

Legal Discourse on Manpower During COVID-19 Outbreak

Richard Kennedy
Master of Law, Faculty of Law, Universitas Diponegoro
kenrichi27@gmail.com

ABSTRAK

Covid-19 has become a global epidemic all around the world. All countries around the world have been completely struggled by this outbreak, including Indonesia. Economy crisis is something that could not be avoided. Naturally, workers, and entrepreneurs will be either directly or indirectly affected. Massive amount of companies has applied the regulation "Termination of Employment", laid off the workers, and even deduction on wages payment. Workers have become vulnerable parties in this case because they do not have enough assurance. Article 164 (1) Act No. 3 of 2003 concerning Manpower indeed regulates the Termination of Employment regulation because of force majeure, however this law seems to be slightly unsuitably applied for this outbreak Covid-19 situation. Therefore, this study is aimed to do legal discoursing in which can both assure those workers and maintain the operation of business in this tight condition. Finally, Indonesia needs to return back to kinship culture and unity in diversity philosophy as stated in Pancasila to equalize the interests both for workers and employers. According to Article 33 (1) and (4) of 1945 Constitution of Republic Indonesia, it has been firmly stated that Indonesian economy should be organized as a common endeavor based upon the principles of the family system and conducted on basis of Pancasila democracy. Hence, government is expected to play the intermediary role in order to unify and even out interest of all parties. Law of Manpower need to be adjusted with some regulations about rights and responsibilities accommodate to workers, employers, and government in deal with epidemic outbreak.

Key words: Covid-19; Legal Discourse; Manpower

ABSTRAK

Covid-19 telah menjadi pandemi global. Seluruh negara dibuat luluhlantah, termasuk Indonesia. Krisis perekonomian tak dapat dihindarkan. Tentu ini berdampak bagi pekerja dan pengusaha. Banyak perusahaan mengambil kebijakan PHK, kebijakan merumahkan, dan pengurangan upah. Pekerja menjadi pihak yang rentan, karena kurangnya jaminan. Pasal 164 ayat (1) Undang-Undang Nomor 13 Tahun 2003 memang telah mengatur mengenai PHK dalam keadaan memaksa, namun itu dirasa kurang ideal diterapkan dalam situasi pandemi covid-19. Karenanya, tulisan ini hendak mendiskusikan hukum, yang memberi jaminan pada pekerja sekaligus mempertahankan keberlangsungan usaha di tengah pandemi covid-19. Sebagai simpulan akhir, Indonesia harus kembali pada kultur kekeluargaan dan kebhinekaan sesuai falsafah Pancasila dalam menyeimbangkan kepentingan pekerja dan pengusaha. Pasal 33 ayat (1) dan ayat (4) UUD 1945, telah menegaskan bila perekonomian Indonesia berasaskan kekeluargaan dan berdasarkan demokrasi Pancasila. Karena itu, negara diharapkan hadir untuk menjadi penengah, menyatukan dan menyeimbangkan berbagai kepentingan. Hukum ketenagakerjaan hendaknya diperbaharui, dengan mengakomodir ketentuan-ketentuan terkait hak dan kewajiban pekerja, pengusaha, dan negara bila terjadi pandemi.

Kata Kunci: Covid-19; Diskursus Hukum; Ketenagakerjaan.

A. INTRODUCTION

Corona Virus Disease (Covid-19) outbreak has been global disaster for the world. All sectors, particularly health, social welfare, and economy sectors has been in chaos due to this outbreak (Gennaro et al., 2020). Indonesia also cannot run from this reality who has announced its first Covid-19 case at 3rd March 2020 (Ihsanuddin, 2020). No one can estimate how far this outbreak will continue. Professionals can only make their prediction through Mathematic models regarding the possibilities of total cases, how long the duration of this outbreak will be, and those impacts accrued as a result of outbreak (Nuraini, Khairudin, Apri, 2020).

Covid-19 originally is caused by a so-called virus SARS-COV-2 (Susilo et al., 2020). Transmission of this virus is mainly happened among human (Susilo et al., 2020). Covid-19 has been spread broadly and hastily all around the world. Health impacts or symptoms inflicted by this virus specifically are: nasal congestion, dry cough, fever, headache, nausea, and if body immune system is not good, it might cause death. Infected on patients with hereditary diseases such as diabetes, hypertension, liver disease, cancer, URI (Upper Respiratory Tract Infection), autoimmune disease will increase the death risk (Susilo et al., 2020). Evidently, Covid-19 has caused tremendous amount of deaths.

