

The Social Impact of *Force Majeure* and the consequences of the Determination of the Covid 19 Disaster Status on Learning the Manpower Law

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Abstract

This study aims to explore learning about the labor law regarding the *Force Majeure* event due to the determination of the 2019 Corona Virus Disease pandemic (Covid-19) National Disaster, which has implications for the termination of employment in Indonesia. This type of research is normative-empirical legal research. Research using non-judicial studies is based on primary legal materials, social behavior guidelines, and relevant previous research. Data are identified using an approach statute which emphasizes empirical legal learning to lead to problem-solving. Results show that the impact of social *force majeure* on Termination of Employment due to the determination of the Covid 19 disaster status imposed by the government has resulted in an increase in unemployment and increased economic difficulties for the community. The law of *force majeure* based on labor regulations and policies reveals that layoffs are carried out after going through the renegotiation process stage. Layoffs cannot just be carried out unilaterally by companies, especially on the Covid 19 outbreak. This is because there are independent auditing steps carried out by stakeholders before actually being declared to have experienced a force majeure condition and enforcing layoffs. In other words, layoffs can be done if both parties have negotiated and are looking to solve the company's financial problems. This research's main contribution is for stakeholders, especially work bound by the company's work contract. By increasing the legal literacy *force majeure*, the unemployment rate due to layoffs should be controlled. In this case, the government needs to review the Manpower Act regulation related to the *force majeure* criteria so that social justice can truly be realized for Indonesian workers.

Keywords: Covid 19, Employment, *Force Majeure*, Learning, Social Impact.

Introduction

The determination of the status of a national disaster due to the spread of Covid 19 has a significant impact on workers and business activities in Indonesia (Siallagan, 2020). Domestic actors (workers who experience termination of employment) experience economic difficulties. Business actors have difficulty even being unable to fulfill their obligations, bound by labor contracts and business contracts. The Central Statistics Agency survey revealed that the income of 84 percent of Small and Medium Enterprises (MSEs) fell during Covid 19. Likewise, Large Medium Enterprises (UMB) decreased by 82 percent. This condition is reflected in the results of the Covid 19 Impact Survey on Business Actors; This survey was conducted in mid-July 2020.

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This survey was attended by 34,558 business actors, consisting of 6,821 Low-Cost Businesses, 25,256 Small Medium Enterprises, and 2,482 Businesses from the Agriculture sector (CNN Indonesia, 2020). World Bank predicts Indonesia's growth is only 0 percent. The inability to meet life necessities due to pressure due to the pandemic has been seen in the first quarter of 2.84 percent, which decreased dramatically compared to consumption in the fourth quarter of 2019 of 4.97 percent. This problem specifically affects the sustainability of business contracts and workers' contracts, where empirically, the business industry in Indonesia is in a condition of economic difficulty with low levels of welfare (Olefrenko & Galuschenko, 2018; Siallagan, 2020).

Before the presence of Presidential Decree No.12 of 2020, business actors could use the spread of Covid 19 as an excuse for force majeure if they were unable to fulfill the contract agreement as long as the reasons are given for the failure of the agreement were not due to company negligence but due to something unpredictable and unavoidable (Berger & Behn, 2020). The Covid 19 pandemic has put strong enough pressure on what companies have never faced, and partnerships have even experienced the project's failure (Casady & Baxter, 2020). As a result, many companies have terminated their employment.

Article 164 paragraph 1 of Law Number 13 the Year 2003 concerning Manpower provides room for companies to lay off employees on the grounds of force majeure due to Covid 19. There is no explanation at all what is meant by compelling circumstances in the Manpower Law. Therefore, this coercive situation's interpretation largely depends on the judges at the Industrial Relations Court (PHI). Another problem that is no less important is the social impact of force majeure on layoffs. Layoff decisions due to force majeure have had a sizable social impact, especially unemployment.

The following are some of the companies that laid off due to corona, 1) Gojek Indonesia implemented a layoff policy for 430 employees; 2) Traveloka companies lay off 100 people or 10 percent of their total employees; 3) PT Shyang Yao Fang laid off 2,500 employees; and 4) PT Express Trasindo Utama Tbk (TAXI) laid off 81 employees and made a salary cut of 40 percent for the remaining 390 employees (Santia, 2020). These companies are proof that mass layoffs have actually caused a serious unemployment problem in Indonesia.

Based on data from the Central Statistics Agency (CSA) in the Indonesian labor sector, it was recorded that up to February 2020, the number of unemployed had increased by 60 thousand people. Meanwhile, the open unemployment rate, which is an indicator to measure the labor market that is not absorbed by the labor market, is 4.99 percent. This indicates that out of 100 people in the workforce, there are around 5 unemployed people with a higher male open unemployment rate than women (Badan Pusat Statistik, 2020a). Even though, in fact, the Covid 19 pandemic regulation cannot be the reason for companies to layoff. The high number of layoffs amid the Covid 19 situation is a strong reason for the importance of legal literacy in *force majeure* agreements related to the implications for layoffs. It is hoped that stakeholders understand that layoffs are the last step taken after going through the renegotiation process.

Force Majeure (French) or known as *vis major* (in Latin), is defined as superior strength, otherwise known as *cas fortuit* (French) or *casus fortuitas* (in Latin), bad events, or situations outside the plan that cannot avoid. *Force Majeure* is an excuse to be exempted from all obligations to pay compensation (Litvinoff, 1985). Several recent studies related to this research explain cases of *force majeure* determination and the implications of Covid 19. Research conducted by Casady & Baxter (2020) reviews several international policies using the Highway 104 Nova Scotia Twin Project as an illustrative force risk management case. *Majeure* at the time of the Covid 19 Pandemic. Furthermore, the issue of *force majeure* doctrine and difficulties in dealing with legal effects from unforeseen circumstances. This research discusses the causes of the Covid 19 pandemic, which involves the doctrine of *force majeure* and domestic partners. Research recommends the idea of the unexpected and the inevitable for determining the *force majeure* criteria (Berger & Behn, 2020).

