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THE APPLICATION OF FORCE MAJEURE CLAUSES AS A BASIS FOR EMPLOYMENT TERMINATION IN INDONESIAN LABOR PRACTICES

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ABSTRACT
The use of force majeure clauses as grounds for termination of employment (PHK) is increasingly common in employment practices, particularly in crisis situations that impact a company's operational capabilities. However, the use of force majeure as a reason for termination of employment often raises legal issues because it is often misinterpreted, over-extended, or used without meeting the normative requirements stipulated in the Manpower Law and its implementing regulations. This study aims to analyze the validity of using force majeure as a basis for termination of employment, identify its legal limitations, and examine the considerations of judges in several Industrial Relations Court and Supreme Court decisions related to this issue. The research method used is normative legal research with a statutory approach, a case approach, and a conceptual approach. The results indicate that force majeure can only be used as a basis for termination of employment if the event is beyond the company's control, unpredictable, and truly prevents the company from maintaining its employment relationship. Furthermore, judges tend to reject terminations based on force majeure if the company is still able to operate or if other alternatives exist, such as bipartite negotiations, rearranged working hours, or wage deferrals. Therefore, regulatory certainty and clarity are needed to prevent employers from misusing force majeure.
Keywords: *force majeure, Termination of Employment (PHK), Employment Law, Judge's Consideration*

ABSTRAK
Penerapan klausul *force majeure* sebagai dasar pemutusan hubungan kerja (PHK) semakin sering muncul dalam praktik ketenagakerjaan, terutama pada situasi krisis yang memengaruhi kemampuan operasional perusahaan. Namun, penggunaan *force majeure* sebagai alasan PHK tidak jarang menimbulkan persoalan hukum karena sering disalahartikan, diperluas maknanya, atau digunakan tanpa memenuhi syarat normatif sebagaimana diatur dalam Undang-Undang Ketenagakerjaan dan peraturan pelaksananya. Penelitian ini bertujuan menganalisis keabsahan penggunaan *force majeure* sebagai dasar PHK, mengidentifikasi batasan-batasan hukumnya, serta menelaah pertimbangan hakim dalam beberapa putusan Pengadilan Hubungan Industrial dan Mahkamah Agung yang berkaitan dengan isu ini. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Hasil penelitian menunjukkan bahwa *force majeure* hanya dapat dijadikan dasar PHK apabila peristiwa yang terjadi bersifat di luar kendali, tidak dapat diprediksi, dan benar-benar menyebabkan perusahaan tidak dapat menjalankan hubungan kerja. Selain itu, hakim cenderung menolak PHK

yang didasarkan pada *force majeure* apabila perusahaan masih dapat beroperasi atau terdapat alternatif lain seperti perundingan bipartit, pengaturan ulang jam kerja, atau penangguhan upah. Dengan demikian, diperlukan kepastian dan penegasan regulasi agar penggunaan alasan *force majeure* tidak disalahgunakan oleh pengusaha.
Kata Kunci: *force majeure*, Pemutusan Hubungan Kerja (PHK), Hukum Ketenagakerjaan, Pertimbangan Hakim

INTRODUCTION

Employment relations are basically built on the principles of certainty, balance and protection for both workers and employers. Both parties bind themselves in a legal relationship that determines rights and obligations, and assumes business continuity and stable work implementation. This ideal working relationship requires a synergy between the company's interests in maintaining business continuity and workers' rights to security, welfare and fair treatment. Thus, employment relations are not only economic in nature, but also contain interrelated social and legal dimensions. However, in practice, these ideal conditions cannot always be maintained.[1] Global economic dynamics, market fluctuations, natural disasters, pandemics, government policies, and unpredictable operational disruptions can hamper company activities and affect the continuity of employment relations.[2] Events like this are often categorized as force majeure, namely compelling circumstances that are beyond the ability and will of the parties to control. This situation creates a situation where the implementation of contractual obligations becomes difficult, sometimes even impossible, thereby creating legal risks for both parties. In Indonesia, the use of force majeure as a reason for termination of employment (PHK) has become increasingly prominent, especially since the COVID-19 pandemic. Many companies refer to compelling circumstances to achieve efficiency and maintain business sustainability. This has implications for an increasing wave of layoffs in various industrial sectors, from manufacturing, services, to tourism. In this context, force majeure appears to be a strategic instrument for companies to adapt to uncertain external conditions.[3]