Therefore, World Health Organization (WHO) has confirmed Covid-19 as a global outbreak (World Health Organization, 2020). Countries all around the world has increased their public health emergency

status by applied lockdown regulation or even only enforced Large Scale Social Restriction (PSBB) like Indonesia. As a prevention action, WHO recommends some guidelines and healthcare protocol to be carried out, such as social distancing, regularly washing hands, use masks whenever going out, ethics in coughing and sneezing, along with protocols to see the doctor if feels and experiences any kind of symptoms (Susilo et al., 2020) (Gennaro et al., 2020).

This outbreak become an interesting topic to discuss concerning manpower. Rights of occupational health and safety has become fundamental in any discussion. However, this study might be distinctive that focused more on regulation regarding Termination of Employment, deducted wage, and regulation about laying off workers. Without reducing the important essential in rights of occupational health and safety, limitation in discussion is ultimately against the more focused and comprehensive findings and analysis.

Economic sector, distinctively, Covid-19 outbreak has made this sector experienced a great shock that predicted will be greater than 1998 economy crisis. (Septalisma, 2020). Companies and factories are all preferred to cut their production or totally stop their production, respectively. Consideration behind this is that rapidly decreasing demand by consumers which make the cost and profit in making those productions are not corresponding to one another. Workers indubitably will be hardly impacted either their employment will

be terminated, wages deducted, or even uncertainty of being laid off.

Ministry of Manpower and Transmigration of the Republic of Indonesia at 20th April 2020 released the numbers of workers that are impacted by this Covid-19 outbreak (Biro Humas Kemnaker, 2020). For a number of 241.431 workers in formal sector have been terminated from their employment, in the other side, 1.304.777 workers have been laid off. Whereas, in informal sector, 538.385 workers have been lost their job. Accumulation of the total numbers of workers that either have been terminated from their employment or been laid off has been reached 2.084.593 people, calculated from 116.370 companies. This number is assumed to keep increasing in the future. This data is also not covered the number of workers whose wages have been deducted.

Undoubtedly this could become certain problems among this outbreak. Act No. 13 of 2003 concerning Manpower (Labour Law) as well as all its derivative regulations veritably have regulated about Termination of Employment, wages system, also rights and obligations of both workers and employers. However, this law seems to be slightly unsuitably applied for this outbreak situation. As a result, Ministry of Manpower and Transmigration of the Republic of Indonesia at 17th March 2020 has issued Circular of the Minister of Manpower No. M/3/HK.04/III/2020 on Protection of Workers and Business Continuity in Precaution and Prevention of

COVID-19 (SE Menaker 2020) (Biro Humas Kemnaker, 2020).

This Circular of the Minister of Manpower 2020 (SE Menaker 2020) has 3 main points, which is (1) handling cases of Covid-19 in the work environment; (2) leave rights for those positively infected Covid-19 or have big possibilities infected by Covid-19 with wages paid accordingly; (3) reducing amount of payment of workers' wages are made based on agreement between employers and workers with taking into account business continuity. This circular letter (SE) is appointed to all governors in Indonesia in respective of their provinces. Despite the fact that this SE is not mandatory and only become a guideline, big appreciation should be given to the effort made in circular letter. SE in this point aiming to protect two parties: (1) workers; and (2) business continuity. This indicates that it has the urge to balance both workers' rights and business continuity.

As noticed, there are several differences in orientation between workers and entrepreneurs. Once workers oriented in protection of their rights, entrepreneurs in the other hands, put their orientation on business continuity and profits (Ismono, 2018). Undeniable that this will make the gap wider. Moreover, entrepreneurs always be identified as the authoritative powerful party and workers as the vulnerable powerless party (Hakim, & Ispriyarso, 2016). Hence, in the concept of welfare state, state needs to show up as an intermediary, unite those two concerns, and diminish the gap (Budiyono, 2013).

Workers, entrepreneurs, and government need an instrument that tend to be mandatory which can balance all the common interests. Controversy is unavoidable, obviously, moral hazard will compete with the economical value. Those in power will in fight to disqualified one another, competing for influencing power (Danardono, 2016). Government in this case, yet, still have to be an intermediary for those interests and power, remember that SE still not has mandatory power and Act No. 13 of 2003 has not accommodated those concerns.