Organizational resilience during the Covid 19 pandemic. The study states that the crisis that occurred due to the pandemic has worsened economic conditions. But *force majeure* cannot be said to be the reason that causes losses and is deemed to deviate from Article 164 paragraph 3 of Law Number 13 of 2003 concerning Manpower (Juaningsih, 2020). Another study conducted in the UK states that two things are considered about *force majeure* conditions, namely: the basic concept of clausal *force majeure* is to provide an alternative to the rigors of the frustration doctrine and in one case 'callosal *force Majeure* must be interpreted by considering every word words that precede or follow it and pay attention to the general terms of the contract (Giaretta, 2020).

From various previous studies, most of them discussed important points that led to the doctrine of force advanced, legal effects, and contracts difficulties. Very few researchers have found previous research that discusses lessons learned from determining force majeure situations and the resulting social impacts. Among them is research conducted by Hamzah, (2020) about social learning in civil law agreements and the implications of regulations in the Covid 19 Pandemic, which revealed that good faith is the key to resolving frustrating agreement problems to secure the agreement between the two parties to the contract. As well as previous research that explains lessons learned about the importance of reviewing the provisions of Force Majeure in the contract agreement to reduce the challenges of Covid 19 in the Nigerian Construction Industry (Kabiru & Yahaya, 2020). Other findings reveal that the Covid 19 pandemic's social impacts have disrupted trading activities, paralyzed supply chains, and forced businesses to seek pragmatic ways to make their businesses survive. Researchers suggest that business people learn how to use sensitive conflict management and negotiation skills to obtain social contracts and help companies successfully navigate their business in the face of economic uncertainty (Akpan, 2018; Benlagha & Hemrit, 2018; Bukusi, 2020; Idowu et al., 2020). Abidin, Suryanto & Utami (2020) added that the beyond muamalah principle in digital payment education can be an important alternative to social education to shape individual character.

Research Questions

Based on the background of the problem, two questions cover the background to the problem that has been raised, namely:

1. What are learn about Force Majeure in the Manpower Law due to the Determination of the Covid 19 Disaster Status?
2. What does the consequences of determining the Covid 19 Disaster Status for Work?

Methods

Design

The type of research used is normative-empirical legal research. This research is a non-judicial case study. This research is a research method generally used for research on business and human rights (socio-law), which includes the (obvious) need to comply with national laws and

self-regulating to cover any gaps between the application of written national law and its practice. (*de facto*), and as international legal standards (Buhmann, FASTERLING, & VOICULESCU, 2018). This research uses a qualitative approach, without conflict so that there is no interference in court.

This study aims to present empirical data more objectively, showing interest and concern for developing new understandings about the impact of Social Force Majeure and the Consequences of Determining Covid 19 Disaster Status on the Learning of the Manpower Law.

Data and sources of data

Based on the source, the research focuses on the secondary data. Sources of data from primary legal materials consist of; 1) Law Number 13 of 2003 concerning Manpower; 2) The 2017 World Bank Guidelines on Provisions for Public-Private Partnerships (PPP) Contracts; 3) Presidential Regulation No. 36/2020 concerning Work Competency Development through the Pre-Employment Card Program; 4) Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation; 5) Presidential Decree (Keppres) Number 12 of 2020 concerning Stipulation of Non-Natural Disaster for the Spread of Covid 19; 6) Financial Services Authority Regulation Number 11 of 2020 concerning National Economic Stimulus; 7) PJOK Number 14/PJOK.05/2020 Concerning Countercyclical Policies on the Impact of Coronavirus Spread in 2019 for Non-Bank Financial Services Institutions; and 8) Civil Code related to Manpower. Secondary data sources and purpose of evaluating are presented in table 1 below.

Table 1.

Sources of data

Theme	The secondary data	Information
Learning the Manpower Law	1. Law Number 13 of 2003 concerning Manpower	The purpose of evaluating data is to demonstrate the importance of learning about labor law in particular regarding termination of employment
	2. Civil Code related to Manpower, pasal 1244 dan pasal 1245	
	3. The 2017 World Bank Guidance Criteria for Contract Conditions of Public-Private Partnerships (PPP)	
	4. Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation	

Social Impact of policy the Covid 19 Disaster Status	<ol style="list-style-type: none"> 1. Financial Services Authority Regulation Number 11 of 2020 concerning National Economic Stimulus 2. PJOK Number 14/PJOK.05/2020 Concerning Countercyclical Policies on the Impact of Coronavirus Spread in 2019 for Non-Bank Financial Institutions 3. Presidential Regulation of the Republic of Indonesia Number 36 of 2020 concerning Work Competency Development through the Pre-Employment Card Program 	The purpose of evaluating this data is to determine the strongest policy implications for people affected by layoffs related to the social impacts of determining the status of the Covid 19 disaster in Indonesia.
Determination of the Covid 19 Disaster Status	Presidential Decree (Keppres) Number 12 of 2020 concerning Stipulation of Non-Natural Disaster for the Spread of Covid 19	The purpose of evaluating data is to find out the contents of policies related to The Determination of Non-Natural Disasters for the Spread of Covid 19

Data collection

Data collection is carried out through legal studies contained in primary legal materials. The main legal materials are presented in the data described in table 2:

Table 2.

Description of research data

Theme	Primary legal data sources	Indication	Code
Manpower		RQ	
	1. Law Number 13 of 2003 concerning Manpower	RQ 1	2, 4, 5
	2. The 2017 World Bank Guidance Criteria for Contract Conditions of Public-Private Partnerships (PPP)	RQ2	13
	3. Presidential Regulation of the Republic of Indonesia Number 36 of 2020 concerning Work Competency Development through the Pre-Employment Card Program	RQ1	6, 8
		RQ2	11, 12
	4. Law of the Republic of Indonesia Number 11 of	RQ2	14

2020 concerning Job Creation				
Non-disaster spread Covid-19	Presidential Decree (Keppres) Number 12 of 2020 concerning Stipulation of Non-Natural Disaster for the Spread of Covid 19	RQ 1	1, 3	
Financial Services Authority (PJOK) Regulations	4. Financial Services Authority Regulation Number 11 of 2020 concerning National Economic Stimulus	RQ1	9	
	5. PJOK Number 14/PJOK.05/2020 Concerning Countercyclical Policies on the Impact of Coronavirus Spread in 2019 for Non-Bank Financial Institutions	RQ2	10	
Civil Code to Manpower	Civil Code related to Manpower, pasal 1244 dan pasal 1245	RQ 1	7	

Referring to the 4 data above, the study applies a normative-empirical legal analysis, as stated by (Buhmann et al., 2018). The steps for collecting data from each document are carried out as follows; 1) classify the data that has been collected based on predetermined themes; 2) adapting the theme to the RQ, preparing the data for analysis; 3) determine the unit of analysis from primary legal sources based on RQ; 4) determine the coding system rules; 5) apply coding to the data; 5) outlining facts and chronology of events; 6) legal analysis and opinion; 7) conclude what data is ultimately used.

