



Legal Protection for Company Employees Who Are Under Self-Isolation Caused by Covid-19 Infection in Indonesia

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Abstract- This study aimed at analyzing regulations concerning legal protection for employees who are under self-isolation caused by Covid-19 infection. Moreover, there is the latest regulation concerning Protection and Business Continuity of Workers/Manpower related to prevention and control of Covid-19 Pandemic. This is a juridical-normative study with a statutory approach. The finding of this study showed that the legal protection scheme on the employees under self-isolation in a company affected by Covid-19 has been regulated in some Government Regulations. Therefore, principally the business owner should give wages fully to the employees as well as providing sick leave base on the established regulations. Sick leave could not reduce the annual leave right or cut off the wages since this absence is caused by obligatory self-isolation, which may raise a right dispute between the employee and company. However, based on Regulation of Minister of Employment No 2 of 2021 concerning Wages Implementation in Certain Labor-Intensive Industries in Covid-19 Pandemic situation, for certain labor-intensive industries companies which are affected by Covid-19, in maintaining the continuity employees' job and maintaining the business in certain labor-intensive industries as long as national economic recovery in Covid-19 Pandemic situation, could adjust the wages and the way of payment for the employees which is conducted based on an agreement between employer and employees.

Keywords: Employees, Wages, Covid-19

I. INTRODUCTION

Covid-19 Pandemic has massively affected many sectors at the global and national levels. It has a significant effect on the economy. Based on the data issued by the Task Force Team for the Acceleration of Handling Covid-19 dated on 14th September 2021, it was confirmed there were 225,024,781 confirmed cases in 224 countries, while there were 4,174,216 confirmed cases in Indonesia (Peta Sebaran Covid-19, 2021). This data showed that the infection of Covid-19 is highly aggressive and Indonesia is still in a critical condition of the Covid-19 pandemic.

Due to this pandemic, the government has issued a policy to limit the spread of Covid-19 in many ways, including conducting Large-Scale Social Restrictions (PSBB) which is

renamed be Enforcement of Restrictions on Community Activities (PPKM). PPKM is a restriction of people's movement to do activities outside of their houses for social distancing/physical distancing. PPKM is conducted based on the Instruction of Minister of Home Affairs No 42 of 2021. Yet, in this period, officially the government still allows essential industrial sectors to operate under the threat of the Covid-19 pandemic. Those sectors are health, food and beverages, energy, communication, service, communication media, financial banking including capital market, logistics and good distribution, retail such as stalls, grocery stores, and other strategical industries based on the explanation in Instruction of Minister of Home Affairs No 18 of 2021.

From the company's point of view, this pandemic has disrupted the operation both at the micro and macro level especially, the companies in the tourism, trading, and transportation sectors. The employees who are working in those 8 (eight) sectors should be willing to work (Work from Office/WFO) while the other sectors must stop in which the employees should work from home/WFH. The employees who work from the office during PSBB should be legally protected and could not be neglected in terms of their health issues by the company since they are vulnerable while conducting their jobs. The company should lay off the employees who are infected with Covid-19. Yet, many companies cut off the wages of their employees who are infected with Covid-19 or having self-isolation which makes them unable to work from the office. Self-isolation could be done when the person only has a minor symptom or even having no symptom. Not only those who are sick and unable to work, but also based on the Protocol of Covid-19 from the Ministry of Health those who are Covid-19 positive should be self-isolated until the person is declared recovered or negative of Covid-19. It is intended to prevent the spread of the virus to other people.