Accordingly, legal discourse is needed to build the concept that have ability to define and acknowledge workers' rights as well as business continuity during this Covid-19 outbreak. Legal discourse is an attempt to form legal knowledges that is critically established to make changes in life practice (Kennedy, 2019) (Adams, 2017). Legal discourse expectantly can harmonize moral hazard with economical value, as well as become legal breakthrough to protect workers from exploitation and ensure the business continuity.

Locke and Marx contradicted idea, along with progressive Satjipto Raharjo will embellish this study. Locke and Marx ideas are aimed to elaborate human nature of working and function of state. Satjipto idea in the other hand, is aimed to refine on Locke and Marx tension in their idea with a concept that working, and state function is accordingly to their nation's culture. Those ideas conclusively will establish a discourse that can equate workers' interest with the business continuity.

Previously, study about Covid-19 still focus on medical issues (Susilo, et al., 2020) (Xiaowei, et al., 2020) and Mathematical models to predict to possibilities of total cases and duration of this outbreak (Nuraini, Khairudin, Apri, 2020) (Sugiyanto, & Abrori, 2020). In fact, Covid-19 has changed all life aspects, not only health sector. Studies about social humanity regarding to Covid-19 are still limited to analysis of lockdown regulation that should be implemented by the government (Yunus, & Rezki, 2020) and assurance of health rights for citizens during this Covid-19 outbreak (Nurhalimah, 2020).

Additionally, study in China points out the effectiveness of moral obligation impact, public leadership, and collective action toward countermeasure of Covid-19 (Yang, & Ren, 2020). Another study in economic sector asserts the impact of Covid-19 in macro-global economy, examines the predicted cost and loss due to outbreak as well as future investment opportunities in medical sector (McKibbin, & Fernando, 2020).

There are currently none studies that investigate about the impacts of Covid-19 in manpower sector, particularly about manpower law. Earlier studies about manpower concerning Termination of Employment only limited to discuss about those workers' negligence in result of termination of their employment (Sonhaji, 2019), companies efficiency factor resulted in termination employment of their workers (Santoso, 2014), along with Termination of Employment and workers' rights regulation for insolvent companies (Budiyono, 2013)

(Sarira, 2011). Therefore, this study will undertake the legal discoursing part during this outbreak calamity.

In accordance with those backgrounds above, this study will examine the main problem question: how legal discourse is capable in equate between workers' rights and business continuity in the middle of this Covid-19 outbreak? To ease the analyzing process, this study divides its main idea into two parts: (1) Regulations in Termination of Employment, Laying off the Workers, and Deduction of Wages; as well as (2) Legal Discourse as Mediator for Various Interests.

B. DISCUSSION

1. Regulations in Termination of Employment, Laying off the Workers, and Deduction of Wages Payment.

a. Regulations in Termination of Employment

Provision of law concerning Termination of Employment generally is regulated in Article 150 until Article 172 Act No. 13 of 2003. Termination of Employment caused by force majeure, precisely, is allowed under Article 164 (1) Act No. 13 of 2003. Force majeure due to Covid-19 has been justified by Presidential Decree No. 12 of 2020 concerning Covid-19 outbreak is declared as national disaster, which is officially ratified on 13th April 2020 (Ihsanuddin, 2020). Indeed, Covid-19 has interfered as well as massively shifted production pattern, distribution, and consumption of good and services.

Thus, companies are required to do efficiency or shut their business down, precisely.

Dismissed workers due to Termination of Employment have the rights to receive severance pay, reward-for-years-of-service pay, and or compensation pay for rights or entitlements that the dismissed workers have not utilized (Vide, Article 156 (1) Act No. 13 of 2003). Those are rewarded to workers as their compensation, who has lost their jobs and incomes. Corresponded to regulations stated in Article 164 (1) Act No. 13 of 2003, if entrepreneur may terminate the employment of his or her workers/ labourers because the company has to be closed down due to force majeure, workers shall be entitled to one time severance pay, one time reward pay for period of employment, and compensation pay for entitlements that have not been used. If the company is not closed down but just going through efficiency instead, according to Article 164 (3) Act No. 13 of 2003, workers shall be entitled to twice amount severance, one time reward for period of employment pay, and compensation pay for entitlements that have not been used.

