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Workers Layoffs Caused from the COVID-19 Pandemic in Indonesia and the European Union

Sholahuddin Al-Fatih*

Universitas Muhammadiyah Malang, Malang, Indonesia

Asrul Ibrahim Nur

University of Debrecen, Debrecen, Hungary

Nilasari

University of Nottingham, Nottingham, United Kingdom

ABSTRACT: This article aims to find legal efforts of workers who layoffs caused by COVID-19 pandemic. Layoff in a company can occur when a company goes bankrupt until it cannot meet its employees' salaries. In addition, some others are not affected by layoffs but are laid off without getting a salary. That were a big problem to face new normal era, a daily life after pandemic. Using the normative legal research method, this paper aimed to explain and describe how COVID-19 affected a thousand workers around Indonesia and European Union. Human rights, especially the rights of worker, use as a tool to analyze, how COVID-19 pandemic affected workers in Indonesia and European Union. As a result, this paper found that many people were laid off because of the COVID-19 pandemic; the government provides some facilities to help people who laid off during and after pandemic COVID-19, both in Indonesia and European Union perspective. Indonesia adopted some program, such as; a) Program for Family Hope; b) Food Donation Without Cash; c) Bantuan Sosial/Bansos; d) Village Funds; e) The Ministry of Social's social charity; f) Pre-Work Card (Kartu Prakerja); g) Donations made by the provincial government; h) Generosity from the city or regency administration; and i) The provincial government offers assistance to those who require housing. While, The EU has a constitution that guarantees that all citizens can work throughout the territory of the member states.

KEYWORDS: COVID-19, European Union, Indonesia, Layoffs.



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* Corresponding author's e-mail: sholahuddin.alfath@gmail.com

I. INTRODUCTION

COVID-19 is a new virus whose transmission is high-speed and is a disease unknown to anyone that affected by Coronavirus.¹ Mostly, all of countries worldwide are currently infected with the Corona Virus (only some countries that reported not being infected by COVID-19, such as North-Korea).² The infection from COVID-19 is generally a disease classified as mild and commonly experienced by humans, especially in children and young adults.³ COVID-19 outbreaks first came from The State of China, precisely in Wuhan, Hubei Province, the People's Republic of China.⁴ This virus began to attack the citizens of Wuhan in late December 2019 and then spread to other countries, including Indonesia, in February 2020.⁵ Starting from an infected woman, a 31-year-old woman from Indonesia who works as a dance teacher. This woman dances with her friend, a Foreign Citizen (foreigner) from Japan. Then the distance of two days after they danced, this 31-year- older woman was sick of coughing and shortness of breath; after being examined, it turned out that this woman was positively affected by the COVID-19.⁶ Thats story, run into terrible in several days after, and confirmed that most of pepole's in Indonesia were infected by COVID-19 and the government created so many policies and regulations to fight against COVID-19.

COVID-19 contagious than the virus is usually through splash water originating from the respiratory tract of man and cannot be transmitted

¹ Mohammad Syahrul Ra, Yusuf Hamdika & Sholahuddin Al-Fatih, "The Impact of COVID-19 Through the Lens of Islamic Law: An Indonesian Case" (2020) 7:3 *Lentera Hukum* 267–278.

² Nistha Shrestha et al, "The impact of COVID-19 on globalization" (2020) 11 *One Health* 1–9.

³ Arfiani Dena Pangestu, Elystiana Freda Cahyani & Sholahuddin Al-Fatih, "Legal Efforts For Workers Who are Experienced With Termination of Employment Due to Covid-19" (2022) 7:2 *Tadulako Law Review* 143–156.

⁴ Jauhar Nashrullah et al, "Juridical Analysis of Simultaneous Election Postpones during the COVID-19 Pandemic: Legal Certainty Perspective" (2022) 2:2 *Indonesia Law Reform Journal* 118–141.

⁵ Aisya Sanghra Devi Nugraha, Eliza Putri Sanggarwati & Sholahuddin Al-Fatih, "Government Legal Policy: Dampak Pembebasan Bersyarat Narapidana selama Pandemi COVID-19" (2021) 1:2 *Indonesia Law Reform Journal* 209–227.

⁶ Pangestu, Cahyani & Al-Fatih, *supra* note 3.

through the air.⁷ This virus can be transmitted through the mucus (droplet) of COVID-19-positive humans who spray onto hostile COVID-19 humans.⁸ The mucus splashed when positive humans for COVID-19 were sneezing and coughing that the water sprayed on other negative people.⁹ Moreover, it can also be transmitted through objects splashed out of positive people COVID-19. Until now, mainly scientists have been found a vaccine or drug to fight (such as Astra Zeneca, Sinovac, Pfizer, Merah Putih, etc), prevent and treat this COVID-19.¹⁰ Even so, there are still many ways to avoid the spread of this virus, namely by washing hands frequently, avoiding direct contact with sufferers, wearing masks when traveling, staying at home, and always keeping a distance from anyone.¹¹ Keeping a distance and staying in the house if it is not essential, its function is to limit and anticipate that COVID-19 is not widely spread. Therefore, President Jokowi has set Work From Home (WFH) Activities, Large Scale Social Restrictions (Pembatasan Sosial Berskala Besar/PSBB), PPKM (including many other related name, such as PPKM Mikro and so on),¹² social distance for the safety of the country and also providing dozen of vaccines stock, to vaccine Indonesian people (minimum 3 (three) dozen for each person).¹³

⁷ Christine J Moore, "Mechanical Ventilation: Weaning Process (Respiratory Therapy)" (2019) Elsevier 1–11.

