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The Covid-19 Pandemic as The Basis for Termination of Employment in Indonesia, Between Force Majeure or Efficiency (Analysis of Decision Number: 781 K/Pdt.Sus-PHI/2021)

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ABSTRACT

The 2019 Coronavirus Disease (Covid-19) pandemic caused a health crisis and caused economic disruption, one of which was companies experiencing decreased sales or orders, decreased revenues, increased losses, and even company closures. One of the steps taken by the company is to terminate the employment relationship (PHK), which often causes debate about the terms and compensation for the layoffs received by workers. Things that are often debated include whether the layoffs due to the Covid-19 pandemic were carried out based on force majeure or efficiency. This research was conducted to determine how the layoffs are arranged due to force majeure and efficiency and to determine the views of the panel of judges who examined cases of industrial relations disputes in Decision Number 781 K/Pdt.Sus-PHI/2021. This study uses a normative juridical method with descriptive characteristics, which uses primary and secondary legal materials. The results of this study indicate that the labor law both before and after the enactment of Law Number 11 of 2020 concerning Job Creation provides space for employers to carry out layoffs based on force majeure or efficiency, and there are significant differences in arrangements before and after the enactment of the Job Creation Act. The view of the Panel of Judges in case Number 781 K/Pdt.Sus-PHI/2021, there is a need for a causal relationship between the Covid-19 pandemic and conditions that force employers to lay off workers. If causality cannot be proven, layoffs are an efficiency measure to reduce the impact of the Covid-19 pandemic.

1. Introduction

The Coronavirus Disease 2019 (Covid-19) pandemic resulted in a health crisis and caused a substantial global economic shock that resulted in an economic recession in many countries. The Covid-19 pandemic has had a significant impact on macroeconomic conditions in Indonesia. This health crisis forced the government to issue and enforce several policies related to the acceleration of Covid-19 in Indonesia, which impacted several macroeconomic indicators' decline. One of the policies taken by the Government of the Republic of Indonesia is the Large-Scale Social Restriction (PSBB) policy and the Policy for the Enforcement of Community Activity Restrictions (PPKM), both of which principally regulate restrictions on community activities, including limiting business activities, and activities in offices or offices workplace. The implementation of the restriction policy, including its extension, is considered to result in employers' termination of employment (PHK), even considered to result in mass layoffs. This is one thing that companies must do to survive.

Employment regulations in Indonesia, both before and after the enactment of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja), allow employers to terminate their workers due to companies already in an unhealthy condition or are expected to become workers. Unhealthy or worse if the workers continue to employ, among others, layoffs because the company is experiencing force majeure or for efficiency reasons. However, there is still debate about layoffs due to the Covid-19 pandemic in several industrial relations dispute settlement cases. Employers assume that layoffs are forced to be carried out due to force majeure events, while workers claim that the layoffs are carried out because the company is efficient. This difference of opinion is

understandable, mainly because of the enactment of the Job Creation Act and its implementing regulations. Layoffs due to efficiency had the consequence that employers had to pay higher layoff compensation, namely paying severance pay of 2 (two) times the amount stipulated by law, while if the dismissal is due to force majeure, the entrepreneur is only obliged to pay severance pay of 1 (one) time of the amount stipulated by law. After the enactment of the Job Creation Law and Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment (PP 35/2021) as implementing regulations of the Job Creation Act, there has been a change in terms of layoffs. Due to force majeure or efficiency reasons, there are also significant changes in the amount of compensation for layoffs due to force majeure and efficiency reasons.

In order to maintain the achievement of the goal of job creation and expansion through increased investment, encourage business development, while taking into account the protection and welfare of workers in Indonesia, the rights of employers given by law to lay off workers due to force majeure and efficiency must be implemented appropriately. In this regard, the author considers it essential to know how the Covid-19 pandemic can be the basis for termination of employment due to force majeure or efficiency, with the formulation of the problem as follows:

1) What is the arrangement for layoffs due to force majeure and efficiency based on the laws in force in Indonesia?
2) What is the view of the panel of judges who examined case Number 781 K/Pdt.Sus-PHI/2021 regarding the Covid-19 pandemic as the basis for termination of employment?

