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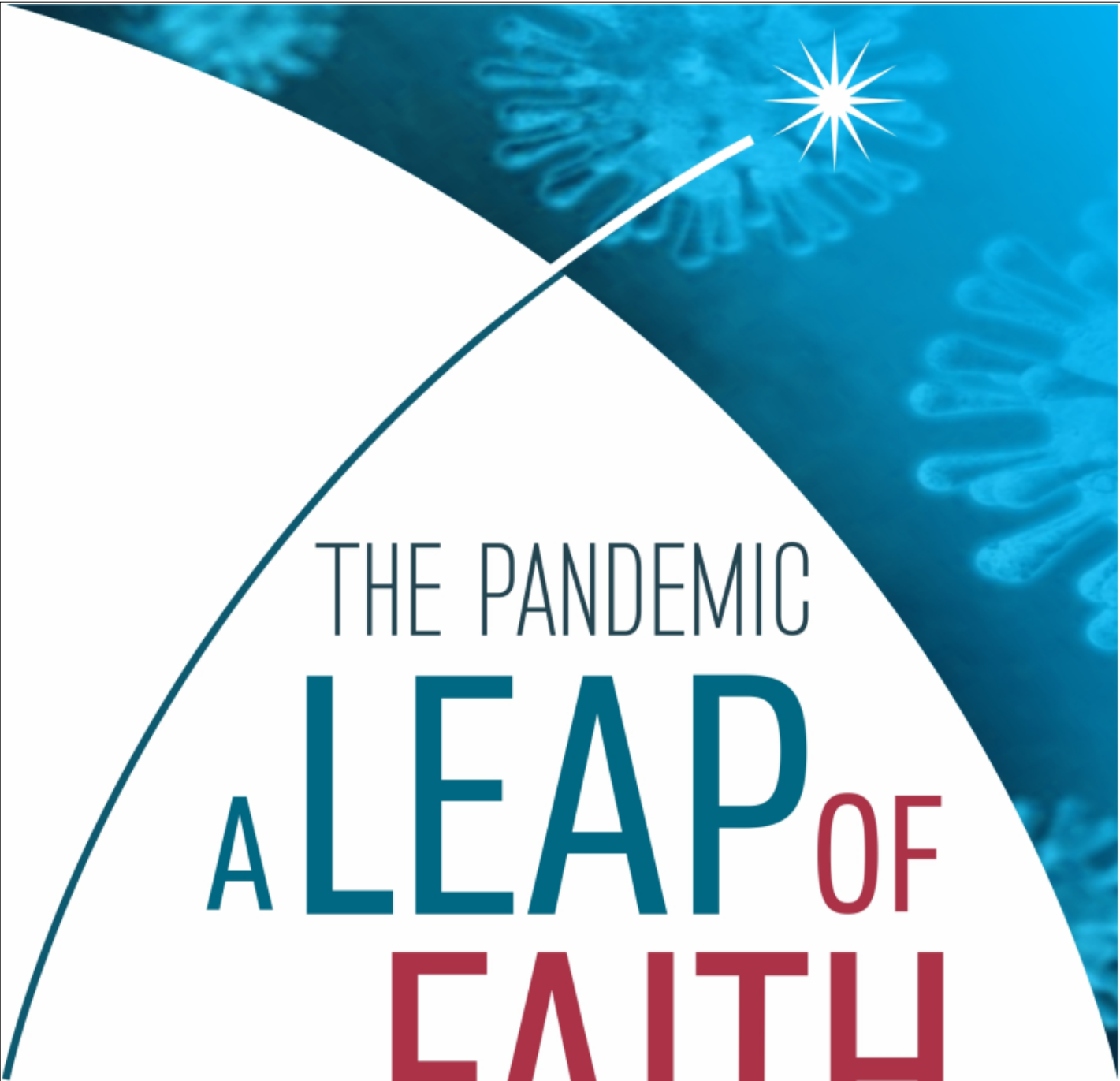
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A LEAP OF
FAITH

Editorial:

Dr. Diah Karmiyati, M. Si.