⁸ Chih-Cheng Lai et al, "severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and coronavirus disease-2019 (COVID-19): The epidemic and the challenges" (2020) 55:3 International Journal of Antimicrobial Agents 1–9.

⁹ Erwin Hardeman & Robert Bertrand, "COVID-19 government grants, liquidity indicators and going concern uncertainty" (2022) 96:3 Maandblad voor Accountancy en Bedrijfseconomie 75–85.

¹⁰ Syafrida Syafrida & Ralang Hartati, "Bersama Melawan Virus Covid 19 di Indonesia" (2020) 7:2 SALAM: Jurnal Sosial dan Budaya Syar-i 495–508.

¹¹ Zhe Zhu et al, "Clinical value of immune-inflammatory parameters to assess the severity of coronavirus disease 2019" (2020) 95 International Journal of Infectious Diseases 332–339.

¹² Vicko Taniady et al, "Phk Dan Pandemi Covid-19: Suatu Tinjauan Hukum Berdasarkan Undang-Undang Tentang Ketenagakerjaan Di Indonesia" (2020) 4:2 Jurnal Yustisiabel 97–117 at 98–99.

¹³ Aprista Ristyawati, "Efektifitas Kebijakan Pembatasan Sosial Berskala Besar Dalam Masa Pandemi Corona Virus 2019 oleh Pemerintah Sesuai Amanat UUD NRI Tahun 1945" (2020) 3:2 Administrative Law and Governance Journal 240–249.

However, during and after COVID-19, a lot of companies, were affected by COVID-19 pandemic, so they laid off also a lot of their workers as a result of efficiency and bankruptcy.¹⁴ The closure of shops and businesses has caused many losses that also impacted millions of dollars in the economic sector.¹⁵ The impact of the pandemic COVID-19 is very much experienced by the people of his specialty in Indonesia, one of which impacts the dismissal of the employees who are not guilty of it, the employees of the company, or related to the world of the industry because of force majeure or experience loss.¹⁶ The sluggish industry caused companies to be forced to make efficient to avoid more significant losses. Employee housing is impromptu, especially in Java. The dismissal of these employees determines the termination round in which they do not receive salary and daily income. The termination means they no longer have money for living expenses and pay for some of their needs. It became a damage and emergency condition for some workers, especially who are came from outside of big city, that they also do not have any family in the city to help them.

The existence of the COVID-19 pandemic has made the economic conditions in the world, especially in Indonesia, become chaotic until suspended animation, which then has an impact on the number of industries that must close down and, of course, makes companies do employee housing/layoffs which is, done instantly.¹⁷ The existence of unplanned layoffs in the industrial world due to the emergence of the COVID-19 pandemic requires protection and fulfillment of the rights of

¹⁴ Silvia Cahyadi & Tundjung Hening Sitabuana, "Perlindungan Bagi Pekerja Atas Tindakan Pemutusan Hubungan Kerja (PHK) Di Masa Pandemi Covid-19" (2022) 1:6 SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, dan Pendidikan 823–832.

¹⁵ Aknolt Kristian Pakpahan, "COVID-19 dan Implikasi Bagi Usaha Mikro, Kecil, dan Menengah" (2020) Jurnal Ilmiah Hubungan Internasional 59–64.

¹⁶ Imas Novita Juaningsih, "Analisis Kebijakan PHK Bagi Para Pekerja Pada Masa Pandemi Covid-19 di Indonesia" (2020) 4:1 ADALAH: Buletin Hukum & Keadilan 189–196.

¹⁷ Silpa Hanoatubun, "Dampak Covid – 19 terhadap perekonomian Indonesia" (2020) 2:1 EduPsyCouns: Journal of Education, Psychology and Counseling 146–153.

terminated workers to continue achieving social welfare.¹⁸ Our study argues that layoffs due to the impact of the COVID-19 pandemic can be categorised as force majeure. In legal terms, the COVID-19 pandemic has been designated as a national disaster through Presidential Decree No. 12/2020. The impact caused by COVID-19 in various sectors is one indicator that the pandemic is an unpredictable disaster that can be categorised as force majeure.

Because the impact of layoffs is significantly hampering one's social functioning if not appropriately handled. The impact on economic, psychological, and social of a worker dramatically affects the quality of his life after receiving a layoff. Apart from the impact on himself, layoffs can also affect the conditions of the worker's family. This condition makes people worried, and even their lives are not calm because they think about what if they lose their jobs. However, how else, the decision to lay off what was taken and chosen by this company was the final step because the company also suffered losses. Those decision was a big dilemma for companies.

In this case, the company was reluctant to take the Layoff Step because the company spent a lot of cost, time, and energy training employees before being accepted into the company.¹⁹ Layoff cannot be done just like that by a company, and this is because layoffs have been regulated by law so it presents a risk for companies to use many considerations in laying off their employees.²⁰ The regulation on this matter is Law No. 13 of 2003 concerning Manpower, stating that in undergoing termination of employment, the parties concerned, namely employers and workers/laborers, must know matters relating to layoffs, so they can get their rights after being laid off.²¹

¹⁸ Gevano Anso, Yulianto Yulianto & Ninis Nugraheni, "Legal Review Of The Implementation Of Termination Of Employment Relationship With The Reason Of The Pandemic Covid-19" (2022) 15:2 Jurnal Legalitas 185–198.