2. Literature Reviews

Termination of employment is the termination of the employment relationship due to a particular matter. Which results in the termination of the rights and obligations between the worker/laborer and the entrepreneur. Termination of employment can also be interpreted as the end of the work agreement made by the employer and the worker. Termination of employment can occur due to the initiative of employers or workers, but the law has limited the reasons for termination of employment, namely:

1. The company merges, consolidates, takes over, or separates the companies, and the worker/laborer is not willing to continue the working relationship, or the entrepreneur does not want to accept the worker/labourer;

2. the company performs efficiency followed by company closure or not followed by company closure due to the company experiencing losses;

3. the company closed because the company suffered losses continuously for 2 (two) years;

4. the company closed due to force majeure;

5. the company is in a state of suspension of debt payment obligations;

6. bankrupt company;

7. there is an application for termination of employment submitted by the worker/labourer because the entrepreneur has committed the following actions:

a. mistreating, threatening, abusively insulting workers/laborers;
b. persuading and ordering workers/laborers to perform acts that are contrary to the laws and regulations;
c. does not pay wages on time for 3 (three) consecutive months or more, even though the entrepreneur pays wages promptly after that;
d. does not perform the obligations that have been promised to the workers/laborers;
e. instruct workers/ laborers to carry out work beyond what was promised; or
f. provide work that endangers the life, safety, health, and morals of workers/laborers while the work is not regulated in the work agreement;

8. there is a decision of the industrial relations dispute settlement institution which states that the entrepreneur has not committed the act as referred to in number 7 on the application submitted by the worker/laborer and the entrepreneur decides to terminate the employment relationship;

9. the worker/labourer resigns of his/her own free will and fulfills the following requirements:

a. The employee submits an application for resignation in writing no later than 30 (thirty) days prior to the start date of the resignation;
b. Workers are not bound by official ties; and
c. Workers continue to carry out their obligations until the date of resignation;

10. the worker/labourer is absent for 5 (five) consecutive working days or more without written information accompanied by valid evidence and has been summoned by the entrepreneur 2 (two) times correctly and in writing;

11. the worker/labourer violates the provisions stipulated in the work agreement, company regulations, or collective work agreement and has been given the first, second, and third warning letters, respectively, each valid for a maximum of 6 (six) months unless otherwise specified in work agreements, company regulations, or collective labor agreements;

12. the worker/labourer is unable to carry out his/her work because the authorities have detained him/her for 6 (six) months or more because he/she is suspected of committing a criminal act;

13. the worker/labourer experiences a prolonged illness or disability due to a work accident and is unable to carry out his/her work after exceeding the limit of 12 (twelve) months;

14. workers/labourers enter retirement age;

15. the worker/labourer dies; or

16. other reasons for termination of employment in the employment agreement, company regulations, or collective labor agreement.

In addition, the law also prohibits employers from doing layoffs if the following conditions occur:

1. The worker is unable to come to work due to illness according to a doctor's statement for a continuous period not exceeding 12 (twelve) months;

2. Workers are unable to carry out their work because they fulfill their obligations to the state by the provisions of laws and regulations;

3. The worker performs the worship ordered by his/her religion;

4. Married workers;

5. Workers who are pregnant, give birth, have an abortion, or breastfeed their babies;

6. Workers have blood ties and marital ties with other workers/ laborers in the same company;

7. The worker establishes, becomes a member and administrator of a trade union/labor union, the worker/laborer carries out trade union/labor union activities outside of working hours, or during working hours upon the agreement of the entrepreneur, or based on the provisions stipulated in the work agreement, company regulations, or collective labor agreements;

8. Workers complain to the entrepreneur to the authorities regarding the actions of the entrepreneur who commits a criminal act;

9. Workers have different views, religions, political sects, ethnicity, skin color, class, gender, physical condition, or marital status;

10. A worker is permanently disabled, sick due to a work accident, or sick due to an employment relationship according to a doctor's certificate whose recovery period has not yet been determined.

One of the rights granted by law to entrepreneurs to perform layoffs is a force majeure cause and efficiency reasons. Force Majeure in Indonesian law is regulated in Article 1244 of the Civil Code or Burgerlijk Wetboek (KUHPerdata), which states: The debtor must be punished to compensate for costs, losses, and interest if he cannot prove that the agreement was not carried out or the timing was not correct. Carrying out the engagement is caused by something unexpected, which cannot be insured against him even though he has no bad faith. Then Article 1245 of the Civil Code states: There is no reimbursement of costs, losses, and interest if due to compelling circumstances or due to coincidences, the debtor is prevented from giving or doing something that is required or performing an act that is prohibited for him. Based on this provision, the debtor is given leeway not to be obliged to reimburse costs, losses, and interest due to a situation beyond his control.

