

**Client Alert on
Labor Wages Policies and Employment Termination on
Covid – 19 Pandemic**

1. Wages Reduction During Covid-19 Pandemic

The increasing pandemic of Covid-19 in Indonesia had resulted in disruptions to the business sectors. As one of the attempts to curb this pandemic, the Ministry of Manpower (“**Manpower Ministry**”) has issued a Circular Letter Number M/3/HK.04/III/ 2020 dated 17 March 2020 on the Protection of Worker/Employee and Business Continuity in relation to the Prevention and Countermeasure of Covid-19 (“**Circular Letter**”).

Through this Circular Letter, the government encourages the companies and its employees to dialogue and discussing the effect of Covid- 19 pandemic which cause the company's business activity including financial condition into a difficult situation. This effort was intended as a prevention action which can be taken in order to avoid termination of employment.

Further, the government also indirectly allow the company who affected by the government’s policy in the region to prevent and countermeasure Covid-19 to reduce the amount of salaries to be paid to its employees including below the minimum wages. Such reduction only could be performed based on consensus between the company and the employee. Therefore, the parties may amend the employment agreement by change the provision on working conditions such as working hours, day off, payment method including wages amount.¹

However, the company must have a strong basis and reason to prove that such consensus was agreed due to Covid - 19 pandemic that disrupted the business continuity. These conditions can be applied as the basis for the companies in the event there is an examination/audit by the relevant manpower office (such as the supervisory officer/*pegawai pengawas*) based on compliant/report submitted by the employees.

2. Force Majeure as a Reason for Employment Termination

The regional and central governments have implemented policies to counter the Covid-19 pandemic. One of the policies at the regional level is the Large-Scale Social Restriction/*Pembatasan Sosial Berskala Besar* (“**PSBB**”), which limits a social activities include work and business activities.² With the limitations of these activities, a several companies have been forced to choose termination employment option because the business operation was disrupted.

¹ The changes need to abide to Article 55 of Manpower Law as well Articles 18 and 42 (2) of Government Regulation Number 78 of 2015 regarding Wages. The provisions regulate that an employment agreement can only be altered with the agreement of both the company and the employee.

² Governor Decree of DKI Jakarta No. 380 of 2020 regarding the Implementation on Social Limitation on Large Scale on Covid -19 Countermeasure in DKI Jakarta province dated 9 April 2020; Governor Decree of West Java No. 443/Kep.221-Hukham/2020 regarding the Implementation on Social Limitation on Large Scale in Bogor Regency, Bogor City, Depok City, Bekasi Regency and Bekasi City Countermeasure Acceleration on Covid-19 dated 12 April 2020; and Governor Decree of Banten No 443/Kep.140-Huk/2020 regarding Stipulation on Social Limitation on Large Scale in Tangerang Regency, Tangerang City, and South Tangerang City in Countermeasure Acceleration on Covid-19 dated 15 April 2020.

The Manpower Law states that a company may terminate employment with its employees due to force majeure reason.³ However, the employment termination process must follow the provisions under Manpower Laws and other relevant regulations and its procedures⁴. If there is a mutual agreement executed between the company and its employees at the bipartite stage, then the settlement procedure to the next stages is no longer required.

However, in the event the employees refuse to accept the compensation package which offered by the company, then the termination process must be resolved through a tripartite forum which is generally mediated by the Mediator at the local manpower office agency.⁵ Further, if the employees still reject the Recommendation issued by the Mediator, the next step is to request a judge's decision through the Industrial Relations Court (*Pengadilan Hubungan Industrial*/"PHI") by submitting a lawsuit.⁶

The Manpower Law does not specifically explain the force majeure situation. The force majeure situation can be referring to the Indonesian Civil Code ("ICC") by fulfill the condition as follows:⁷

- a. unexpected event;
- b. cannot be borne;
- c. there is no bad faith from the party;
- d. there are unintentional circumstances;
- e. hinders the performance; and
- f. if the performance is to be met, it is prohibited.