Juridically, employment issued in Indonesia is regulated by Law No 13 of 2003 concerning Employment and Chapter IV concerning Employment of Law of Job Creation which is recently promulgated in 2020. Article 80 in conjunction with Article 81 of Law of Job Creation explained that the Law of Job Creation is issued to provide minor changes on the Law of Employment which means the Law of Employment is still valid in Indonesia. The right of employees' health is regulated in many regulations. First, Article 166 paragraph 1 and 2 of Law No 36 of 2009 concerning Health stated that paragraph (1): "Employer is obliged to guarantee employees' health through prevention, improvement, medication, and recovery as well as obliged to bear all the costs of maintaining the health of employees" Paragraph (2): "Employer bears the costs of health problems as the consequences of work suffered by the employee based on the laws and regulations". Second, Article 35 paragraph (3) Law No 13 of 2003 concerning Employment stated that "Employer in employing employee is obliged to protect the welfare, safety, as well as mental and physical health of the employee".

Indonesia is a law-based country that has the main goal to create order ([Zulkarnaen & Utami, 2016](#)). Considering the important role of the employee for the company, the government and people should issue and conduct an employee protection program for the sake of company productivity and stability. One of the employee protections is wages protection. Yet, the regulation does not accommodate the issue related to employment. Issue of employment is fully handled by the company and it is risky to cause company arbitrariness.

There is some establishment of government regulations during this pandemic such as Circular Letter of Minister of Employment No M/3/HK.04/III/2020 concerning Employees' Protection and Business Continuity in the context of Prevention and Control of Covid-19 which is issued in March 2020 addressed to all Governors in Indonesia. Another regulation is the Regulation of Minister of Employment No 2 of 2021 concerning Wages Implementation in Certain Labor-Intensive Industries in Covid-19 Pandemic situation which is the latest legal product in handling employment issue to maintain the fulfillment of wages rights of the employee and working continuity as well as business continuity in certain labor-intensive industries as long as national economic recovery during Covid-19 Pandemic. However, this regulation does not fully accommodate the employment issue because it is only concerning certain labor-intensive industries. Meanwhile, there are other industries outside certain labor-intensive industries that are badly affected directly by the Covid-19 pandemic. Legally, Circular

Letter only regulates internal government so there is no obligation for the company to obey it. The issue of employment is fully handled by the company and is highly risky to cause company arbitrariness. For instance, in Bali which is the worst region affected by the Covid-19 pandemic, many companies do not have a written agreement between the management and employees related to wages reduction and layoffs (Meinarni & Thalib, 2021).

The obligation of self-isolation causes concern for the employees since there could be a reduction in their rights of having annual leave or reduction of wages especially in the company affected by Covid-19. Based on the above description, the problem of this study is how is the legal protection for the employees of the company who are under self-isolation.

II. METHODS

The method of this study is juridical-normative, i.e., a legal study which is conducted by studying literature or secondary legal material as the main material to be studied by analyzing regulation and literature related to the object of the research (Soekanto & Mamudji, 2001). A normative legal research is a library research. To obtain the relevant legal documents, such as primary legal materials literature studies are required. Some of the terms used in this writing are explained using secondary legal materials such as books, legal scientific works, and other written materials. Data analysis is carried out with a qualitative approach to primary and secondary data based on the nature of this study employing descriptive analytical research method. Descriptive contents include the content and positive legal structure, i.e., the author's action in determining the content or meaning of the legal regulations under examination.

III. RESULT AND DISCUSSION

3.1. Employee Protection in Covid-19 Pandemic

The role of government is emerging when the relationship pattern of employee-employer changes to be an industrial relationship which is not only involving the employee and employer but also emphasizing the position of government as the third party (Kahfi, 2016). Circular Letter of Minister of Employment No M/3/HK.04/III/2020 concerning Employees' Protection and Business Continuity in the Context of Prevention and Control of Covid-19 was issued as a response to the increasing cases of Covid-19 in some regions in Indonesia and considering the official statement of the World Health Organization (WHO) who determined Covid-19 as a global pandemic.

