



## Legal Protection for Termination of Employment In the Era of Covid-19 Pandemic (Comparative Study of Islamic Law and Positive Law in Indonesia)

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**Abstract:** *The purpose of this research is the legal protection for Termination of Employment in the era of the COVID-19 pandemic according to Islamic law and Indonesian positive law as well as the similarities and differences between the two. The research method used in this research is comparative descriptive, with a content analysis approach. This approach used an in-depth discussion of the contents of written information, systematically and objectively analyzed the facts, characteristics, and the relationship between existing elements or certain phenomena and can then be compared to theory. According to Islamic law, legal protection for workers against layoffs is part of the purpose of Islamic law. Namely to maintain life and property to achieve happiness in the world through a good and honorable life (bayyah thayyibah). Therefore, it must be carried out with principles such as human freedom, human dignity, justice, and anti-discrimination, as well as fair wages. In contrast, according to positive law, workers' legal protection for termination of employment can occur because the company is closed due to force majeure, and the entrepreneur is obliged to pay severance pay, long service pay and compensation rights pay that must be received by the worker. The difference is that Islamic law is not regulated in detail regarding the provision of severance pay, long service pay, and compensation rights pay that should be received as in positive law. However, in Islamic law, it is carried out following the agreement (akad) that has been made and agreed to. Therefore, there is no dispute due to injustice committed by one of the parties.*

**Keywords:** *Islamic Law, Positive Law, Covid-19 Pandemic, Layoffs, Legal Protection*

**Abstrak:** Tujuan penelitian ini adalah perlindungan hukum atas Pemutusan Hubungan Kerja (PHK) di-era pandemik covid-19 menurut hukum Islam dan hukum positif Indonesia serta persamaan dan perbedaan diantara keduanya. Metode penelitian yang digunakan dalam penelitian ini bersifat *deskriptif komperatif*, dengan pendekatan *content analisis* yaitu pembahasan mendalam terhadap isi suatu informasi yang tertulis, secara sistematis dan objektif mengenai fakta-fakta, sifat-sifat, ciri-ciri, serta hubungan antara unsur-unsur yang ada atau fenomena tertentu lalu dapat di perbandingkan terhadap teori. Menurut hukum Islam perlindungan hukum pekerja atas PHK merupakan bagian dari tujuan hukum Islam yaitu untuk memelihara jiwa dan harta supaya mencapai kebahagiaan di dunia melalui suatu tata kehidupan yang baik dan terhormat (*bayyah thayyibah*), maka dari itu harus dilakukan dengan prinsip-prinsip seperti kemerdekaan manusia, kemuliaan derajat manusia, keadilan dan anti diskriminasi, serta kelayakan upah pekerja. Sementara menurut hukum positif perlindungan hukum pekerja atas pemutusan hubungan kerja dapat terjadi karena alasan perusahaan tutup yang disebabkan keadaan memaksa (*force majeure*), dan pengusaha wajib membayar uang pesangon dan/atau uang penghargaan masa kerja dan uang penggantian hak

yang seharusnya diterima, kemudian perbedaannya yaitu dalam hukum Islam tidak diatur secara detail tentang pemberian uang pesangon, uang penghargaan masa kerja, dan uang penggantian hak yang seharusnya diterima seperti dalam hukum positif, akan tetapi dalam hukum Islam dilakukan sesuai dengan perjanjian kerja (akad) yang telah dibuat dan disepakati supaya tidak terjadi perselisihan akibat ketidakadilan yang dilakukan oleh salah satu pihak.