¹⁹ Wibowo Hadiwardoyo, "Kerugian Ekonomi Nasional Akibat Pandemi Covid-19" (2020) 2:2 BASKARA : Journal of Business and Entrepreneurship 83–92.

²⁰ Sonhaji Sonhaji, "Analisis Yuridis Pemutusan Hubungan Kerja Akibat Kesalahan Berat Pekerja" (2019) 2:1 Administrative Law and Governance Journal 60–78.

²¹ Pangestu, Cahyani & Al-Fatih, *supra* note 3.

Scholars have conducted studies on layoffs due to the COVID-19 pandemic in both Indonesia and EU member states. Mardiyah and Nurwati conducted a study on the impact of the COVID-19 pandemic on the increase in unemployment in Indonesia.²² The study analysed data released by various institutions including the World Bank, IMF, WHO, and BPS as well as various journalistic information contained in national and international media. As an initial study, the results obtained are quite interesting because they provide a helicopter view perspective, although the research conducted is general and did not provide specific policy recommendations.

A study on the impact of COVID-19 on the labour sector from a legal perspective was conducted by Zubaidi et. al. This study analysed the effectiveness of the pre-work card policy adopted by the Indonesian government in addressing the impact of COVID-19, especially in the labour sector.²³ The study focuses on the case of Indonesia without comparison with other countries.

Furthermore, studies ⁴ on the impact of COVID-19 on labour were also conducted by scholars in the European region. Ebbinghaus and Weishaupt conducted a study on the influence of the COVID-19 pandemic on changes in labour protection in EU member states.²⁴ The research explains that the EU has been relatively successful in overcoming the labour crisis during COVID-19. The EU is a region whose integration was formed due to the crisis, the policy response to the crisis is one of the factors that affect regional integration.

The studies conducted by Mardiyah and Nurwati and Zubaidi et. al. addressed only one jurisdiction, namely Indonesia. Meanwhile, Ebbinghaus and Weishaupt discussed several national jurisdictions of EU member

²² Rahma A Mardiyah & R Nunung Nurwati, "Dampak Pandemi Covid-19 Terhadap Peningkatan Angka Pengangguran Di Indonesia" (2020) *Academia.edu* 1–20.

²³ Najella Zubaidi, Regy Gusti Pratamab & Sholahuddin Al-Fatih, "Legal Perspective on Effectiveness of Pre-Work Cards for Indonesian People" (2020) 8:1 *Bestuur* 9–18.

²⁴ Bernhard Ebbinghaus & J Timo Weishaupt, "Readjusting unemployment protection in Europe: how crises reshape varieties of labour market regimes" (2022) 28:2 *Transfer: European Review of Labour and Research* 181–194.

states that were affected by the EU legal response to tackle the COVID-19 pandemic crisis in the labour sector directly. Therefore, the previous three studies essentially do not use a comparative approach between different jurisdictions.

This paper will be analysed from a comparative perspective between Indonesia and the EU. There are at least three reasons why this comparative study is appropriate. First, Indonesia and the majority of EU member states adopt a civil law legal system with the main characteristic of the dominant role of written laws. Furthermore, Indonesia and the EU have similar patterns in responding to the labour crisis caused by COVID-19, namely the subsidies provided to workers affected by layoffs. Finally, Indonesia is an important economic partner for the EU in the ASEAN region. The fact makes this comparative study even more interesting to conduct because it will provide a new perspective on the relationship between the two entities in the perspective of handling the labour sector crisis.

According to those problematic backgrounds, this article aimed to answer the research question of how the government fulfills workers' rights during layoffs caused by the COVID-19 pandemic from the perspective of Indonesia and European Union Policy. Several cases and best practices are also described in this article to examine the best way to solve the layoff workers problem during the COVID-19 pandemic.

II. METHODS

The normative juridical method is the most suitable and accurate method to study this research.²⁵ Normative juridical method is legal research conducted by examining literature material or secondary data as the primary material to be investigated by searching for regulations and literature relating to the problem under study.²⁶ Normative research uses legal material, which includes letters, books, laws, and official documents

²⁵ Sholahuddin Al-Fatih & Ahmad Siboy, *Menulis Artikel Karya Ilmiah Hukum di Jurnal Nasional dan Internasional Bereputasi* (Malang: Inteligencia Media, 2021).

²⁶ Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003).

issued by government officials.²⁷ Techniques for analyzing using interpretation systems in the technical analysis of legal materials, such as grammatical and systematic interpretations. As a normative juridical research, the study materials used in Indonesian Law No. 13/2003 on Manpower,²⁸ Government Regulation o. 35/2021 on Fixed-Term Labour Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment (GR 35/2021), the European Social Charter of 1961, the Treaty of Rome, journals, and scientific articles provide insight and understanding to find the best answer for the research question that analysis in the discussion.

III. INDONESIAN GOVERNMENT POLICIES FOR WORKERS WHO LAYOFFS DURING COVID-19 PANDEMIC

⁷The Ministry of Manpower (Kemnaker) noted that as many as 72,983 employees became impacted by massive layoff due to the COVID-19 pandemic.²⁹ The survey was conducted at 21 Manpower Offices (Disnaker) from 34 provinces in Indonesia using a quantitative method by administering a questionnaire. The survey results also found that 4,156 companies had laid off their employees. This was done because the company's financial condition was depressed due to the impact of the COVID-19 pandemic. Unfortunately, due to the company's financial condition, some companies do not pay severance pay; they cannot even pay the salaries of their laid-off employees, even though the salary is the employee's right.

