

## Analysis of Wages and Severance Pay during the Covid-19 Pandemic Reviewed from Labor Law

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**ABSTRACT:** At the end of December 2019, Wuhan, China, became the site of the first detection of the Corona Virus Disease 2019 pandemic. This virus spreads rapidly and has reached nearly every nation, including Indonesia. As a result of the infection of corona virus, it has a negative influence on several sectors such as the economic sector, business, tourism, industry, health and so on. The tourism sector has been severely affected by the Covid-19. Until now, almost all tourist destinations in Indonesia are closed. This is a very difficult condition, in Indonesia almost all tourist destinations, hotels, facilities, and entertainment are closed and are only allowed for 50% of visitors based on Government recommendations. The Karo Regency Government is also facing the same problem, one of the sectors that is relied upon to support Karo Regency's Original Regional Revenue (PAD) is from the tourism sector, and Brasatagi Subdistrict is one of the sub-districts that is the mainstay of the tourism sector in Karo Regency. Speaking of the tourism sector, the industry that is most closely related is Hotels and Restaurants. Throughout 2020 until mid-2021, the hotel occupancy rate in the Brastagi District fell by almost 90%. The very significant decline in the level of tourist visits, hotel occupancy and restaurant visitors in Brastagi District has caused entrepreneurs of tourist sites, hotels and restaurants to suffer huge losses. Employers are no longer able to cover all operational costs, including the cost of wages for workers. This forces employers to rearrange their working hours and calculate the number of workers that they still allow them to employ. Some of this is done by applying alternate vacations or leave to their employees, some of them who are no longer able to survive, are forced to lay off temporarily, cut wages. or terminate the employment of its employees.

According to the study's conclusions, employers must continue to pay workers' full wages in the form of base pay and set benefits, while they are lost a job due to the COVID-19 pandemic and must also give them severance pay in as stated in Article 156 of Law Number 2003 about Labor and the Ninth Part, Article 37 concerning Payment of Wages in a State of Bankruptcy in the Government Regulation concerning Wages no. 78 of 2015.

Keywords: Wages, Severance pay, Pandemic, Covid 19, Law



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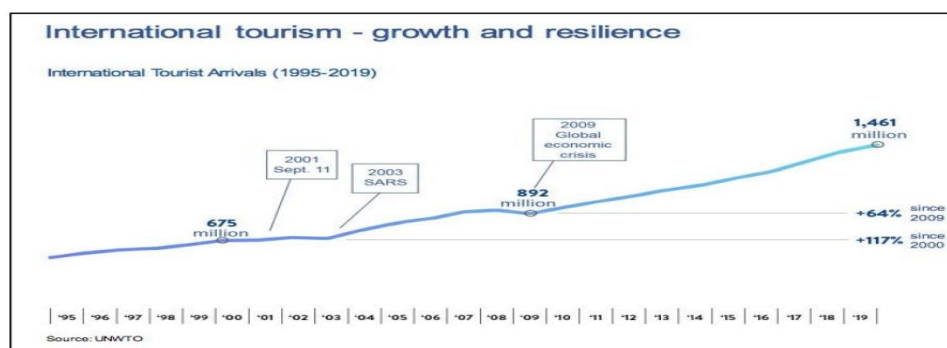
## INTRODUCTION

The world is currently faced with an era of disruption (disruption/chaos), not only 1(one) dimension of disruption but has become 3 (three) disruptions or Triple Disruption, namely: Industrial Revolution 4.0, Covid 19 Pandemic and Society Revolution 5.0 ([Choi & Sigjin, 2022](#); [Grybauskas et al., 2022](#); [Marsden & Docherty, 2021](#); [Rad et al., 2022](#); [Sindhvani et al., 2022](#)). Of

the three disturbances, the disruption from the Covid 19 pandemic is the biggest nuisance that has an impact on changing life patterns in the community (Kareem, 2021; Morris et al., 2022; Waitt & Stanes, 2022). In the end of December 2019, The Covid 19 epidemic shook the entire globe virus, which spread and contagion reached all over the world, the World Health Organization declared that Covid-19 was a global pandemic (Barrutia & Echebarria, 2021; Faraj et al., 2021; Malahayati et al., 2021). The impact of the COVID-19 pandemic does not only impact on the aspect of public health, but also affects lifestyle, religion, tourism, economy and others (Abbas et al., 2021; Tsvetkova et al., 2022). On the economic aspect . The pandemic has caused thousands of companies from various industries to stop operating and are no longer able to survive (Nordhagen et al., 2021; Shafi et al., 2020). This, of course, has an impact on its workforce, namely a large wave of layoffs in both the formal and informal sectors (Nugroho et al., 2021; Stephens et al., 2021). Not only did they terminate their employment, many employers also laid off their employees because they could not continue their business (Trinh et al., 2020) . From national data obtained on April 16, 2020, there are many workers in most companies affected by the corona who have been terminated, as many as 229,789 people, while there are 1,270,367 people who have been laid off (UNESCO, 2022). Meanwhile, in the informal sector, there are 443,760 people from 30,794 industries who make decisions to terminate employment. From the information from the Manpower Office, there were 9,096 industries that laid off 72,770 workers (UNICEF, 2021).

