

## GOVERNMENT SUPERVISION OF THE RIGHTS FULFILLMENT OF HOUSED WORKERS IN THE TRANSITION PERIOD

**Arini Nur Annisa, Mutiah Wenda Juniar, Rismawati Nur, Muh Ramadhansyah Prasetya**

Faculty of Law, Hasanuddin University, Makassar, Indonesia

arininurannisa.aa@gmail.com, mutiahwendajuniar@unhas.ac.id, rismawatinur736@gmail.com,  
mramadhansyahprasetya@gmail.com

Received 15 September 2022 • Revised 25 October 2022 • Accepted 28 November 2022

### Abstract

This study aims to determine the form of supervision carried out by the government on the fulfillment of the rights of laid-off workers and to analyze the effectiveness of the wage system policy and welfare of laid-off workers using empirical normative research methods that use research materials in the form of primary data obtained from field research and secondary data collected obtained from various laws and regulations, books, articles, and theoretical materials related to the object of research. The results show that the form of supervision carried out by labor inspectors tends to be non-judicial repressive in nature by waiting for complaints from workers/laborers and then making tripartite settlements through mediation. The fulfillment of the rights of laid-off workers/laborers through various government policies cannot run effectively which is influenced by three factors, namely, a) labor regulations that do not contain strict sanctions for violations of the fulfillment of workers' rights, b) law enforcers, namely labor inspectors and Civil servant investigators must have qualified legal knowledge related to employment and be active in conducting supervision, and c) Legal culture, especially workers and employers.

**Keywords:** supervision, government, workers laid off, Covid-19

## INTRODUCTION

Every worker has the same right to obtain employment opportunities and treatment without discrimination from employers/employers in every employment relationship<sup>1</sup> which has been guaranteed in the constitution where everyone has the right to work and receive remuneration and equal treatment in employment relations<sup>2</sup> as an effort to realize the welfare of workers and their families.<sup>3</sup>

Protection of the rights of workers/labor is a form of protection and fulfillment of human rights. Therefore, all forms of arbitrariness to workers/laborers carried out by employers need special handling from the government considering the unequal position between workers/laborers and employers/entrepreneurs in the economic and social fields. As a result, employers often take unilaterally beneficial actions, including Termination of Employment and the act of laying off workers during the pandemic without paying wages.

Based on the results of a survey conducted by the Ministry of Manpower at 21 Manpower Offices throughout Indonesia, there were 72,983 employees who experienced termination of employment, of which 4,156 companies were forced to lay off due to the company's financial decline.<sup>4</sup> The Manpower and Transmigration Office of South Sulawesi noted that 1,141 companies in 17 districts/cities were affected by the pandemic with a total of 14,393 workers being laid off and only 5,007 workers still receiving wages and the rest still waiting for a call to work.<sup>5</sup> Meanwhile, the Makassar City Manpower Office also found 108 companies that laid off 7,059 workers and 53 of them experienced layoffs.<sup>6</sup> Workers with the status of being laid off refer to data from the Manpower Office of Makassar City which is dominated by the hotel and tourism sector where 21 hotels have laid off 1,257 workers.<sup>7</sup> From the available data, there are only 575 workers whose wages are paid, while 8,993 are without payment.<sup>8</sup>

Seeing this fact will have the potential to harm workers who are in laid-off status because there is no transparency of policies and the same agreement presented by each company in fulfilling workers' rights. Basically, workers with the status of being laid off still have a working relationship with the employer/employer, this has different legal consequences from workers/laborers who have been laid off. The difference in legal status has resulted in different legal consequences where the employer/employer has an obligation to fulfill the wage rights of laid-off workers. However, there has not been found a legal regulation that is able to provide full guarantees for laid-off workers against the protection and fulfillment of their rights. worker.

The potential for workers not to be paid their wages, wage cuts and even suspension of wages by employers affected by the Covid-19 outbreak is still very large. Therefore, government intervention is needed in bringing a sense of justice to workers/laborers in employment relations through comprehensive policies in creating fair industrial relations because the government plays a role in creating a sense of social justice and realizing general welfare for all Indonesian people.<sup>9</sup>

The presence of the Circular Letter of the Minister of Manpower Number M/3/HK.04/III/2020 which is intended to provide protection for workers/laborers has not been able to guarantee the fulfillment of wage rights for laid-off workers considering that circulars cannot be classified into the hierarchy of laws and regulations invitation<sup>10</sup> so that the circular is not included in the type of legislation that has a normative content but is a form of policy regulation.