²⁷ *Ibid.*

²⁸ Several provisions in Law Number 13/2003 on Manpower have been revoked by the Constitutional Court through decisions Number 012/PUU-I/2003, Number 100/PUU-X/2012, Number 13/PUU-XV/2017, Number 7/PUU-XII/2014, Number 72/PUU-XIII/2015. The law has also been amended by Law No. 6/2023 on the Enactment of Government Regulation in Lieu of Law No. 2/2022 on Job Creation into Law.

²⁹ Dwi Aditya Putra, "Kemnaker: 72.983 Pekerja Kena PHK Selama Pandemi Covid-19", (2021), online: [liputan6.com <https://www.liputan6.com/bisnis/read/4750566/kemnaker-72983-pekerja-kena-phk-selama-pandemi-covid-19>](https://www.liputan6.com/bisnis/read/4750566/kemnaker-72983-pekerja-kena-phk-selama-pandemi-covid-19).

Worse, the status of employees also affects their wages or severance pay. Under these conditions, employees will likely suffer losses because of their weak position in labor law regulations. With their weak social status, employees and laborers need legal protection.³⁰ In this condition, the workers questioned the protection of workers/laborers' rights to severance pay provided by the company, which was not regulated fairly (depending on the company's financial ability to use emergency conditions/emergency law).³¹ However, workers' concerns go beyond severance pay. They worry about how they will live over the next few months, whether they will be qualified for another job or they will be jobless forever and facing the COVID-19 pandemic with an emergency.

As a result of layoffs, the unemployed (previously, they were workers who were laid off during the Covid-19 pandemic), will survive on the remaining salary or severance pay they get.³² If not handled properly, increasing the number of persons without higher-level jobs (unemployment) might lead to many adverse outcomes. The worst potential wrong handling of the amount of responsibility that is high can cause poverty to increase and can make it impossible for any sector to move; when poverty increases and there is less employment available, other problems, such as hunger, crime, and so forth, could become more serious.³³ The vast number of people unable to eat is a new situation worse than the risk posed by the COVID-19 virus. Many people will starve to death if the economy continues in this direction. Hunger is brought on by a person's inability to satisfy his food needs as a result of the before mentioned poverty. If not effectively addressed, hunger can result in new, more dangerous issues like looting and

³⁰ Nikodemus Maringan, "Tinjauan Yuridis Pelaksanaan Pemutusan Hubungan Kerja (Phk) Secara Sepihak Oleh Perusahaan Menurut Undang-undang No. 13 Tahun 2003 Tentang Ketenagakerjaan" (2015) 3:3 Jurnal Ilmu Hukum Legal Opinion 1-9.

³¹ Mustika Mega Wijaya et al, "Juridical Review Legal Protection of Workers Affected of Termination of Employment (PHK) Due to the Covid-19 Pandemi Viewed from the Perspective of Labor Law (Act No. 13 of 2003 Concerning Labor)" (2023) 10:2 International Journal of Multicultural and Multireligious Understanding 460-468.

³² Ahmad Hanfan, "Hak-Hak Pekerja I Buruh I Karyawan Dalam Pernutusan Hubungan Kerja (Phk), Pensiun dan Pengunduruan Diri" (2010) 47 CERMIN 158-169.

³³ Reporter Unila, "Covid-19 dan Filantropi", (2020), online: *Univ Lampung* <<https://www.unila.ac.id/covid-19-dan-filantropi/>>.

crime. Looting and crime happen when there is no other option for someone to meet their necessities to survive.³⁴

Because there is a chance it will occur if the handling is done incorrectly from the start, things that can generate criminal behavior because there are not enough job prospects due to layoffs since the COVID-19 outbreak must be overlooked. All Indonesians, not just the workers affected by the COVID-19 pandemic, anticipate the government's role, efforts, and policies. Over 80%, or around 1%, of the population, or 2 million people, are PHK. 10% are laid off, out of which more than 80% are. All employees have lost their means of support, which is why many workers are dissatisfied with the PHK.³⁵

As a result of the COVID-19 outbreak, many workers in this country are asking for severance pay. The employees demanded legal protection for severance pay on unexpected layoffs by businesses to prevent poverty and starvation due to the absence of money obtained from layoff victims, which is the effect of the COVID-19 pandemic. In this instance, the government took action to control the problem by announcing a Pre-Work Card policy.³⁶ This card is meant for employees who have been laid off, jobless individuals, and individuals who have completed formal education but have yet to find employment.³⁷ This first agreement is only worth \$10 trillion, but if the COVID-19 Pandemic occurs, it will be worth twice as much.

The community was astonished and unprepared for the epidemic and experienced shock and unexpectedness. Nevertheless, the government provided a financial allowance of IDR 600,000 for around four months to help resolve this situation.³⁸ That requires legal protection in situations like this:³⁹ a). the government must assume responsibility for protecting employees who are still employed by issuing statutory regulations, specific

³⁴ Pangestu, Cahyani & Al-Fatih, *supra* note 3.

³⁵ *Visualisasi Data Penyebaran COVID-19 di Indonesia*, by Ghiffari Assamar Qandi & Nur Rakhmawati, ResearchGate (Institut Teknologi Sepuluh Nopember, 2020).

³⁶ Zubaidi, Pratamab & Al-Fatih, *supra* note 23.