According to Subekti, several conditions must be met to be considered force majeure, namely: (i) the situation is beyond the control of the parties and can eventually force them; and (ii) the occurrence of such circumstances must be unpredictable by the parties at the time the agreement is made, the debtor does not bear at least the risk. Sri Soedewi Masjchoen interprets coercion as a condition where the debtor or debtor will not be able to fulfill their debts or if it is still possible to fulfill their debts requires immense sacrifices or consequences, where the sacrifices and consequences are not balanced, or the strength of the soul is beyond human ability. or incur huge losses. There are two theories regarding the state of coercion, namely:

a. the theory of impossibility (onmogelijkheid) argues that a state of coercion is a state of inability to perform the promised achievement. Impossibility can be divided into two, namely: (i) absolute or objective impossibility, namely the debtor is entirely

unable to fulfill his obligations; and (ii) relative impossibility, namely a situation that causes the debtor to be still able to fulfill his obligations, but will result in disproportionately large sacrifices;

b. the theory of elimination or elimination of errors (afwesigheid van schuld) argues that with the existence of overmacht or coercive circumstances, the debtor's faults will be erased by eliminating errors, the debtor cannot be held accountable.

The Government of the Republic of Indonesia through Presidential Regulation Number 12 of 2019 concerning Non-Natural Disasters Spreading Corona Virus Disease 2019 (COVID-19) as a National Disaster, but to make the Covid-19 pandemic the basis for force majeure, it is necessary to conduct an assessment between the Covid-19 pandemic and the COVID-19 pandemic. -19 with achievements that the debtor cannot fulfill. Mustakim and Syafrida, in their research on the Covid-19 pandemic as a reason for force majeure in carrying out layoffs, concluded that the spread of Covid-19 could be qualified as a force majeure condition as stipulated in Article 164 paragraph (1) of Law 13/2003 by basing it on forced circumstances. However, to carry out permanent layoffs requires a loss and the company closes and layoffs, the provisions of Article 164 paragraph (3) of Law 13/2003 can be carried out on the grounds of efficiency on the condition that the company is closed with preliminary actions taken to prevent mass layoffs as referred to in the Circular of the Minister. SE 907/MEN/PHI-PPHI/X/2004 and the Decision of the Constitutional Court of the Republic of Indonesia (MKRI) Number 19/PUU-IX/2011.

3. Research Method

This research is in the form of normative juridical, which prioritizes using library materials as research sources. The normative legal research method is a method that examines the law from an internal perspective with the object of research in the form of legal norms. The typology of this research is descriptive, which provides a description, explanation, and validation of the phenomenon being studied. The material used in this study is secondary data consisting of primary legal materials and secondary legal materials. The primary legal materials used are statutory regulations and court decisions related to the termination of relations due to the Covid-19 pandemic and also regarding force majeure. While the secondary legal materials used are books, journals, and research results.

4. Results and Discussions

A. Arrangements for Layoffs Due to Force Majeure and Efficiency After the Enforcement of the Job Creation Law and its Implementing Regulations

Before discussing the regulation of layoffs due to force majeure and reasons for efficiency after the enactment of the Job Creation Law and PP 35/2021 as implementing regulations of the Job Creation Act, in order to understand better the new arrangements based on the Job Creation Law, the author is of the view that it is necessary to discuss the arrangement for layoffs due to force majeure briefly. Majeure and efficiency per Law Number 13 of 2003 concerning Manpower (Law 13/2003) before being amended based on the Law on Job Creation. The regulation of layoffs due to force majeure and efficiency reasons is regulated in Article 164 of Law 13/2003, wherein Article 164 paragraph (1) it is stated that employers can terminate their employment due to force majeure reasons as long as the following elements are met:

1. Company closed; and

2. Closing of the company due to force majeure

Meanwhile, layoffs for reasons of efficiency are regulated in Article 164 paragraph (3), which requires the following elements to be fulfilled:

1. Company closed; and

2. Companies do efficiency

At the formulation in Article 164 paragraph (1) and paragraph (3) of Law 13/2003, carrying out a layoff either for reasons of force majeure or efficiency requires the company's closure. However, both at the first level and on cassation, the Panel of Judges often decides the layoff due to force majeure or efficiency without requiring or not proving the company closed. Regarding the regulation and interpretation of the requirements for closing companies in layoffs, the MKRI has tested it. Especially concerning layoffs for reasons of efficiency, where the MKRI in its decision Number 19/PUU-IX/2011 states: "Stating Article 164 paragraph (3) of the Law on Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39. Supplement to the State Gazette of the Republic of Indonesia Number 4279) is contrary to the 1945 Constitution of the Republic of Indonesia. As long as the phrase "closed company" does not mean "permanently closed company or company not closed for a while." In addition, in its consideration, the Panel of Judges also stated that the cessation of company operations is not the same as closing the company, and the word efficiency in Article 164 paragraph (3) of Law 13/2003 does not mean that it is to streamline labor costs by terminating the employment relationship, but must The closing of the company is interpreted as a form of efficiency by closing the company. However, the MKRI decision in practice has multiple interpretations. Some require the permanent closure

of the company, and some view that entrepreneurs can carry out layoffs for efficiency without having to permanently close the company with the consideration that efficiency is done precisely to save the company.