<sup>1</sup> Article 5 and Article 6 of Law No. 13 Year 2013 concerning Employment

<sup>2</sup> Article 28D (paragraph 2) of the 1945 Constitution of the Republic of Indonesia

<sup>3</sup> Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta, 2013, p. 6

<sup>4</sup> Helmi Fithriansyah, (2021, 14 December), "Kemnaker: 72.983 Pekerja Kena PHK Selama Pandemi Covid-19", see <https://www.liputan6.com/bisnis/read/4750566/kemnaker-72983-pekerja-kena-phk-selama-pandemi-covid-19>

<sup>5</sup> Himawan, (2020, 13 May), "Imbas Corona, 14.393 Pekerja di Sulsel Dirumahkan dan 447 PHK", see <https://regional.kompas.com/read/2020/05/13/14312471/imb- corona-14393-pekerja-di-sulsel-dirumahkan-dan-447-phk>

<sup>6</sup> Asrul, (2020, 13 April), "Disnaker Makassar Sudah Terima Aduan Puluhan Karyawan yang di PHK", see <https://www.sulselsatu.com/2020/04/13/opd/dinsnaker-makassar-sudah-terima-aduan-puluhan-karyawan-yang-di-phk.html>

<sup>7</sup> Aan Pranata, (2020, 22 Juli), "Dampak Pandemi, 1.257 Pekerja Hotel di Makassar Dirumahkan", see <https://sulsel.idntimes.com/news/sulsel/aanpranata/dampak-pandemik-1257-pekerja-hotel-di-makassar-dirumahkan>

<sup>8</sup> Kodrat Setiawan, (2020, 11 April), "9.726 Pekerja di Sulawesi Selatan Dirumahkan Akibat Dampak Corona", see <https://bisnis.tempo.co/read/1330476/9-726-pekerja-di-sulawesi-selatan-dirumahkan-akibat-dampak-corona>

<sup>9</sup> Karina Hatane, et.al., *Perlindungan Hukum Terhadap Pekerja di Masa Pandemi Covid-19*, *Tatohi Jurnal Ilmu Hukum*, Vol. 1, No. 3, 2021, p. 265-275

<sup>10</sup> See Article 7 of Law Number 13 Year 2022 concerning the Second Amendment to Law Number 12 Year 2011 concerning the Establishment of Legislation.

Policy regulations as “regulations” that are not statutory regulations will have indirect consequences that are legally binding, but still have a strong legal relationship with a statutory regulation.<sup>11</sup> The legal strength of this circular will certainly cause weaknesses in providing legal certainty for laid-off workers.

The implementation of policies contained in the form of policy regulations needs to be monitored and coordinated in the form of policy evaluations by the government. Therefore, it is necessary to conduct research that aims to determine the form of government supervision in an effort to fulfill the rights of workers with the status of being laid off during the Covid-19 transition period and the effectiveness resulting from government policies on the wages and welfare of laid-off workers.

## METHOD

The type of research used is empirical-legal research using primary data and secondary data.<sup>12</sup> Primary data was obtained from the results of field research using in-depth interviews with resource persons who have expertise in their respective fields, namely the Manpower and Transmigration Office of South Sulawesi Province and the Confederation of All Indonesian Trade Unions (Konfederasi Serikat Pekerja Seluruh Indonesia/KSPSI). The secondary research data consists of primary legal materials and secondary legal materials. Primary legal materials are all written rules in the form of laws and government decrees.<sup>13</sup> The secondary legal materials used are books, articles, and legal theory as a complement and support for primary data obtained from the results of field research. The approach method used in this research is in the form of a statutory approach, which is to review legislation and policies related to problems (legal issues) that are currently being investigated regarding the protection of the fulfillment of workers' rights during the transition period of the Covid-19 outbreak, as well as a case approach to creating legal reasoning in the perspective of concrete cases that occur in the field relating to cases or legal events on the issue of fulfilling workers' rights. All research data were analyzed qualitatively by prioritizing the quality of the data obtained based on the results of collecting relevant data<sup>14</sup> then poured in a descriptive form that describes the form of government policy analysis on worker protection and evaluation of government supervision in the transition to the Covid-19 pandemic.