³⁷ Art. 1 (1) Presidential Regulation No. 36/2020 on Job Competency Development through the Pre-Employment Card Programme as amended latest by Presidential Regulation No. 113/2022.

³⁸ Hanoatubun, *supra* note 17.

³⁹ Pangestu, Cahyani & Al-Fatih, *supra* note 3.

workers under article 155 of Law No. 13 of 2003 concerning Employment; b) following a layoff, the former employee is still entitled to certain benefits, including; 1) the office will cover any costs associated with salaries, earnings, and benefits; 2) a range of facilities and allowances; and 3) protection, personal safety, and interests while working are ensured.⁴⁰

GR 35/2021 has determined that companies can make layoffs under force majeure conditions.⁴¹ The reasons for the layoffs are often applied during the COVID-19 pandemic, accompanied by an explanation of the decline in the company's revenue that necessitates the layoffs. Despite experiencing layoffs, workers still receive protection in the form of payment of rights consisting of severance pay, long service pay, and compensation pay.⁴²

The Regulation also categorises two conditions of force majeure that cause companies to layoff.⁴³ The first condition is force majeure that causes the company to close its business and therefore must conduct layoffs. The second is the condition of force majeure that leads a company to initiate layoffs without closing its business. This distinction has consequences for the number of workers affected by layoffs. According to the policy, in the event of a natural termination of work, the employer must provide severance pay or a gratuity as well as reimbursement for benefits that should be accepted as Article 156(1) of Law 13/2003. Following Law 13/2003 on Manpower, several events, such as the employee's resignation due to advanced age, a severe error they made, being detained by the police, the company suffering losses, an unintentional violation, or even death, can result in a worker being let go. While they were being discussed, the business faced losses and had to fire workers or staff. In order to resolve this

⁴⁰ Koko Kosidin, *Perjanjian Kerja perjanjian perburuhan dan peraturan perusahaan* (Bandung: Mandar Maju, 1999).

⁴¹ Art. 36 (c) Government Regulation Number 35 of 2021 on Fixed-Term Labour Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.

⁴² Art. 40 Government Regulation Number 35 of 2021 on Fixed-Term Labour Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.

⁴³ Art. 45 Government Regulation Number 35 of 2021 on Fixed-Term Labour Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment.

pressing issue between the employer and employees, the termination of these labor privileges should be discussed. Since the welfare of the people has an impact on human rights when it comes to the necessities of human life, the Government must oversee defending this in the first place.⁴⁴ The government's responsibility in rescuing the economy of its people is to contribute donation from Mr. President's help expressly provided for Indonesian peoples. Also available are village funds, which assist the communities in coping with the current economic downturn. The government is also easing up a bit on credit payments and providing help to State Electricity Company/Perusahaan Listrik Negara (PLN) when it comes to paying electricity bills.⁴⁵ Furthermore, the government also loosened credit payments, such as motor vehicle and housing loans/mortgages (such as KPA, KPR and so on).

Additionally, the Government of the Republic of Indonesia has taken several actions and attempted to address COVID-19 from the social, economic, health, and numerous other sectors in tackling this epidemic. The government offers several conveniences to help citizens who are stranded due to Termination of Employment during the pandemic COVID-19, among other things, due to the large number of people who are impacted by layoffs as a result of the pandemic COVID-19: a) Program for Family Hope (PKH/Program Keluarga Harapan). This initiative was in place prior to the emergence of the COVID-19 epidemic. People from disadvantaged backgrounds have been identified as routine recipients of government aid who are qualified for support from this program; b) Food Donation Without Cash (Bantuan Pangan Non Tunai/BPNT). Help is also available right now, prior to the development of the COVID-19 pandemic, and the data of those who are less able to have registered as users of routine government help each month; c) The President's Social Charity (Bantuan Sosial/Bansos). The target population comprises Indonesian citizens (WNI) whose information still needs to be entered as PKH and

⁴⁴ Imas Novita Juaningsih et al, "Optimalisasi Kebijakan Pemerintah dalam penanganan Covid-19 terhadap Masyarakat Indonesia" (2020) 7:3 SALAM: Jurnal Sosial dan Budaya Syar-i 509-518.

⁴⁵ Siti Setiati & Muhammad Khifzhon Azwar, "COVID-19 and Indonesia" (2020) 52:1 Acta Medica Indonesiana 84-89.

BPNT recipients; d) Village Funds under Village Minister Regulation The Village Fund budget, one designated mainly for managing COVID-19, can be reallocated by the village authority. e) The Ministry of Social's social charity program provides every family with an essential donation of IDR 600.000 each month, calculated over the four months beginning in April; f) Pre Work Card (Kartu Prakerja), given to worker affected by layoff, unemployed, or just completed formal education are handed this card (as formerly mentioned above); g) Donations made by the provincial government. By giving the affected community Bansos IDR 500.000, with a third in the form of cash and two-thirds in the form of groceries for COVID-19; h) Generosity from the city or regency administration. The City Government/Regency Government may offer direct support to residents in need if they are not listed as Provincial Government aid recipients; and i) The provincial government offers assistance to those who require housing—giving food or rice packets to scavengers or beggars who are genuinely homeless or in need demonstrates humanity.⁴⁶

Additionally, the government has plans to lessen the impact of COVID-19 on the impacted areas, particularly for those who have lost their source of income due to layoffs. Some of them are allowances paid by the government on extended credit to pay for one year from March 2020 to March 2021 for groupings of micro, small, and medium-sized businesses, motorcycle taxis, and taxi drivers. Then, during the pandemic, the government provided subsidies to subscribers to offer policy dispensation PLN electricity costs. This relief is available to paying and token-using consumers, who will receive free electricity up to 450 V and a 50% discount up to 900 V power supply voltage. The government offers this program exclusively for the needy, and it will be in effect for three months starting in April 2020.⁴⁷ Given some of the aid provided by the government to areas that the COVID-19 pandemic has severely impacted, it is hoped that this will lessen the burden on affected society and allow for the fulfillment of

⁴⁶ Mardiyah & Nurwati, *supra* note 22.