The wave of layoffs that also cannot be avoided occurs in the tourism industry, including workers who work in tourist locations, hotels, cafes and restaurants (Block et al., 2022; Chi et al., 2021). Although layoffs are a very difficult decision, in the end there is no choice for Entrepreneurs/Managers of Tourist Spots, Hotels, Cafés and Restaurants to face the conditions during this Covid 19 pandemic (AlFattani et al., 2021; El-Chidtian et al., 2021). A very significant decrease in the degree of tourist visits, hotel occupancy and restaurant visitors causes the tourist areas, hotels, cafes and restaurants to lose their source of income, this situation causes entrepreneurs/managers to no longer be able to finance their operational expenses. In March 2020, World Tourism Organization (UNWTO) assessing the effects of the Covid 19 outbreak on visitors from other countries (Gretzel et al., 2020; Ninaus et al., 2021).

The assessment's findings suggest that the growth of foreign visitors since 1995 has persisted, as evidenced by their tenacity and fortitude in the face of shocks like SARS in 2003 and the world economic crisis brought on by the war in Iraq 2009 (Hadi, 2020; Haryanto, 2020; Modjo, 2020). If the storm can quickly be defeated, the number of foreign tourists will rise to 1.461 million by 2019. (Figure 2).



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The UNWTO currently projects that as a result of the lessons learned from managing the SARS outbreak in terms of size, dynamics of the global travel market, the geographic spread of

COVID-19 (Fanaqi et al., 2020; Jiang & Wen, 2020) Its potential economic impact, international tourist arrivals could decline by 1% to 3% globally by 2020, or down from forecasted growth of 3% to 4% in early January 2020. (Figure 3, and Figure 4).

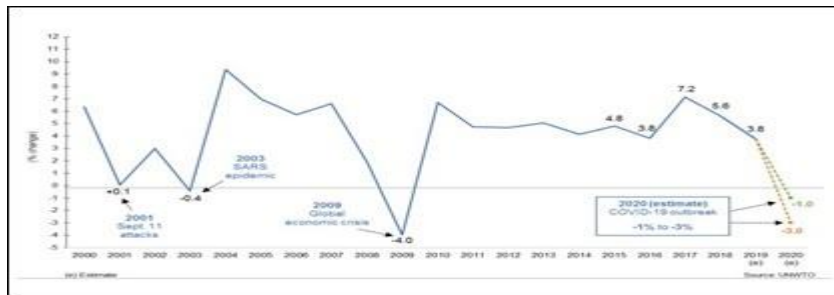


Figure 3.

Revised 2020 forecast – international tourist arrivals, world (% change)

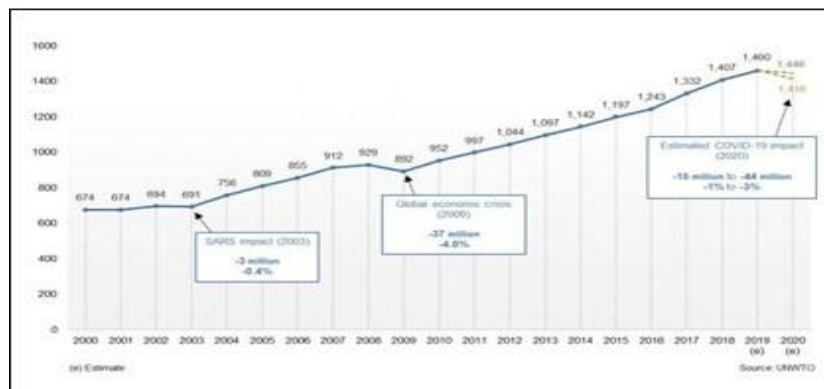


Figure 4. Revised 2020 forecast – international tourist arrivals, world (million)

The same thing also happens in almost all over the world including Indonesia and various countries in the area.

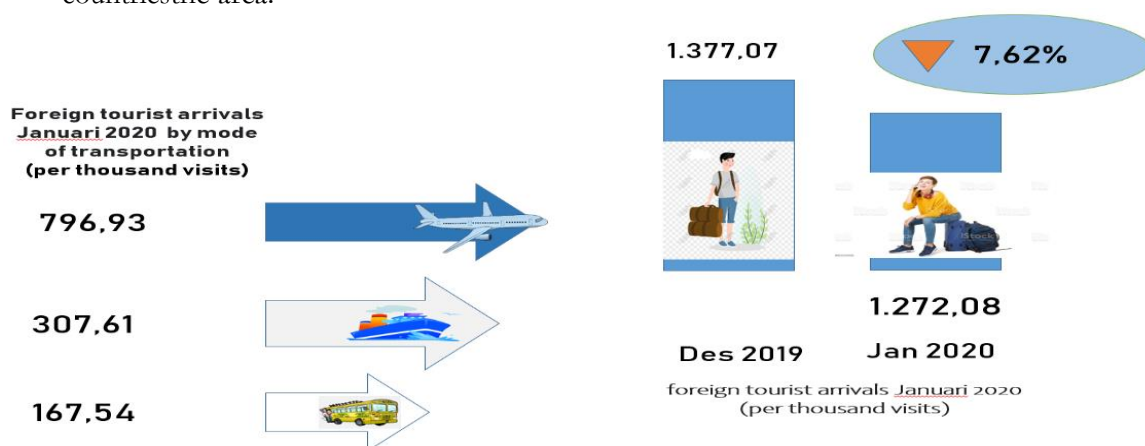


Figure 5. Number of foreign tourists visiting by mode of transportation January 2020