## DISCUSSION

### Government Supervision in Fulfilling the Rights of Dismissed Workers

Workers are a national asset that is able to increase state income so that government efforts are needed to provide protection and fulfillment of labor rights.<sup>15</sup> Protection and fulfillment of workers' rights including wage rights are very important in supporting the welfare of workers' lives. Protection of workers has been regulated in Law 13/2003 which regulates all matters relating to labor before, during and after work. The relationship between the workforce and the employer is adjusted to the content of the work agreement between the two parties which contains elements of the type of work, the number of wages and orders<sup>16</sup> which is an instrument of providing legal certainty for various possibilities that can occur to workers.

Wage is the provision of a sum of money by the employer/employer to the worker/labourer, including allowances for the worker/laborer and his family for a job and/or service that has been or will be performed.<sup>17</sup> on work performance in a company where the fulfillment is adjusted based on the work contract between the two parties.

The provision of wages includes the burden of the employer that must be paid to workers for the form of services in producing wealth.<sup>18</sup> Therefore, a minimum wage standard is set in order to be able

<sup>11</sup> Arini Nur Annisa, *Pengujian Materil Peraturan Kebijakan (Beleidsregels) Berkarakter Peraturan Perundang-Undangan di Indonesia*, Thesis, Postgraduate, Faculty of Law, Hasanuddin University, Makassar, 2016, p. 65

<sup>12</sup> Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci Press, Semarang, 2021, p. 127

<sup>13</sup> I Made Pasek Diantha, 2016, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenada Media, Jakarta, 2016, p. 142

<sup>14</sup> Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, Mitra Buana Media, Yogyakarta, 2020, p. 192

<sup>15</sup> Windi Arista, Hak-hak Konstitusional Buruh Migran Indonesia di Malaysia. *Jlex Librum: Jurnal Ilmu Hukum*, Vol. 6, No. 1, December 2019, p. 109

<sup>16</sup> Article 1 point 15 of Law Number 13 Year 2003 concerning Manpower

<sup>17</sup> Article 1 point 30 of Law Number 13 Year 2003 concerning Manpower

<sup>18</sup> Afzalurrahman, *Muhammad Sebagai Pedagang*, Yayasan Swarna Bhumi, Jakarta, 2000, p. 395

to provide protection for the fulfillment of the living needs of the workers/ laborers and efforts to realize the welfare of the workers/laborers.<sup>19</sup> This includes workers who have been laid off during the Covid-19 pandemic. Fulfillment of workers' rights, especially the wages of workers with the status of being laid off, needs special attention from the state, in this case, the government through various policy regulations and supervision as a form of legal protection for workers as well as efforts to realize workers' welfare.

Supervision in the field of manpower is important in efforts to provide legal protection to workers and efforts to enforce labor laws to prevent things that could potentially harm the workforce, such as industrial relations, the right to meet minimum wages, occupational safety and health and other issues relating to employment and social security for workers/laborers.<sup>20</sup> Supervision is very necessary in order to ensure that the rights of workers who are laid off are fulfilled by the employers, considering that the fulfillment of the rights of workers who are laid off is very vulnerable to being ignored by employers. Evidenced by the non-fulfillment of workers' rights<sup>21</sup> such as not being given wages, being laid off for an indefinite period of time, and many even positioning being laid off as an act of dismissing workers.<sup>22</sup> This condition occurs due to the non-optimal function of supervision by the government so that the rights of laid-off workers are not fulfilled. Efforts to realize the rights of laid-off workers need to be accompanied by an optimal monitoring system.

The relationship between coaching and supervision is like two coins that cannot be separated for maximum achievement. Structured, recorded and regular supervision is needed so that the results of the coaching can be effective in improving the welfare of the workers and the development of the company.<sup>23</sup> In accordance with the theory put forward by Wolfgang Von Richthofen, the characteristics of labor inspection in Indonesia clearly adhere to a functional integration system.<sup>24</sup> This is reflected in the practical steps in conducting supervision in the form of:

a. Providing Guidance (Preventive Educative)

Preventive educative is a form of supervision in the form of guidance to companies related to laws and regulations related to the field of employment, providing direction/advice to companies, and providing services in the form of consulting.<sup>25</sup>

b. Non-judicial repressive measures Providing written warnings through warning notes to company leaders if violations in the labor sector are found.<sup>26</sup>

c. Judicial Repressive Action

The judicial repressive effort is the last resort taken after the Labor Inspectorate has provided written guidance and warning to the employer, but the employer/employer still does not heed the purpose of the guidance.<sup>27</sup> In this case, civil servant investigators (Penyidik Pegawai Negeri Sipil/PPNS) are given the authority as labor inspectors to carry out investigations.<sup>28</sup>