**Kata Kunci:** Hukum Islam, Hukum Positif, Pandemi Covid-19, Pelindungan Hukum PHK

## ▪ Introduction

Law Number 13 of 2003 Article 1 Number 25 explains that the definition of Termination of Employment (PHK) is the termination of employment relations due to a certain matter that results at the end of rights and obligations between workers or laborers and employers.<sup>1</sup> Umar Kasim also stated that termination of employment will result in workers/laborers losing their livelihoods, which also means the start of the unemployment period.<sup>2</sup>

The issue of termination of employment has received an additional burden since the entry of the COVID-19 pandemic.<sup>3</sup> COVID-19 is an outbreak of the disease that struck the entire country at the end of 2019 and peaked in 2021.<sup>4</sup> COVID-19 is classified as a ribonucleic acid (RNA) virus containing *alpha*, *beta*, *gamma*, and

*delta* genera (Neuman, 2016). The spread of COVID-19 is believed to have started in Wuhan, China, as revealed by the Chinese Center for Disease Control and Prevention (CDC). The pandemic that started in China is now spreading all over the world, including in Indonesia.<sup>5</sup> The entry of COVID-19 in Indonesia began in early March 2020. The spread of COVID-19 can be through "human to human". Even at this time, the World Health Organization (WHO) issued an official statement that the spread of COVID-19 can be through the air.<sup>6</sup> Reporting from *real-time* data created by WHO on August 20, 2020, there were more than 21.9 million people confirmed positive for COVID-19 with a total of 775,893 deaths.<sup>7</sup> In

<sup>1</sup> Republic of Indonesia, Law Number 13 of 2003 Concerning Manpower

<sup>2</sup> Sonhaji. (2019). Analisis Yuridis Pemutusan Hubungan Kerja Akibat Kesalahan Berat Pekerja. *Administrative Law & Governance Journal*, 2(1), 60–78. <https://doi.org/10.14710/alj.v2i1.60-78>

<sup>3</sup> Al-Fatih, S., Ahsany, F., & Alamsyah, A. F. (2020). Legal Protection Of Labor Rights During The Coronavirus Disease 2019 (Covid-19) Pandemic. *Jurnal Pembaharuan Hukum*, 7(2), 100–115. <https://doi.org/10.26532/jphv72.10975>

<sup>4</sup> Disemadi, H. S., & Shaleh, A. I. (2020). Banking credit restructuring policy amid COVID19 pandemic in Indonesia. *Jurnal Inovasi Ekonomi*, 3(3). <https://doi.org/https://doi.org/10.2219/jiko.v5i3.11790>

<sup>5</sup> Einstein, T., Helmi, M. I., & Ramzy, A. (2020). Kedudukan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Terkait Covid-19 Perspektif Ilmu Perundang-Undangan. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 7(7), 595–612. <https://doi.org/10.15408/sjsbsv7i7.15826>

<sup>6</sup> Hasibuan, L. (2020). WHO Sebut Covid Menyebar di Udara, Catat Panduan Barunya. Retrieved Juni 15, 2021, from <https://www.cnbcindonesia.com/tech/20200712091017-37-171991/who-sebut-covidmenyebar-di-udara-catat-panduanbarunya>

<sup>7</sup> World Health Organization. (2020). Coronavirus Disease (COVID-19). Retrieved June 15, 2021, from <https://www.who.int/emergencies/diseases/novel-coronavirus-2019?gclid=CjwKCAjwr7X4BRA4EiwAUXjbt3zxrwbNBMWOHd>

Indonesia, people infected with COVID-19 have reached 144,945 people with a death rate of 6,346 people (Task Force for the Acceleration of Handling COVID-19, 2020). The presence of the COVID-19 pandemic not only has an impact on the health sector but also has an impact on the employment sector in Indonesia.

One of the biggest impacts besides the deaths due to the covid-19 pandemic outbreak is that many companies have postponed the *hiring* process,<sup>8</sup> imposed *layoffs*<sup>9</sup> or leave unpaid and one of the steps taken by several companies in Indonesia had to lay off employees who worked at the company.<sup>10</sup> Based on data published in Tempo, the number of workers laid off has reached 3.05 million. Still, according to the same source, Bappenas previously estimated that unemployment this year would reach 4.2 million. Meanwhile, according to a survey by the Central Statistics Agency (BPS), low-income residents and workers in the informal sector are the groups most affected by COVID-19. Conditions are somewhat different in urban areas, which are affected by business or trade.<sup>11</sup>