The matter is, not all of companies have a good balance sheet, including do not have sufficient amount of petty cash in their account to survive this outbreak. Apparently only large cap companies have this petty cash. As a result, most of the dismissed workers cannot reach the fulfillments of their rights. Undeniable that workers at this state has been aggrieved, however this is unavoidable reality to deal with. Hence, there are some companies that cannot

apply Termination of Employment regulation but lay off their workers instead.

b. Regulations in Laying Off Workers

Regulations to lay off workers literally are not regulated in Act No. 13 of 2003. However, the principle that grounds this action is “no work no pay”, which is contained in Article 93 (1) Act No. 13 of 2003. Workers in this case, essentially, do not need to come to work during this outbreak which means that companies do not have the obligations to pay them. This regulation indeed put workers in uncertainty, they are still counted as workers, but they cannot come to work and cannot receive any wage. Whereas, ironically no one knows when this outbreak will come to an end.

Article 93 (1) Act No. 13 of 2003 which has commonly used as the foundation to lay off the workers need to be comprehensively discussed. Indeed, on this basis, if workers are not working, they are not entitled for any wage payment. However, explanation in Article 93 (1) Act No. 13 of 2003, is stated that the principle of this excludes those workers that cannot work not for their own negligence. Thus, if workers are halted from their job either by their employers or government regulations to do Large Scale Social Restriction (PSBB), then, in fact they are still entitled to wage payment because they stop working not because of their own reasons.

Terminology of laying off workers is not clearly stated in Act No. 13 of 2003, but this term had been used before in 2 Circular of the Ministry of Manpower, which are: Circular of the Ministry of Manpower

No.05/M/BW/1998 of 1998 concerning Temporarily Laid Off Workers' Wages Not to Termination of Employment (SE Menaker 1998) and Circular of the Ministry of Manpower No. 907/MEN/PHI-PPHI/X/2004 concerning Prevention of Mass Termination of Employment (SE Menaker 2004). Those two Circulars of the Ministry of Manpower have allowed the regulation to lay off workers. SE Menaker 1998 declared that even though workers have been laid off, their wages and severance pay need to be fully paid unless it has contradictorily stated in the collective work agreement, or if entrepreneur is intended to only pay partial amount then it need to be priorly discussed with workers. Whereas, SE Menaker 2004 has stated that regulation to lay off workers is a prevention action to mass of Termination of Employment.

Termination of Employment and regulations to lay off workers have their own advantages and disadvantages. Termination of Employment give workers their inevitably status that allowed them to pursue their rights. However, that also indicates that their have loss their jobs and incomes. In the other hand, laying off workers make them ambiguous of their current working status with unpredictable duration, with no work no pay. Despite of this, if all condition is getting better, they still can go back to work. Entrepreneurs periodically use this regulation of lay off workers to evade those obligations arise if they terminate their workers' employment. They assume that workers can voluntarily resign from their job which make entrepreneur does not have to fulfill

their obligations in paying out severance pay, reward for period of employment pay, and compensation pay for entitlements that have not been used.

c. Regulation in Deducting Wages Payment

Regulations to deduct wages payment as settled in SE Menaker 2020, in fact, has been restricted by Article 90 (1) Act No. 13 of 2003. However, Article 90 (2) Act No. 13 of 2003 gives option to those entrepreneurs who could not meet wages payment as it should be. Minister of Manpower and Transmigration Decree Number: Kep.231/MEN/2003 concerning Procedures for Postponing the Application of the Minimum Wage (Kepmenaker 231/2003) was declared to settle those technical issues. This rules only limited to those procedures in postponing compliance to pay minimum wages, basically.

Application for a permission to postpone minimum wages shall be submitted to the the provincial Governors within a period of no later than 10 days before the date of minimum wage shall officially take place (Vide, Article 3 (1) Kepmenaker 231/2003). This application shall be made based on the written agreement between entrepreneur and (Vide, Article 3 (2) Kepmenaker 231/2003). Written agreement has to be made through in-depth, honest and open negotiations. Moreover, application shall be attached with financial reports for the last two years, data on workers' wages, data on total number of the enterprise's workers and the number of workers whose payment of minimum wages will be postponed, company's production and marketing

developments for the last two years, and production and marketing plans for the next two years (Vide, Article 4 (1) Kepmenaker 231/2003).

