THR) for the 2021 period;
6. Request the panel of judges to set a dwangsome fine of IDR 1,000,000 (one million rupiah) every day if the Defendant neglects or does not implement the decision of the Industrial Relations Court;
7. Request the panel of judges to declare the judgment in this case enforceable in advance (*Uit Voer bar bij voorraad*) despite the opposition and other remedies on the part of the Defendant;
8. Request the panel of judges to place a conservatoir beslag on the assets of the Defendant, or assets - assets of the Defendant's personal property, both movable assets in the form of cars or other vehicles or immovable assets in the form of a plot of land and buildings of PT. Lingga Hamparan Krida (Hotel Atlet Century Park) on Jl. Pintu Satu Senayan Jakarta to be used as collateral for this matter;

Or if the panel of judges thinks otherwise, ask for a verdict that is as fair as possible (*exaequo et bono*). In the description above, it is the subject matter (*posita*) and claims (*petitum*) of the plaintiffs contained in the lawsuit letter. In the industrial relations dispute, the plaintiffs to strengthen their lawsuit submitted 10 (ten) pieces of evidence and presented two witnesses. Furthermore, the defendant in the said case in his reply submitted the Exception that the plaintiffs' claim was vague/obscure libel because it uses a legal basis that is no longer valid, namely using Law Number 13 of 2003 concerning Manpower which has been amended by Law Number 11 of 2020 concerning Job Creation, and also filed a Reconvension lawsuit.

B. In Reconvension Lawsuit.

The plaintiff in the reconvension conveys that he has suffered a loss, then the plaintiff in the reconvension will lay off with provisions referring to Article 43 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment which has been effective on February 2, 2021, where it is stated that:

Employers can terminate the employment of workers/workers for the reason that the company makes efficiency caused by the company experiencing losses, then workers/workers are entitled to:

1. Severance pay of 0.5 (zero point five) times the provisions of Article 40 paragraph (2);
2. Service period award money of 1 (one) time the provisions of Article 40 paragraph (3); and

3. Money reimbursement rights by the provisions of Article 40 paragraph (4).

C. To refute the plaintiffs' claims, the defendants submitted 21 (twenty-one) pieces of evidence and did not present witnesses.

Regarding legal considerations in case Number 398/Pdt.Sus- PHI/2021/PN. JKT. PST The Panel of Judges gave its consideration in the exception Considering, that against the argument of the defendant's exclusion the Panel of Judges will give legal consideration, according to the Panel of Judges regarding the legal basis of the lawsuit is closely related to the subject matter of the dispute which must still be proven together with the subject matter, that with such considerations, making the defendant's exception unreasonable and deserves to be rejected.

The panel of judges considered that the plaintiffs in their provincial lawsuit asked the defendants to pay the plaintiffs' wages during the termination process from June 2020 until now (for 15 months), the Panel of Judges during the trial there was no evidence showing that the plaintiffs were suspended, so with such consideration, the plaintiffs' claim for provision became unreasonable in law and deserved to be rejected.

D. To answer the subject matter,

The Panel of Judges will consider the provisions of laws and regulations as well as evidence, and witnesses submitted by the parties who are relevant to the case a quo. Furthermore, the Panel of Judges considered evidence T-10 in the form of financial statements of PT. LINGGA HAMPARAN KRIDA for the year ended December 31, 2020, obtained the fact that the defendant suffered losses for IDR 15,777,039,975.00 (fifteen billion seven hundred seventy-seven million thirty-nine thousand nine hundred and seventy-five rupiah), and the Panel of Judges noticed that throughout the trial there was no evidence that the plaintiffs were present to work from June 2020 to December 2020, then based on Article 93 of Law Number 13 of 2003 About Employment is: Wages are not paid if workers/laborers do not do work.

The Panel of Judges gave consideration, considering such conditions in which the defendant suffered losses, and the plaintiffs and defendants no longer carried out their obligations, to provide certainty of the employment relationship between the plaintiffs and defendants, and as a fair settlement of the dispute a quo case, there were sufficient legal reasons for the Panel of Judges to declare the decision of employment relations between the plaintiffs and defendants since this judgment was pronounced because of the defendant carry out efficiencies caused by the Company experiencing losses. So the decision of the Panel of Judges adjudicates:

In the Convention on Exceptions, it rejects the defendants' exclusion in its entirety, in the provision it rejects the plaintiffs' claim for provision in its entirety.