The wave of layoffs rose significantly over the past 9 months. During the Covid-19 pandemic, generally, layoffs were due to *force majeure* and efficiency reasons. The impact of the COVID-19 pandemic, in addition to workers being laid off, some workers were "laid off", terminating employment contracts before they expired, withheld wages, and enforcing the principle of *no work no pay*.<sup>12</sup>

Furthermore, given the importance of legal protection and rights in the employment relationship, the termination of the employment relationship, must be carried out with certain procedures and requirements that must be met, especially on the part of the employer. Law Number 13 of 2003 concerning Manpower Article 67 to Article 101 includes protection of workers with disabilities, children, women, working time, occupational safety and health, wages, and welfare.<sup>13</sup>

However, it does not regulate wage protection for workers/workers affected by layoffs due to the impact of the Covid-19 pandemic. The purpose of providing protection, defense of rights, and interests is to improve the welfare of workers/laborers, especially workers/laborers affected by layoffs. In practice, most companies only want to employ workers to the maximum by targeting their companies and seeking maximum profit or profit to survive in the current Covid-19 pandemic situation, so they no longer think about the fate of their workers.

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<sup>8</sup> The hiring process is the process of recruiting prospective employees (job seekers) who have not been tied to any company

<sup>9</sup> Lay off is a temporary dismissal if there is a situation and conditions in the company do not improve

<sup>10</sup> Imas Novita Juanningsih, Analisis Kebijakan PHK Bagi Para Pekerja Pada Masa Pandemi Covid-19 di Indonesia, *Jurnal Adalah: Buletin Hukum dan Keadilan*, Vol. 14 No. 1 Tahun 2020

<sup>11</sup> Moh. Muslim, "PHK Pada Masa Pandemi Covid-19". *Jurnal Manajemen Bisnis* Vol. 23 No. 3 (December 2020), 1.

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<sup>12</sup> *Ibid.*

<sup>13</sup> Suci Flambonita, "Perlindungan Hukum Terhadap Hak Pekerja Perempuan di Bidang Ketenagakerjaan". *Jurnal Simbur Cabaya* Vol. 24 No 1 (January 2017), 98.

Meanwhile, Islam clearly encourages us to treat every Muslim fairly, as explained in the word of Allah Qs. an-Nisa verse 58 as follows;

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾

*"Indeed, Allah commands you to return trusts to their rightful owners;<sup>14</sup> and when you judge between people, judge with fairness. What a noble commandment from Allah to you! Surely Allah is All-Hearing, All-Seeing."*

The above paragraph requires that in granting the rights of laid-off workers, an employer must establish them fairly and according to the performance of the worker/laborer. Islam connects the relationship between workers and employers in the fabric of friendship and brotherhood so that both are not justified in violating the rights of the other without proper foundation.

The above phenomenon is fascinating to be studied and studied more deeply related to the views of Islamic law and positive law on legal protection against termination of employment during the Covid-19 pandemic.

The research method used in this research is descriptive comparative, with a content analysis approach, namely an in-depth discussion of the content of written information, systematically and objectively regarding the facts, characteristics, characteristics, and relationships between existing elements or certain phenomena and then can be compared to the theory. In addition, this research is normative legal research that uses literature study techniques sourced from secondary legal data in examining a problem. Secondary data is obtained

from legal literature namely legislation, legal journals, law books, and legal dictionaries. In this method, the main use of analyzing legal literature that is critically and comprehensively studied is to create a correct argument and complete a legal statement to find legal coherence.

## ■ Discussion

### 1. The Reasons of Termination of Employment (PHK) Due to Covid-19 Pandemic

Mass layoffs by companies in Indonesia are not a foreign story in this country. This is due to the weak macroeconomics in Indonesia because Indonesia itself still relies on foreign investment to support the domestic economy,<sup>14</sup> so that if there is a global economic turmoil, the domestic economy can experience a significant weakening. According to the Trade Union Association (ASPEK), the main reason for mass termination of employment is due to the large number of low-wage cases that occur in companies, the occurrence of *union busting* cases (the practice of stopping trade unions/trade unions in companies),<sup>15</sup> and the large number of foreign workers entering Indonesia.<sup>16</sup> Another reason for the termination of

<sup>14</sup> Febriana, A., & Muqorobbin, M. (2014). Investasi Asing Langsung Di Indonesia Dan Faktor Faktor Yang Mempengaruhinya. *Jurnal Ekonomi & Studi Pembangunan.*, 15(2), 109–117. <https://doi.org/10.18196/jesp.15.2.1221>

<sup>15</sup> Fuadah, A. F., & Soenmi, L. (2019). Menghancurkan Solidaritas Praktek Pemberangusan Serikat Buruh di Indonesia 2014-2019. Jakarta: LOKATARU FOUNDATION.