In case that provincial Governors approved the application, postponement in compliance of minimum wages shall be granted for a period of no longer than 12 months (Vide, Article 5 (1) Kepmenaker 231/2003). Postponement in compliance of minimum wages shall be given by paying minimum wages according to the previous minimum wage rate, or higher than the previous rate but lower than the current rate, or increases minimum wages gradually (Article 5 (2) Kepmenaker 231/2003). Entrepreneurs are under obligation to pay the minimum wages as it should be after the permission is expired.

Accordingly, based on Kepnaker 231/2003, entrepreneurs shall primarily apply for postponement in compliance of minimum wages to provincial Governors. This indeed not as straightforward as what stated in SE Menaker 2020 that only covered the agreement between entrepreneurs and workers in terms of wages deduction. Furthermore, this Ministry of Manpower and Transmigration Decree (Kepnaker) also points out that if the maximum deduction of minimum wages only limited to the previous minimum wage rate, thus, there is no possibility that it will attain 50% more deduction. Indeed, this regulation is undeniable irrelevant, recognized that this Covid-19 outbreak condition has interfered production pattern, distribution, and consumption which impacts the companies' revenue. Consequently, entrepreneurs might not have the

ability to pay the workers' wages with the value that has entitled to them.

Workers' rights and business continuity need to be equally protected. Workers are the heart in business sectors, while businesses are the heart of national economy (Charda S, 2015). This current Covid-19 outbreak situation certainly has impeded both workers and entrepreneurs. There is no alternative to fulfil the workers' rights, yet entrepreneurs have to deal with the potential to close their business. Thus, regulations that can equate both workers' and entrepreneurs' needs are crucial in this moment. Regulations that can ensure these two entities, protect the whole national economy. Hence, this study is substantial in discussing concept developments concerning the nature of work and state function.

d. Concept Reflection

John Locke once states that working is to get private property rights (Locke, 1970). The nature of work is to manage the possessed life, body, energy, and resources. Humans can claim those to be theirs, legitimate their ownership by working. As for Locke, every human has the natural rights in the form of life, liberty, and property rights, which could not be alienated by the government. This thought has formed in individual rights, which developed into Human Rights. Thus, according to Locke, government has the obligations to protect and shall not alienated those natural rights (social contract) (Mulyana, 2013). Assuredly, government is only in

charge of protection against violation of those individual human rights (night watchman).

Locke argues that limitation on property might happen based on human awareness of others' needs (Mali, 2015). Human can acquire as much works as they can consume in terms that they cannot pile it up until they are rotted. Human ethically just claimed on properties which they need. However, this ethical idea cannot be adapted since money is introduced as medium of exchange (Mali, 2015). In fact, that money cannot rot, tremendous or few amount of money is relative as they can be reduced in nominal value. Consequently, human become greedier and attempt to pile up as much money as they could in their work.

Go along with Locke, Adam Smith concludes that if that property is a result of a work. Property can be resulted in prosperity if human can work productively (Mali, 2015). Hence, Smith proposes his division of labor concept for a productivity (alienation) reason. Smith points out, furtherly, human is homo economicus. Human is tended to strive all resources they have in order to pursue their own gratifications. Accordance to Smith, if this human's egocentric and individualistic characters are left out without intervention from government, thus, allocation of factors of production, equity, justice and freedom will occur effectively, while supporting the development of innovation and creativity (Mali, 2015). This idea that Smith has developed is the initiation in the presence of free market.

Locke and Smith idea of Night watchman state genuinely creates the gap between social classes.

Karl Marx through *Das Capital* accused against it. Marx summons the unfair imbalance relation of powers between workers and capitalist (Hendrawan, 2017). Workers are exploited to increase the capital of capitalist. As a result, working will go against the human rights. Working will not be seen as an actualization and self-expression, instead, it has been alienated just for capital needs (Hendrawan, 2017). Human shift their business and work as a commodity which only valued by nominal numbers. Besides alienation, working often provokes exploitation to workers from capitalist (Zuhdan, 2014).