The Central Statistics Agency (BPS) reported a decline when it comes to foreign visitors to the nation in the first quarter of 2020. 1.27 million foreign tourists visited during January 2020 (Škare et al., 2021). When compared to the 1.37 million visits made by foreign tourists in

December 2019, this figure fell 7.62 percent. The Covid19 epidemic that took place in the final week of January 2020 was the main cause of the drop in the number of foreign tourist visits. One of the regions in Indonesia that also relies on its regional income through the tourism sector is the Karo Regency area. Karo Regency is one of the second-level regions in North Sumatra where the name Tanah Karo was formerly known from a long journey that has changed since Dutch colonialism, Japanese colonialism until independence. Karo Regency in North Sumatra Province is geographically located between 2°50'-3°19' North Latitude and 97°55'-98°38' East Longitude. The majority of Karo Regency's area is in the highlands, which are part of the Bukit Barisan range. This region is vulnerable to volcanic earthquakes because there are two active volcanoes nearby. The Karo Regency region is situated between 200 and 1500 meters above sea level ([Susilawati et al., 2020](#)).

### **Wages and Related Legal Aspects Remuneration**

Among the factors that encourages workers to work or support the business as a whole is their pay. Although salaries and wages are sometimes used interchangeably, the two terms have some subtle differences. The following distinction within the remuneration payout system of pay and wages when permanent employees and contract employees are categorized in a corporation.

The following illustrates how wages and salaries are defined differently: In accordance with Soem arso, the definition of wages is compensation for employees who perform manual labor and rely more heavily on their physical prowess. The amount is typically calculated on a daily, unit, or wholesale basis ([Krumbiegel et al., 2018](#); [Martins & Saraiva, 2020](#); [Šilingienė et al., 2015](#)).

The same opinion was also expressed by Mulyadi who stated that wages are generally payments for the delivery of services performed by implementing employees (labor). Wages are given on the basis of daily performance, this practice is usually found in factories. Wages are sometimes also based on units of product produced ([Guo et al., 2022](#); [Xiang et al., 2022](#)).

From the comparison between wages and salaries, the difference can be clearly compared with the guidelines that salaries are given to permanent employees continuously every month. While salaries are paid to workers on a piece-rate basis, daily in accordance with the services rendered so that the amount gained is unclear, and typically to level-level employees. low-wage or fictitious factory workers ([Knudsen et al., 2022](#); [Yamagishi, 2021](#)).

### **Wage System in Indonesia**

1. Wages according to time are wages whose amount is based on the length of work (hourly, per week, per month)
2. Wages according to the unit of output are wages whose amount is based on the number of goods produced by workers (per piece, per item, per weight).
3. Wages based on a piece rate are paid an agreement between the giver and the recipient profession
4. System bonus is additional payment outside of wages as incentives for workers to work better.
5. The business partner system is the provision of wages in the form of company shares ([Budijanto, 2017](#); [Ngurawan, 2016](#)).

### **Legal Aspects of Wages**

Based on the Law no. 13 of 2003 concerning Manpower Article 1 number 30, the definition of wages is as follows: "Wages are the rights of workers/laborers received and expressed in the form of money as compensation from the entrepreneur or employer to workers/labourers that 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". Protection in the field of wages for employee is intended to the protection of employees' fundamental rights. Wage protection and social security for workers are given to workers in general. Wage protection has been clearly regulated in Article 88 of Law Number 13 of 2003 concerning Manpower, namely:

1. Every laborer has a right to remuneration that satisfies an acceptable standard of living for humanity.
2. The government sets a wage policy that protects workers/laborers in order to achieve an income that satisfies a fair living for humanity as mentioned in paragraph (1).
3. The following are examples of wage policies that safeguard workers/laborers as mentioned in paragraph (2):
  - a. The Minimum wage;
  - b. Overtime pay;
  - c. Wages are absent from work because illness;
  - d. Wages do not come to work because they do other pursuits than their profession;
  - e. pay for utilizing their right to a break;
  - f. Form and manner of wage payment;
  - g. Fines and wage deductions
  - h. items that are calculable using wages;
  - i. Proportionate wage structure and scale;
  - j. severance pay wages; and
  - k. Pay for income tax purposes.
4. According to paragraph (three) letter a, the government decides the minimum wage by weighing the necessity for a fair standard of living against productivity and economic growth.

### **Legal Aspects Concerning Employment Termination (PHK)**

Termination of Employment Relations or more commonly known as layoffs, is the termination of a relationship or work ties of one or more employees to the organization/company where they work. Layoffs can occur as a result of an agreed-upon time limit passing or agreed upon in advance and can also occur due to a conflict involving the employee and the employer, death of worker or due to other reasons. As for what is meant by termination of employment, according to FX Djumaldji, is the ending of the employment connection owing to a specific event that ends the rights and obligations of the employee or laborer and the business owner. Much Nurachmad means that the end of an employment relationship is the end of a specific matter that results in the end of rights and duties between employees and employers. D. Danny H. Simanjuntak, A number of significant events can lead to the end of an employment connection between a business owner or employer and their employees, which is known as a termination of employment.