<sup>16</sup> Jazuli, A. (2018). Eksistensi Tenaga Kerja Asing di Indonesia dalam Perspektif Hukum Keimigrasian. *Jurnal Ilmiah Kebijakan Hukum.*, 12(1), 89–105. <https://doi.org/10.30641/kebijakan.2018.V12.89-105>

employment carried out by the company is the weak level of quality of human resources in Indonesia. This was revealed through World Bank data related to the *Human Capital Index* which stated that the *Human Capital Index* only reached 0.53%.<sup>17</sup> Based on the data above, the number of terminations in 2015 reached 50,000 people,<sup>18</sup> in the following year the number of terminations decreased. In 2016 it reached 12,800, in 2017 it reached 9,800 people, in 2018 it reached 3,400<sup>19</sup> and in 2019 it reached 3,000 people.<sup>20</sup> However, during the positive trend obtained, in 2020, Indonesia had to face the COVID-19 pandemic which caused the number of layoffs to increase sharply in April to reach 749,400 people even though Indonesia had undergone the New Normal policy.<sup>21</sup>

On the other hand, the reasons for termination of employment that the company uses are as follows;

- a. Availability of raw materials that are starting to run low. This is due to the stopped traffic, as a result of the Large-Scale Social Restrictions (PSBB) which resulted in a decrease in industrial productivity, and the manufacturing sector had to cut 30% so that there was the potential for a reduction in workers to maintain the stability of the company's cash flow.<sup>22</sup>
- b. Weakening of the Rupiah against the Dollar. The company in this case feels burdened because the Rupiah figure almost touches the value of Rp 17,000 per US Dollar,<sup>23</sup> if this continues the production costs for companies that use imported materials will continue to increase not proportional to the company's income.
- c. Indonesia's tourism visitors have decreased as a result of social distancing implemented in various countries to reduce the virus spread curve. This has implications for the layoff of workers in the tourism sector. The Central Statistics Agency (BPS) revealed that in January-April 2020, the number of foreign tourist visits to Indonesia reached 2.77 million visits or a decrease of 45.01% compared

<sup>17</sup> Victoria, A. O. (2019). Bappenas: Kualitas SDM Indonesia Masih Ketinggalan Jauh dari Vietnam. Retrieved August 13, 2020, from Katadata website: <https://katadata.co.id/agustiyanti/fianisial/5e9a50395709c/bappenas-kualitas-sdm-indonesia-masih-ketinggalan-jauh-dari-vietnam>

<sup>18</sup> Fajriah, L. R. (2018). KSPI Sebut Ada 4 Gelombang PHK Besar-besaran Sejak 2015. Retrieved June 20, 2021, from Sindonews.com website: <https://ekbis.sindonews.com/berita/1365790/34/kspi-sebut-ada-4-gelombang-phk-besar-besaran-sejak-2015>

<sup>19</sup> Lokadata. (2018). Angka PHK di Indonesia, 2014-2018. Retrieved Juni 20, 2021, from <https://lokadata.beritagar.id/chart/preview/angka-phk-di-indonesia-2014-2018-1581482895>

<sup>20</sup> Susanto, V. Y. (2019). Serikat Pekerja: Ada 3.000 pekerja kena PHK sejak awal tahun, tanpa pembekalan

<sup>21</sup> Jayani, D. H. (2020). Wabah PHK akibat COVID-19. Retrieved 24 Juni, 2021, from Katadata website: <https://katadata.co.id/ariayudhistira/infografik/5e9a66d0e897f/wabah-phk-akibat-covid-19>