⁴⁷ *Ibid.*

community needs even though there are restrictions that prevent people from engaging in daily activities as usual.⁴⁸

IV. LAYOFFS FROM ⁴THE COVID-19 PANDEMIC: HOW DO EU COUNTRIES PROTECT WORKERS' FUNDAMENTAL RIGHTS?

During ⁴the Covid-19 pandemic, states across Europe have been confronted with a variety of challenges, including the issue of ensuring jobs and incomes for their citizens. ⁵The Covid -19 pandemic has caused economies throughout Europe to collapse at an unprecedented rate, which has led to a significant number of people losing their jobs. In the first quarter of 2020, 3.0 million EU residents were out of work due to temporary layoffs, a figure that nearly fivefold increased in the second quarter (Q2 2020), reaching 13.8 million.⁴⁹ The widespread layoffs occurred as a direct result of the widespread business closures that were required ⁶to prevent the spread of the COVID-19 virus.

The dilemmatic nature of such a circumstance cannot be denied. However, all levels of government, employers, and employees must maintain their coordinated efforts to quell the pandemic. Nonetheless, it is imperative to protect the workers' fundamental rights. The EU protects the fundamental rights of workers in both social and economic aspects. These provisions were originally included in the Community Charter of the Fundamental Social Rights of the Workers adopted by the European Economic Community (EEC) in 1989. During the transformation of the EEC into the EU, the provisions on workers' fundamental social rights were maintained in the Treaty of Functioning the EU and the Charter of the Fundamental Rights of the EU.⁵⁰

The protection of workers' fundamental rights in a treaty legal instrument is important in the EU legislative system. Treaties are primary legislation

⁴⁸ Agus Joharudin et al, "Panic Syndrom Covid-19: Penekanan Terhadap Kebijakan Yang Diberikan" (2020) 4:1 Jurnal Perspektif 44–53.

⁴⁹ Eurostat, "Temporary lay-offs from work record high in 2020", (2021), online: <<https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20210419-1>>.

⁵⁰ Art. 151 Treaty of Functioning of the European Union.

that constitute the foundation of EU law.⁵¹ It also means that treaties are the constitutional basis of the EU legal system. Therefore, the protection of workers' fundamental rights in treaties provides a powerful basis for ensuring the protection of these rights under any circumstances.

Furthermore, if layoffs continue to rise, it will contradict the European Pillar of Social Rights Action Plan, which proposes initiatives to build a strong, fair, inclusive, and opportunity-rich social Europe in the twenty-first century.⁵² At least 78% of the population between the ages of 20 and 64 should be actively employed by the year 2030 in accordance with the social target set by the EU for 2030.⁵³ However, the Covid -19 pandemic has halted six years of employment growth, with a third-quarter 2020 employment rate of 72.4%.⁵⁴

COVID-19 has unquestionably impacted the fulfilment of EU's fundamental social rights. At the level of ordinary law, all Member States have established social rights for their citizens. These rights can be found in areas such as labour law, which governs the relationship between employees and employers including protection against dismissal, minimum wages, leave, and safe working conditions.⁵⁵

Employment protection rights, such as the right to work in a safe environment under just conditions for fair remuneration and the right to organize and collectively bargain in trade unions, are among the social and economic rights guaranteed by the European Social Charter of 1961 but are most challenged during a pandemic. Furthermore, the EU countries have put a serious effort to employment protection by passing legislation

⁵¹ Bruno de Witte, "Legal Instruments and Law-Making in the Lisbon Treaty" in Stefan Griller & Jacques Ziller, eds, *Lisbon Treaty EU Const Const Treaty* (Vienna: Springer, 2008) 79.

⁵² European Commission, "European Pillar of Social Rights", (2021), online: <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights_en>.

⁵³ European Commission, "The European Pillar of Social Rights Action Plan", (2020), online: <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-action-plan_en>.

⁵⁴ *Ibid.*

⁵⁵ Mark Eric Butt, Julia Kubert & Christiane Anne Schultz, *Fundamental Social Rights in Europe* (Luxembourg: European Parliament, 1999).

under Article 118 of the Treaty of Rome referring to matters relating to “employment, labour law and working conditions, the right of association and collective bargaining between employers and workers”.⁵⁶ This treaty is expected to create a non-discriminatory workplace environment for employees and employers. During a pandemic, such a legislation is necessary because employees tend to be members of vulnerable groups, where their employers have the ability to terminate contracts by citing the pandemic as an excuse.