### **Legal Aspects of Termination**

Law No. 13 of 2003 Article 1 Number 25 indicates that the termination of an employee's employment is the consequence of a specific event that ends the employee's or employee and employer's rights and duties. Since termination of work is connected to unemployment, criminality, and employment opportunities, it is essentially a multifaceted problem. The issue of employment termination is a matter of concern since it affects human life, along with the rate of



development of the business industry and the growing number of workforce members engaged in an employment connection. When a worker loses their job, their sorrow officially begins because they will no longer have an income, which will cause them and their families to suffer. However, layoffs continue to occur everywhere in reality. The government in this case has issued regulations relating to termination of employment where the implementation arrangements are always refined continuously. Regulations relating to termination of employment in addition to protecting workers from losing their jobs, also pay attention to employers for their difficulties in dealing with uncertain economic developments. Implementing regulations of Law no. 13 of 2003 contained in various Ministerial Decrees and Ministerial Regulations, and Government Regulations including: The government in this case has issued regulations relating to termination of employment where the implementation arrangements are always refined continuously. Regulations relating to termination of employment in addition to protecting workers from losing their jobs, also pay attention to employers for their difficulties in dealing with uncertain economic developments. Implementing regulations of Law no. 13 of 2003 contained in various Ministerial Decrees and Ministerial Regulations, and Government Regulations including: The government in this case has issued regulations relating to termination of employment where the implementation arrangements are always refined continuously. Regulations relating to termination of employment in addition to protecting workers from losing their jobs, also pay attention to employers for their difficulties in dealing with uncertain economic developments. Implementing regulations of Law no. 13 of 2003 contained in various Ministerial Decrees and Ministerial Regulations, and Government Regulations including: law enforcement guidelines no. 13 of 2003 contained in various Ministerial Decrees and Ministerial Regulations, and Government Regulations including: putting into effect a law no. 13 of 2003 contained in various Ministerial Decrees and Ministerial Regulations, and Government Regulations including :

as follows:

- a) PP No. 78 of 2015 concerning the implementation of wages and severance pay.
- b) Decree of the Minister of Labor and Immigration No : Kep.49/Men/IV/2004 concerning Wage Structure and Scale.
- c) Decree of the Minister of Manpower Number KEP-150/MEN/2000 Year 2000 relating to the Company's settlement of employment terminations and determination of severance pay, service period rewards, and compensation, as well as its revisions.
- d) Government Regulation (PP) No 35 of 2021 concerning Specific Time Work Agreements (PKWT), Outsourcing, Working Time, Work Relations and Rest Time, and Termination of Employment (PHK)
- e) Decree of the Minister of Manpower and Transmigration NUMBER:Kep.51/Men/IV/2004 concerning Long Rest in Certain Companies
- f) The 2020 Government Regulation in Lieu of Law (PERPU) No. 1 of 2020, which has a lengthy title, "State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid19) Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability"
- g) SE Number M/3/HK.04/III/2020 concerning the protection of workers/laborers and business continuity in the context of preventing and overcoming COVID-19, the 2003 Manpower Act arrange system method implementation of termination of employment so that there is a reference that can be used by workers to observe the decision to terminate employment made by the employer or company. The 2003 Manpower Law requires employers or companies to first apply for a permit to terminate the employment relationship to the Industrial Relations Dispute Settlement Agency (LPPHI).

Article 150 of the 2003 Manpower Law states “The provisions concerning termination of

employment in this Law apply to terminations of employment that take place in business entities, whether or not they are legal entities, whether they are individually owned, whether they are partnerships, whether they are legal entities, both private and state owned, as well as business entities. social enterprises and other businesses. Termination of employment as mandated by Law No. 13 of 2003 is a matter as much as possible may not be done by the company. This is mandated in Article 151 which states, "entrepreneurs, workers or laborers, and the government, with all efforts must try to prevent termination of employment." presented in writing, together with the justifications for it, to the Industrial Relations Dispute Settlement Institution. Thus, workers who will be laid off know the reasons that are used as the basis by the entrepreneur or company. Article 154 states that a stipulation on an application for a termination of employment permit will only be issued if the negotiation between the entrepreneur and the worker fails.

### **Severance pay and related legal aspects**

The termination of employment is the beginning of a difficult period for workers and their families. Therefore, to help or at least reduce the burden on laid-off workers, the Employers are required by law to pay employees' due compensation, service fees, and severance pay. Employers are required to provide severance pay as compensation. If an employee leaves their job, the business or the owner is responsible. Mechanism for providing severance pay is regulated in a number of government regulations and policies. Such as Law No. 13 of 2003 and the Republic of Indonesian Minister of Manpower Decree, No. Kep150/ Men/2000. of the 2003 Manpower Act governed by Article 156 the guidelines for severance pay compensation for employees who lose their jobs. The calculation severance pay is as follows:

For one month pay working shorter than a year's time.

- If you work for less than two years but more than a year, you get paid for two months.
- If you work for at least two years but less than three, you'll receive three months' pay.
- 4 months of pay for a practical duration of three years or more, but not longer than four years.
- If you work for at least four years but fewer than five, you'll receive five months' pay.
- If you work for five years or longer but less than six, you'll receive six months' pay.
- 7 months of pay for working for 6 years or longer but less than 7 years.
- If you work for seven years or more but less than eight years, you'll get paid for eight months.
- 9 months of pay for a working period of at least 8 years.