<sup>22</sup> Yuniarto, T. K. (2020). Pembatasan Sosial Skala Besar, Sektor Manufaktur Pangkas Produksi 30%. Retrieved 23 June, 2021, from Katadata website: <https://katadata.co.id/ekarina/berita/5e9a41f74b260/pembatasan-sosial-skala-besar-sektor-manufaktur-pangkas-produksi-30>

<sup>23</sup> Indonesia, 2014-2018. Retrieved 25 Juni, 2021, from <https://lokadata.beritagar.id/chart/preview/angka-phk-di-indonesia-2014-2018-1581482895>



to the number of visits in the same period the previous year which amounted to 5.03 million visits.<sup>24</sup> Even the decline in the number of foreign visits increased in June 2020 which reached 88.2% compared to the same period last year.<sup>25</sup> So that cumulatively in January-June 2020 the number of foreign tourist visits reached 3.09 million or decreased by 59.96% compared to the same period the previous year. The decline will further occur due to the closure of international flights in Indonesia as an effort to prevent the spread of COVID-19.

- d. The composite stock index experienced a drastic decline as a result of which Indonesia's revenue from oil exports and the stock index cumulatively declined. The Jakarta Composite Index (JCI) weakened 2.78% to 5,006.22 in trading on August 3, 2020.<sup>26</sup> The weakening of the stock index was shadowed by the release of Indonesia's macroeconomic data this week. This resulted in pressure on the financial sector of the State Budget (APBN) so that State revenues and companies decreased.
- e. Indonesia experienced deflation of 0.10% in July 2020 and annual inflation

of 1.54%.<sup>27</sup> In broad outline, the cause of deflation in July 2020 was caused by weakening public consumption due to COVID-19 and social restrictions. So the company has to lower prices in order to maintain sales stability even though production costs are increasing. Some companies also terminate employment on the grounds of force majeure. According to Subekti, *force majeure* is a reason to avoid the obligation to pay compensation.<sup>28</sup> He continued that the conditions of *force majeure* are that the situation itself is beyond the company's power and forces and the situation was never predicted before when the agreement was made, at least the risks that occur are not borne by workers which results in them having to experience termination of employment. However, the definition of force majeure is still not explicitly stated in the Civil Code. On the other hand, two articles are often used as a reference in the assessment of force majeure in Indonesia, namely Article 1244 and Article 1245 of the Civil Code, written in Article 1244 of the Civil Code.

Based on the provisions contained in articles 1244 and 1245 of the Civil Code, the main characteristics that can

<sup>24</sup> Badan Pusat Statistik. (2020). *Pertumbuhan Ekonomi Indonesia Triwulan I-2020*. Jakarta, Indonesia.

<sup>25</sup> Badan Pusat Statistik. (2020d). *Pertumbuhan Ekonomi Indonesia Triwulan II-2020*. Jakarta, Indonesia.

<sup>26</sup> Utami, D. N. (2020). *IHSG Diproyeksi Bergerak Konsolidasi Melemah, Ini Penyebabnya*. Retrieved August 21, 2020, from *Bisnis.com* website: <https://market.bisnis.com/read/20200809/189/1276826/ihsg-diproyeksi-bergerak-konsolidasi-melemah-ini-penyebabnya>

<sup>27</sup> Avisena, M. I. R. (2020). *Deflasi 0,10% Pada Juli 2020, BPS: Daya Beli Harus Ditingkatkan*. Retrieved July 20, 2020, from *Media Indonesia* website: <https://mediaindonesia.com/read/detail/333562-deflasi-010-pada-juli-2020-bp>

<sup>28</sup> Isradjuningtias, A. C. (2018). *Force Majeure (Overmacht) Dalam Hukum Kontrak (Perjanjian) Indonesia*. *Veritas et Justitia*, 1(1), 136–158. <https://doi.org/10.25123/vej.1420>

give rise to force majeure circumstances are:<sup>29</sup>

- a. Unforeseen events;
- b. There are obstacles that cause an achievement/job to be unable to run;
- c. The incapacity is not the result of the debtor's fault; and
- d. The incapacity that occurs should not be charged at risk to the debtor.

