



## **TERMINATION OF EMPLOYMENT RELATIONSHIP PANDEMIC COVID-19 PERSPECTIVE FIQH MUAMALAH**

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### ***Abstract***

This research is a normative legal research. This study uses sources from library data, this research approach uses a type of approach that is tailored to the problems raised, namely the statutory approach and conceptual approaches. The data analysis used is content analysis. The purpose of this study was to describe and analyze the termination of employment during the Covid-19 pandemic with the perspective of Fiqh Muamalah. Termination of employment during the Covid-19 pandemic is not in accordance with the terms of the work agreement (*ijarah*). Because it does not fulfill the aspects in the termination of the work agreement (*ijarah*). The termination of the work agreement (*ijarah*) is due to several things, including: The death of one of the parties, *Iqalah*, namely the cancellation of both parties, the object being rented out is damaged or destroyed, The expiration of the agreed time, unless there is an *age*. The period of the Corona Virus Disease 2019 (Covid-19) pandemic in Islam cannot be used as an excuse / *age* and is not included in an emergency situation on the part of the employer or labor force to postpone or add to the contract period in terminating employment by employers / employees because they are not classified as an excuse (*aged*) that can invalidate the *ijarah* contract. Because the government has implemented various steps during the Covid-19 pandemic including helping companies and workers such as tax cuts, credit / debt restructuring, increasing quality in the financial system and suspension of debt payments from the small business creditor (KUR) scheme.

**Keywords:** *Termination of employment, Covid-19, Fiqh Muamalah.*

## **INTRODUCTION**

Termination of employment is the termination of the employment relationship due to a certain matter which results in the end of the rights and obligations between the worker/laborer and the entrepreneur (Hidayani, 2020). In January 2020, the world experienced a crucial problem with the outbreak of the Corona Virus. Corona Virus is a new type of virus that is attacking the world community at this time in medical terms it is referred to as the 2019 Novel Coronavirus (2019-nCoV), the health authority in Wuhan, Hubei Province. China, said three people died in Wuhan after suffering from pneumonia caused by the virus (Febrian, 2020). Indonesia is one of the countries facing a very crucial problem, namely the presence of Corona Virus Disease 2019 (Covid -19). Corona Virus Disease 2019 (Covid -19) has harmed not only the health sector but the economic sector of countries around the world, including Indonesia. The global economy is certain to experience a decline, following the WHO's determination that the Corona Virus Disease 2019 outbreak is a pandemic that affects the business world.

As a solution carried out by the Indonesian government, namely by implementing Large-Scale Social Restrictions. When the PSBB took effect, many workers in Indonesia had to be sent home, because considering the spread of this virus was very fast, and all companies felt the impact. Many companies have finally terminated their employment relationship with their employees due to the Corona Virus Disease (Covid-19) pandemic which is increasing rapidly. Companies have even issued extreme decisions, namely termination of employment (PHK), laid off, terminating the work contract before it ends, cutting wages, working partly, reducing their salary, to imposing the principle of no work no pay (no work, no pay). This is in line with Articles 164 and 165 of Law no. 13 of 2003 concerning Manpower which more or less states that a company has the right to terminate employment with workers if a company experiences continuous losses for two years or force majeure or because the company makes efficiency.

However, in general, several companies that terminated their employment relationship during the Corona Virus Disease (Covid-19) pandemic often used force majeure or efficiency reasons, even though these companies were still producing as usual. An important thing is a condition for terminating the company's employment relationship with workers, that is, the company has experienced a decline or loss for 2 years. Meanwhile, the current Corona Virus Disease (Covid-19) pandemic has not reached or is considered to be two years.

The clarity of force majeure which is still a question of entering the classification into natural disasters or not requiring attention. Because the force majeure reason used by the company to terminate the employment relationship cannot be justified. Given that there are still some misunderstandings for companies and workers regarding the status of temporarily laid off workers. As a result, many companies have taken advantage of the pandemic to "lay off" their workers without pay, but the workers can't do anything about it. With the right of employers to terminate employment relations (PHK) for their workers, this will increase the unemployment rate in Indonesia (Buwana, 2020).