Presidential Regulation No. 21 Year 2010 which regulates labor inspection states that labor inspection is carried out in an integrated, integrated and coordinated manner which includes:

- 1) Labor inspection work unit;

<sup>19</sup> Henny Damaryanti, S. Abdullah Alkadrie and Annurdi, *Op.Cit.*, p. 110

<sup>20</sup> Khoiril Hidayah. Optimalisasi Pengawasan Ketenaga Kerjaan di Kota Malang, *De Jure, Jurnal Syariah dan Hukum*, Vol. 7, No. 2. December 2015, p. 103

<sup>21</sup> Interview with Syahraeni Arsam (Supervisory Officer at the Manpower and Transmigration Office of South Sulawesi Province) in Makassar on August 29, 2022.

<sup>22</sup> Putu Ayu Tasya Agnesty and I Made Sarjana. Perlindungan Hukum Terhadap Pemenuhan Hak Dari Pekerja Yang Dirumahkan Pada Masa Pandemi Covid-19. *Kertha Wicara: Jurnal Ilmu Hukum*. Vol. 10, No. 10, October 2021, p. 860

<sup>23</sup> Totok Tumangkar, Pengawasan Ketenagakerjaan di Bidang Kesejahteraan, *Jurnal Ilmiah Hukum dan Dinamika Masyarakat*, Vol. 18, No. 1, October 2020, p. 71

<sup>24</sup> Safri Nugraha in Sonhaji, Tinjauan Yuridis Terhadap Perubahan Kewenangan Pengawasan Ketenagakerjaan Dari Pemerintah Kabupaten/Kota Kepada Pemerintah Provinsi Jawa Tengah, *Administrative Law & Governance Journal*, Vol. 2, No. 2, June 2019, p. 356

<sup>25</sup> Umi Kalsum, Penegakan Hukum Terhadap Perusahaan Perkebunan Kelapa Sawit di Kabupaten Ketapang yang Melanggar Pasal 90 Ayat (1) Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, *Jurnal Nestor Magister Hukum*, p. 30

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Employment crime investigations are a series of actions of Employment Civil Servant Investigators in terms of and according to the method stipulated in the provisions of the criminal procedure law to seek and collect evidence to make light of an employment crime that occurred.

- 2) Labor inspectors; and
- 3) Labor inspection procedures.<sup>29</sup>

Educational preventive measures taken by the government can be taken if possible and the public still has the awareness to obey the law. However, educational preventive efforts are considered ineffective<sup>30</sup> because it tends to be passive, especially during the pandemic to the Covid-19 transition period which causes many workers to be laid off. This is because labor inspectors tend to be non-judicial and repressive in conducting labor inspections because in practice labor inspectors tend to wait for complaints from the workers/labor unions.<sup>31</sup> Based on this, the supervisor then conducts an examination and ensures that there has been a violation in the labor sector.<sup>32</sup>

The industrial relations settlement process carried out by the government based on Law 2/2004 regarding the settlement of industrial relations disputes. The provision stipulates that before the government takes part in efforts to resolve disputes experienced by workers/laborers with their employers, both parties must first make bipartite efforts in deliberation between workers and employers in order to reach a consensus within 30 days from the start of the negotiations.<sup>33</sup> If within the stipulated timeframe both parties have not reached an agreement, then the bipartite negotiation is considered a failure and is null and void.

In addition to carrying out bipartite efforts, the settlement of rights disputes and termination of employment is also pursued through the tripartite method if the bipartite stage does not result in an agreement between the parties. At the tripartite stage, employers and workers mediate industrial relations by mediators as representatives of the government.

Industrial relations mediation is carried out by a mediator who is responsible for providing written advice to the disputing parties, such as disputes over rights, interests, termination of employment, and disputes between trade unions/labor unions within the same area within the company.<sup>34</sup> In the settlement of industrial relations, the mediator acts as a peacemaker and mediator in conducting mediation.