On the other side, article 47 paragraph (1) letter j of Law Number 2 of 2017 concerning Construction Services reveals the meaning of force majeure can be interpreted as a situation that is beyond the will and harms one of the parties. Such force majeure circumstances include:<sup>30</sup>

- a. Force majeure circumstances of an absolute nature, namely circumstances in which the parties cannot initiate or continue their rights and obligations according to the agreement; and
- b. A force majeure situation of a relative nature, namely a situation in which the parties can still initiate and continue their rights and obligations.<sup>31</sup>

<sup>29</sup> Harnowo, T. (2020). Wabah Corona sebagai Alasan Force Majeur dalam Perjanjian. Retrieved August 5, 2020, from Hukum Online.com website:

<https://www.hukumonline.com/klinik/detail/lt5e81ae9a6fc45/wabahcorona-sebagai-alasan-force-majeur-dalam-perjanjian/>

<sup>30</sup> Isradjuningtias, A. C. (2018). Force Majeure (Overmacht) Dalam Hukum Kontrak (Perjanjian) Indonesia. *Veritas et Justitia*, 1(1), 136–158. <https://doi.org/10.25123/vej.1420>

<sup>31</sup> Juaningsih, I. N. (2020). Analisis Kebijakan PHK Bagi Para Pekerja Pada Masa Pandemi Covid-19 di Indonesia. *'Adalah: Buletin Hukum & Keadilan*, 4(1), 189–196. <https://doi.org/10.15408/adalah.v4i1.15764>

## 2. Legal Protection of Workers for Termination of Employment during the Spread of Covid-19 According to the Perspective of Islamic Law

Work is an effort to obtain money or prices in a halal way, in Islam work as an element of the production is based on the concept of *istikhlaf*, where humans are responsible for prospering the world and are responsible for investing assets mandated by Allah Swt to meet human needs.

Then the term labor is all efforts and endeavors made by limbs or minds to get the right reward. Including all types of work done physically or mentally. Labor as a factor of production has great significance. Because all-natural wealth is useless if it is not taken advantage of by humans. Nature has given untold wealth but without human effort, all will be saved..

According to Suhrawardi K. Lubis, Islam recognizes the fact that wealth is produced together by labor and capital. Islam has set some rules to protect their rights. Labor rights are the responsibility of the employer. Things that become the rights of workers are:

- a. The right to obtain employment.
- b. The right to wages by the agreement.
- c. The right to be treated well in the work environment.
- d. The right to social security, especially regarding the dangers experienced by a worker in carrying out work.

The obligations of the worker are the rights of the employer; the basic obligation of the worker is to fulfill all the obligations contained in the employment agreement. He must strive to exert his abilities following the terms of employment

efficiently and honestly. He must devote his attention and commitment to his work. A worker should be physically strong again and trustworthy and must serve the person who employs him diligently, efficiently, and honestly. The obligations of workers are:

- a. Knowing the things required in a job so that workers can fulfill the necessary things and can pursue their work.
- b. Carry out work with sincerity and perseverance.
- c. Fulfilling promises, namely carrying out work following the agreed agreement.
- d. Calculation and accountability, intended to avoid things that harm the business owner.

According to Jusmaliani, termination of employment in the Islamic economy itself is the release or termination of the employment relationship between the company and labour at the request of either the company or the employees themselves, which is because there are things that are no longer productive to cooperate, but still follow Islamic rules, namely, there must be no acts of tyranny, injustice, and harm to the parties.

The expiration of the employment agreement or contract in the opinion of the Hanafiyah madhhab usually occurs due to the death of one of the parties who performed the contract.

Concerning Islamic law, dismissal can be seen as an end to the contract (*fasakh*). The types of contract termination in Islamic treaty law include:

- a. *Fasakh* of a contract that is *fasid* (defective), namely one that does not fulfill the conditions for the validity of

the contract according to the Hanafiyah madhhab.