The value of the long service award if employees are laid off is as follows:

- 2 months' worth of salary for fewer than six years, but at least three years.
- 3 months' worth of salary fewer than 9 years, but at least 6 years
- 4 months' worth of salary for nine years or more, but not longer than twelve
- 5 months' worth of salary for 12 years or more but less than 15 years.
- 6 months of pay for fewer than 18 years, but at least 15 years..
- 7 months of pay if you are 18 years old or older but under 21
- 8 months of pay if you are 21 years old or older but under 24 years.
- 10 months of pay after 24 years or more.

In the meanwhile, the compensation that must be paid is as follows:

The cost or costs of returning the worker or laborer and his or her family to the place the worker or laborer is hired to work.

- a. unclaimed annual leave that has not yet been used fallen.
- b. (Minister of Manpower and Transmigration Letter Number: 18 KEP- 04/29/2004)
- c. 15 percent of severance pay and/or gratuity for years of service is used for replacement of housing, treatment, and care, but given to workers/labourers whose employment relationship was terminated due to a serious error or resigned.

d. Additional conditions outlined in the employment contract, corporate policies, or collective bargaining agreement, such as severance pay.

For the purposes of determining severance pay, service pay, and compensation for entitlements, the following two components of salaries are used as the basis:

- a. minimum wages; and
- b. any and all set allowances.

## **METHOD**

### **The type of Research**

In this study, descriptive research is used. In order to precisely characterize a specific person, condition, symptom, or group, as well as to track the spread of a symptom or explore whether there is a correlation between one symptom and another in society, descriptive research tries to provide detailed descriptions of those features.

### **Types of research**

Types of Legitimate Legal Research Research that discusses the legal standards outlined in the law is called normative legal research. This library study is a study that looks at document studies, which include a variety of secondary sources, including law, court rulings, legal theory, and sometimes expert opinions.

### **Data collection method**

The data collection technique in this research is to use a socio-legal approach, which is a legal research method that in addition to analyzing the implementation of wage and severance pay provisions in the applicable normative law / positive law, namely Law No. 13 of 2003 and PP No. 78 of 2015 concerning the implementation of wages and severance pay for employees in the Tourism and Hospitality Industry who were laid off and laid off during the Covid 19 pandemic in accordance with the Act, which were experienced by the parties involved, namely judges, advocates/lawyers, entrepreneurs/entrepreneurs associations. as well as workers/labor or trade/labor unions.

### **Data type**

This study uses secondary data. In terms of binding power, Ronny Hanitijo Soemitro divides secondary data into three categories: primary law materials, secondary law materials, and tertiary law materials. The secondary data are broken down into:

- a. Primary Legal Materials, namely materials that are binding which consists of: the 1945 Constitution of the Republic of Indonesia
  - 1) Code of Civil law
  - 2) Law No. 13 of 2003 concerning Manpower
  - 3) PP No. 78 of 2015 concerning the implementation of wages and severance pay.
  - 4) UU no. 11 of 2020 concerning Job Creation
  - 5) Decree of the Minister of Manpower and Transmigration NUMBER: Kep.49/Men/IV/2004 concerning Wage Structure and Scale.
  - 6) Decree of the Minister of Manpower Number KEP-150/MEN/2000 Year 2000 concerning Settlement of Termination of Employment and Determination of Severance Pay, Service Period Rewards and Compensation in the Company along with the amended rules.
  - 7) Government Regulation No. 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment
  - 8) Decree of the Minister of Manpower and Transmigration



- NUMBER:Kep.51/Men/IV/2004 concerning Long Rest in Certain Companies
- 9) Government Regulation in Lieu of Law no. 1 of 2020 with a fairly long title, namely "State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability
  - 10)SE Number M/3/HK.04/III/2020 concerning protection of workers/laborers and business continuity in the context of preventing and overcoming covid 19 Compilation of Manpower and Social Security Law.
  - 11)Secondary Legal Materials, which consist of literature materials Books, Scientific Journals and the Internet
- b. Tertiary Judicial Materials, namely legal materials that are complementary in nature to provide additional instructions or primary and secondary legal documents explanations. The Legal Dictionary is among the study's Tertiary Legal Materials. and the Big Indonesian Dictionary.

### **Data analysis**

Qualitative Research A study strategy based on philosophy is called methods, Whereas utilizes scientific conditions (experiments) where the researcher serves as an instrument, qualitative data gathering and analysis procedures place a greater emphasis on meaning. Qualitative analysis of this data is sourced from legal materials based on concepts, theories, and laws and regulations regarding wages and severance pay, especially those that often occur during the current COVID-19 pandemic.

## **RESULTS AND DISCUSSION**

To get answers and discuss the problems posed as well as the objectives to be achieved in this study, an analysis will be carried out on quantitative data and qualitative data obtained from research using a systems approach, so that according to Lawrence M. Friedman, then analysis must be carried out on Three components make up the legal system, namely Legal culture, substance, and organization .

### **Workers Protection and Termination of Layoffs & Severance pay during the Covid 19 Pandemic.**

The Decree of the Minister of Manpower Number KEP-150/MEN/2000 of 2000 about Settlement of Termination of Employment and Determination of Severance Pay, Term of Service Rewards and Compensation in the Company governs the determination of severance pay, to gratuity of service, and compensation.