Direktorat Program Pascasarjana
Universitas Muhammadiyah Malang

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THE PANDEMIC: A LEAP OF FAITH

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Website: www.penerbitbildung.com

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EDITORIAL

The Pandemics: A Leap of Faith

Imagine where we are in 2019. We are still living in best possible way, we gather, we socialize, and we celebrate plenty of things together with our loved one without worry. The 2019 is just two years ago, but it certainly feels like longer than that. Now, we are at the year of 2021. The pandemic has been with us for 17 months now. The countries all over the world loosen and tighten its border as the pandemics evolve into certainty when the vaccinations held. Indeed, the catastrophic of the pandemics didn't just leave us behind, many of us losing our loved one and in grief. Yet we are still hopeful of the future especially when Science nurtured our thinking while God is with all of us at heart.

This book chapter is an example. It is glad to see the spirit, where many scholars are racing to contribute. We see, scholars are continuously work together to contribute to the world. One paper I was taken into is where the researcher conducting research in Islamic economic while balanced it together with a teaching in psychology. Islam, as most of the Indonesian religion, comes at the forefront when facing a pandemic. We seek God for protection, help, and guidance as we must. One of the research papers in this book mentioned that Islamic economy can be contribute well to the economic reset that initiated in World Economic Forum 2020. I do personally believe that.

Whereas other scholar focusses on how pandemic affects agriculture, language, justice and law, technology, and environment. Language, for example, has a tremendous impact on how one face this pandemic. For example, in the UK, the message that the government sent about COVID19 mitigation is very rigid and tangible. Therefore, the citizens are following its instruction carefully. On the contrary, unfortunately in Indonesia we see plenty of changes are made and delivered unclear by the government. As such, the message that means to be delivered to citizens has double meaning.

We cannot also turn a blind eye on the development of online education and learning that thriving during this pandemic, especially in Indonesia. Almost 100% of the Indonesian university conducts the lecture

online without a class interaction that we've done for the last few decades. This comes up with challenges, as mentioned by one of the papers in this book chapter that it is hard on students as well as on teacher/lecturer.

Another outstanding topic that is covered in this book chapter that how the terms "healthy" is stretch out into something far greater important in our daily life. The word "health", "well-being", and "healthy behavior" are not taken for granted anymore; we internalize it now even more. For instance, according to Mint, the health start-up companies in shows a significant user increase since the pandemic begun, where online consultation with doctor are rising to 600% compared to 2019. Before the pandemic, health care consultation is mostly face-to-face with the doctor, but once the pandemic hits, online consultation are encouraged. In Indonesia itself, our behavior also changes. When one caught COVID19, if the symptoms is mild, online consultation with telemedicine's apps such as Halodoc, or Alodokter is preferable. Therefore, we have made such strenuous effort to adjust and adapt., and I believe plenty of changes and adjustment that we face will bring us forward.

Imagine being back in 2019. If we knew that pandemic would hit us in the coming years, what will we do? Do we laid back and relax? Or do we create a plan to better face it? Will we be ever ready for the changes?

However, the answer is, I am sure that God is the best planner. We human can only make the best of us while God is the best planner after all. We just need to take the leap of faith.

I hope this scholarly work we all of us done, won't stop here and this is just the beginning of far greater scientific contribution.

Malang,
August 27, 2021

Dr. Diah Karmiyati, MSi

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A Study on the Non-Fulfillment of the Right to Wages for Workers During the Covid 19 Pandemic According to Government Regulation of the Republic of Indonesia Number 36 of 2021

Fithriatus Shalihah¹

Introduction

Until the end of July 2021, according to the World Health Organization (WHO), there were around 194 million people exposed to Corona Virus Disease 2019 (Covid-19), with a death toll of around 4 million people spread over 188 countries. For Indonesia, in the same period since March 2, 2020, there are more than 3 million people exposed to Covid-19, with a death toll of almost 87,000 people [11]. With a large number of Covid-19 cases in Indonesia, the government issued a policy limiting community activities to reduce the spread of Covid-19 [5].