Data analysis techniques

The analysis technique for normative-empirical legal research includes (Lawless, Robbennolt, & Ulen, 2010): 1) data reduction (summarizing research data, coding, looking for relevant themes, creating clusters); 2) analyzing the legal basis and statutory regulations related to the research conducted; 3) Describe the facts and chronology of events and reinforce them in a sequence of events based on the timing of the problems in the study; 4) analyzing and legal considerations on the main issues based on predetermined legal provisions and related previous research; 5) analysis of the problem refers to the legal facts and regulations that have been identified as in table 1; 6) a section on the description of opinions on the subject matter based on analysis and legal considerations and relevant previous research; 7) make conclusions and solutions to problems. Efforts to draw conclusions that are in line with the researcher's theme, namely regarding the Impact of Social Force Majeure and the Consequences of Determining the Covid 19 Disaster Status on the Learning of the Manpower Law.

Result and Discussion

Force Majeure Learning in Labor Law

The first finding indicates that termination of employment cannot be avoided by companies in the midst of uncertain economic conditions. Moreover, facing the low purchasing power of the community due to the stipulation of Presidential Decree (Keppres) Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Covid 19, considering data 1.

- (1) *"Non-natural disasters caused by the spread of Corona Virus Disease 2019 (Covid-19) have had an impact on increasing the number of victims and property losses, expanding the number of victims and property losses, expanding the coverage of areas affected by disasters and having implications for socio-economic aspects that are widely in Indonesia."*

About company decision making, the Termination of Employment must pay attention to aspects as the objectives of the Manpower Law Number 13 of 2020 in article 4 letter a, considering data 2.

- (2) *"Empowerment and workforce utilization is an integrated activity to provide the widest possible job opportunities for Indonesian workers. Through this empowerment and empowerment, it is hoped that Indonesian workers can participate optimally in National Development, but while still upholding their human values."*

It is evident that the content in the explanation in article 4 prioritizes several aspects, namely: 1) empowering and optimally empowering human resources; 2) realizing equal employment opportunities and labor supply according to development needs; 3) protect workers; and 4) fair or non-discriminatory employment agreement provisions. This indicates that the Termination of Employment is the last step taken by the company. Given that companies must also comply with government regulations in supporting efforts to empower workplaces to achieve people's welfare. So, in this case, companies and workers should negotiate together in finding solutions to face the consequences of Presidential Decree (Keppres) Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Covid 19. Further information

regarding the prohibition of discrimination is explained in articles 5 and 6, which reads, considering data 3.

- (3) *“Every worker has the same opportunity without discrimination to get a job (Article 5). Every worker/ laborer has the right to receive equal treatment without discrimination from employers (Article 6).”*

As stipulated in article 1320 of the Civil Code, a valid agreement must fulfill five elements: a binding agreement, the ability to make an engagement, a certain subject matter, a cause that is not prohibited, and an employment relationship. Of course, it can be understood that negotiations are clearly highly recommended, given that a working relationship bounds the company and workers. Also, negotiation is a form of enforcing justice as a form of rejection of acts of discrimination. Termination of employment contracts unilaterally without clear reasons and the absence of independent auditing is clearly not justified because the action is contrary to the objectives of the Manpower Law.

Based on the Manpower Act Number 13 of 2020 concerning Manpower as contained in article 163, considering data 4.

- (4) *“Employers can make a Termination of Employment for workers/laborers in the event of a change in status, merger, consolidation, or change in company ownership. Workers are not willing to continue their working relationship.”*

From the explanation in Article 163, several reasons for the company to conduct a Termination of Employment can be seen. However, it is unfortunate that if the company took this step without independent auditing regarding the force majeure, it would not be by the Manpower Act's as explained earlier. Further, Article 156 regulates severance pay or service fees or forms of work service awards and compensation for rights that should be received and must be paid by companies.

Referring to article 164, paragraph 1 of Law No.13 of 2003 concerning Manpower, it states that employers can carry out Employment Termination for workers/laborers because they close due to *force majeure*.

Furthermore, Article 164 paragraph 3 adds that employers can also carry out a Termination of Employment of workers/laborers with the following provisions, namely: considering data 5.

- (5) *“1) The provisions of Article 151 apply whereby when conducting a Termination of Employment, an intensive social dialogue must be carried out with a union of workers/ labor unions; 2) there must be evidence of loss for 2 consecutive years audited by an independent audit.”*

It needs to be understood that there is an unclear definition of *force majeure*, which causes conditions of non-natural disasters and/or quarantine regulations to be used as reasons for layoffs. These findings corroborate the research presented by Casady & Baxter (2020) , which reveals the relationship between the Covid 19 pandemic and public-private partnerships (PPP) and force majeure. It was explained that this *force majeure* leads to a situation where contract execution is not possible and an effort to resolve problems arising from poor performance due to the suspension or termination of the first party. According to the study, the Covid 19 pandemic was a force majeure event, as long as it met the criteria of the 2017 World Bank Guidelines on Provisions for Public-Private Partnerships (PPP) Contracts, considering data 6

- (6) *“The Majeure Event Force in a PPP contract represents any event or combination of events that exceed reasonable control limits, is unexpected or cannot be prevented/cannot be prevented, and is not a direct result of any breach of the PPP contract by the private partner.”*

Further in clause (1) is described,

“a) epidemics, diseases, epidemics and natural disasters, but not limited to hurricanes, cyclones, hurricanes, tornadoes, blizzards, earthquakes, volcanic activity, landslides, tsunamis, floods, lightning, and drought; b) fire, explosion, or nuclear, biological or chemical contamination (other than caused by the Private Partner, its contractor or any subcontractor, supplier or vendor); c) war (whether declared or not), armed conflict (including but not limited to hostile attacks, blockades, military embargoes), hostilities, invasions, acts of foreign enemies, acts of terrorism, sabotage or piracy [in any case occurring abroad]; d) civil wars, rebellions and revolutions, riots, military or power seizures, civil unrest or chaos, mass violence, acts of civil disobedience [in any case that occurs outside the State]; e) radioactive contamination or ionizing radiation [occurring outside the State]; or f) general labor disturbances such as boycotts, work strikes and lock-outs, sluggishness, occupation of factories and premises, do not belong to similar

situations in PPP Projects and specific to private partners or their subcontractors [and occur outside the country] (The World Bank, 2017).”