The mediation process is a non-litigation effort carried out as an effort to realize the protection of the rights of workers/laborers against arbitrary actions of employers/employers. Labor inspection efforts, especially for the fulfillment of workers' rights with the status of being laid off during the pandemic to the Covid-19 transition period, require the active role of labor inspectors through educational preventive efforts, namely by disseminating labor norms, technical advice, and assistance.<sup>35</sup> optimally so that the fulfillment of workers' rights that are neglected can be fulfilled. However, labor inspectors only act if they receive a report from the workforce/labor based on the evidence provided.<sup>36</sup> An employment regulation will not work effectively if the supervision is not carried out optimally. As for the main task:

- a. Carry out supervision of the implementation of labor regulations.
- b. Implementation of socialization of labor regulations to workers/ laborers and employers.
- c. Conducting investigations of various violations in the field of manpower as well as providing considerations on government policies, especially those related to manpower. Investigate the situation

The activity of a labor inspector is very much needed as an effort to enforce labor law. However, in reality, government supervision tends to be passive and depends on complaints from workers/laborers.<sup>37</sup> As a result, labor law enforcement tends to be neglected which has an impact on violations of the fulfillment of workers' rights with the status of being laid off during the pandemic until the transition period of the covid-19 pandemic.

<sup>29</sup> Article 2 Presidential Regulation Number 21 Year 2010 concerning Labor Inspection.

<sup>30</sup> Abdul Hakim, *Dasar-dasar Hukum Ketenagakerjaan di Indonesia*, Bandung: Citra Aditya, 2009, p. 209

<sup>31</sup> Interview with Basri Hasan (Chairman of the All-Indonesian Trade Union Confederation/Konfederasi Serikat Pekerja Seluruh Indonesia KSPSI of South Sulawesi Province) in Makassar on September 1, 2022.

<sup>32</sup> Interview with Maniah Efendy (Head of Sub-department for Supervision of the Manpower and Transmigration Office of South Sulawesi Province) in Makassar on August 29, 2022.

<sup>33</sup> Article 3 paragraphs (1), (2) and (3) of Law Number 2 Year 2004 concerning Settlement of Industrial Relations Disputes.

<sup>34</sup> Article 1 point 12 of Law Number 2 Year 2004 concerning Settlement of Industrial Relations Disputes.

<sup>35</sup> Oktantiani Dyah Pramudya, Efektivitas Penegakan Hukum Pidana Ketenagakerjaan. *Jurnal Idea Hukum*, Vol. 8, No. 1, March 2022, p. 136

<sup>36</sup> Interview with Maniah Efendy (Head of Sub-department for Supervision of the Manpower and Transmigration Office of South Sulawesi Province) in Makassar on August 29, 2022.

<sup>37</sup> Interview with Basri Hasan (Chairman of the All-Indonesian Trade Union Confederation/Konfederasi Serikat Pekerja Seluruh Indonesia KSPSI of South Sulawesi Province) in Makassar on September 1, 2022.

### The Effectiveness of Government Policies on the Wage System and Welfare of Homeworkers

The effectiveness of a policy is directly proportional to the implementation of a statutory regulation. The ideals of the rule of law in creating the life of the nation and state are always guided by three main things, namely certainty, expediency, and justice.<sup>38</sup> A policy can be said to be effective if the goals or objectives of the formation of the policy can be achieved.

The effectiveness of government policies regarding the remuneration system and welfare of workers who are laid off can be seen from the number of workers who are laid off and the fulfillment of workers' rights while being furloughed. Then look at the government's response to efforts to supervise and protect the fulfillment of the rights of laid-off workers.

Wage policy as an effort to realize the welfare of workers/laborers is the responsibility of the state as an implication for the fulfillment and guarantee of the rights of workers/laborers that:

- a. Every Worker/labor has the right to proper remuneration for the sake of humanity; and
- b. The government is obliged to establish a wage policy that protects workers/laborers.<sup>39</sup>

The government's efforts to protect and fulfill the rights of workers/laborers can be seen from the various policies that have been set, such as the policy of providing drinking wages and overtime wages, the provision of wages not coming to work, the structure and scale of proportional wages and the existence of a wage policy for calculating income tax.

In an effort to fulfill or accommodate the fulfillment of workers' rights while at home, the government has issued a Decree of the Minister of Manpower Number 104/2021 confirming that employers must pay wages for workers/laborers who are laid off as usual. In addition to the provisions of laws and regulations, the wage policy is also regulated in the Work Agreement, Company Regulations, or Collective Labor Agreement which can also be used as a wage guide for companies.