In order to mitigate the impact that the coronavirus pandemic will have on their respective economies, the finance ministers of the EU have given their approval to stimulus measures totalling 500 billion euros, which contains hundreds of billions in loans to businesses and credit for EU governments, as well as up to €100 billion (\$110 billion) in wage subsidies intended to prevent mass layoffs.⁵⁷

Other than the policy of providing subsidies to prevent mass layoffs, various EU member states also encourage companies to adopt alternative actions to prevent the increase in the number of unemployed people. One such way is to enable remote working or work-from-home mechanisms. Previously, this concept was unknown or rarely applied by many EU member states, especially Italy and Eastern Europe.⁵⁸ However, some workers are not able to do their jobs remotely, for instance machine operators and workers in the agricultural sector. Therefore, limiting the number of operators working is one possible solution. Promoting companies to implement remote working policies is one effort to reduce mass layoffs.

The other effort is to introduce a short-time work scheme, which is mostly implemented in Western European countries such as the Netherlands,

⁵⁶ Article 118 of the 1957 Treaty of Rome (TFEU)

⁵⁷ Charles Rilley, “Europe has a rescue package. But who’s going to pay for its coronavirus recovery?”, (2020), online: *CNN Bus* <<https://edition.cnn.com/2020/04/10/business/europe-coronavirus-stimulus/index.html>>.

⁵⁸ *Recovery from COVID-19: The changing structure of employment in the EU*, by John Hurley, Dragos Adăscăliței & Elisa Staffa (Luxembourg: Publications Office of the European Union, 2022).

Belgium, and France as well as Mediterranean regions such as Italy.⁵⁹ EU member states implemented the short-time work scheme massively from 2020 to 2021 and was proven to be sufficiently effective to avoid mass layoffs.⁶⁰ The EU has a crucial role to promote its member states to adopt work retention policies by allocating emergency funds under the Support to Mitigate Unemployment Risk in an Emergency (SURE) scheme.⁶¹ The regulation is stipulated in Council Regulation (EU) 2020/672 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak.⁶² The regulation was adopted based on the provisions in Article 122 of the Treaty of Functioning of the European Union (TFEU) which mandates the Council to provide financial support in emergency situations.⁶³

Through the SURE scheme, the EU provides financial assistance of up to €100 million to each member state.⁶⁴ The mechanism for applying for financial assistance is through the European Commission, which will also verify the eligibility of member states to be eligible for assistance from the EU.⁶⁵ The implementation of the financial assistance will then be audited and must be reported to the European Commission.⁶⁶

Adopting the secondary legislation instrument in the form of a regulation, the provision applies to all EU member states. However, each country implements various different policies. Spain adopted a work retention

⁵⁹ Ebbinghaus & Weishaupt, *supra* note 24.

⁶⁰ *Ibid.*

⁶¹ Bernhard Ebbinghaus & Lukas Lehner, “Cui bono – business or labour? Job retention policies during the COVID-19 pandemic in Europe” (2022) 28:1 *Transfer: European Review of Labour and Research* 47–64.

⁶² *Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak*, Official Journal of the European Union 2020.

⁶³ *Consolidated Version of The Treaty on The Functioning of The European Union*, Treaty Functioning of the European Union 1957.

⁶⁴ Art. 5 *Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak*, *supra* note 62.

⁶⁵ Art. 6 *Ibid.*

⁶⁶ *Ibid.*

policy through the *Expediente de Regulación Temporal de Empleo* (ERTE) established through Royal Decree Law 8/2020.⁶⁷ The Spanish government implemented a measure to prevent mass layoffs by stipulating that companies can temporarily shorten working days or hours and suspend labour contracts without terminating employment.⁶⁸ The Spanish government's policy has significantly reduced the number of mass layoffs, with 25% of workers experiencing the direct impact of these efforts. Through this scheme, workers also obtained direct financial support from the government.⁶⁹

A similar policy was also implemented by the Italian government as the first country in the European region to be infected with Covid -19. Italy also implemented a work retention policy with a higher achievement rate when compared to Spain. Around nearly 50% of workers in Italy were affected by the policy and prevented from mass layoffs.⁷⁰ The work retention policy in the form of short-time work is certainly not new to Italy, during the 2008 financial crisis the Italian government also adopted this policy to reduce the number of mass layoffs.⁷¹ Since the beginning of 2020 Italy has provided a wage guarantee at the local level which later became a national scale along with the implementation of a national lockdown.⁷² Italy is also a country that has successfully managed EU assistance through the SURE scheme to keep the labour market from experiencing a prolonged crisis.⁷³

Another EU member state that has made significant strides to prevent mass layoffs is Germany. Work retention in German Federal labour law is not a recent policy. In line with social insurance regulations, the policy has

⁶⁷ M Sylvania Porras-Arena et al, "Okun's Law: The effects of the COVID-19 pandemic and the temporary layoffs procedures (ERTE) on Spanish regions" (2022) MPRA Paper, online: <<https://ideas.repec.org/p/prapa/mprapa/115530.html>>.

⁶⁸ Javier Garcia-Clemente, Nicola Rubino & Emilio Congregado, *Evaluating the effects of short and medium-term temporary work reduction schemes: the case of Spain's ERTEs during the COVID-19 outbreak* (Germany: Munich Personal RePEc Archive, 2022).

⁶⁹ Hugh Robertson, "ETUI Policy Brief" (2016) European Economic, Employment and Social Policy.

⁷⁰ Ebbinghaus & Weishaupt, *supra* note 24.

⁷¹ Robertson, *supra* note 69.

⁷² Ebbinghaus & Lehner, *supra* note 61.

