

Termination of Employment Due to the Covid-19 Pandemic in the Job Loss Guarantee Program Based on the Job Creation Act

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Abstract. Job Creation Act as an Omnibus law product promulgated during the Covid-19 pandemic made it one of the regulations that had direct implications and should contain legal protection during the pandemic. Employment is one of sectors that amended in the Job Creation Act, the amendments including changes to the Termination of Employment Section. The purpose of discussion in this journal is to direct the changes on termination of employment in the Job Creation Act and can Covid-19 be used as a reason for termination of employment. This discussion used a normative juridical method with a qualitative approach. This study concludes that in the Job Creation Act there are additional reasons for efficiency as a reason for termination of employment and the Covid-19 pandemic can be an object as a reinforcing element for reasons of efficiency. Besides that, although adding reasons for efficiency, Job Creation Act guarantees its protection in the Job Loss Guarantee program.

Keywords: Termination of employment; Covid-19 pandemic; Job Creation Act; Job Loss Guarantee Program

1 Introduction

The problem of labor during the Covid-19 pandemic is a new thing, and Law Number 13 of 2003 concerning manpower has not been able to specifically accommodate this problem. On the one hand, the company will suffer huge losses, but on the other hand, the workers will be harmed and their rights will not be fulfilled. Employment problems during the Covid-19 pandemic were dominated by layoffs [1]. Reflecting on the report book of the Jakarta Legal Aid Institute (LBH Jakarta), it appears that during the Covid-19 pandemic, complaints regarding industrial relations were dominantly related to the termination of employment. The termination of employment relations has direct implications for the structure of society.

From the time of the Covid-19 pandemic started, approximately two years ago, until now, there have been several legal products issued, starting from laws, government regulations, and ministerial decrees. These legitimate items allude to and have suggestions for the anticipation and control of Covid-19, one of which is Law Number 11 of 2020 concerning Job Creation (Law on Job Creation Act), Government Regulations Number 34, 35, 36, and 37 of the year

2021 (got rules from the Job Creation Act), Regulation of the Minister of Manpower, and Circular Letter of the Minister of Manpower of the Republic of Indonesia.

Along these lines, are the guidelines given and proclaimed from 2020 to 2021 that straightforwardly oblige the end of work in the states of the Covid-19 pandemic? This is a question that needs to be investigated further regarding the form of protection for workers and companies. Then, whether the Job Creation Act as a law issued within the period of the Covid-19 pandemic can protect workers who are affected by the termination of work This will be discussed further in this research.

2 Research Methods

This study uses a type of juridical normative legal research, which is research obtained from library materials and secondary data and continued with strengthening data through primary data collection in the form of interviews. This discussion used a normative juridical method with a qualitative approach.

3 Results and Discussion

3.1 The Job Creation Act as a Legal Update During the Covid-19 Pandemic Against Labor Protection

The Job Creation Act is a product of the Omnibus Law in which there are many laws from various sectors, one of which is the employment sector, namely the amendment to Law Number 13 of 2013 concerning Manpower. In the amendment to the Job Creation Act, there are 51 articles of amendment, including changes to the article related to the termination of employment. These changes include: [2]

1. About employment relations, changes in overtime, leave, and PKWT work type;
2. About the Termination of Employment Relations, changes to the addition of 5 (five) reasons for being able to perform layoffs and the abolition of reimbursement for health care rights;
3. About Foreign workers', changes to the cancellation of the written permission of the Minister;
4. About Outsourcing, changes to the list of work types that can be transferred;
5. About Social Security, changes and including the addition of job-loss guarantee.

From the changes above in the Job Creation Act, which have direct implications for workers during the Covid-19 pandemic, namely by adding the reasons for being allowed to layoffs, namely in Article 154A paragraph (1), letter b, which reads,

“...perusahaan melakukan efisiensi diikuti dengan penutupan perusahaan atau tidak diikuti dengan penutupan perusahaan yang disebabkan perusahaan mengalami kerugian.” [3]

When compared to the previous law, namely Law Number 13 of 2003 concerning manpower, there is an additional reason for the possibility of terminating employment, which is now the main reason for terminating employment due to the Covid-19 pandemic, namely efficiency reasons. Regarding efficiency, based on the previous discussion from the interview with the Manpower, Transmigration, and Energy Office of DKI Jakarta, which stated that efficiency can be used as a reason for termination of employment due to the Covid-19 pandemic, and also based on an interview with Mr. Andi Awaluddin, Director General of Social Security and Relationship Disputes at the Ministry of Manpower on Monday, November 29, 2021, that

efficiency can be used as a reason for termination of employment due to the Covid-19 pandemic, as long as the company has implemented; [4]