This Circular Letter was established in March 2020 addressed to all governors in Indonesia which regulates the following issues:

1. For employees who are categorized as Monitored People (*ODP*) Covid1-19, based on doctor recommendation so they could not conduct their work for a maximum of 14 days or based on the standard of Ministry of Health, so their wages should be fully paid.
2. For employees who are categorized as Covid-19 suspected case and quarantined/isolated based on doctor recommendation, so they wages should be fully paid as long as their quarantine/isolation period.
3. For employees who are sick leave because of Covid-19 and proven with a doctor recommendation letter, so their wages should be paid based on laws and regulations.
4. For a company that limits their business operation due to Government policy to prevent and handle Covid-19, and makes some or all of their employees are absent from work, by considering the continuity of the business, could make changes of the wages or the way of wages payment based on the agreement between the employee and company/employer.

To avoid Layoffs, the employer could make changes of the wages or the way of wages payment for the employees who are housed due to Covid-19, based on the agreement of the parties. Besides that, the employees who are suspected or positively infected by Covid-19 also have a right upon the wages based on this Circular Letter. Whenever the employers could not pay based on minimum wages due to Covid-19, they could do payment deferral of wages (if the employers could not pay in accordance to the minimum wages), by conducting pre-

negotiation with the employees.

Therefore, principally the protection that should be gained by the employees are as follows (Firdaus et al., 2016):

1. The rights to negotiate with the employer,
2. The rights to work safety and health in conducting the job,
3. Exclusive protection for women, children, and people with disabilities,
4. Protection is related to the system of wages, peace, and social security.

The implementation of work from home (“WFH”) during Covid-19 can be related to Article 86 paragraph (1) letter a of Law of No 13 of 2013 concerning Employment, in which every employee has a right to get protection upon work safety and health. Based on the Circular Letter of Office of Employment, Transmigration and Energy of Jakarta No 14/SE/2020 of 2020 concerning Work from Home, the owner of companies are suggested to take actions in preventing the risk of Covid-19 infection by implementing work from home. The prevention steps can be categorized into three as follows:

1. For the time being, the company could stop all business operation
2. For the time being, the company could reduce some of the operations (some employees, time, and operational facilities)
3. The company could not stop their business which is directly related to health service, food, and energy.

This circumstance obliged the company to implement protection upon their employees not to be infected by virus and spreading the virus in the workplace by implementing social distancing in the workplace and requires the employees to use Personal Protective Equipment (APD). This protection has been regulated in Article 35 paragraph (3) Law No 13 of 2003 concerning Employment which stated: “The employer as mentioned in paragraph (1) in employing employee is obliged to protect the welfare, safety, as well as mental and physical health of the employee.” Related to the rights of the employee in having health protection is further regulated in Article 86 No 13 of 2003 concerning Employment which states as follows:

1. Every employee has rights to get protection upon:
 - a. Work safety and health;
 - b. Moral and decency; and
 - c. Treatment in accordance with human dignity and values as well as religious values.
2. To protect employee’s safety in realizing optimum work productivity so there is an effort of work safety and health.
3. Protection as mentioned in Paragraph (1) and Paragraph (2) is conducted based on the laws and regulations.

Employment supervision which is regulated through many Laws and regulations of the Minister of Employment and Transmigration is expected able to trigger the employer to obey the Law of Employment which has been regulated and protects the rights of the employee (Hatane et al., 2021).

3.2. Legal Protection for the Company Employee Who are Under Self-Isolation

The definition of self-isolation can be derived from Number 2 Letter a of Circular Letter of Minister of Health No HK.02.01/MENKES/202/2020 of 2020 concerning Protocol of Self-Isolation in Handling Coronavirus Disease (Covid-19), i.e., voluntarily or based on the recommendation of health official, stay at home and not working, go to school or got to public places.

Concerning the recommendation of self-isolation in the workplace is mentioned in Circular Letter of Minister of Employment No M/3/HK.04/III/2020 of 2020 concerning Employees’ Protection and Business Continuity in the Context of Prevention and Control of Covid-19, in which Part I Number 6 mentioned that Governor is required to prevent the spread and handle the cases related to Covid-19 in the workplace, i.e., in term of employee or employer who is at risk, suspected or sick due to Covid-19, so there should be handling steps based on the health standard issued by Ministry of Health.