The relationship between workers and employers is a work relationship that is bound by an agreement (contract) as a legal basis. The work agreement that has been agreed upon is a legal norm that contains binding rights and obligations to the parties who enter into the contract, in this case the employer and the worker. Therefore, if there is a dispute between the two, then the basis used to claim it is the deed of agreement. In disputes that result in termination of employment while in the middle of the contract period, it is necessary to fairly calculate the wages. Based on this background, the authors are interested in conducting more in-depth research and then reviewing the problem.

## **METHOD**

The type of research used is normative legal research or also called doctrinal legal research, namely research that examines statutory regulations in a coherent legal system and unwritten legal values that live in society (Sugiyono, 2019). Normative legal research or doctrinal law is also defined as research by searching and examining literature which is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are arranged systematically, reviewed, then a conclusion is drawn in relation to the problem written. Legal research like this does not recognize field research because what is researched is legal materials so it is said to be library based, focusing on reading and analysis of the primary and secondary materials or often called library research (Fathammubina, 2018).

This study uses a type of approach that is adapted to the issues raised in this study, namely the statutory approach and the conceptual approach. Statutory approach (statute approach), namely conducting a review of legislation related to the central theme of the research, namely termination of employment during the Corona Virus Disease 2019 (Covid-19) pandemic from the Fiqh Muamalah perspective. The conceptual approach is an approach by understanding the abstract elements that exist in the mind (Efendi and Johnny, 2020). Primary data sources in this study are the Qur'an, hadith, Compilation of Syari'ah Economic Law, Book of Islamic Jurisprudence Wa Adilatuhu Karangan wahbah Zuhaili which has been translated by Abdul Hayyie al-Kattani, et al, Volume 5 concerning the law of financial transactions, buying and selling transactions, insurance, Khiyar, various types of buying and selling contracts, Ija'rah contracts, Volume 7 on the Islamic economic system, financial markets, law on adultery, Qadzf and theft and Volume 8 on Jihad, courts and decision-making mechanisms, governance in Islam and Covid-19 outbreaks, slander and wisdom, Law No. 13 of 2003 concerning Employment and Policies issued during the Corona Virus Disease 2019 (Covid-19) Pandemic. Secondary data in this study are books, journals, theses, articles or other writings that support this research which discuss Termination of Employment during the Corona Virus Disease 2019 (Covid-19) pandemic and Muamalah Fiqh.

## RESULTS AND DISCUSSION

The employment relationship is the relationship between workers and employers that occurs after an employment agreement. That is an agreement in which the first party, the worker binds himself to the other party to work and get wages and the employer states the ability to employ the worker by paying wages. 1 Termination of Employment (PHK) is listed in Chapter XII Article 150 to Article 172 of Law Number 13 of 2003 concerning Manpower. Based on UUK article 1 number (25) of the Law of the Republic of Indonesia Number 13 of 2003, the termination of the employment relationship is due to a certain matter which results in the end of the rights and obligations between the worker/laborer and the entrepreneur.

The Corona Virus Disease 2019 (Covid-19) pandemic that hit Indonesia caused the government to issue Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) in several regions. This policy has an impact on the socio-economic activities of the community, including the continuity of employment and a decrease in workers' income. In the initial phase, the International Labor Organization (ILO) estimated that around 25 million jobs in the world could be lost due to the Covid-19 pandemic (ILO, 2020a). Furthermore, in the second quarter of 2020 the ILO predicts that the working hours of all workers will decrease by 10.5 percent, or the equivalent of 305 million full-time workers, assuming full-time working hours are 48 hours per week (ILO, 2020c).