- b. *Fasakh* of a contract that is not binding (*ghair lazim*), whether the contract is not binding because of the right of *khayar* (option) for one of the parties to the contract or because of the nature of the contract itself which was not binding from the beginning.
- c. *Fasakh* of the contract due to the agreement of the parties to it.
- d. *Fasakh* was against the contract because one of the parties did not carry out the agreement, either because it did not want to carry it out or because the contract was impossible to carry out.

The purpose of shari'ah (*maqashid ash-shari'ah*) is to achieve happiness in this world and the hereafter through a good and honorable way of life (*hayyah thayyibah*). This is the ultimate happiness not pseudo-happiness. One of the purposes of Islamic law is to maintain *al-umur al-dlaruriyah* in human life, that is, things that are the joint existence of human life that must exist for their benefit. This means that if these joints do not exist, their lives become chaotic, the benefit is not achieved and *ukhrani* happiness cannot be enjoyed. There are five kinds of *dlaruriyah* affairs, namely religion, soul, mind, offspring, and property. The five *maqashid shari'ah* is very closely related to labor and employers as entrepreneurs because both are part of the members of society who in their actions in working use and make a basis for life.

In order for the partnership relationship to run well and all parties involved to benefit from each other, Islam regulates it clearly and in detail with laws relating



to employment contracts. This includes the stipulation of Islamic provisions in employment contracts between employers and employees and the stipulation of provisions governing the settlement of disputes that occur between employers and employees. This includes provisions governing how to deal with acts of injustice committed by one party (employers and workers) against the other. Islam requires employment contracts between employers and workers to be following Islamic provisions, the legal basis that can be used is by using a contract to transfer the right to use goods or services, through payment of wages, without being followed by the transfer of ownership (*ownership / milkah*) of the goods themselves.

A work/labor agreement is an agreement made between the worker (laborer) and the party providing the work (employer). Typically, the employer gives an order that the worker must obey. Work agreements in Islamic law are classified as wage agreements to hire human labor to do work. In Islamic law terms, the party doing the work is *ajir*. This *ajir* consists of *ajir khas*, namely a person or several people who work for a particular person, and *ajir musytarak*, namely people who work for the benefit of many people. While the person who benefits from the work of the *ajir* (employer) is called *musta'jir*.

A condition for the validity of a contract is anything that Shara' requires to ensure the validity of the contract. If they are not fulfilled, the contract is invalid. There are specific conditions about the validity for each contract. Hanafiyah scholars require that a person avoid six defects in the contract, namely ignorance, coercion, time limitation, estimation, there is an element of harm, and the conditions of the sale and purchase are damaged (*fasid*).

Based on the explanation above, it can be concluded that the legal protection of workers on termination of employment during the spread of Covid-19 according to the perspective of Islamic law is carried out by complying with the work agreement (contract) that has been made and agreed upon by workers and companies so that no disputes occur and to avoid acts of injustice and injustice committed by one of the parties. This legal protection is part of *maqashid ash-shari'ah*, namely to preserve the soul and property to achieve happiness in this world and the hereafter through a good and honorable way of life (*hayyah thayyibah*).

### 3. Legal Protection of Workers for Termination of Employment during the Spread of Covid-19 According to a Positive Legal Perspective

Termination of employment is a condition of the employee's non-employment at the company because the employment relationship between the person concerned and the company is severed, or no longer renewed. Meanwhile, according to Law Number 11 of 2020 concerning Job Creation Article 1 Paragraph 25, it is stated that the definition of termination of employment is the termination of employment relations due to a certain matter that results in the end of rights and obligations between workers/laborers and employers.

The variety and form of layoffs can be seen in the number of parties (workers) who are dismissed. In this case, it can be classified into 3 types:

- a. Individual layoff, which is the termination of employment that is individual, personal, or person-by-

person with a certain time limit. Examples of individual layoffs are the end of the working period (entering retirement age) or the expiration of the employment contract. Individual layoff cases can occur in workers who commit violations so that they are given sanctions of dismissal or termination of employment..