Based on the criteria from the 2017 World Bank Guidelines regarding the Provisions for Public-Private Partnerships (PPP), it is clear that the criteria for enforcing *force majeure* against companies at the time of the Covid 19 incident are not much different from the provisions of the Manpower Law Number 13 of 2020. Both depend on conditions other laws such as the negotiation process, dispute resolution in court, limitation of responsibility in contract agreement's content, liquidated compensation, governing law, and the right to termination based on each government policy's decision. The government played an important role in the force majeure event. As stated by Smith (1936) explaining the force majeure doctrine and the impossibility of performance, in the case of *force majeure*, the central government and local government authorities' actions and regulations have been considered *force majeure*.

As in the statutory regulations, The Termination of Employment provision basically obliges employers or companies to provide severance pay to workers/laborers. However, this becomes a social problem when the unemployment rate due to the Termination of Employment in the midst of a national disaster has increased, and severance pay is no longer sufficient to meet daily needs. In this case, there should be renegotiation between workers and the company as a form of the labor agreement. The *force majeure* alias overmatch is regulated in Article 1244 of the Civil Code, which explains, considering data 7.

(7) *“The debtor must be punished to compensate costs, losses, and interest if he cannot prove that the agreement was not carried out or that the agreement was not carried out on time due to unforeseen circumstances that could not be borne by though there was no bad intention to him.”*

Unfortunately, in fact, some companies did not do it and dismissed unilaterally. Meanwhile, most lay workers do not understand the legal provisions regarding the terms of the Termination of Employment in a *force majeure* situation and accept it. Even though, as workers, especially those who are bound by a contract, they can file court demands related to their rights as workers who are bound by an agreement contract. Therefore, workers must understand that the force majeure that can result in the Termination of Employment must fulfill three elements, namely; Unforeseen situations, cannot be prevented by the party that must fulfill obligations, or carry out

the agreement, beyond the fault of the party. These provisions have been explained in article 164 paragraph 1 of Law No.13 of 2003 concerning Manpower.

The problem is that the definition of *force majeure* is not regulated in detail in the Civil Code in Indonesia. Article 1245 of the Civil Code states, considering data 8.

(8) *“Costs, losses, and interests don't need to be compensated for an overmatch or an accidental situation. The debtor cannot provide or do something required or the same things that have committed an illegal act.”*

Responding to the implementation of contract agreements for some people who have been laid off and experiencing economic difficulties, it has been regulated in the Financial Services Authority Regulation Number 11 of 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Corona Virus Disease 2019. Although the contents of the explanation in the regulation aim to encourage banking performance, about companies, this policy really helps ease the debt burden for companies constrained by loans or financing at the bank. Of course, by paying attention to the principles of prudence and monitoring mechanisms to prevent misuse in the application of regulations (*moral hazard*). As explained in the Regulation of the Financial Services Authority of the Republic of Indonesia Number 11/PJOK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy the Impact of the Spread of Corona Virus Disease 2019 states, considering data 9.

(9) *“.....The countercyclical policy on the impact of the spread of coronavirus disease 2019 (Covid-19) is aimed at encouraging banking performance, especially the intermediation function, maintaining financial system stability, and supporting economic growth, namely by providing special treatment for bank credit or financing with a certain amount and restructured credit or financing to debtors affected by the spread of coronavirus disease 2019 (Covid-2019) include micro, small and medium business debtors....”*

Based on the stipulation of Presidential Decree (Keppres) Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Covid 19 and the provisions of the Manpower Act Number 13 of 2020. It is understood that force majeure and difficulties provide legal tools to deal with long-term effects and the uncertainty of the Covid 19 situation, especially in long-term contracts. This finding is in line with research conducted by Berger & Behn (2020) ,

which states that at the time of the Covid 19 situation, the doctrine of force majeure and difficulties acting as regular law was not an exception to recovery. This allows for risks stemming from an unprecedented crisis. Then distributed evenly among stakeholders. The same statement was made by Maskow (1992) regarding the difficulty and force majeure determination in the revolutionary events of the post-World War I inflation crisis period and the seventies oil crisis in Eastern Europe and parts of Eastern Germany. What is clearly stated is that the contract must define the rights and obligations of each party. One of the natural methods used is to maintain the contract stability and flexibility as the *'pacta servanda sunt'* law. It is further explained that the force majeure criteria must reflect the values of justice and the requirements to bind someone to the promise and protect the promised interests. Even in a situation where the first party cannot keep its promise, and both parties cannot reasonably expect a profit and without any compensation.

It should be understood that the force majeure principle is the main principle of most legal contracts and is recognized as a rule of international law (Ripert, 1949). In other words, in following up on force majeure learning and the issue of Termination of Employment, a sufficient understanding of the principles of force majeure itself is needed, especially understanding the criteria and standardization that have been determined by stakeholders, namely government regulations and international organizations such as the World Bank. Designing appropriate contracts to examine and carefully assess the criteria needed to claim force majeure as well as renegotiation, arbitration, and litigation and force majeure clauses that clearly rearrange when damages can be claimed, but not after notification has been filed (Giaretta, 2020). Two aspects can be considered criteria for determining the force majeure under the Covid 19 situation, namely competent management to avoid reasonable doubt in determining force majeure and unpredictable and unpredictable situations (Ward, 2020).

If examined more deeply, good faith and moral strength as a standard in a labor contract's behavior as an agreement that binds the company and the workforce is needed. Therefore, a return to moral strength, human values, justice, and negotiation is carried out before deciding on employment termination. Moral strength is an integral part of preventing contract violations and at the drafting stage, predicting uncertain situations such as Covid 19. These findings are reinforced by previous research that recommends the rapid development of trust, pursuing project rescue agreements, embracing collaborative responsibility, being optimistic and

innovative to create results that benefit both parties to the contract. And in the long term, it is hoped that the current situation requires a comprehensive revision of the force majeure provisions to prioritize mitigation measures more adequately (Casady & Baxter, 2020).