However, the regulation was canceled after Manpower Law Number 13 of 2003 was passed into law. However, several provisions in the Manpower Law have been amended by Law Number 11 of 2020 concerning Job Creation. Article 151 paragraph (1) of Law Number 13 of 2003 concerning Manpower affirms that:

*"Entrepreneurs, workers/laborers, trade unions/labor unions, and the government, with all efforts must try to prevent termination of employment."*

If every effort has been made, but layoffs cannot be avoided, then the purpose of the layoff must be negotiated by the entrepreneur and the trade union/labor union or with the worker/laborer if the worker/laborer concerned is not a member of a trade union/labor union. The government in the COVID-19 pandemic situation asks employers not to lay off workers, especially in sectors that are vulnerable to being affected by the COVID-19 pandemic. In order to avoid layoffs, the Ministry of Manpower has issued a Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Protection of

Workers/Labourers and Business Continuity in the Context of Prevention and Control of COVID-19. Wage protection for workers/labourers is regulated with the following provisions: *“Employing Wage Protection for Employees/Laborers Affected by the COVID-19 Pandemic”*

1. Wages are paid in full for employees/laborers who are designated as COVID-19 Monitoring Persons (ODP) based on a doctor's note and are unable to report to work for a maximum of 14 days or in accordance with the regulations of the Ministry of Health. .
2. Wages are paid in full during the quarantine or isolation period for employees or laborers who are labeled as suspected COVID-19 patients and are quarantined/isolated in accordance with a doctor's statement.
3. Wages for employees or laborers who miss work due to a COVID-19 sickness that is proved by a doctor's declaration are paid in accordance with the legislation.
4. Taking into account business continuity, changes will be made to the amount and method of paying workers'/laborers' wages for businesses that restrict their business operations due to regional government policies for the prevention and control of COVID-19, resulting in some or all of their employees being absent from work. in accordance with the contract between the employer and the employee.

So, avoid layoffs, employers can introduce modification to based on an agreement between the parties, the amount and procedure for paying payments to employees or laborers who were temporarily laid off owing to the COVID-19 epidemic. In addition, workers/labourers who are suspected of or positively infected with COVID-19 are also entitled to wages based on the circular letter.

If the entrepreneur is unable to pay wages according to the minimum wage as a result of COVID-19, the entrepreneur can postpone the payment of wages (if the entrepreneur is unable to pay wages according to the minimum wage), by first negotiating with the workers/labourers or the trade union/labor union regarding the suspension. The suspension of payment of the minimum wage by the entrepreneur to the worker/labourer does not necessarily eliminate the employer's obligation to pay the difference in the minimum wage during the period of suspension.

Based on this description, layoffs are not recommended. There are alternative efforts to keep employing workers/labourers and maintain business activities as described above, however, observations and interviews of researchers with workers, some of the workers at the research sites who work in the tourism, hotel and restaurant industries, some of these workers must experience layoffs without severance pay, being laid off without receiving wages while waiting to be called back to work if the situation improves.

### **The Rights of Workers Affected by Layoff During a Pandemic**

In principle, if there is a layoff from the company, the company must pay severance pay and/or service award (“UPMK”) and compensation for entitlements that should be received. As regulated in Article 81 number 44 of the Job Creation Law which amends Article 156 of the Manpower Act.

As for referring to Article 81 number 44 of the Job Creation Law which amends Article 156 of the Manpower Law, the amount of severance pay given is as follows:

- A month's salary for a work term of less than a year;
- Working time of at least one year but less than two years, two months' pay;
- Working period of at least two years but less than three years, three months' pay;
- Work time of at least three years but less than four years, four months' pay

- Work period of at least four years but less than five years, five months' pay;
- Work term of at least five years but less than six years, six months' pay;;
- Work period of at least six years but less than seven years, seven months' pay;
- If you work for 7 years or longer but less than 8 years, you'll receive 8 months' pay
- 9 months of pay if you worked for 8 years or more.

Furthermore, the amount of Term of Service Rewards awarded is as follows, in accordance with the provisions of Article 156 of the Manpower Law is amended by Job Creation Law Article 81 Number 44 as follows:

- 2 months of pay for employment lasting 3 years or more but less than 6 years;
- 3 months of pay for employment lasting 6 years or more but less than 9 years.;
- 4 months of pay for employment lasting between 9 and 12 years
- 5 months of pay for employment lasting between 12 and 15 years.
- Working periods of 15 years or more but under 18 years are compensated with 6 months' pay
- working periods of 18 years or more but under 21 years are compensated with 7 months' pay;
- 8 months of pay for a work term of 21 years or more but less than 24 years;
- 10 months' worth of pay after 24 years or more of employment.

The following are acceptable UPH provisions as defined by Article 81, number 44 of the Job Creation Law, which replaces Article 156 of the Manpower Law:

- Costs or return fees for employees and their families to the location where the worker is accepted to work;
- Annual leave that has not yet been used and has not yet expired;
- Additional items specified in the employment agreement, business policies, or collective labor agreement.

The above provisions are also influenced by various other conditions. One of them is an emergency or *force majeure* like during this pandemic which is worth paying attention to.