The spread of the Covid-19 outbreak as a global pandemic has caused various new problems in various sectors in Indonesia, even the world. Not only a health issue, but the spread of the Covid-19 outbreak has also caused a multidimensional crisis. One of them is in the economic field, especially business activities in Indonesia, which have been severely disrupted since the Covid-19 pandemic [4]. Community activities are prohibited and temporarily suspended, the economy weakens, transportation services are reduced and strictly regulated, tourism is closed, shopping centers are empty of visitors, and the informal sector is closed, such as; Online motorcycle taxis, drivers, street vendors, mobile traders, MSMEs (Micro, Small, and Medium Enterprises) and rough porters have decreased their income. Trade centers, such as malls and markets, usually busy with visitors, are suddenly deserted and are currently closed temporarily. The tourism sector has decreased, the government has closed tourist attractions and entertainment venues. Work and study are also carried out at home online [7].

¹ Faculty of Law, Ahmad Dahlan University, Yogyakarta, fithriatus.shalihah@law.uad.ac.id

Many companies have gone out of business in the industrial and business sectors due to the Covid-19 pandemic. This has resulted in companies that are still surviving being forced to lay off their workers. There are even companies that issue extreme decisions, namely terminating employment, being sent home, terminating work contracts before they expire, cutting wages, working parts, reducing their salaries, and enforcing the principle of no work, no pay [12].

Based on data from the Ministry of Manpower in March 2021, more than 29 million workers were affected by the Covid-19 pandemic. This number includes Termination of Employment workers laid off without pay to reduce working hours [8]. With so many workers/laborers having their employment terminated and sent home without wages, this causes the worker concerned to lose income to support himself and his family, especially the unavoidable fulfillment of daily basic needs.

In general, companies that cut off work relationships during the Covid-19 pandemic often use force majeure or efficiency reasons. The clarity of force majeure is still a question of whether it is classified as a natural disaster or not. For this reason, the company used to terminate the employment relationship cannot be justified. Considering that there are still some misunderstandings for companies and workers regarding the status of workers being temporarily laid off. So many companies are taking advantage of the pandemic period to lay off their workers without paying wages and severance payments [2].

Wages significantly influence workers in carrying out their duties and guarantee the survival of themselves and their families [3]. The regulation of the right to work for wages is based on the provisions of Article 28D paragraph 2 of the 1945 Constitution of the Republic of Indonesia, which states that "Everyone has the right to work and receive fair and proper remuneration and treatment in an employment relationship."

The condition of workers during the Covid-19 pandemic is like the word "having fallen on a ladder," meaning that workers who are laid off without being given wages will suffer even more (double suffering), namely that apart from their safety being threatened in the face of Covid-19, the workers concerned also suffer from constant hunger haunted him and his family. Moreover, coupled with the imposition of restrictions on community activities that urge the public to do social distancing, self-quarantine, and work from home, WFH (work from home) even prohibits people from traveling from one area to another, this further adds to the suffering for workers and their families [6].

These situations and conditions require appropriate policies or solutions both by the government and employers so that workers can get their rights, namely in the form of wages that employers should give to meet the needs of themselves and their families. As regulated in the Manpower Act, every worker has the right to a decent living. A decent living includes basic human needs in the form of clothing, food, and shelter.

Based on the description of the background above, the author is then interested in studying the problems related to the non-fulfillment of the right to wages for workers during the Covid-19 pandemic according to Government Regulation Number 36 of 2021 on Wages.