The Consequences of Determining Covid 19 Disaster Status on Employment

One of the development targets stated in the State Budget to improve people's welfare is to reduce unemployment, which is supported by quality economic growth and a successful social protection program. In the midst of a situation determining the Covid 19 disaster status, workers who were victims of the Termination of Employment were the biggest contributor to the unemployment rate. Not without reason, due to force majeure conditions, the company dismissed workers so that most of the workforce experienced economic difficulties. This is quite a social problem, given that the poverty rate in Indonesia due to Covid 19 is quite high. Until March 2020, there were 26.42 million people, with a percentage reaching 9.78 percent (Badan Pusat Statistik, 2020b).

Humanitarian disasters must be watched out for. Moreover, the Covid 19 pandemic situation is very vulnerable to a survival crisis. Even in India, a humanitarian disaster has occurred. About 99 percent of India's workforce is employed in sectors that are not well organized, losing their livelihoods for household needs, hunger, destitution, and abuse (Sengupta & Jha, 2020). Most of the workers have lost their jobs due to the Covid Pandemic 19. This has increased unemployment because most of the workforce depends on the economy on companies or business actors. Contract workers and self-employed workers also have to face the inequality of the government assistance program. A study revealed that there were four groups of workers who were socially affected during the Covid 19 crisis, namely 1) sick people who did work but did not get sick leave; 2) unemployed workers who wish to claim unemployment insurance but do not meet the requirements; 3) workers who are unemployed and receive insurance but have run out; and 4) workers are not covered by government programs (Wandner & O'Leary, 2020). Workers may not survive long unless they have a sufficient amount of savings (Martin, Markhvida, Hallegatte, & Walsh, 2020). They have to deal with decreasing income and use their savings until their savings are completely depleted. If this happens en masse, unemployment due to employment termination will lead to global poverty and famine.

The second finding regarding the consequences of determining the Covid 19 Disaster Status for employment in Indonesia concerns the policies that have been taken by the government to overcome economic difficulties. One of them is the press release issued by the Financial Services Authority Regulation (PJOK) in the implementation of Government Regulation instead of Law (Perppu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Pandemic Coronavirus Disease 2019 (COVID-19) and/or Financial System Stability. This regulation aims to maintain financial system stability and encourage the running of the national economy. In other words, through the Financial Services Authority Regulation (PJOK), the government is trying to overcome the increase in unemployment due to mass layoffs from the aspect of financial institutions. The regulation is outlined in PJOK Number 14/PJOK.05/2020 concerning Countercyclical Policy on the Impact of the Coronavirus Distribution in 2019 for Non-Bank Financial Institutions with the following conditions, considering data 10.

- (10) *“Providing financing restructuring for debtors affected by Covid 19 and various other provisions such as a deadline for submitting periodic reports; implementation of fit and proper test; determination of asset quality in the form of financing and Financing restructuring; calculation of the level of solvency of insurance companies, sharia insurance companies, reinsurance companies, and sharia reinsurance companies; calculation of the quality of funding for pension funds administering defined benefit pension plans; and implementation of provisions for asset management according to the age of the participant group (life cycle fund) for pension funds that organize defined contribution programs.”*

To overcome unemployment, especially victims of the Termination of Employment affected by the determination of the Covid 19 disaster status, the government provided a Pre-Employment Card. This is part of a strategic step in the social protection program to encourage Indonesia's workforce expansion and quality. The Pre-Work Card is a card given by the government to job seekers or workers to obtain vocational training services (skilling and re-skilling) and/or job competency certification. The total budget for 2020 provided by the government to implement this policy is IDR 10 trillion, with a target of 2 million participants (Direktorat Penyusunan Anggaran APBN, 2020).

The following is the Pre-Work Card Implementation Scheme;

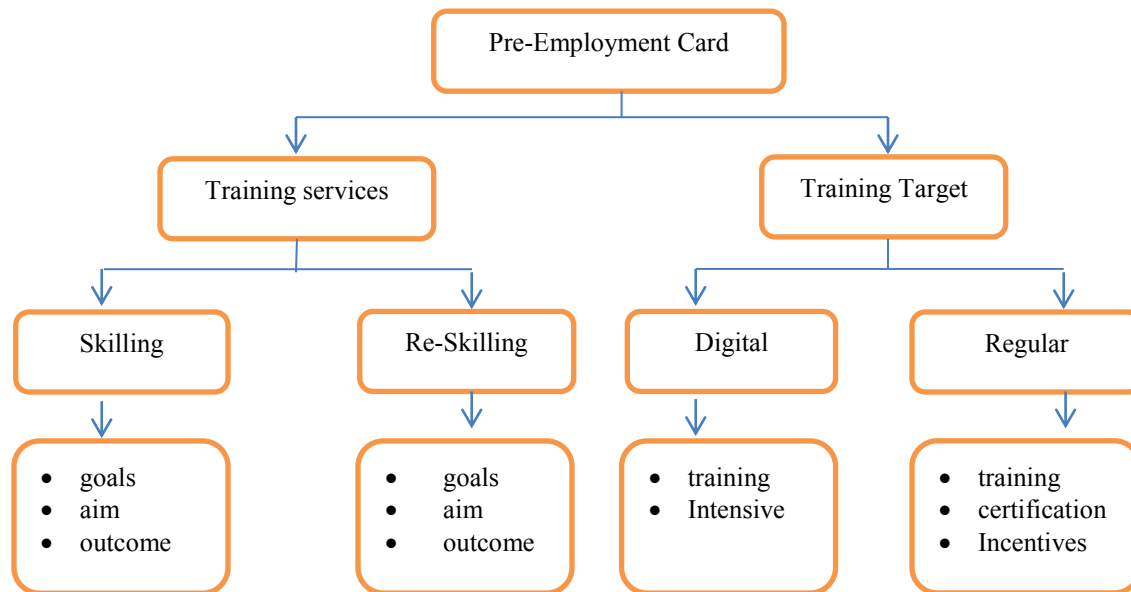


Figure 1. Pre-Employment Card Scheme

Source: Processed data, (Direktorat Penyusunan Anggaran APBN, 2020)

Based on the design of the Pre-Work Card implementation, as in Figure 1, it can be seen that vocational training services consist of two categories, namely skilling and re.skilling. The difference lies in the goals, objectives, and outcomes the government wants to achieve- Skilling targets fresh graduate job seekers. The goal is to build adjustment skills and vocational skills for work. And the outcome to be achieved is to reduce unemployment. Meanwhile, Re-skilling has a target aimed at a change of profession, a terminated worker, or a potential Termination of Employment.