- b. Group layoffs, namely termination of employment to a group of employees. For example, a group of employees resigns for certain reasons, such as demanding a wage increase or work safety. Layoffs can also be carried out due to work efficiency. Under certain conditions, such as during the co-19 pandemic, making several sales outlets closed and the decline in people's purchasing power, group layoffs were carried out. Some companies have experienced a decline in production, making some employees have to be laid off in certain sections in groups.
- c. Mass layoffs are terminations carried out against some employees for various reasons, for example, due to the company's inability to reduce employees, such as the closure of certain units or branches or factories, resulting in a reduction in employees (rationalization).

One of the impacts of the Covid-19 pandemic is the rise of layoffs. According to a survey by the Central Statistics Agency (BPS), low-income residents and workers in the informal sector are the groups most affected by COVID-19. Conditions are somewhat different in urban areas, which are affected by business or trade. Especially during the COVID-19 pandemic, almost all cases of layoffs were not personal problems, but rather due to emergency conditions (*force majeure*).

Based on the Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/3/HK.04/III/2020 concerning Protection of Workers/Laborers and Business Continuity in the Context of Preventing and Overcoming Covid-19, it has regulated wage protection for workers/laborers related to the Covid-19 pandemic but does not regulate wage protection for workers/laborers who have been laid off due to the impact of the Covid-19 pandemic. The purpose of providing protection, defense of rights, and interests is to improve the welfare of workers/laborers, especially for workers/laborers affected by layoffs.

Meanwhile, according to Law Number 11 of 2020 concerning Job Creation, Article 154A Paragraph (1) states that termination of employment can occur due to the reason that the company is merging, consolidating, taking over, or separating the company and workers/laborers are not willing to continue working relationships or employers are not willing to accept workers/laborers. Company efficiency followed by company closure or not followed by company closure due to company losses. A company is closed due to the company experiencing losses continuously for 2 (two) years. A company closes due to *force majeure*. The company is in a state of postponement of debt payment obligations, the company is bankrupt.

Then regarding the consequences of termination of employment, Law Number 11 of 2020 concerning Job Creation Article 156 Paragraph (1) explains that in connection with the termination of employment, employers are obliged to pay severance pay and/or long service pay and compensation for rights that should have been received.

Based on the explanation above, a conclusion can be drawn, that the legal protection of workers on termination of employment during the spread of covid-19 from a positive legal perspective is regulated in Law Number 11 of 2020 concerning Job Creation Article 154A Paragraph (1), where termination of employment can occur for reasons of company closure due to force majeure, in this case, the impact of the covid-19 pandemic. Then in Article 156 Paragraph (1), it is explained that in connection with the termination of employment, employers are obliged to pay severance pay and/or long service pay and compensation pay that should have been received.

#### ▪ Closing

The introduction of the COVID-19 pandemic in Indonesia has resulted in negative economic growth. This negative growth was followed by many companies terminating the employment of employees/laborers. Based on this research, many cases of termination of employment carried out by companies violate the rules that have been made. Law No. 13/2013 on Manpower Article 151 clearly states that employers, the government, and employees are obliged to try to prevent termination of employment. Moreover, there are many reasons for companies to terminate employment such as force majeure and very significant losses. Whereas Article 164 of the Manpower Law states that employers can terminate workers when the company suffers losses for 2 consecutive years causing the company to be closed.

According to Islamic law, the legal protection of workers on layoffs is part of the objectives of Islamic law, namely to preserve the soul and property to achieve happiness in the world through a good and honorable life system (*hayyab thayyibah*), therefore it must be carried out with principles such as human freedom, the nobility of human dignity, justice and anti-discrimination, and the feasibility of workers' wages.

While according to positive law the legal protection of workers for termination of employment can occur due to the reason for the company's closure caused by *Force Majeure*, and employers are obliged to pay severance pay and/or employment award money and reimbursement money that should have been received, then the difference is that in Islamic law it is not regulated in detail about the provision of severance pay, service award money, and reimbursement money that should have been received as in positive law, but in Islamic law, it is carried out by the employment agreement (*akad*) that has been made and agreed so that there is no dispute due to injustice committed by one of the parties.

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