In addition to the requirements for layoffs, Article 164 paragraph (3) also stipulates additional compensation for layoffs due to force majeure and because of efficiency, namely employers are obliged to pay compensation for layoffs due to force majeure as follows:

1. severance pay of 1 (one) time as stipulated in Article 156 paragraph (2);
2. service fee of 1 (one) time as stipulated in Article 156 paragraph (3); and
3. compensation for rights following the provisions of Article 156 paragraph (4).

While the compensation for layoffs that employers must pay for reasons of efficiency are as follows:

1. severance pay of 2 (two) times the provisions of Article 156 paragraph (2);
2. service fee of 1 (one) time as stipulated in Article 156 paragraph (3); and
3. compensation for rights under the provisions of Article 156 paragraph (4).

After enacting the Job Creation Law and PP 35/2021, there are different arrangements regarding termination of employment, including those caused by force majeure and efficiency. This change is both the terms and the compensation. Referring to Law 13/2003, the compensation for layoffs is regulated directly in the law, while the Job Creation Law abolishes the provisions in Law 13/2003 which regulate the compensation for layoffs received by workers, and gives a mandate to a Government Regulation to regulate further procedures termination of employment including compensation received by workers. The Academic Manuscript of the Job Creation Law states that the law regulates essential matters related to layoffs. In contrast, technical matters, including the procedures for layoffs and the amount of compensation for layoffs, are regulated in a Government Regulation. Regarding the discussion of the regulation of requirements and compensation for layoffs due to force majeure and efficiency after enacting the Job Creation Law, the author will discuss it in the following two sections.

1. Layoff Arrangements Due to Force Majeure

Layoffs due to force majeure are regulated in Article 154A paragraph (1) letter d of Law 13/2003 as amended by the Job Creation Law (Manpower Act), which states:

(1) Termination of employment may occur for the following reasons:

d. company closed due to force majeure

The sound in Article 154A paragraph (1) letter d is also adopted in Article 36 letter d of PP 35/2021. Then Article 45 of PP 35/2021 further regulates layoffs due to force majeure, as follows:

(1) Employers may terminate the Worker/Labourer relationship due to the reason that the Company is closed due to force majeure, then the Worker/Labourer is entitled to:

a. severance pays of 0.5 (zero point five) times the provisions of Article 40 paragraph (2);

b. b. period of service award in the amount of 1 (one) time as stipulated in Article 40 paragraph (3); and

c. compensation for rights under the provisions of Article 40 paragraph (4).

(2) Employers may terminate the Employment Relations of Workers/Labourers due to force majeure, which does not result in the Company closing, the Workers/Labourers are entitled to:

a. severance pays of 0.75 (zero point seventy-five) times the provisions of Article 40 paragraph (2);

b. period of service award in the amount of 1 (one) time as stipulated in Article 40 paragraph (3); and

c. compensation for rights by the provisions of Article 40 paragraph (4).

If we compare the formulation in the Manpower Law after the Job Creation Law and the formulation in PP 35/2021, it appears that PP 35/2021 regulates more broadly than the Manpower Law after the Job Creation Law, wherein Article 154A of the Manpower Law, layoffs can be carried out if two elements are met simultaneously. Cumulatively, the company closed, and there was a force majeure that caused the company to close. Meanwhile, PP 35/2021 explicitly stipulates that in the event of force majeure, employers can either terminate the company, which results in the company closing or not closing, thus based on PP 35/2021 the company's closure is an optional condition and is not mandatory. The explanation in Article 154A of the Manpower Law does not explain the purpose of the layoff due to the force majeure, only mentions it quite clearly. The Academic Manuscript of the Job Creation Law also does not explain the reasons for arranging layoffs due to force majeure in Article 154A. Therefore, it is crucial to

know the legislator's intent in formulating Article 154A paragraph (1) letter d, whether it also requires the company's closure or layoffs can be carried out without any closure of the company. Suppose a company closure must accompany the layoff intended by the legislator. In that case, it is necessary to amend the Government Regulation, or it can be done by conducting a material review, considering that in the formation of any legislation, it must pay attention to the juridical basis, namely every statutory regulation must refer to and does not conflict with higher regulations. In addition, this provision also does not explain the meaning of the company's closing, whether the company's closure is permanent or can only be temporary. At the provisions in the Elucidation of Article 44 paragraph (1) of PP 35/2021, which regulates layoffs because the company suffers a loss and causes the company to close, what is meant by closing the company is a company that stops operating or is unable to continue the production process due to losses.