The pre-employment card program is contained in the Presidential Regulation of the Republic of Indonesia Number 36 of 2020 concerning Job Competency Development through the Pre-Employment Card Program. In CHAPTER 1 General Provisions Article 1, paragraph 1 and 2 reads, considering data 11.

(11) *“The Pre-Employment Card Program is a working competency development program aimed at job seekers, workers/laborers who have been terminated, and/or*

workers/laborers who need increased competence (paragraph 1). Pre-Work Card is a sign or identity card given to beneficiaries of the KartuPrakerja program.”

The purpose of providing different or new vocational skills is for transferring professions and/or entrepreneurs. The outcome to be achieved is to prevent re-unemployment. It can be understood that the government is trying to overcome the social impact of determining the Covid 19 Disaster Status on employment or increasing unemployment by implementing the Re-Skilling Pre-Employment Card policy. As explained in CHAPTER I General Provisions Article 2 which explains that, considering data 12.

(12) *Pre-employment Card Program aims; a. Develop workforce competencies; and b. Increase the productivity and competitiveness of the workforce.*

There are two kinds of implementation design used, namely digital implementation and regular implementation. The difference lies in the provision of certification for 0.5 million regular track participants, which is lower than the total digital implementation budget, reaching 1.5 million participants. In a digital implementation, participants are given training and incentives. The training is conducted online (e-learning) and offline (face-to-face) provided by the private sector. Whereas for the regular route, the next development stage, including training and certification, is carried out by Government Job Training Institutions (including Vocational Training Centers), Private LPKs, and Industrial TCs. Training and certification institutions are adjusted to the management of the executors.

The problem of unemployment should be resolved after the existence of a poverty alleviation program, or at least be able to increase productivity and work competitiveness in the midst of the Covid 19 situation as the program's initial objectives. According to Irawan, Ludiya, Romi, & Rahardianto (2019), Productivity and work competitiveness can increase competitive advantage, especially human resource management. But the facts tell another. The findings indicate that the pre-employment card is not directed at leading and potential industries such as the textile and apparel industry sector. The government's focus does not, in detail, determine the direction of the training program. It may be that the design and training content provided is not the type of skill a potential market is looking for. The training program may not add new skills; thus, the program recipients find it difficult to find jobs. This finding is in line with previous research, which explains that the government also does not guarantee that after the pre-work program, people can

get a job or not (Zubaidi, Pratama, & Al-Fatih, 2020). The effectiveness of pre-employment cards has not really achieved the goal of tackling unemployment. First, this program has drawn criticism because of most of its fund's go-to service providers. For training materials, it was generally available before the program was implemented, so it seemed ineffective. Second, the lack of a transparency program in providing training services (Ing & Vadila, 2020). The government should have a clear database of targeted benefits. As the findings of Setyawan, Rika Gamayuni, & Muhammad Ahmad (2019) state that the implementation of e-budgeting and an internal control system can be done to achieve accountability and good governance. Also, the program must be distributed fairly. This controversial and polemic government program requires a quick and precise solution, considering that the Covid 19 pandemic is still not over. Meanwhile, the community has to struggle every day to face the consequences of determining the Covid 19 Disaster Status.

The most likely condition for the community to maintain their survival amid the Covid 19 pandemic is working from home or Work From Home (WFH). Work From Home is a working concept where workers can do their work from home. The possibility of getting a job via the internet is also a great opportunity for job seekers to earn just an income. This WFH can be linked to Article 86 paragraph (1) letter an of Law Number 13 of 2013 concerning Manpower, considering data 13.

(13) *“Every worker/laborer has the right to obtain protection for occupational safety and health.”*

Workers get a form of protection for worker safety when they implement WFH. However, in this case, neither the government nor the company can guarantee that workers are completely protected by working at home. This will be successful if the community follows the health protocol properly. The problem is, WFH can only be accessed by people who understand the internet. In other words, workers/laborers who do not understand how to access digital technology or are still working outside are very vulnerable to being unprotected for their workplace safety and health rights during social distancing during the Covid 19 pandemic.

There is a Social Security Administering Body as a protection body for occupational safety and health. The government requires every company to register its workers with Social Security Administrator (SSA) employment. However, this only applies to the four programs, as stated in

Law of the Republic of Indonesia Number 24 of 2011 concerning Social Security Administering Bodies Article 6 paragraph 2, namely work accident insurance, old age security, pension security, and death security. Meanwhile, there is no guarantee program as compensation, as stated in this government regulation, if it terminates the employment relationship.

There is only severance pay, as stipulated in Article 156 Paragraph 2 of the Manpower Act. In this case, the Job Creation Law Number 11 of 2020 has changed employment relations between employers and workers, Article 81, number 37. And the regulation of severance pay as stipulated in Article 156 Paragraph 2 of the Job Creation Law reads, considering data 14.

(14) *As referred to in paragraph 1, the severance pay is provided with the following conditions: a. The work period is less than 1 (one) year, 1 (one) month of wages; b. The work period of 1 (one) year or more but less than 2 (two) years, 2 (two) months of wages; c. The working period of 2 (two) or more but less than 3 (three) years, three months of wages; d. The working period of 3 (three) years or more but less than 4 (four) years, 4 (four) months of wages; e. The working period of 4 (four) years or more but less than 5 (five) years, 5 (five) months of wages; f. The work period of 5 (five) years or more, but less than 6 (six) years, 6 (six) months of wages; g. The work period of 6 (six) years or more but less than 7 (seven) years, 7 (seven) months of wages; h. The work period of 7 (seven) years or more but less than 8 (eight) years, 8 (eight) months of wages; i. The work period of 8 (eight) years or more, 9 (nine) months of wages.”*

As written in the Job Creation Law, it is clear that there are provisions regarding severance pay. However, this regulation cannot guarantee that the company can pay severance pay according to the provisions, especially if the company is declared bankrupt. In this case, termination of employment insurance and termination of employment credit insurance in Indonesia are still managed by private companies. Termination of employment insurance can protect business owners from the obligation to pay severance pay when termination of employment occurs. Meanwhile, termination of employment credit insurance is a form of protection and guarantees the insured as a credit recipient/debtor if he experiences termination of employment. Unfortunately, claims can only be made when the company is declared truly bankrupt by a court decision that is legally binding by the Manpower Act Number 13 of 2003.