⁷³ *Ibid.*

been implemented in Germany even before the Covid -19 pandemic.⁷⁴ During the pandemic, the policy was implemented with the additional financial assistance from the Federal government so that businesses would not implement mass layoffs.⁷⁵ However, the work retention policy does not apply instantly. There is a mechanism that needs to be completed, namely the establishment of a collective agreement at the company level. With this collective agreement, the company's acceptance rate for work retention even reached 100%.⁷⁶

Reducing the number of mass layoffs during the Covid -19 pandemic is not only an economic issue but also involves citizens' rights. The EU has a constitution that guarantees that all citizens can work throughout the territory of the member states.⁷⁷ Therefore, it is very important to ensure that all EU member states have mechanisms to prevent mass layoffs, especially during a crisis such as the Covid -19 pandemic. In addition, the right to work is also a fundamental right guaranteed by the EU.⁷⁸ In this perspective, it is appropriate for the EU to adopt regulations that provide financial assistance for workers affected by the Covid -19 pandemic crisis.

Crisis for the EU is a relatively frequent condition. Before the COVID-19 pandemic, several crises had been experienced by the EU. The financial crisis in 2008, the Eurozone crisis in 2010, and the refugee crisis in 2015 are crises other than the COVID-19 pandemic faced by the EU in the last two decades. These various forms of crisis have then made the EU adapt by adopting several legal innovations that are sufficiently futuristic. Some studies also mention that the crisis is one of the accelerators of strengthening European integration, although the opposite has also happened with Brexit.⁷⁹

⁷⁴ Anika Seemann et al, "Protecting livelihoods in the COVID-19 crisis: A comparative analysis of European labour market and social policies" (2021) 21:3 *Global Social Policy* 550–568.

⁷⁵ Robertson, *supra* note 69.

⁷⁶ *Ibid.*

⁷⁷ Art. 45 *Consolidated Version of The Treaty on The Functioning of The European Union*, *supra* note 63.

⁷⁸ Art. 15 *The Charter of Fundamental Rights of the European Union*, 2000.

⁷⁹ Federico Maria Ferrara & Hanspeter Kriesi, "Crisis pressures and European integration" (2022) 29:9 *Journal of European Public Policy* 1351–1373.

The experience of the EU and its member states in efforts to reduce mass layoffs, especially during the COVID-19 pandemic, can be a benchmark for other regional organisations or other nations. Health crises with multi-sectoral impacts must be managed by prioritising the fundamental rights of citizens without neglecting economic considerations. Therefore, it is necessary to adopt effective legal instruments that have a direct impact and are well accepted by all stakeholders.

V. CONCLUSION

The COVID-19 case had a frightening effect on the community, and they lost many jobs. Unemployment rate has increased during the COVID-19 pandemic. All experienced losses and suffering, but thanks to government funding, the weight placed on the disruptive individuals and those who cannot pay it has at least been somewhat lessened. The COVID-19 pandemic has caused chaos in the global economy, particularly in Indonesia (and some countries in European Union/EU). Many businesses are compelled to shut down to stop the spread of the problem to society at large, resulting in millions of people losing their jobs and being laid off. In this instance, from the economic sector, the health sector, and numerous other sectors, the Government of the Republic of Indonesia has taken many actions and made great efforts to handle COVID-19. Due to the large number of people who have been made redundant due to the COVID-19 epidemic, the government also offers various services to assist those who have lost their jobs due to the pandemic. The EU has a relatively stronger legal basis for protecting workers' fundamental rights than Indonesia. The form of protection provided by the EU is by providing financial assistance to member states to run programmes that protect workers affected by layoffs. Indonesia provides protection with various programmes such as pre-employment cards, PKH, and other types of social assistance. The EU has experience in overcoming crises, for example, in 2008, the refugee crisis in 2015, and even the crisis during Brexit. Thus, the EU's way of responding to the emergence of unemployment during the COVID-19 pandemic was widely used as a reference by other countries and regional organizations.

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Workers Layoffs Caused from the COVID-19 Pandemic in Indonesia and the European Union

Sholahuddin Al-Fatih*
Universitas Muhammadiyah Malang, Malang, Indonesia

Asrul Ibrahim Nur
University of Debrecen, Debrecen, Hungary

Nilasari
University of Nottingham, Nottingham, United Kingdom

ABSTRACT: This article aims to find legal efforts of workers who layoffs caused by COVID-19 pandemic. Layoff in a company can occur when a company goes bankrupt until it cannot meet its employees' salaries. In addition, some others are not affected by layoffs but are laid off without getting a salary. That were a big problem to face new normal era, a daily life after pandemic. Using the normative legal research method, this paper aimed to explain and describe how COVID-19 affected a thousand workers around Indonesia and European Union. Human rights, especially the rights of worker, use as a tool to analyze, how COVID-19 pandemic affected workers in Indonesia and European Union. As a result, this paper found that many people were laid off because of the COVID-19 pandemic; the government provides some facilities to help people who laid off during and after pandemic COVID-19, both in Indonesia and European Union perspective. Indonesia adopted some program, such as; a) Program for Family Hope; b) Food Donation Without Cash; c) Bantuan Sosial/Ransum; d) Village Funds; e) The Ministry of Social's social charity; f) Pre-Work Card (Kartu Prakerja); g) Donations made by the provincial government; h) Generosity from the city or regency administration; and i) The provincial government offers assistance to those who require housing. While, The EU has a constitution that guarantees that all citizens can work throughout the territory of the member states.

KEYWORDS: COVID-19, European Union, Indonesia, Layoffs.



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* Corresponding author's e-mail: sholahuddin.alfatih@gmail.com