The wage policy for workers with the status of being laid off is basically very dependent on the work agreement between the two parties. Thus, laid-off workers are entitled to receive wages like people with working status with the provisions of the agreement of the parties. This is because there is no nomenclature that employers are allowed not to pay wages to workers with the status of being laid off.

In reality, it was found that many workers were laid off without a work agreement related to the period of being laid off and the number of wages to be paid so that it had an impact on the non-fulfillment of wage rights and the time they were laid off was not accommodated due to the COVID-19 pandemic. Based on research data in the distribution of 5 (five) companies in South Sulawesi, there are 673 workers who have been laid off and there are 129 workers who have been laid off, which is equated with layoffs.<sup>40</sup> As a result, efforts to fulfill the welfare of workers are not fulfilled.

Employers' actions that do not fulfill the wage rights of laid-off workers and even equate housing actions as a form of layoff are a form of violation of the fulfillment of workers' rights. The company should make wage adjustments based on an agreement between the two parties that includes the number of wages, whether 25 percent, 50 percent, or paid in full, the method of payment of wages, paid all at once or in stages, and the expiration time of the agreement of the parties.<sup>41</sup>

In addition to the fulfillment of the right to wages, workers with the status of being laid off are also entitled to non-wages such as the provision of religious holiday allowances (Tunjangan Hari Raya/THR). The provisions for providing non-wage income are further regulated in Circular Letter M/1/HK.04/IV/2022 which makes it easy for companies to pay workers' non-wage income in installments.<sup>42</sup>

Obligation to pay non-wage income for workers no later than one week before religious holidays. However, both wage entitlements and non-wage rights for laid-off workers are often paid late, partially paid, or not paid. If this happens, the workers through the trade union will initiate an industrial relations dispute.

Companies that pay outside the agreed time of the parties will be subject to a fine of 5 percent

---

<sup>38</sup> Tan in Rahmi Ayunda, et.al., Efektivitas Kebijakan Pemerintah Tentang Perlindungan Sosial Pekerja Migran Indonesia: Studi Hukum di Provinsi Kepulauan Riau, *Justisi*, Vol. 7, No. 2, 2021, p. 97

<sup>39</sup> Article 88 of Law 13 Year 2003 concerning Manpower.

<sup>40</sup> Data processed by researchers.

<sup>41</sup> Interview with Basri Hasan (Chairman of the All-Indonesian Trade Union Confederation/Konfederasi Serikat Pekerja Seluruh Indonesia KSPSI of South Sulawesi Province) in Makassar on September 1, 2022.

<sup>42</sup> Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/1/HK.04/IV/2022 concerning Implementation of Granting Religious Holiday Allowances in 2022 for Workers/Labourers in Companies

for late payments.<sup>43</sup> The non-fulfillment of wage rights and non-wage rights for workers/laborers has an impact on efforts to fulfill workers' welfare. This indicates that the wage policy set by the government is not working effectively due to the discovery of various violations of the employment relationship between workers/laborers and employers.

Lawrence M. Friedman argues that the legal system in its implementation is a complex organizational unit in which the structure, substance, and legal culture influence each other.<sup>44</sup> There are three factors that affect the effectiveness of labor law enforcement, namely:

a. Employment law structure

In the structure of labor law, labor inspectors have an important role so the independence and active role of inspectors are needed in enforcing the law in an effort to protect workers' rights. The absence of a common perception has led to errors in handling cases of payment of wages below the minimum wage, which should have been through the mechanism of approval of the suspension by the Governor. However, workers who are laid off not only get wages below the minimum wage standard but are also laid off without paying any wages at all.<sup>45</sup>

b. Employment law substance

Obstacles in labor law enforcement are also related to the substance of labor law which has not regulated all crimes that occur against workers, such as the application of outsourcing, piecework contracts, and daily freelance that are not in accordance with the law.<sup>46</sup> Even though Article 81 paragraph (63) of Law No. 11 Year 2020 concerning Job Creation has contained the imposition of criminal sanctions for companies that pay wages below the minimum wage standard. However, this provision has never been implemented due to a lack of understanding of the criminal wages and the mechanism for imposing sanctions on these provisions has not been found.<sup>47</sup>

c. Community Legal Culture

Efforts to settle disputes in the labor sector are pursued through a lawsuit to the Industrial Relations Court and the mechanism for imposing criminal sanctions through the Police or the Labor Inspector.<sup>48</sup> In general, labor problems that occurred in South Sulawesi during the pandemic to the covid-19 transition were related to industrial relations disputes which were resolved bipartitely or tripartitely.