Government programs based on the Presidential Regulation of the Republic of Indonesia, Number 36 of 2020 concerning Work Competency Development through the Pre-Employment Card Program, require novelty to overcome the current unemployment problem. Not without reason, if the after evaluation of these policies is not carried out, the impact of an economic recession can occur as has happened in developing countries and developed countries.

In line with the findings, previous research revealed that programs that can be carried out to overcome social impacts as an effort to improve the economy at the time of Covid 19 are by providing income support programs, compensation (Woodbury, 2020), insurance benefits, and job subsidies (Ortiz, Salvo, & Astudillo, 2020). This is done in unique ways, namely in the form of a transfer of income paid within a certain period. It was further explained that these programs need further protection to be right on target. Although in the implementation of the possibility of failure, negative impacts and obstacles will definitely exist, over time with local businesses' support and the right government policies can ensure that the economy can run conducive.

Based on the results of a study on government policies in overcoming the problem of termination of employment, which is considered to increase unemployment and is related to the Covid 19 disaster, it can be understood that the implication of the policy that has the most impact on society is the Presidential Regulation of the Republic of Indonesia Number 36 of 2020 concerning the Development of Work Competence through the Card Program. Pre-employment by paying attention to data 11. It is clear that through the pre-employment card program, it is hoped that unemployment due to termination of employment can be minimized. However, it seems that it still needs evaluation and improvement in the future. But empirically, this program has been implemented and has been felt by most people affected by layoffs in Indonesia.

Conclusion

The first findings reveal that learning from force majeure during the Covid 19 pandemic encourages the importance of good faith and moral strength as a standard in labor contract behavior as an agreement that binds the company and the labor party. In this case, the criteria and principles of force majeure must also be considered. The second finding shows that the social impact of force majeure on employment is the occurrence of mass unemployment. To overcome these social impacts, the government implemented a pre-employment card program.

However, it seems that the program has not been able to solve the current mass unemployment problem.

This research has quite broad implications. First, researchers highlight the importance of increasing legal literacy of force majeure agreements, especially in situations of economic uncertainty. Learning about *force majeure* is urgently needed for those who agree. Contract so that both parties can find a solution by the applicable legal provisions. If this is done, it is hoped that the company might avoid breaching contractual obligations. Second, this research's normative-empirical approach helps to build and explain legal provisions related to force majeure and its social impacts. Of course, it is hoped that this research can become a reference for the government to determine policy direction in dealing with unemployment problems. Future research should investigate the potential of the importance of learning force majeure law as a strategic step in determining the criteria and solutions faced by companies and workers in a situation of economic uncertainty.

References

- Abidin, Suryanto, T., & Utami, P. (2020). Beyond muamalah principles in digital payment education and its impacts on corruption prevention in Indonesian public sectors. *Journal of Social Studies Education Research*, 11(3), 46–64.
- Akpan, L. (2018). The political undertone in the development of nomadic education in Africa: Lessons from Nigeria. *American Journal of Qualitative Research*, 2(1), 1-21.
- Badan Pusat Statistik. (2020a). Keadaan Ketenagakerjaan Indonesia Februari 2020. *Berita Resmi Statistik*, (40), 20. Retrieved from <https://www.bps.go.id/pressrelease/2020/05/05/1672/februari-2020--tingkat-pengangguran-terbuka--tpt--sebesar-4-99-persen.html>
- Badan Pusat Statistik. (2020b). Profil Kemiskinan di Indonesia. *Berita Resmi Statistik*, (56), 1–12. Retrieved from <https://www.bps.go.id/pressrelease/2020/01/15/1743/persentase-penduduk-miskin-september-2019-turun-menjadi-9-22-persen.html>
- Benlagha, N., & Hemrit, W. (2018). The inter and intra Relationship between Economics, Administrative sciences and Social sciences disciplines. *Research in Social Sciences and Technology*, 3(3), 92-115. <https://doi.org/10.46303/ressat.03.03.6>
- Berger, K. P., & Behn, D. (2020). Force Majeure and Hardship in the Age of Corona. *SSRN Electronic Journal*, 6(4). <https://doi.org/10.2139/ssrn.3575869>

- Buhmann, K., FASTERLING, B., & VOICULESCU, A. (2018). Business & human rights research methods. *Nordic Journal of Human Rights*, 36(4), 323–332. <https://doi.org/10.1080/18918131.2018.1547522>
- Bukusi, A. D. M. (2020). How empathy , social contracts and deep conversations are helping companies in Kenya overcome the disruptive impact of the COVID-19 pandemic, 14(10), 309–312. <https://doi.org/10.5897/AJBM2020.9081>
- Casady, C. B., & Baxter, D. (2020). Pandemics, public-private partnerships (PPPs), and force majeure | COVID-19 expectations and implications. *Construction Management and Economics*, 0(0), 1–9. <https://doi.org/10.1080/01446193.2020.1817516>
- CNN Indonesia. (2020). Survei BPS: Pemasukan 84 Persen Usaha Kecil Turun Saat Corona CNN. *CNN*. Retrieved from <https://www.cnnindonesia.com/ekonomi/20200915192919-92-546903/survei-bps-pemasukan-84-persen-usaha-kecil-turun-saat-corona>
- Direktorat Penyusunan Anggaran APBN. (2020). Pokok-pokok APBN 2019. *Kementerian Keuangan R.I*. Retrieved from <https://www.kemenkeu.go.id/media/13730/informasi-apbn-2020.pdf>
- Giaretta, B. (2020). COVID-19 Force Majeure Notices Under English Law: What Comes Next? *NYSBA New York Dispute Resolution Lawyer*, 13(2), 47–49. Retrieved from http://nysbar.com/blogs/ResolutionRoundtable/Summer-2020_WEB_DisputeResolutionLawyer.pdf#page=47
- Hamzah. (2020). Civil law agreement and its implication on regulation for prevention of corruption within COVID-19 pandemic. *Journal of Social Studies Education Research*, 11(3), 156–176.
- Idowu, S., Ifedayo, T., & Idowu, E. (2020). Assessing the Career Conflict Options of Senior Secondary School Students of Ado-Odo Ota Local Government, Ogun State, Nigeria. *Research in Social Sciences and Technology*, 5(3), 55-77. <https://doi.org/10.46303/ressat.05.03.3>
- Ing, L. Y., & Vadila, Y. (2020). Implementing Indonesia’s COVID-19 stimulus. *East Asia Forum Quarterly*, 12(2), 27–28. Retrieved from <https://search.informit.com.au/fullText;dn=282923054210961;res=IELHSS>
- Irawan, A., Ludiya, E., Romi, M., & Rahardianto, R. (2019). Influence of Human Resource Management Practices on Competitive Advantage through Operational Excellence: Case study on SME Food and Beverages In Bandung Regency West Java Indonesia. <https://doi.org/10.4108/eai.10-9-2019.2289336>
- Juaningsih, I. N. (2020). Analisis Kebijakan PHK Bagi Para Pekerja Pada Masa Pandemi Covid-19 di Indonesia. *Buletin Hukum Dan Keadilan*, 4(1), 189–196. <https://doi.org/10.15408/adalah.v4i1.15764> Abstract:

- Kabiru, J. M., & Yahaya, B. H. (2020). Can Covid-19 Considered as Force Majeure Event in the Nigeria Construction Industry? *International Journal of Scientific Engineering and Science*, 4(6), 34–39. Retrieved from <http://ijses.com/>
- Lawless, R. M., Robbennolt, J. K., & Ulen, T. (2010). *Empirical methods in law*. New York: Aspen Publishers.
- Litvinoff, S. (1985). Force Majeure , Failure of Cause and Théorie de l ' Imprévision : Louisiana Law and Beyond, 46(1).
- Martin, A., Markhvida, M., Hallegatte, S., & Walsh, B. (2020). Socio-Economic Impacts of COVID-19 on Household Consumption and Poverty. *Economics of Disasters and Climate Change*, 4(3), 453–479. <https://doi.org/10.1007/s41885-020-00070-3>
- Maskow, D. (1992). Hardship and Force Majeure. *The American Journal of Comparative Law*, 40(3), 657. <https://doi.org/10.2307/840591>
- Olefrenko, A., & Galuschenko, A. (2018). Major Features, Benefits, and Prerequisites for Intelligent Enterprise Managing System. *Research in Social Sciences and Technology*, 3(3), 68-91. <https://doi.org/10.46303/ressat.03.03.5>
- Ortiz, P. A., Salvo, A. A., & Astudillo, N. (2020). COVID-19 and Labour Law : Chile. *Italian Labour Law E-Journal*, 13(1), 1–7. <https://doi.org/https://doi.org/10.6092/issn.1561-8048/10775>
- Ripert, G. (1949). *La règle morale dans les obligations civiles*. Paris: LGDJ.
- Santia, T. (2020). Terkapar, 6 Nama Besar yang Harus PHK Ratusan Karyawan Akibat Corona Tira. *Liputan 6*. Retrieved from [https://www.liputan6.com/bisnis/read/4309209/terkapar-6-nama-besar-yang-harus-phk-ratusan-karyawan-akibat-corona#:~:text=Dari surat edaran yang diterima,Indonesia \(Aprisindo\) Firman Bakri.](https://www.liputan6.com/bisnis/read/4309209/terkapar-6-nama-besar-yang-harus-phk-ratusan-karyawan-akibat-corona#:~:text=Dari surat edaran yang diterima,Indonesia (Aprisindo) Firman Bakri.)
- Sengupta, S., & Jha, M. K. (2020). Social Policy, COVID-19 and Impoverished Migrants: Challenges and Prospects in Locked Down India. *The International Journal of Community and Social Development*, 2(2), 152–172. <https://doi.org/10.1177/2516602620933715>
- Setyawan, W., Rika Gamayuni, R., & Muhammad Ahmad, S. (2019). Analysis The Effect of e-Budgeting and Government Internal Control System on The Quality of Financial Reporting of Local Government in Indonesia in Islamic Perspectives. *Ikonomika*, 4(2), 137–150. <https://doi.org/10.24042/febi.v4i2.5204>
- Siallagan, W. A. (2020). Redam Kesulitan Ekonomi Akibat Covid 19, Pemerintah Lakukan Upaya Ini. *Kemenkeu.Go.Id*. Retrieved from <https://www.kemenkeu.go.id/publikasi/artikel-dan-opini/redam-kesulitan-ekonomi-akibat-covid-19- pemerintah-lakukan-upaya-ini/%0A>
- Smith, J. D. (1936). Impossibility of Performance as an Excuse in French Law: The Doctrine of

Force Majeure. *The Yale Law Journal*, 45(3), 452. <https://doi.org/10.2307/791608>

The World Bank. (2017). *Guidance on PPP Contractual Provisions*. Washington DC: <http://pubdocs.worldbank.org/en/217281498617774364/Guidance-on-PPP-Contractual-Provisions-2017-edition.pdf>. Retrieved from www.worldbank.org

Wandner, S. A., & O'Leary, C. J. (2020). An Unemployment Insurance COVID-19 Crisis Response. *Employment Research*, 27(2), 3–4. [https://doi.org/10.17848/1075-8445.27\(2\)-2](https://doi.org/10.17848/1075-8445.27(2)-2)

Ward, M. (2020). Eskom's COVID-19 force majeure. *Emerald Emerging Markets Case Studies*, 10(3), 1–9. <https://doi.org/10.1108/EEMCS-05-2020-0149>

Woodbury, S. A. (2020). Disaster Unemployment Assistance Would Help Gig, Contract, Self-Employed Workers Affected by COVID-19. *Employment Research*, 27(2), 4–4. [https://doi.org/10.17848/1075-8445.27\(2\)-3](https://doi.org/10.17848/1075-8445.27(2)-3)

Zubaidi, N., Pratama, R. G., & Al-Fatih, S. (2020). Legal Perspective on Effectiveness of Pre-Work Cards for Indonesian People. *Bestuur*, 8(1), 9. <https://doi.org/10.20961/bestuur.v8i1.42722>