Through *The Communist Manifesto* written together with Frederick Engel, Marx engaged to diminish ownership on production tools as private property (Mali, 2015). Marx sees production tools need to be controlled by the government for the sake of common prosperity (Mali, 2015). Those that previously become night watchman state can transform to a state that take control the production issues (welfare socialist/ welfare state). This is the only way to break exploitation against workers from capitalist. Hence, work outcome can be equally relished together. The goal of Marx is to create a society without social classes which can generate justice without suppression (Zuhdan, 2014). *Das Capital* and *The Communist Manifesto* become the fundamental guideline for labour movements even Marx has never led any labour movements (Suseno, 2013).

Differences between Locke's (liberal-capitalist) and Marx's (social-communist) ideology indeed very

obvious. While Locke considers working as a way to earn gains, Marx, on the other hands sees working as self-actualization and profits will only make human be alienated from the others. Supposing that Locke anticipated the government to maintain disciplines and securities for the continuance of individual natural rights and does not have the rights to alienated those rights (night watchman state), Marx long for government that controls production tools and participate in diminishing social classes (welfare-socialist state) instead. Locke ideology creates Human Rights while Marx ideology generated welfare state, which both ideologies still under discussions up until now.

Subsequently after Locke and Marx, Satjipto Rahardjo is discoursing his progressive ideas that grounded with conscience of happiness. Establish with Bentham's concept idea, Satjipto is craving for a government that can bring happiness to its people (Rahardjo, 2009). Satjipto's understandings about a government is not barely a legal, political, and social building, but beyond that, is a cultural building (Rahardjo, 2009). Government need to be ruled based on its culture. This culture can be found in either a state's life philosophy or constitution. In order to discover this culture, a moral reading technique is required to read a state's life philosophy and constitution (Rahardjo, 2009).

Indonesia, in particular, is a country based with culture of unity in diversity (Lestari, 2015). *Bhineka Tunggal Ika* (Unity in Diversity), that is the official national motto of Indonesia. Thus, neither Locke's

liberal-individualist ideology or Marx's social-communist ideology is suitable for Indonesia with Pancasila ideology. Pancasila culture is established deeply in Indonesia, grounded with the value of belief in one God, humanity, unity, democracy, and social justice. Concluded in one Ekasila, value of communal work is the one that embodies in Indonesia. Satjipto argues that a unique culture like this needs to be delegated and become the groundwork in the patriotic and constitutional life (Rahardjo, 2009) (Siallagan, 2016). Various regulations need to be enlivened by this culture, including regulations regarding manpower.

Indonesia interprets working as an action to satisfy humane livelihood (Vide, Article 27 (2) of 1945 Constitution of Republic Indonesia). Every person is free to choose any jobs in accordance with his/her conscience (Vide, Article 28E (1) and (2) of 1945 Constitution of Republic Indonesia) and have the right to receive fair and proper remuneration and treatment in employment (Vide, Article 28D (2) of 1945 Constitution of Republic Indonesia). Working indeed is aimed to get payment for a prosperous life, however it cannot be apart from humanity rights. Every person shall have the right to own personal property, (Article 28H (4) of 1945 Constitution of Republic Indonesia) and The rights to freedom from torture and enslavement (Article Pasal 28I (1) of 1945 Constitution of Republic Indonesia), however, he/she has the duty to respect the human rights of others (Vide, Article 28J (1) of 1945 Constitution of Republic Indonesia). Indonesia emphasizes deeply

on the balance between profits and morals, as well as rights and obligations.

Regulations in Termination of Employment, laying off workers, and deducting wages payment, therefore should be done accordingly to principle of balance. Those numerous regulations should be established upon Indonesia's characteristic and unique culture. Government as a regulator is envisioned to provide regulations that can equate needs of all parties, rights and obligations of workers and entrepreneurs. Regulations that have been employed so far still absent from the value of Pancasila and communal work principles. Workers' and entrepreneurs' interests are still not harmonized. Legal discourse concerning manpower, thus, becomes critically needed to mediate those interests.

e. Legal Discourse as Mediator for Various Interests

Collective actions and consciousness of moral obligations are crucial to encounter this Covid-19 outbreak (Yang, & Ren, 2020). This also applies for issues in economy sector. Moreover, Article 33 (1) of 1945 Constitution of Republic Indonesia has once disclosed that economy of Indonesia should be organized as a common endeavor based upon the principles of the family system. Defining that every dispute should be deliberated collectively to attain the best solutions for all people in Indonesia. Government as the head of a family need to mediate concerns of workers and entrepreneurs for the best outcome. Collective actions are needed, as well as

consciousness of moral obligations and sense of relief along with firmness for that nation.