1. Providing workers with severance pay; and
2. Provide retirement insurance (JHP).

According to sources, the Job Creation Law adds that the reason for efficiency is as a complement to legal needs, especially in adapting during the Covid-19 pandemic. For reasons of efficiency, the company may terminate the employment relationship but still have to fulfil these requirements. The reason for efficiency is that it is the best win-win solution between the company and the workforce. In addition, the government is also helping to take actions to overcome the impact of layoffs due to the Covid-19 pandemic, namely:

1. Providing social services to the entire community; and
2. Government assistance is based on a number of factors.

In fact, according to sources, although the Job Creation Act adds reasons for terminating employment due to efficiency, workers still receive protection in the form of assistance and guarantees. Thus, it is permissible to terminate employment during the pandemic period if the reason given is efficiency reasons with the Covid-19 condition. Although the Job Creation Act is considered to increase the losses for workers by adding efficiency reasons, the Job Creation Law has added social security in the form of the Job Loss Guarantee (JKP).

3.2 Job Loss Guarantee as Additional Protection from the Job Creation Act

The Job Creation Act expands the social security program by adding the Job Loss Guarantee (JKP) program in addition to the social security program for workers. This program was initiated by adopting the provisions of the International Labor Organization (ILO) Convention No. 102 of 1952, on the minimum standard of social security. Several countries, such as Japan, South Korea, and Malaysia, have provided insurance to workers in the form of job loss insurance, which is structured like the convention. The Job Loss Guarantee provides benefits for workers, especially those affected by the termination of employment. The contents of the guarantee provide cash, job market information, and job training.

The Job Creation Act orders the arrangement of BPJS Ketenagakerjaan as the agent of the Job Loss Guarantee (JKP) program. Employment Cutback Guarantee, hereinafter abridged as JKP, is an assurance given to laborers/workers who experience end of work as money benefits, admittance to work market data, and occupation preparing. The JKP program intends to keep a nice way of life when laborers lose their positions. Laborers can meet the fundamental necessities of a fair living when there is a gamble of end of work while attempting to find a new line of work once more [5].

Based on its provisions, the job loss guarantee has detailed benefits, namely [6]:

1. Benefits in the form of cash are received by participants every month for a maximum of 6 months after workers who have been laid off are verified by BPJS Employment and meet the requirements as JKP beneficiaries. Cash benefits are given at $(45\% \times \text{wages} \times 3 \text{ months}) + (25\% \times \text{wages} \times 3 \text{ months})$. The wages used are the last reported wages, with a wage limit of Rp. 5,000,000.00.
2. Access to job information is provided in the form of labor market information services and/or job guidance in the form of self-assessment and assessment and career counseling.
3. Job training based on competency. Job training is conducted through job training institutes owned by the government, private sector, or companies. (which can be held online and/or offline).

In addition to being stated in the Job Creation Act, it is also technically described in the Ministerial Regulation Number 15 of 2021 concerning Procedures for Providing Job Loss

Guarantee Benefits. It is hoped that this program will be part of the solution so as not to reduce workers' rights by adding reasons for termination of employment.

4 Conclusion

The Covid-19 pandemic can't be blamed for end of business. As per Law Number 11 concerning Job Creation, Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment, and in view of meetings with the Ministry of Manpower and the Department of Manpower, Transmigration, and Energy of DKI Jakarta Province, the Covid-19 pandemic doesn't exist recorded as a hard copy and thusly can't be utilized as a justification for end of business. The Covid-19 pandemic isn't a justification behind end of work, yet must be utilized as a component of the issue to fortify explanations behind productivity. As indicated by the previously mentioned regulations and guidelines, the Covid-19 pandemic in working connections can in any case be overseen and evaded. Consequently, the Covid-19 pandemic can't be utilized as a justification for end of work.

The Job Creation Act adds a job loss guarantee program as one of the additional social security provisions provided for workers affected by the termination of employment. This program is expected to ensure that workers affected by the termination of employment still have a decent standard of living. This job loss guarantee program is carried out to guarantee the fate of the workers and also as a solution to reduce unemployment.

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