Methodology

The author uses normative legal research methods. The normative legal research method is a scientific research procedure that functions to find the truth based on the logic of legal science from the normative side, namely the legislation. The data used is secondary data using primary legal materials and secondary legal materials. This research is descriptive-analytical in conducting the discussion (data analysis), and the author uses an inductive method in making conclusions.

Discussion

In Indonesia, the concept of human rights is expressly guaranteed in the 1945 Constitution of the Republic of Indonesia, including the right to a decent income for workers. Although the employment relationship is in the realm of private law, wages can be desired according to the agreement of workers and employers. The State has an interest in determining the minimum wage. This is a manifestation of the State's responsibility in protecting the rights of workers to live decently in meeting their basic needs.

The attachment of the Indonesian people to human rights issues can be seen from the arrangement of fundamental rights contained in the constitution. The regulation contains legal and political rights and includes human rights in the social, economic, and cultural fields. Although the arrangements are not as complete as those contained in the Universal Declaration of Human Rights 1948, these arrangements have shown that the Indonesian people have high respect for human rights. The incomplete formulation of human rights contained in the 1945 Constitution of the Republic of Indonesia compared to the formulation of human rights in the 1948 Universal Declaration of Human Rights is because the 1945

Constitution of the Republic of Indonesia was first formulated from Universal Declaration of Human Rights 1948.

Recognition of human rights as legal rights can be seen based on their legitimacy through international legal instruments such as the 1948 Universal Declaration of Human Rights (UDHR) and several Covenants relating to human rights in the political, social, cultural, and economic fields. As well as national legal instruments through the legitimacy of the Constitution of the Republic of Indonesia and other organic laws. As in Law Number 39 of 1999, they concerned human rights [8].

In the Universal Declaration of Human Rights or UDHR (Universal Declaration of Human Rights) or known as the UDHR, the right to work has been outlined in article 23, paragraphs 1 to 4, which reads:

1. Everyone has the rights to work, to free choice of employment, to just and favourable condition of work and to protection against unemployment;
2. Everyone, without any discrimination, has the right to equal pay for equal work;
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, an existence worthy of human dignity, and supplemented, if necessary, by others means of social protection;
4. Everyone has the right to form and to join trade unions for the protection of his interests.

The rights regarding workers' wages as mentioned above are contained in paragraph 2, namely the right to receive equal pay for equal work; and in paragraph 3, namely the right to just and favourable remuneration insuring an existence worthy of human dignity.

A new right can function effectively if the right can be maintained and protected. For this reason, as a country based on the law (*rechtsstaat*). Human rights must be part of national law, and there must be legal procedures to defend and protect these human rights. The government, in this case, is obliged to establish a wage policy, on the one hand, to ensure a decent standard of living for workers and their families, increase productivity, and increase people's purchasing power.

In the current Covid-19 pandemic situation, many companies have to implement Work From Home (WFH). This, of course, has implications for the mechanism of the wage regulation itself. Because it affects the working hours of the company itself. Meanwhile, most companies pay their workers based on the fulfillment of working hours [14]. This policy

was taken because many entrepreneurs were affected by the Covid-19 pandemic. In addition, some companies lay off their workers or lay off their workers in rotation to the point of termination of employment for reasons of efficiency such as reducing/or cutting wages, reducing facilities, implementing shift work, working overtime, reducing working hours and working days to dismissing workers.

Wages are one of the factors that greatly affect work motivation, namely an encouragement for the willingness of workers to do more for what they are doing [13]. In Law No. 13 of 2003 on Manpower, wages are regulated. The state has guaranteed wages in such a way that there is no arbitrariness of employers in paying wages to workers in private relations between workers and employers. Article 1 number 30 of Law Number 13 of 2003 on Manpower explains that "Wages are the rights of workers/laborers received and expressed in the form of money as compensation from the entrepreneur or employer to workers/laborers who are determined and paid according to an employment agreement, agreements, or laws and regulations, including allowances for workers/laborers and their families for a job and/or service that has been or will be performed." So based on this mandate, business actors should pay wages/salaries of their workers.