One of the health standards that should be concerned is health standard based on Circular Letter of Minister of Health No HK.02.01/MENKES/335/2020 of 2020 concerning Protocol of Prevention of Corona Virus Disease (Covid-19) Spread in Workplace of Service and Trading Sector (Public Area) in Supporting Business Continuity (“*SE Menkes HK.02.01/2020*”) and Decision of Minister of Health No HK.01.07/MENKES/328/2020 of 2020 concerning Guidance of Preventing and Controlling Corona Virus Disease 2019 (Covid-19) in Office and Industry in Supporting Business Continuity in Pandemic Situation (“*Kepmenkes HK.01.07/2020*”).

In *SE Menkes HK.02.01/2020*, management of the workplace, employer/consumer, and employee in the sector of service and trading (public area) along the period or after the *PSBB* in terms of accelerating the handling of Covid-19 are suggested to implement health protocol in preventing the spread of Covid-19, such as:

1. Checking body temperature for all employees before starting the work and for consumer/employer in front of the front door. If there is a person with temperature $>37,3^{\circ}\text{C}$ (2 times checking with 5 minutes period), he/she could not enter and is required to check his/her health condition; and
2. For the employee, he/she should be in good condition before working. An employee with the symptom of fever/cough/cold/sore throat is suggested to sick leave and checking the health to a public health facility.

In the Appendix of *Kepmenkes HK.01.07/2020* which stated about Guidance of Preventing and Controlling Corona Virus Disease 2019 (Covid-19) in Office and Industry in Supporting Business Continuity in Pandemic Situation, it is emphasized that there is a prohibition of leaving for employing, guest/visitor with symptoms of fever/cough/cold/sore throat/out of breath. The company/workplace is also asked to provide leniency of company rules concerning the obligation of showing sick certificates. If an employee should conduct self-isolation/quarantine, so his/her rights should be fully paid. Besides that, a person without symptoms or monitored person with a negative or positive rapid test, so one of the responses is self-quarantined by implementing clean and healthy life as well as physical distancing. Therefore, self-isolation is an emergency and categorized as sick, not paid leave. Since it is considered “sick” so the fulfillment of all obligations from the company should be conducted.

However, the fact is that the company is initiatively suggesting the employees take self-isolation, not the employee. The employees although they are not suggested to take self-isolation, would not take leaves. It means that their absence is not based on their willingness. Therefore, this self-isolation is the company's risk. The employees could argue that their absence due to self-isolation is company order, so the risk of this absence becomes the responsibility of the company, not the employees.

Sick leave is differentiated from annual leave and could not be calculated into annual leave. Sick leave could be taken by the requirement in which the employee has a sick certificate from a doctor or hospital. Sick leave is an absolute right of the employee, even Article 153 paragraph (1) letter a of Law of Employment 13 of 2003 in conjunction with Law of Job Creation No 11 of 2020 which protects the form of layoffs prohibition to the employee due to sick leave based on doctor recommendation as long as maximum 12 (twelve) consecutive days. Layoffs based on this reason are null and void, and the employer has obliged to re-employing the employee.

Therefore, the quarantined or isolated employee who is not yet confirmed Covid-19 positive could get full wages. Meanwhile, the wages of an employee who is sick leave or Covid-19 positive is paid based on laws and regulations. The regulation is Law of Employment No 13 of 2003, Article 93 paragraph 1, 2(a) and 3 as follows:

1. The wage is not paid if the employee does not work
2. The regulation as mentioned in paragraph (1) is not valid, and the employer should pay if (a) employee is sick so he/she is unable to work.
3. The wage which is paid to a sick employee as mentioned in paragraph 2 letter a is as follows:
 - a. For the first 4 months is paid 100% of the wage

- b. For the second 4 months is paid 75% of the wage
- c. For the third 4 months is paid 50% of the wage
- d. For the following 4 months is paid 25% of the wage before layoffs by the employer.