If we refer to the local government policies, through an Exclamation Letter/*Surat Himbauan*, Manpower and Transmigration Office Agency of Karawang has stipulate that Covid-19 as a force majeure situation.⁸ A same condition also emphasized by the central government with the stipulation of Covid-19 pandemic as a type of diseases which cause Emergency on Society Healthiness⁹ and a Non-Natural National Disaster/*Bencana Nasional Non Alam*¹⁰ which also stated previously by Head of National Disaster Countermeasure Agency/*Badan Nasional Penanggulangan Bencana* which stipulated a specific outbreak disaster status caused by Coronavirus.¹¹

Further, on the several judicial decisions, the panel of judges decides that the situation can be deemed as force majeure as follows:

a. Supreme Court Decision No. 198 K/Pdt.Sus-PHI/2018

The panel of judges considered that a company could carry out employment termination, because its cooperation agreement had been terminated by another company, hence there was

³ Article 164 (1) of Manpower Law.

⁴ Law Number 2 of 2004 on Industrial Relation Dispute Settlement ("**Law No. 2 /2004**").

⁵ Article 8 of Law No. 2 /2004.

⁶ Article 14 (2) of Law No. 2 /2004.

⁷ Article 1244 and 1245 of ICC.

⁸ Exclamation Letter of Head of Manpower and Transmigration Agency Office No. 568/2.308/HIPK dated 26 March 2020.

⁹ President Decree No. 11 of 2020 on the Stipulation of Society Healthiness Emergency of Covid-19 dated 31 March 2020.

¹⁰ President Decree No. 12 of 2020 on the Stipulation of Non-Natural Disaster of COVID-19 Spread Out as National Disaster dated 13 April 2020.

¹¹ Head of National Disaster Countermeasure Agency Decree No. 9.A of 2020 on Determination of Specific Emergency Status of Disasters Outbreak Disease of Caused by Coronavirus in Indonesia dated 28 January 2020 as extended by Head of National Disaster Countermeasure Agency Decree No.13.A of 2020 regarding Extension on Determination of Specific Emergency Status of Disasters Outbreak Disease which Caused by Coronavirus in Indonesia dated 29 February 2020.

no work to be performed. The employment termination based on Article 164 (1) of Manpower Law can be applied.

b. Supreme Court Decision No. 1222 K/Pdt.Sus-PHI/2017

The panel of judges on the Supreme Court nullified the decision of PHI Bandung. The Supreme Court ruled that the company had a difficulty in paying its debt obligations to its creditors which caused financial problems to such company. Based on the judicial facts, it was proven that the company's problematic financial situation was caused by the prohibition on mineral exportation policies imposed by the relevant government institutions. Therefore, the employment termination to its employees could refer to Article 164 (1) of Manpower Law. However, the company is still operating and not closed as required under Article 164 (1) of Manpower Law.

c. Supreme Court Decision No. 2821 K/Pdt/2014

The panel of judges considered that the loss of cargo on the ship accident was caused by high-waves due to bad weather condition and cannot be prevented or predicted. The panel deemed it as force majeure condition.

A force majeure condition is sometime associated with a natural disaster like in the ruling in point c above. Nonetheless, the rulings in points a and b above illustrate that a force majeure condition can occur due to an imposition and change of government policy, which causes a debtor to be unable to satisfy its obligations to its creditor. They show that a force majeure event can happen because of a non-natural disaster.

The Covid-19 pandemic is a non-natural disaster. It had caused the implementation of PSBB which arguably can disrupt a company's financial performance that leads to the inability of the company to satisfy the obligations to its creditor. Therefore, these arguments can establish the Covid-19 pandemic as a force majeure event which could be the reason for employment termination. Should all the conditions are fulfilled, they may serve as adequate reasons for the panel of judges to determine that the termination of employment can occur according to Article 164 (1) of Manpower Law.

Please be advised however, that, to the best of our knowledge and until this article is prepared, the relevant judicial decisions on the industrial relation dispute which state a Covid-19 pandemic as force majeure has not yet exist based on the official website of the Supreme Court of the Republic of Indonesia.

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