Since Law Number 11 of 2020 on Job Creation, several articles have been replaced and deleted in Law Number 13 of 2003 concerning Manpower. In Article 88 paragraph 4 explains that further provisions regarding wage policies are regulated in a Government Regulation, namely Government Regulation Number 36 of 2021 on wages.

The Central Government establishes a wage policy as one of the efforts to realize workers' rights to a decent living for humanity. The wage policies include:

- a. Minimum wage;
- b. Wage structure and scale;
- c. Overtime wages;
- d. Wages do not come to work and/or do not do work for certain reasons;
- e. Form and method of payment of wages;
- f. Things that can be calculated with wages; and
- g. Wages as the basis for calculating or paying other rights and obligations (Article 88 of Law 11/2020).

The components of wages according to Article 7 Paragraph (1) Government Regulation Number 36 of 2021 on Wages consist of:

- a. Wages without benefits;
- b. Basic wages and fixed allowances;

- c. Basic wages, fixed allowances, and variable allowances; or
- d. Basic wages and allowances are not fixed.

With the existence of the Manpower Act, workers have a clear and firm legal umbrella regarding the rights obtained upon the completion of the fulfillment of obligations to the employer/business actor by the work agreement as regulated in the Manpower Act. The right to wages is one of the most crucial rights in the working relationship between employers and workers. The wages given by entrepreneurs are theoretically considered as the price of the labor sacrificed by workers for the sake of production, in connection with this, the wages received by workers can be divided into two types, namely:

1. Nominal Wage, which is several wages expressed in the form of money regularly received by workers;
2. Real Wage is the nominal wage ability received by workers when exchanged for goods and services, which is measured based on the number of goods and services that can be obtained from the exchange [10].

The policy regarding the minimum wage aims to guarantee workers' rights to wages as long as they are still in status as workers and provide protection for workers who receive the lowest wages. Lower than the net [1]. The minimum wage must meet the living needs of workers, at a minimum that can meet the needs of food, clothing, household needs, and other basic needs. As guaranteed in Article 2 paragraph 1 of Government Regulation Number 36 of 2021 on Wages, every worker/labor has the right to a decent living for humanity.

The determination of the minimum wage policy in each region is different. The minimum wage determination is adjusted to the stages of achieving a comparison of the minimum wage with the needs of a decent living, the amount of which is determined by the Minister of Manpower. Decent living needs to be achieved gradually because the minimum living needs are primarily determined by the business world's ability [9]. In Article 25, paragraph 1 of Government Regulation Number 36 of 2021, the minimum wage consists of:

- a. Provincial minimum wage;
- b. Regency/city minimum wage with certain conditions.

The urgency of State policy in determining the Provincial Minimum Wage is to provide legal protection to workers to fulfill their basic needs. Article 23, paragraph 3 Government Regulation Number 36 of 2021 states that employers are prohibited from paying wages lower than the minimum wage. The Provincial Minimum Wage which is based on the components

of a decent living requirement of one worker, cannot be contested because if a worker is not fulfilled, Entrepreneurs cannot fulfill their basic needs to survive, so they cannot live a decent life, so the payment of the right to wages must be paid in full by the provincial minimum wage so that workers can meet the needs of a decent living.

Suppose the company cannot pay labor wages according to the provincial minimum wage in a public health emergency due to the Covid-19 pandemic. Companies are not allowed to terminate employment or not pay workers wages immediately. As stipulated in Article 151 paragraph 1 of Law Number 11 of 2020 on Job Creation, it has been stated that Entrepreneurs, workers/laborers, trade unions/labor unions, and the Government must strive to prevent termination of employment. Suppose the worker/ laborer has been notified and refuses to terminate the employment relationship. In that case, the settlement of the termination of employment must be carried out through bipartite negotiations between the entrepreneur and the worker/laborer and/or the trade union/labor union.