The Manpower Law after the Job Creation Law and PP 35/2021 also has not defined force majeure. Therefore, the author is of the view that force majeure must be interpreted as generally accepted by law. According to Black's Law Dictionary, what is meant by force majeure is an event or result that cannot be anticipated or controlled, including natural actions (e.g., floods and hurricanes) and human actions (e.g., riots, strikes, and wars. From this definition, it can be seen that what is meant by force majeure is an "event," an event that cannot be anticipated or is out of control, either in the form of natural events or human actions.

The regulation of force majeure or overmacht or coercive circumstances in the legislation in Indonesia is mentioned in Article 1244 and Article 1245 of the Civil Code. The formulation in Articles 1244 and 1245 of the Civil Code does not explicitly define what a force majeure "event" is but regulates the "cause" a person or a party is not blamed for not fulfilling the engagement and therefore he is also excluded from being responsible for it. This is by the theory of elimination or elimination of errors (afwesigheid van shculd) which teaches that with the existence of overmacht, the debtor's mistakes are erased so that due to errors that have been eliminated, the debtor cannot be held accountable.

Sri Soedewi Masjchoen interprets coercion as a condition where the debtor or debtor will not be able to fulfill their debts or if it is still possible to fulfill their debts requires enormous sacrifices or consequences, where the sacrifices and consequences are not balanced, or the strength of the soul is beyond human ability. or incur huge losses. The factor that prevents the debtor from fulfilling his obligations must also not be the debtor's fault.

Based on the description above, it can be concluded that a debtor or party who is obliged to fulfill the engagement can be considered in a force majeure condition if the following conditions are met:

1. some factors prevent the debtor from fulfilling his achievements, with the following requirements:

   a. The barrier factor is something that cannot be reasonably expected or predicted
   b. The barrier factor is not a debtor's risk
   c. These barrier factors can be in the form of natural events or human actions (such as government policies, wars, riots).
   d. Barrier factors must arise after the engagement is made
   e. The barrier factor must have a causal relationship with the non-fulfillment of the engagement

2. There are no debtor errors that result in the engagement not being fulfilled

3. The debtor has made reasonable efforts to fulfill his performance, or if the debtor fulfills his performance, it results in a tremendous and unreasonable loss

In the context of force majeure as the basis for layoffs, the author interprets that the layoffs carried out by employers are due to force majeure. Namely, if the employer does not fulfill the work agreement made by the entrepreneur and the worker, that is, does not fulfill the clause on the validity period of the work agreement, which impacts the entrepreneur not being able to fulfill the employment agreement. Normative rights of workers, but employers cannot be held accountable other than those already regulated in the law because there is a barrier factor, force majeure. Thus, referring to the provisions in PP 35/2021, which are still binding, employers can lay off workers if there are reasons that result in the employment relationship being unable to continue or if it continues, it will result in unreasonable sacrifices or substantial losses, namely by two options as follows:

1. the company is closed and must pay compensation in the form of severance pay in the amount of 0.5 (zero point five) times and a period of service award of one time, calculated from the amount as stipulated by law, as well as compensation for entitlements;

2. The company does not close, with the consequence that the entrepreneur is obliged to pay compensation greater than if the company closed, i.e., the entrepreneur is obliged to pay severance pay of 1 (one) time from the amount stipulated by law. In contrast, the amount of the award for service period and compensation for entitlements the entrepreneur must pay the same as the layoff due to force majeure followed by the closing of the company, which is one time from the calculation stipulated by law.

2. Layoff arrangements due to efficiency

Layoffs due to efficiency are regulated in Article 154A paragraph (1) letter b of the Manpower Law, which was later adopted in Article 36 letter b of PP 35/2021, which states:

(1) Termination of employment may occur for the following reasons:

b. the company performs efficiency followed by company closure or not followed by company closure due to the company experiencing losses;