This then prompted the ratification of Government Regulation (PP) No. 35 of 2021 concerning Specific Time Work Agreements (PKWT), Outsourcing, Working Time, Employment Relations and Rest Time, and Termination of Employment (PHK).

The regulation stipulates layoffs of workers for reasons of efficiency caused by the company experiencing a loss, so that the company's financial condition cannot afford it, the company is allowed to pay severance pay equal to half of the stipulated provisions.

Government Regulation (PP) No 35 of 2021 distinguishes the rights of laid-off workers based on the reasons, including:

Workers are entitled to severance pay 1 time severance pay, UPMK 1 time UPMK provisions, and UPH, if laid off for the following reasons:

1. The company combines, consolidates, or separates businesses, and the employee is unwilling to carry on their employment or the employer is unwilling to accept them.
2. Company takeover
3. To reduce losses, the business practices efficiency..
4. The business didn't go out of business because it lost money.
5. The corporation is deferring its debt payments, not because it has experienced a loss.
6. The worker has filed a request for layoff on the grounds that the business has done the act mentioned in Article 36, letter g, of PP 35/2021.

Workers are entitled to severance pay 0.5 times the severance pay, UPMK 1 times the UPMK provisions, and UPH, if laid off for the following reasons:

1. Takeover of a company that results in changes to the terms of work and workers not willing to keep the professional connection going.
2. The business operates effectively because the company suffers a loss.
3. The company closed due to continuous losses for 2 years or not continuously for 2 years.
4. Force majeure caused the business to shut down.
5. The business is struggling. delay in paying debt obligations due to the company experiencing losses.
6. Bankruptcy company.
  - a. The employee transgresses the terms of the Employment Agreement and Company Regulations (“PP”), or Collective Labor Agreement (“PKB”) and has previously been given the first, second, and third warning letters, respectively.
  - b. Workers are entitled to severance pay 0.75 times the severance pay, UPMK 1 times the UPMK provisions, and UPH, if the company experiences force majeure conditions that do not cause the company to close.
  - c. Workers entitle themselves to severance pay 1.75 times the severance pay, UPMK 1 times the UPMK provisions, and UPH, when entering retirement age.
  - d. Workers are entitled to severance pay 2 times the severance pay provisions, UPMK 1 times the UPMK provisions, and UPH, if:
    1. Workers died.
    2. Workers are chronically ill or disabled owing to work accidents and are unable to perform their work after exceeding the 12 month limit.
    3. Workers are entitled to a UPH and severance pay, the amount of which is regulated in the work agreement, PP, or PKB if they are laid off for the following reasons:
      4. There is a decision of the industrial relations dispute settlement institution stating that the entrepreneur has not committed the act as referred to in Article 36 letter g of PP 35/51 against the application submitted by the worker.
      5. Resigned voluntarily and complied with.
      6. The worker is absent for 5 or more working days in a row without written information accompanied by valid evidence and has been summoned by the Employer 2 times properly and in writing.
      7. Workers commit violations of an urgent nature as regulated in the work agreement, PP, or PKB.
      8. Workers are unable to work for 6 months due to being detained by the authorities because they are suspected of committing a crime.
      9. The worker is found guilty of committing a crime based on a court decision.

### **Protection of Workers and Wages of Workers During the COVID-19 Pandemic in accordance with Government Regulations**

In response to the ongoing Covid 19 pandemic and a major impact on workers in various industries, the Government has stipulated Peraturan Perundang-undangan Number. 1 of 2020 suspends the application of various provisions in 11 laws and changes the material of 1 law, namely the APBN Law. Likewise, laws that have not been changed or suspended by the Peraturan Perundang-undangan means that they are still valid as they are, so they cannot be disregarded in the execution of PERPU No. 1 of 2020. The purpose of PERPU Number. 1 of 2020 is only to overcome the situation in monetary and economic fields, Under these circumstances, the stipulation of PERPPU should not only be limited to the fiscal economy, but should be comprehensive to include the employment cluster. The statement or proclamation from a condition emergency by the Head of State causes a change in the legal

regime from a normal state to a state of emergency. Changes in the normative system include changes in the ideal behavior system and government actions that are out of the ordinary under normal circumstances. In fact, states of emergency can also be used as a reason or condition for postponing the rights and freedoms guaranteed in the basic law or constitution of a country.

Employment law reforms are based on collectivity and by the ever-growing protection of workers. Conceptually it departs from the assumption that there is an asymmetrical ties between employees and employers, and therefore the need for state intervention to protect workers who will always have a weaker position in front of capital and employers. In the labor law literature, these changes are reflected in the trend of deregulation and flexibility, which weakens the function of the traditional collective interest representation of workers. This is what Indonesia also experienced through package 3 of the labor laws issued between 2000 and 2004. All three are clearly influenced by the interests of investors more than the interests of workers. Reality in the field also shows similar things as found by researchers in the field, In a COVID-19 pandemic situation like this, the Ministry of Manpower has not only issued a Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 of 2020 concerning Protection of Workers/Labourers and Business Continuity in the Context of Prevention and Control of COVID-19. However, issuing Circular Letter Number M/7/AS.02.02/V/2020 regarding business continuity plans in the face of the coronavirus disease 2019 (COVID-19) pandemic, this circular is intended to provide labor protection and business continuity from the impact of the pandemic and prevent the spread of covid-19 in companies that are still carrying out business activities and producing in accordance with the provisions of the applicable laws and regulations, so that entrepreneurs, workers, to the government as much as possible trying to prevent layoffs by taking systematic and effective steps as a preparedness measure by preparing business continuity plans in the face of the COVID-19 pandemic as stated in the circular letter. Several policies concerning the legal protection of workers have also been released by the government, including:

- a. The issuance of the pre-employment card program  
This pre-employment card program aims to develop the competence of the workforce, increase productivity and competitiveness of the workforce. The pre-employment card is a way for the government to provide assistance to small workers/laborers who have experienced layoffs (PHK) as well as small and micro business actors who are affected, so that they can work and work again. The pre-employment card program provides assistance to each card holder in the amount of Rp. 3,550,000 for 4 months which are sent in stages. In addition, the government is also working with BP Jamsostek to provide an additional intensive of Rp. 600,000 to every worker who is a victim of layoffs who have been registered with BP Jamsostek and also an incentive to work surveys of Rp. 150,000.
- b. Cash labor intensive program  
This program is implemented to provide temporary income for daily workers who have lost their income due to various social restrictions in the midst of the covid 19 pandemic. The target of this program is for poor families, unemployed or already unemployed.
- c. Policy issuance and protection to workers.  
The Minister of Manpower has issued various policies and programs to protect the safety and rights of workers while at the same time maintaining business or business continuity. These policies and programs were issued to realize the new normal order of employment during the Covid-19 pandemic. The Ministry of Manpower issues the Minister of Manpower SE of the Republic of Indonesia Number M/8/HK.04/V/2020 concerning Protection of Workers/Labourers in the Work Accident Insurance Program (JKK) in Cases of Occupational Diseases Due to COVID-19. The SE emphasizes the granting of



rights to workers who are at risk and exposed to COVID-19 to obtain protection from the JKK (work accident insurance) program in accordance with the law.

d. Social safety net program (JPS)

The JPS program during the Covid-19 pandemic is a program designed to help poor people affected by the COVID-19 pandemic and is carried out through rescue and recovery stages to return to normal conditions. These programs are basic food assistance, cash social assistance in which this program provides cash funds to the community in the amount of Rp. 600,000 to the community for 3 months, free electricity, which is free electricity intensive electricity, which is given to workers affected by the COVID-19 pandemic, with provide exemption from bills, electricity discounts, elimination of minimum fees and elimination of abnomen, and employee salary subsidies where these subsidies are given to employees registered with BPJS for employment with salaries below 5 million. Recipients of this employee salary subsidy will receive assistance of Rp.600.

## **CONCLUSION**

In the current Covid- 19 pandemic conditions, The application and enforcement of laws require specific consideration, regulations and decrees related to the protection of wages and protection for workers in the workplace, employers can defer payment of wages( if the entrepreneur is unable to pay wages according to wages). minimal wage), by first negotiating with the workers atau laborers or trade unions atau labor unions regarding the suspension. The postponement of payment of the minimal wage by the entrepreneur to the worker atau laborer does not necessarily eliminate the employers obligation to pay the difference in the minimal wage during the period of suspension. Then, according to the Circular Letter of the Manpower, Transmigration and Energi Office of the DKI Jakarta Province Number 14 atau SE atau 2020 of 2020 Company executives are required to be able to take precautions against the risk of COVID-19 virus transmission in relation to the appeal to work from home (work at home). The implementation of sah protection for workers atau labourers is implemented in the form of circulars from the Minister of Manpower, pre- employment card programs, cash- intensive work, social safety nets and issuance of policies and protections for workers. implementation of sah protection for workers World Health Organization have been laid off and laid off, namely for workers World Health Organization have been laid off, the method of giving wages is half paid in the range of 25% to 50% according to the mutual agreement between the two parties by referring to government regulations and the circular letter of the minister of manpower so as not to burden both parties, while for workers World Health Organization are laid off severance pay is paid for 3 months of wages during the pandemic, The government also needs to issue regulations related to the Protection of Workers in the World Health Organization is still employing their workforce in the midst of the COVID- 19 Pandemic situation in instruksi to protect work status in instruksi to avoid Termination of Employment without severance pay and reduction and withholding wages that are not in accordance with the provisions.

## **Suggestion**

The implementation of policies issued by the government during the COVID19 pandemic, which are actually there to protect every worker's rights against exploitation by employers and that every worker/labor has the right to guarantee work and a decent living in the world, requires supervision and commitment from various parties in the employment market. In order to fulfill the normative rights of workers and ensure that both parties in the employment

relationship, namely employers and employees, understand and accept the situation, the government's goal is to uphold and foster justice for the continued viability of business, particularly in light of the current COVID-19 pandemic. Because both parties are equally impacted by COVID-

19, it must be modified in accordance with the capabilities of the business in order to fulfill the normative rights of workers.

Additionally, it is essential to conduct joint inspections between the Ministries of Health and Labor on workplaces that are still conducting business during COVID-19 Pandemic in order to prevent businesses' employment practices that are arbitrary and in violation of Law Number 13 of 2003 Concerning Manpower, which are believed to be causing the COVID-19 outbreak to grow uncontrollable.

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