The deduction of workers' wages has been regulated in Government Regulation Number 36 of 2021 on Wages with certain conditions. The deduction of wages by employers is carried out by work agreements, company regulations, or collective labor regulations for:

1. fines;
2. compensation; and/or
3. wage advance.

On the other hand, there are wage deductions by employers that must be made based on a written agreement or written agreement, namely for:

1. payment of debts or installments of debts of workers/laborers; and/or
2. rental of houses and/or rental of company-owned goods rented out by employers to workers/laborers.

Then the deduction of wages by the entrepreneur can also be carried out without the consent of the worker/ laborer in the event of an overpayment of wages to the worker/ laborer. For the total amount of wage deductions, a maximum of 50% of each payment of wages received by the worker/laborer. So that if workers' wages are cut because the company is losing money due to the Covid-19 pandemic, the wage cuts are not based on law and can lead to industrial relations disputes, namely rights disputes.

The Government makes regulations that specifically regulate the protection of workers during the current Covid-19 pandemic. Through

¹ the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 on Protection of Workers/Labourers and Business Continuity in the Context of Prevention and Control of Covid-19 as follows:

1. For workers/laborers who are categorized as Persons Under Monitoring (ODP) related to Covid-19 based on a doctor's statement so that they cannot come to work for a maximum of 14 (fourteen) days or according to the standards of the Ministry of Health, their wages are paid in full;
2. For workers/laborers who are categorized as suspected cases of Covid-19 and are quarantined/isolated according to a doctor's statement, their wages are paid in full during the quarantine/isolation period;
3. For workers/laborers who do not come to work because of Covid-19 illness and are proven by a doctor's statement, and their wages are paid according to the laws and regulations;
4. For companies that limit their business activities due to government policies in their respective regions for the prevention and control of Covid-19, thus causing some or all of their workers/laborers not to come to work, taking into account business continuity, changes in the amount and method of payment of workers/labor is carried out by the agreement between the entrepreneur and the worker/laborer.

In the description of the points above, it is explained that the laid-off workers/ laborers are still entitled to total wages or wage deductions if the company and the worker¹⁰ have agreed upon it. Provision of total wages by employers to workers in the form of basic wages and fixed allowances as long as the workers are laid off other than those stipulated in the work agreement of company regulations or collective labor agreements, and for workers who experience termination of employment, the form of protection provided by the entrepreneur is based on statutory regulations. That the law requires employers to provide severance pay, service fees/ service fees, and compensation/entitlements compensation⁴, severance pay is compensation that the company/employer must pay in the event of termination of employment.

Conclusion

The 1945 Constitution of the Republic of Indonesia has guaranteed human rights, one of which is the right to a decent income. In carrying out its responsibilities, the state determines the minimum wage to protect the right to wages for workers to live decently in meeting their basic needs. These provisions are regulated in detail in Government Regulation Number 36 of 2021 on Wages, a derivative, or implementing Law Number 11 of

2020 on Job Creation. The state policy in setting the provincial minimum wage aims to fulfill a decent living for workers and their families.

During the current Covid-19 pandemic, many workers are being laid off or working from home. This causes the wage system to change because many companies temporarily pay workers based on the fulfillment of working hours. This is contrary to article 23, paragraph 3 of Government Regulation Number 36 of 2021 concerning Wages. Meanwhile, regarding wage cuts, Government Regulation Number 36 of 2021 concerning Wages does not regulate worker wage cuts because the company is losing money due to the Covid-19 pandemic, so the wage cut has no legal basis. It can lead to industrial relations disputes, namely rights disputes, so that the company is obliged to pay wages in full to workers as stipulated in the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020. As for Termination of Employment Relations, employers must provide severance pay as stipulated in the legislation. This means that even though the COVID-19 pandemic can be categorized as a force majeure situation regarding the suspension of wages or unilateral termination of employment by the employer, it cannot justify the employer to release him from the employer obligation to fulfill the rights to workers wages.

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