In contrast to the regulation of layoffs due to force majeure, layoffs due to efficiency can be followed by company closure or not followed by company closure, provided that if there is no company closure, the company must be in a loss condition. This arrangement is significantly different from the regulation in Law 13/2003, which requires companies to be closed, as reaffirmed by the Panel of Judges who examined the case that layoffs due to efficiency must be followed by company closure, i.e., the company is permanently closed or the company is closed temporarily. The Job Creation Act explicitly mentions layoffs because efficiency does not have to be accompanied by company closures. However, the author sees that there is an inaccuracy in the formation of the Job Creation Law. In the Academic Paper of the Job Creation Law, it is stated that the provisions for layoffs in Law 13/2003, which the Job Creation Law amended, were among others carried out with reasons to adjust to the material test results by the MKRI. One of which was adjusting to MKRI Decision Number 19/PUU-IX/2011 regarding layoffs due to efficiency as previously explained, but the provisions referred to are not provisions for layoffs due to efficiency, but layoffs due to bankrupt companies, in which the Constitutional Court Decision Number 19/PUU-IX/2011 is the same never intended to test layoffs because the company went bankrupt. If it is true that there are inaccuracies in the preparation of Academic Papers, then the Job Creation Law should still require the company to close if the entrepreneur intends to lay off the job for reasons of efficiency. However, the author believes that the provisions in the Job Creation Law stipulate that layoffs due to efficiency do not have to be followed by company closure, remain binding, considering that if interpreted grammatically. Article 154A paragraph (1) of the Manpower Law expressly mentions layoffs due to efficiency "followed by with the closure of the company" or "not followed by the closure of the company due to the company experiencing a loss."

Further regulation regarding layoffs due to efficiency is regulated in Article 43 of PP 35/2021, which regulates differently from the provisions of Article 154A paragraph (1) letter b in the Manpower Law after Job Creation, where Article 43 of PP 35/2021 states:

(1) Employers may terminate the Worker/Labourer's employment relationship due to the Company's reasons for carrying out efficiency caused by the Company experiencing a loss. The Worker/Labourer is entitled to:

a. severance pays of 0.5 (zero point five) times the provisions of Article 40 paragraph (2);
b. period of service award in the amount of 1 (one) time as stipulated in Article 40 paragraph (3); and
c. compensation for rights by the provisions of Article 40 paragraph (4).

(2) Employers may terminate the Worker/Labourer's employment relationship due to the Company's reasons for implementing efficiency to prevent losses, then the Worker/Labourer is entitled to:

a. severance pays of 1 (one) time as stipulated in Article 40 paragraph (2);
b. period of service award in the amount of 1 (one) time as stipulated in Article 40 paragraph (3); and
c. compensation for rights by the provisions of Article 40 paragraph (4).

From the formulation of Article 43 of PP 35/2021, it can be seen that the option to do layoffs because of efficiency is if the company is already in a loss condition or the company has not experienced a loss, and the layoff is intended to prevent losses. The author argues that although these arrangements look different, they are not contradictory to each other. If these two provisions are harmonized, there will be 3 (three) possible layoffs due to efficiency. First, the company is closed and in a loss condition, the second company is closed and is in no loss condition, and the third company is not closed and is in a loss condition. Suppose the company does not close and is not in a loss condition. In that case, the entrepreneur cannot perform layoffs for reasons of efficiency, considering that Article 154A paragraph (1) letter b of the Manpower Law and Article 36 letter b of PP 35/2021, states that the layoff is due to the efficiency that is not followed by company closure must be caused by the company experiencing a loss.

Layoffs due to efficiency also cannot be carried out immediately when the company closes or suffers losses. The company must first take the necessary steps to make efficient and avoid layoffs. The Constitutional Court confirms this in the case of judicial review of Article 164 paragraph (3) Law 13/2003 concerning layoffs due to efficiency, which states that companies cannot perform layoffs before taking the following measures (a) reducing wages and facilities for top-level workers, for example at the level of managers and directors; (b) reduce shifts; (c) limiting/eliminating overtime work; (d) reducing working hours; (e) reducing working days; (f) temporarily furlough or lay off workers/labourers; (g) not or extend the contract for workers whose contracts have expired; (h) provide pensions for those who have met the requirements.

In addition, there are other requirements to carry out layoffs because of this efficiency, namely the condition of the company that is correlated with layoffs as an efficiency measure, and secondly regarding proof of losses. In the Elucidation of Article 43, paragraph (2) of PP 35/2021 is stated to carry out layoffs due to efficiency. A company condition must lead to losses, such as decreased productivity or decreased income or profit. This is in line with the Termination of Employment Convention on the Initiative of Entrepreneurs in 1982, which states that there are terminations of employment at the entrepreneur's initiative due to economic, technological, structural, or similar reasons. Thus, there must be a reason that resulted in a decline in the company's economic indicators. Besides that, it must also be proven that there will be an impact on the company becoming more efficient by doing layoffs. If this condition does not exist, such as the company is in a normal condition, there is no decrease in productivity, then the employer cannot lay off workers unless there are other valid reasons. If the company closes not because of a loss or there is no efficiency condition, then the layoff must refer to a different provision, namely the layoff due to the reason the company is closed, which is not due to the company experiencing a loss as referred to in Article 44 paragraph (2).