Article 33 (4) of 1945 Constitution of Republic Indonesia has clearly stated that the national economy of Indonesia shall be conducted on the basis of economic democracy upholding the principles of (1) togetherness; (2) efficiency with justice; (3) continuity; (4) environmental perspective; (5) self-sufficiency; and (6) keeping a balance, development, and unity of the national economy (Hapsari, 2018). Consequently, Indonesia need to uphold the communal work principle in encountering economy shock due to Covid-19 outbreak. Communal work (collective actions) in the practice reckon on moral awareness from all parties. Those entrepreneurs that acquire a good financing, they must be aware of their moral obligations to fulfil all of their workers' rights. However, for those workers whose rights might not satisfied considering bas financing condition of their employers, they are expected to have conscience and decency to bear the postponement in fulfillment of their rights. Government also need to take part in ensuring both interests of workers and entrepreneurs.

Decent works and livelihood undoubtedly are part on Human Rights (Ismono, 2018). As stated above, this statement has been approved by all either national or international legal instruments, include 1945 Constitution of Republic Indonesia. Nonetheless various interests need to be equally weighed in the middle of this Covid-19 outbreak. Workers' rights and business continuity need to be

harmonized for the sake of common interests (Nation of Indonesia). In order to bring out those ideas, 3 principles of assurance, responsibilities of respect, and restoration are essential to harmonize the interests of workers and entrepreneurs (Prihandono & Sandra, 2018). Those principles individually must be upheld and done by all related parties: government, companies, and workers.

Principles of assurance can be realized by government regulations which aimed to assure respects and fulfillments of Human Rights. Those existing regulations must ensure that none of entrepreneurs and companies violate those wrokers' rights. As for principle of responsibilities of respect, entrepreneurs and workers must firmly cling onto this. All parties are requested to have responsibilities in respecting and not disregarding their rights and obligations. Principle of recovery, otherwise, becomes common responsibilities that guarantee all workers' rights and business continuity will be accomplished after this Covid-19 outbreak come to an end (recovered).

Regulations to harmonize and guarantee both workers' and entrepreneurs' interests is vital as an initial move. Legal discourse concerning manpower therefore has to be done so that can stimulate law reform in manpower. Law form is a conscious, planned, and systematic attempt to re-evaluate and re-observe any regulations according to socio-political, socio-philosophy, and socio-cultural value in this society (Hoesein, 2020) (Arief, 2010). This argument will be initially started by choosing the form

of regulations, content materials, until finally those desirably impacts occurred.

Covid-19 outbreak which has generated emergency alert, enables Government Regulation in Lieu of Law (Perpu), according to Article 22 (1) of 1945 Constitution of Republic of Indonesia, to regulate any issues regarding manpower. Perpu can be used as an alternative in conditions, if: (1) there are urges to settle any legal issues appropriately based on the underlying Laws; (2) Those needed Laws are still unavailable (resulting in Legal Vacuum) or those underlying Laws are inadequate; (3) Legal vacuum cannot be handled with just generating Laws with normal procedure, remember that it would be insufficient time in this indispensable situations to deal up with (Vide Constitutional Court Decision Number 138/PUU-VII/2009).

Those 3 conditions are complied with situation in Covid-19 outbreak. Termination of Employment, laying off workers, and deducting wages payment, those issues are urged to be handled with Perpu that complement the underlying Laws. Act No. 13 of 2003, however, which has been the basis of any regulations concerning manpower are still inadequate and does not have any substantial regulations to follow in this emergency like Covid-19 outbreak resulting in economy crisis. SE Menaker 2020 cannot be used as reference as it is only a petition, does not have any mandatory power, and should not be contradicted with Act No. 13 of 2003 or any related regulations and laws. Moreover, substantial regulations concerning Termination of Employment, laying off

workers, and deducting wages payment are deeply associated with Human Rights, which according to Article 28J (2) of 1945 Constitution of Republic of Indonesia can only be restricted by any established Laws to guarantee the recognition and justice of the rights based upon considerations of morality, religious values, security and public order in a democratic society. Construct Laws with normal procedure is less likely action to do in the middle of this Covid-19 outbreak.