3.3.1 In The Subject Matter

Granting the plaintiffs' claim in part;

- (1) Declaring the termination of employment between the plaintiffs and the defendant as of the time this judgment is pronounced because the defendant made efficiencies caused by the company experiencing losses;
- (2) Punish the defendants to pay the rights to termination of employment to the plaintiffs in the form of severance pay and service award money, reimbursement money for leave rights, holiday allowances in 2021, and wages during the process to each plaintiff;
- (3) Dismiss the plaintiffs' claims for other than and the rest;

This was decided by the consultative meeting of the Industrial Relations Court Judges at the Central Jakarta District Court, on Wednesday, January 19, 2022, by us, Mochammad Djoenaidie, S.H., M.H., as the Presiding Judge, Lita Sari Seruni, S.E., S.H., M.H., and Purwanto, S.H., M.H. respectively as Member Judges, the decision was pronounced on Wednesday, On February 2, 2022, the hearing was open to the public by the Presiding Judge in the presence of the Member Judges, assisted by Andi Zumar, S.H., M.H, Substitute Registrar, in the presence of the plaintiffs' and the defendants' attorneys.

IV. CONCLUSIONS

The provisions for wages, termination of employment, and the amount of severance pay in Law Number 13 of 2003 have been amended, deleted, or stipulated new arrangements for several provisions in Law Number

11 of 2020 and further regulated in the provisions of Government Regulation Number 35 of 2021 concerning Certain Time Work Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment, so that it has decreased from the amount of severance pay and other rights to workers/laborers. However, there are additional benefits for laid-off workers/laborers, namely being able to apply for Job Loss Insurance (JKP).

Analysis of Law Number 11 of 2020 concerning Job Creation with Law Number 13 of 2003 concerning Employment lacking support for workers/laborers so that there are many demands from workers/laborers to cancel Law Number 11 of 2020 concerning Job Creation, we as authors will encourage this through the Union Organization Workers to send a letter to the government to issue a Presidential Regulation instead of Law (Perpu) to revoke Law Number 11 of 2020 concerning Job Creation.

REFERENCE

Books

- Taufani Galang "et al.", *Research Methodology of Philosophical Law, Theory and Practice*, Raja Grafindo Persada, 2018.
- Ibid.*, p. 33.
- Abdul Khakim, *Legal Aspects of Termination of Employment (PHK) After the Enactment of the Job Creation Law*, Bandung: PT. Citra Aditya Bakti, 2022, p.101.
- Faizal Kamil, *Principles of Civil Procedure Law*. Jakarta: Iblam Publishing Board, 2005, p. 42
- Indonesia, Law Number 11 of 2020 concerning Job Creation of Employment Clusters, L.N.No.245 of 2020, Article 151.
- Indonesian Industrial Relations Association, *Industrial Relations Dispute Resolution Mechanism*, Jakarta: Indonesian Industrial Relations Association, 2007, p. 8.
- Mathius Tambing, *Himpunan Pokok – Pokok – Pokok Perjuangan Hukum Ketenagakerjaan Indonesia*, Jakarta: Lembaga Pengkajian Hukum Ketenagakerjaan Indonesia, 2013, p. 304.
- Herri Suwanto, *The Dilemma of Execution*, Jakarta: Rayyana Komunikasindo, 2018, p. 192.
- Rumawi, Christina Bagenda, Firzhal Arzhi Jiwantara, Ade Darmawan Basri, Rasdiana, Yusep Mulyana, Barzah Latupono, Setiyo Utomo, Dwi Edi Wibowo, Ronald Saija, Ince Aprianti, Agus Prihartono & Fatkhul Muin, Sakirah, Silfy Maidianti. *Hukum Acara Perdata*, ISBN: 978-6236092-75-0, Cetakan Pertama: Juli, 2021, Penerbit Widina Bhakti Persada Bandung.

Internet Citation/Online Media

Shinta, Layoff Rate in Indonesia, 2014 – 2020. 2020, <https://lokadata.beritagar.id>. (accessed April 6, 2020).

Nurcholis Ma'arif, 9.77 Million People Laid Off, MPR Highlights Human Resources and Technology Literacy. 2020, <https://news.detik.com>. (accessed December 2, 2020).

Ministry of Finance, Recognizing Interim Decisions and Their Types, Jakarta: <https://www.djkn.kemenkeu.go.id>, (accessed 2021).

Indonesia, Presidential Decree of the Republic of Indonesia Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID19) as National Disasters. Jakarta: <https://peraturan.bpk.go.id>, (accessed April 13, 2020).

Laws and Regulations

Coordinating Ministry for Economic Affairs of the Republic of Indonesia, Speech of the President of the Republic of Indonesia at the plenary session of the People's Consultative Assembly of the Republic of Indonesia in the framework of the Inauguration of the President and Vice President of the Republic of Indonesia for the 2019-2024 period. Jakarta: Coordinating Ministry for Economic Affairs of the Republic of Indonesia, 2020, p. 2.