Regarding the provisions for proving company losses, PP 35/2021 regulates differently from the provisions in Law 13/2003, which requires that losses must be subject to an annual report that has been audited by an independent auditor, in the Elucidation of Article 43 paragraph (1) it is stated that audit results can prove company losses. Internal and external. Thus the company's financial statements as a basis for declaring a loss company does not need to be in the form of financial statements that an independent auditor has audited, but only in the form of the company's internal financial statements.

Thus, referring to the provisions in Article 154A paragraph (1) letter b of the Manpower Law and Article 43 PP 35/2021, layoffs due to efficiency can be carried out with 3 (three) options as follows:

1. The company is closed and is in a loss condition, the entrepreneur must pay compensation in the form of severance pay of 0.5 (zero point five) times and a one-time service award, which is calculated from the amount as stipulated by law, as well as compensation for entitlements;

2. The company is closed and is no loss condition, the entrepreneur must pay compensation in the form of severance pay in the amount of 1 (one) time and one-time service award, which is calculated from the amount as stipulated by law, as well as compensation for entitlements;

3. The company is closed, and in a state of loss, the entrepreneur must pay compensation in the form of severance pay of 0.5 (zero point five) times and a one-time service award, which is calculated from the amount as stipulated by law, as well as compensation for entitlements.

B. The views of the Panel of Judges examining Case Number 781 K/Pdt.Sus-PHI/2021 regarding the Covid-19 Pandemic as the basis for Termination of Employment

This case is an industrial relations dispute regarding termination of employment, where workers sue the employer who terminates on the grounds of the Covid-19 pandemic so that the employer provides compensation for termination of employment as a result of force majeure or company losses for 2 (two) consecutive years. While workers think that the compensation for termination of employment received by workers is compensation for layoffs due to efficiency, so workers filed a lawsuit to the Industrial Relations Court at the Tanjung Karang District Court on November 27, 2020. Against the lawsuit filed, the employer considers the lawsuit filed by the worker wrongly applying the law because the Job Creation Law was promulgated before the lawsuit was filed. However, the Panel of Judges at the first and cassation levels continued to use the provisions in Law 13/2003, considering that industrial relations disputes between a worker and entrepreneur have started before enacting the Job Creation Law. The filing of a lawsuit was made before the Job Creation Act came into effect. In this case, the implementing regulations that further regulate the termination of employment are also not yet valid. PP 35/2021, which is the implementing regulation of the Job Creation Law was only promulgated on February 2, 2021. So, that if continue to use the Job Creation Law, there will be a legal vacuum, among others, regarding the regulation of the amount of compensation for layoffs in Law 13/2003. which has been abolished by the Job Creation Act because it will be regulated in its implementing regulations.

The dispute began with the termination of employment by employers on the grounds of the Covid-19 pandemic. Entrepreneurs postulate that the Covid-19 pandemic has a significant impact on the company's sustainability, especially on the sales results of the company's products, which impact the company's cash flow. Besides that, there has been a decline in company productivity caused by the development of the Covid-19 outbreak, which greatly affected the company's production, where several witnesses also explained in the trial that there had been a decrease in the implementation of work, namely before the pandemic it was carried out in three shifts. However, after the pandemic, it was only one shift. Employers also argue that they have done the necessary things to avoid layoffs, namely by negotiating and entering into agreements with workers, including with workers who filed a lawsuit in this case, to lay off some workers and continue to pay workers' wages of 50% (five percent). tens of percent) as long as workers are laid off, and if conditions do not improve, layoffs will be carried out in stages.

The Panel of Judges who examined the case believed to use the Covid-19 pandemic as the basis for layoffs think it was necessary to prove the relationship between the development of the Covid-19 pandemic and a decrease in productivity. However, it was not legally proven that there was a causal relationship between the Covid-19 pandemic and a decrease in productivity during the trial. , and also the entrepreneur does not prove that the company has suffered losses for 2 (two) consecutive years based on the results of the audit report so that layoffs cannot be carried out based on Article 164 paragraph (1) of Law 13/2003. Thus the layoffs carried out by the entrepreneur are an efficiency measure to reduce the impact of the Covid-19 pandemic, so the Panel of Judges decided, among other things, to punish the entrepreneur for paying severance pay of 2 (two) times the value that must be received according to the working period of the worker as referred to in Article 164 paragraph (3) Law 13/2003.