This Perpu should bring in both workers and entrepreneurs in the making process. Their present in this process is really vital remember that this regulation will take their interests into account. President and the staff together with labour union association and entrepreneurs' association representatives are enabled to do virtual negotiations in public. Government need to play a role as parent that wisely, fairly, balance the position of workers and entrepreneurs in the discussion (Charda S, 2015). Workers often to be in vulnerable position that make their rights have a chance to be reduced.

Perpu, substantially, is required to contain regulations concerning: (1) workers' rights which are affected by Covid-19 outbreak; (2) entrepreneurs' rights to apply for postponement in accomplice of dismissed workers' wages with all conditions and procedures of application; (3) government's and entrepreneurs' responsibilities toward those dismissed workers whose wages have been postponed; (4) rights and regulations on wages calculation for those be laid off workers; (5)

application for wages deduction, regulations, procedures, and obligations of recovery after this outbreak come to an end; (6) rights of workers who are still working in the middle of this outbreak; (7) government regulations to ensure the welfare of workers whose rights has been postponed; and (8) sanction for entrepreneurs who abuse this Perpu.

Expectation on this discourse is to ensure there are legal protections for workers and entrepreneurs. Certainty of harmonization in all their needs, thus will be presented here. Government, as a parent, is anticipated to be seen and assured the common welfare. This harmonization is important for the continuity of a nation's life. Companies need workers for their business continuity, workers need companies to satisfy their needs, while government needs both of them to stabilize the national economy (Budiyono, 2013).

Other than the reason to satisfy need in the middle of this Covid-19 outbreak, regulations concerning any emergency calamity that caused economy crisis have to be enclosed in any regulations inside the Laws. Moreover, government now is scheming an Omnibus Law on Work Creation which will substitute the Act No. 13 of 2003. This is important with the fact that those clauses need to be investigated further with various argumentations.

This study is aimed to initiate the legal discoursing on manpower, especially when it is needed to deal with emergency situation which economy crisis has been arisen. Final goal is to reform the holistic, substantive justice, and

progressive law on manpower. This study is widely opened to any advices and suggestions, as well as any other argumentations.

C. CONCLUSION

Act No. 13 of 2003 has included force majeure in its Article 164 (1), however, this is only limited to regulations about Termination of Employment. In fact, during this Covid-19 outbreak, beside Termination of Employment, other regulations like laying off workers and deducting wages payment has been massively implemented. Current regulations cannot be specifically accommodated during this outbreak. Existence of economy crisis, in particular, has imbalanced financing issues in companies and affected the fulfillment of workers' rights. Workers and companies, both are important components in national economy. Legal discourse indeed has to be executed immediately during this Covid-19 outbreak.

Prominent understanding of Locke's, Marx's, and Satjipto's ideology is needed to comprehensively grasp the nature of work and the function of state. Locke and Marx are 2 philosophers with 2 entirely different ideologies. While Locke considers working is in order to obtain private property rights, Marx, on the other hands sees working as self-actualization and profits will only make human be alienated from the others. While Locke recognizes more the concept night watchman state, Marx longs more for welfare-socialist state that controls the production tools instead. Both are undoubtedly have carried out admirable ideology. Locke go with Human Rights,

Marx with welfare state which has been discoursed up until now.

After all, those 2 ideologies are still not suitable to be implemented by Indonesia. Satjipto, hence suggest his ideology with progressive approach which take into account conscience of happiness as his basis. According to Satjipto, a culture of a nation is crucial in underlying any patriotic and legal moves. Indonesia is a state that has kinship and communal work culture in which it will prioritize the stabilization of the nation. This culture and value are expected to be reflected on any government regulation, including regulations on manpower.

Collective actions (communal works) and moral obligations are considered to be important in any regulations to control the Covid-19. Economic sector, yet, is included in practice based on Article 33 (1) of 1945 Constitution of Republic of Indonesia which states that economy of Indonesia should be organized as a common endeavor based upon the principles of the family system and democracy. Legal discourse on manpower become crucial to equate various interests and rights between workers and entrepreneurs in which government is expected to take part in. Principle of assurance, responsibility of respect, and recovery is the main aspect that requires attention.

Legal discourse is counted on provocation for a law form on manpower. Omnibus Law on Work Creation is currently planned by the government hopefully can includes regulations concerning any emergency situations that will turn into economy

crisis for the nation. This can help government and all related parties to evidently deal with this kind of Covid-19 outbreak situation in the future.

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