The habit of handling cases through non-litigation channels is due to the fact that workers/laborers have not been able to distinguish between disputes and labor crime violations..<sup>49</sup> This is a factor of legal culture that affects workers' understanding which causes weak law enforcement in the field of manpower so that the active role of the Labor Inspector/Civil Servant Investigator is needed in providing a deterrent effect for employers to comply with labor regulations and the role of trade unions in accommodating interests and improve the welfare of workers.

## CONCLUSION

Workers with the status of being laid off from the pandemic to the transition to the COVID-19 pandemic basically still have a working relationship with the employer. Therefore, laid-off workers have wage rights and non-wage rights in accordance with the provisions of the legislation and also based on the Manpower Decree Number 104 of 2021 concerning Guidelines for Implementing Work Relations During the Corona Virus Disease 2019 Pandemic. The protection of the rights of laid-off workers needs special attention from the government considering that laid-off workers tend to receive discriminatory treatment due to the unequal socio-economic position between employers and workers/laborers. Therefore, it is necessary to be active in the supervision of the government and appointed institutions in ensuring the enforcement of labor law.

The efforts of labor inspectors in preventive education have not been effective and tend to be passive. The form of supervision carried out by the government during the Covid-19 pandemic and

<sup>43</sup> Interview with Basri Hasan (Chairman of the All-Indonesian Trade Union Confederation/Konfederasi Serikat Pekerja Seluruh Indonesia KSPSI of South Sulawesi Province) in Makassar on September 1, 2022.

<sup>44</sup> Lawrence M. Friedman in Oktantiani Dyah Pramudya, *Op.Cit.*, p. 139

<sup>45</sup> Interview with Basri Hasan (Chairman of the All-Indonesian Trade Union Confederation/Konfederasi Serikat Pekerja Seluruh Indonesia KSPSI of South Sulawesi Province) in Makassar on September 1, 2022.

<sup>46</sup> Oktantiani Dyah Pramudya, *Op.Cit.*, p. 141

<sup>47</sup> Interview with Syahraeni Arsam (Supervisory Officer at the Manpower and Transmigration Office of South Sulawesi Province) in Makassar on August 29, 2022.

<sup>48</sup> *Ibid.*

<sup>49</sup> Oktantiani Dyah Pramudya, *Op.Cit.*, p. 143

transition period specifically for workers who were laid off is non-judicial repressive, in which the labor inspector will conduct investigations and follow up according to applicable legal procedures. This is due to the tendency of labor inspectors to be passive because they only wait for complaints from the workers/laborers and then take action/supervision. Looking at the form of government supervision which tends to be repressive and non-judicial, it is clear that this is not effective enough in supervising wage policies in the manpower sector. This is also caused by several factors, namely: a) The substance of labor law, b) The structure of labor law, and c) The legal culture of the community.

The absence of an active role for labor inspectors in enforcing labor laws has resulted in the non-fulfillment of the rights of workers who have been laid off during the pandemic until the transition period of the COVID-19 pandemic. This also reflects the absence of enforcement of labor laws and the ineffectiveness of providing policies for handling the COVID-19 pandemic for laid-off workers/laborers due to a lack of supervision from the government.

As an effort to enforce labor law, active government supervision is needed on the protection of the rights of workers/laborers, especially those who are at home status during the pandemic until the Covid-19 pandemic transition in optimizing policies on the wage system as an effort to fulfill the welfare of workers/laborers and their families.