The author believes that the considerations and decisions of the Panel of Judges regarding the Covid-19 pandemic as the basis for layoffs are correct. In the previous chapter, the author conveyed that a force majeure clause must have a clear causal relationship regarding achievements that the debtor cannot fulfill. In this case, must be able to prove by law the causality between the Covid-19 pandemic and conditions that force the entrepreneur to terminate the employment relationship, or prevent the entrepreneur from continuing the employment relationship, or if the employment relationship is continued, the entrepreneur will suffer a substantial and unnatural loss. Such as the case between PT Hikari and its workers decided that the layoffs occurred due to non-natural force majeure because the company had to close gradually. The West Jakarta Administration did not renew its business license and production permit because the area is designated as an office zone, so entrepreneurs cannot avoid it.

Thus, the Covid-19 pandemic can be a cause of force majeure because it is a non-natural disaster as determined by the government and something unexpected, but that does not mean that the Covid-19 pandemic can always be applied to every case as a cause of force. Majeure still has to be seen casuistically, especially the causal relationship with obligations that the debtor cannot fulfill. In the context of layoffs due to force majeure reasons, as long as it can be legally proven that there is a causal relationship between the Covid-19 pandemic and the causes that force the entrepreneur to terminate the employment relationship, the entrepreneur can perform the layoff based on force majeure and without the need to prove a loss for two consecutive years.

5. Conclusion and Recommendation

Regulations regarding requirements and compensation for layoffs due to force majeure and efficiency in Indonesia are contained in Law Number 13 of 2003. They concern Manpower which has been amended by Law Number 11 of 2020, and Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Time Work and Rest Time, and Termination of Employment, where the post-enactment of the provisions of the Job Creation Law underwent significant changes, both regarding the requirements and compensation. The regulatory matrix regarding layoffs due to force majeure and efficiency is as follow

Reason	Company Status	Cause of Force Majeure	Company Loss	Indications of decline/The company's economic problems
Force Majeure	Close	Yes	No	No
	Open	Yes	No	No
Efficiency	Close	No	Yes	Yes
		No	No	Yes
	Open	No	Yes	Yes

Reason	Company Status	Company Loss	Severance pay	UPMK	Reimbursement of Rights

PHK Karena Force Majeure	Close	No	0,5x	1x	Yes
	Open	No	1x	1x	Yes
PHK Karena Efisiensi	Close	Yes	0,5x	1x	Yes
		No	1x	1x	Yes
	Open	Yes	0,5x	1x	Yes

2. The Panel of Judges in case Number 781 K/Pdt.Sus-PHI/2021 still uses the provisions of Law 13/2003 and has not used the provisions of the Job Creation Law, even though the lawsuit was filed after the enactment of the Job Creation Law. The consideration of the panel of judges to continue to use Law 13/2003 is because industrial relations disputes between workers and employers have already started before the enactment of the Job Creation Law. When the lawsuit has filed, the provisions of the Job Creation Law were not yet fully enforced. In this case, the implementing regulations that stipulate further regarding termination of employment have not been promulgated. Regarding layoffs carried out by entrepreneurs due to the Covid-19 pandemic, the panel of judges argued that this was an efficient measure to reduce the impact of the Covid-19 pandemic and was not a layoff due to force majeure, because during the trial, there was no legal evidence of a causal relationship between the Covid-19 pandemic with decreased productivity forcing employers to lay off employees. Thus, to make the Covid-19 pandemic the basis for layoffs due to force majeure, it is necessary to legally prove causality between the Covid-19 pandemic and the conditions that force the entrepreneur to terminate the employment relationship or prevent the entrepreneur from continuing the employment relationship or if the employment relationship continues. The entrepreneur will experience a tremendous and unreasonable loss.

Based on the discussion carried out in this study, there are several suggestions that the author can convey:

1. The author suggests that the government adjusts the provisions governing layoffs due to force majeure in PP 35/2021 following the makers' intent of the Job Creation Act. This is important to avoid multiple interpretations regarding whether the requirement for company closure is mandatory (must exist) or optional in implementing layoffs due to force majeure, considering the formulation in Article 154A letter b grammatically requires company closure. At the same time, PP 35/ 2021 provides an option followed by company closing and not followed by company closing. Another way to test the makers' intent of the Job Creation Law is through a judicial review mechanism by the Supreme Court, which is authorized to assess the content of a statutory regulation under the act against a higher statutory regulation. In addition, it is also necessary to clearly state the intention of the company to close, whether it can only be a temporary closure or it must be a permanent closure.

2. Employers should not immediately lay off due to force majeure due to the Covid-19 pandemic but must first examine the causality between the Covid-19 pandemic and the reasons that force employers to lay off workers. Although after the enactment of the provisions in the Job Creation Law, layoffs due to force majeure and layoffs due to efficiency have the same compensation consequences for layoffs, non-fulfillment of the requirements can also result in protracted industrial relations dispute settlement process, which will result in losses for both employers and workers.

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