The results of the research carried out by the LIPI Population Research Center together with the Demographic Institute of the University of Indonesia (LD-UI) and the Research and Development Agency of the Ministry of Manpower conducted an online survey on the impact of Corona Virus Disease 2019 (Covid19) on the workforce, indicating that there was a wave of Termination of Employment ( layoffs) and a decrease in the income of workers/employees/employees during the PSBB period in Indonesia.

The percentage of termination of employment (PHK) for workers/employees/employees in Indonesia at the end of April 2020 was 15.6 percent, consisting of 1.8% of layoffs with severance pay and 13.8% of layoffs without severance pay. 4 And data from the Ministry of Manpower shows that The authors obtained a significant number of workers/laborers in Indonesia who experienced termination of employment during the Corona Virus Disease 2019 (Covid-19) pandemic. Apart from data obtained from the LIPI Population Journal, there is also data from the Ministry of Manpower regarding portraits of workers affected by Covid-19.

Based on the results of a survey conducted by the ILO in the ILO Minutes above, it was found that 65% of companies temporarily stopped their operations and 3% stopped them permanently. Number 19/PUU-IX/2011, dated 20 June 2020 and the Labor Law. The reasons for terminating employment during a pandemic are of course varied, but it cannot be denied that many employers also interpret the Corona Virus Disease 2019 (Covid-19) outbreak which has been established by the government with Presidential Decree Number 12 of 2020 issued by the Indonesian government which legitimizes Corona status Virus Disease 2019 (Covid-19) as a natural disaster, this is the reason for force majeure to terminate employment relations with employees to reduce losses due to the Corona Virus Disease 2019 (Covid-19) pandemic.

Termination of Employment (PHK) in Law Number 13 of 2003 article 1 point 25 is defined as termination of employment because of a certain matter which results in the end of the rights and obligations between the worker/laborer and the entrepreneur. In Article 61 Paragraph (1) Law Number 13 of 2003 stipulates that work agreements can end under several conditions, namely, the worker dies; the expiry of the term of the work agreement agreed upon by the worker and the previous employer; there is a court decision and/or decision or determination of an Industrial Relations Dispute Settlement Institution that has permanent legal force regarding Termination of Employment (PHK); or there are certain conditions or events that are stated in the work agreement, company regulations, or collective bargaining agreements which can cause the end of the employment relationship.

International Labor Organization (ILO) in the ILO convention no 158 concerning the fair termination of employment relations described in article 4 the employment of a worker will not be terminated unless there are reasons for the termination related to the capacity or behavior of the worker or based on the operational requirements of the business sector, company or service.

The government's efforts to protect workers/laborers during the Corona Virus Disease 2019 (Covid-19) pandemic have been carried out with the aim of preventing termination of employment during the Covid pandemic-namely by removing worker cards, pre-employment cards is the government's way of providing assistance to small workers/laborers who have experienced Termination of Employment (PHK) as well as affected micro and small business actors, so that they can work and create again. And as well as the issuance of Permenaker Number 14 of 2020 concerning guidelines for providing government assistance in the form of salary/wages subsidies for workers in handling Corona Virus Disease 2019 (Covid-19). This assistance is expected to reduce the burden on workers/laborers and entrepreneurs/employers in financial matters so that termination of employment can be avoided.

If various efforts have been made to avoid termination of employment (PHK) and termination of employment (PHK) cannot be stopped, then the entrepreneur/employer must fulfill the rights of the worker/laborer in accordance with the provisions of Law No. 13 of 2003 concerning Manpower.

As for termination of employment in the view of muamalah fiqh, the following 3 aspects must be considered:

## **1. Aspek Pekerja/ Buruh**

In the context of muamalah fiqh, workers/laborers are referred to as *ajir*/workers, namely those who provide services and receive wages for the services provided. Therefore, in an *ijarah* work agreement, the main elements must be determined, namely: the form of work, the time for work, and the wages. Basically, *ijarah* transactions in Islam must be based on the principles of mutual benefit with a pattern of partnership relations. With the main elements listed in the *ijarah* work agreement, each party can understand their rights and obligations. Workers/laborers are obliged to carry out the work that is their duty, in accordance with the agreement that has been agreed upon and at the same time they are entitled to receive wages for the work they carry out. If there is termination of employment, the worker/laborer must receive according to his rights as a worker, one of which is severance pay. If an entrepreneur unilaterally terminates a relationship, as happened during the Covid-19 pandemic, then the worker/laborer has the right to get their rights according to their rights.