It is in line with Government Regulation No 36 of 2021 concerning Wages, which is the implementation of Law of Job Creation in Article 40 which mentioned "Wage is not paid if the employee leaves the work and/or does not do the work."

Therefore, if the employee is infected with Covid-19 and could not work for 4 months, so he/she still has a right to get a full wage, i.e., basic wages and fixed allowances as much as he/she has received so far.

Most of the employees under self-isolation still could work at home, yet many employers used the "no work no pay" strategy. This principle positions the employee in uncertainty and the way of the company to avoid the obligation to pay wages, especially it is done by company affected by Covid-19. Wage is the main obligation that should be paid by the employer. It is different from attendance fees or transport fees which are included as non-permanent allowance and paid based on employee's attendance at the office. The employee who leaves due to isolation, so the attendance fee payment is paid based on company regulation.

If the company cuts off the annual leave rights or the wage, whereas the absence is caused by self-isolation, so there is a right dispute between the employee and company. However, Article 6 paragraph (1) of Regulation of Minister of Employment No 2 of 2021 concerning Wages Implementation in Certain Labor-Intensive Industries in Covid-19 Pandemic situation mentioned that for certain labor-intensive industries companies which are affected by Covid-19 could adjust the wages and the way of payment for the employees. Paragraph (2) mentioned that the adjustment as mentioned in paragraph (1) is conducted based on an agreement between employer and employees.

It is also mentioned in Article 7 (1) the agreement of employer and employees is conducted in a deliberation based on kinship, transparency, and good faith. (2) the agreement as mentioned in paragraph (1) is written and minimally includes: a. number of wages; b. wages payment; and c. validity of the agreement is maximum on 31 December 2021. (3) the employer conveys the agreement as mentioned in paragraph (2) to the employee.

However, the adjustment of the wages should consider the structure and scale of wages in the company, which of them is based on position in the company. Therefore, by considering business continuity, the change of the wages and how to pay the wages is conducted based on an agreement between the employer and employee.

Based on the above description, it is clear that the wage is an important component in an industrial relationship, so the Law of employment and Government Regulation No 78 of 2015 concerning Wages protects the wages. Legal action that can be done when an employer does not implement the Laws is the ways as regulated in Law No 2 of 2004 which regulates Industrial Relationship Dispute. Article 1 number 2 defines a right dispute as a dispute that occurred because there was no fulfillment of rights, as the consequence, there is a difference of implementation or interpretation upon the laws and regulation, work agreement, company regulation, or mutual work agreement. Therefore, some suggestions can be delivered, first, the Government should issue strict and binding regulations to protect the employee who frequently has a weaker position than the employer. Second, the Government should be serious in supervising and give strict sanctions to the employer who breaks the regulation of legal protection.

IV. CONCLUSION

Based on the analysis and discussion, it can be concluded that the legal protection scheme upon the company employees who are under self-isolation due to Covid-19 has been regulated in some kinds of Government Regulations. Therefore, self-isolation is naturally emergency and categorized as sick leave, not leave. Since it is categorized as "sick", the fulfillment of all company obligations should be implemented. Therefore, sick leave could not reduce the annual leave right or cut off the wages since this absence is caused by obligatory

self-isolation, which may raise a right dispute between the employee and company. However, based on Regulation of Minister of Employment No 2 of 2021 concerning Wages Implementation in Certain Labor-Intensive Industries in Covid-19 Pandemic situation, for certain labor-intensive industries companies which are affected by Covid-19, in maintaining the continuity employees' job and maintaining the business in certain labor-intensive industries as long as national economic recovery in Covid-19 Pandemic situation, could adjust the wages and the way of payment for the employees which is conducted based on an agreement between employer and employees.

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