## REFERENCES

- Aan Pranata, (2020, 22 Juli), "Dampak Pandemi, 1.257 Pekerja Hotel di Makassar Dirumahkan", see <https://sulsel.idntimes.com/news/sulsel/aanpranata/dampak-pandemik-1257-pekerja-hotel-di-makassar-dirumahkan>
- Abdul Hakim, *Dasar-dasar Hukum Ketenagakerjaan di Indonesia*, Bandung: Citra Aditya, 2009.
- Afzalurrahman, *Muhammad Sebagai Pedagang*, Yayasan Swarna Bhummy, Jakarta, 2000.
- Arini Nur Annisa, *Pengujian Materil Peraturan Kebijakan (Beleidsregels) Berkarakter Peraturan Perundang-Undangan di Indonesia*, Thesis, Postgraduate, Faculty of Law, Hasanuddin University, Makassar, 2016.
- Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, Sinar Grafika, Jakarta, 2013.
- Asrul, (2020, 13 April), "Disnaker Makassar Sudah Terima Aduan Puluhan Karyawan yang di PHK", see <https://www.sulselsatu.com/2020/04/13/opd/disnaker-makassar-sudah-terima-aduan-puluhan-karyawan-yang-di-phk.html>
- Circular Letter of the Minister of Manpower of the Republic of Indonesia Number M/1/HK.04/IV/2022 concerning Implementation of Granting Religious Holiday Allowances in 2022 for Workers/Labourers in Companies
- Helmi Fithriansyah, (2021, 14 December), "Kemnaker: 72.983 Pekerja Kena PHK Selama Pandemi Covid-19", see <https://www.liputan6.com/bisnis/read/4750566/kemnaker-72983-pekerja-kena-phk-selama-pandemi-covid-19>
- Himawan, (2020, 13 May), "Imbas Corona, 14.393 Pekerja di Sulsel Dirumahkan dan 447 PHK", see <https://regional.kompas.com/read/2020/05/13/14312471/imbac-corona-14393-pekerja-di-sulsel-dirumahkan-dan-447-phk>
- I Made Pasek Diantha, 2016, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenada Media, Jakarta, 2016.
- Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*, Mitra Buana Media, Yogyakarta, 2020.
- Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci Press, Semarang, 2021.
- Karina Hatane, et.al., *Perlindungan Hukum Terhadap Pekerja di Masa Pandemi Covid-19*, *Tatohi Jurnal Ilmu Hukum*, Vol. 1, No. 3, 2021.
- Khoirul Hidayah. *Optimalisasi Pengawasan Ketenaga Kerjaan di Kota Malang*, *De Jure, Jurnal Syariah dan Hukum*, Vol. 7, No. 2. December 2015.
- Kodrat Setiawan, (2020, 11 April), "9.726 Pekerja di Sulawesi Selatan Dirumahkan Akibat Dampak Corona", see <https://bisnis.tempo.co/read/1330476/9-726-pekerja-di-sulawesi-selatan-dirumahkan-akibat-dampak-corona>
- Oktantiani Dyah Pramudya, *Efektivitas Penegakan Hukum Pidana Ketenagakerjaan*. *Jurnal Idea Hukum*, Vol. 8, No. 1, March 2022.
- Presidential Regulation Number 21 Year 2010 concerning Labor Inspection.
- Putu Ayu Tasya Agnesty and I Made Sarjana. *Perlindungan Hukum Terhadap Pemenuhan Hak Dari Pekerja Yang Dirumahkan Pada Masa Pandemi Covid-19*. *Kertha Wicara: Journal Ilmu Hukum*. Vol. 10, No. 10, October 2021.
- Safri Nugraha in Sonhaji, *Tinjauan Yuridis Terhadap Perubahan Kewenangan Pengawasan Ketenagakerjaan Dari Pemerintah Kabupaten/Kota Kepada Pemerintah Provinsi Jawa Tengah*,

- Administrative Law & Governance Journal*, Vol. 2, No. 2, June 2019.
- Tan in Rahmi Ayunda, et.al., Efektivitas Kebijakan Pemerintah Tentang Perlindungan Sosial Pekerja Migran Indonesia: Studi Hukum di Provinsi Kepulauan Riau, *Justisi*, Vol. 7, No. 2, 2021.
- The 1945 Constitution of the Republic of Indonesia
- The Law Number 13 Year 2003 concerning Manpower
- The Law Number 2 Year 2004 concerning Settlement of Industrial Relations Disputes.
- The Law No. 13 Year 2013 concerning Employment
- The Law Number 13 Year 2022 concerning the Second Amendment to Law Number 12 Year 2011 concerning the Establishment of Legislation.
- Totok Tumangkar, Pengawasan Ketenagakerjaan di Bidang Kesejahteraan, *Jurnal Ilmiah Hukum dan Dinamika Masyarakat*, Vol. 18, No. 1, October 2020.
- Umi Kalsum, Penegakan Hukum Terhadap Perusahaan Perkebunan Kelapa Sawit di Kabupaten Ketapang yang Melanggar Pasal 90 Ayat (1) Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan, *Jurnal Nestor Magister Hukum*.
- Windi Arista, Hak-hak Konstitusional Buruh Migran Indonesia di Malaysia. *Jlex Librum: Jurnal Ilmu Hukum*, Vol. 6, No. 1, December 2019.