## **2. Employer/Employer Aspect**

Employers in the provisions of Article 1 paragraph (5) of Law No. 13 of 2003 concerning Manpower, entrepreneurs are: a) Individuals, partnerships or legal entities that run a company owned by themselves, b) Individuals, partnerships, or legal entities that independently run a non-owned company, c) Individuals, partnerships or legal entities located in Indonesia representing companies as referred to in letters a and b domiciled outside Indonesia. In the context of muamalah fiqh, the entrepreneur/employer referred to as a *musta'ji* is the party receiving the service or the employer who provides wages. Entrepreneurs/employers must also carry out their obligations in accordance with the main elements listed in the *ijarah* agreement. If there is a unilateral termination of employment due to Corona Virus Disease 2019 (Covid-19) committed by the entrepreneur/employer against the worker/worker, then the entrepreneur/employer must fulfill the obligation to pay wages/severance pay to the worker/or laborer. Because workers / laborers are partners in obtaining mutual benefits. If the entrepreneur/employer does not do this, it can be categorized as tyranny in terminating the employment relationship.

## **3. Aspects in Islam**

Islam considers that a work relationship is an *ijarah* or a contract for certain included and certain benefits that can be given and permissible with certain rewards. Thus, the main points of the transaction in this *ijarah* include the following provisions: (1) The services transacted are services that are transacted are services that are lawful, not services that are unlawful. (2) Fulfill the requirements for the validity of an *ijarah* transaction, namely a person who is legally competent and the transaction is based on the principle of the willingness of both parties, (3) Transactions must meet clear conditions relating to the type of work, length of service, wages, and level energy expended during work.

So when terminating the employment relationship in Islam, one must pay attention to the provisions contained in terminating the ijarah, such as the death of one of the parties making the contract, Iqalah or cancellation by both parties, damage to the leased object so that the ijarah is impossible to continue and the lease term has ended. Termination of employment in Islamic law can be seen as termination (fasakh) of the employment contract (ija>rah). Ija>rah is a contract that is permanent, so that one party cannot fasakh (cancel) without the consent of the other party, as the process of a contract that is formed due to the agreement of both parties. It is clear that in the process of establishing or in the process of terminating a contract, one of the parties cannot be in a coercive situation.

## CONCLUSION

Termination of employment during the Corona Virus Disease 2019 (Covid-19) pandemic from the Fiqh Muamalah perspective can be drawn the following conclusions: 1. Termination of Employment Relations during the Corona Virus Disease 2019 (Covid-19) pandemic that occurred in Indonesia based on the analysis the authors can that the termination of employment during the Corona Virus Disease 2019 (Covid-19) pandemic was due to force majeure. however, the reason for this force majeure needs to be underlined that a termination of employment can be carried out for reasons of force majeure (forje majuer) and losses must be proven in financial statements showing consecutive losses for 2 years and must be based on an audit. 2. Termination of employment during the Corona Virus Disease 2019 (Covid-19) pandemic from the fiqh muamalah perspective is not in accordance with the provisions of the work agreement (ija>rah) because termination of employment during the covid-19 pandemic is not included in the category of termination (fasakh ) work agreement contract (ijarah). The occurrence of termination of employment during the Corona Virus Disease 2019 (Covid-19) Pandemic was an effect of government policies that stipulated self-quarantine/including lockdowns. While this policy is a policy in avoiding greater harm, namely expanding the spread of Corona Virus Disease 2019 (Covid 19).

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