However, the application of force majeure reasons in layoffs does not always comply with applicable legal provisions. Problems often arise when these reasons are

[1] Yusuf Randi. 2020. "Pandemi Corona Sebagai Alasan Pemutusan Hubungan Kerja Pekerja Oleh Perusahaan Dikaitkan Dengan Undang-Undang Ketenagakerjaan," Yurispruden 3(2).

[2] Tri Manisha Roitona Pakpahan, Si Ngurah Ardhya, dan Muhamad Jodi Setianto. 2022. "Tinjauan Yuridis Mengenai Perlindungan Hukum Terhadap Hak Tenaga Kerja Yang Mengalami Pemutusan Hubungan Kerja Secara Sepihak Ditinjau Dari UndangUndang Nomor 11 Tahun 2020 Tentang Cipta Kerja," Jurnal Komunitas Yustisia 5(3).

[3] Syaiful Khoiri Harahap. 2022. "Renegosiasi Kontrak Sebagai Upaya Penyelesaian Pelaksanaan Kontrak Saat Pandemi Covid-19," Ius Quia Iustum 29(2).

used inappropriately, excessively, or without being supported by adequate evidence. In practice, there are cases where layoffs are carried out under the pretext of compelling circumstances, even though the company actually still has adequate operational capacity or there are still other alternatives that can be taken. These alternatives include reducing working hours, temporary salary adjustments, implementing a shift work system, internal rotation, utilizing annual leave, or even borrowing workers between units. When these alternative steps have not been tried, the use of force majeure reasons to carry out layoffs can cause injustice to workers, because legally and ethically, layoffs should be the ultimum remedium, that is, the last resort taken only after all other options have been exhausted. Unfortunately, in some cases, force majeure is misused as a form of legal evasion, allowing employers to avoid normative obligations towards workers. The impact of this practice is very real, for example not paying severance pay, holiday allowances, other compensation, or normative rights that are regulated in the Employment Law.

In addition, the abuse of force majeure in the context of layoffs can have long-term legal consequences for the company. First, the risk of lawsuits in the Industrial Relations Court increases because workers or trade unions can demand cancellation of layoffs or additional compensation. Second, the company's reputation in industrial relations and public trust may decline, because it is deemed not to comply with the principles of justice and social responsibility.[4]

In addition, there are fundamental differences between the interpretation of force majeure in general civil law and the employment context.[5] In civil law, force majeure emphasizes the impossibility of carrying out performance due to extraordinary events that cannot be predicted, and is usually associated with negligence or contractual risk. Meanwhile, in labor law, layoffs are a very limited step and must meet strict substantive and procedural requirements. This means that companies cannot arbitrarily use force majeure reasons without going through clear legal procedures, including consultation with labor unions, official notification, and proof that layoffs are the only way to maintain business continuity.[6]

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[4] Vicko Taniady, Novi Wahyu Riwayanti, Reni Putri Anggraeni, Ahmad Alveyn Sulthony Ananda, dan Hari Sutra Disemadi. 2020. "PHK dan Pandemi Covid-19: Suatu Tinjauan Hukum Berdasarkan Undang-Undang Tentang Ketenagakerjaan di Indonesia," Yustisiabel 4(2).

[5] Lucius Andik Rahmanto. 2020. "Perjanjian Kredit Tanpa Jaminan Dalam Pelaksanaan Penyediaan Dana Bergulir Program Nasional Pemberdayaan Masyarakat Mandiri Perdesaan (PNPM-MP): Studi di Desa Bendung Ditinjau Dari Pasal 1245 KUH Perdata Akibat Pandemi Covid-19," Actual 10(2).

[6] Riyan Sisiawan Putra dan Moh. Maruf. 2021. "Dampak COVID-19 Terhadap Pemutusan Hubungan Kerja (Phk) Dan Ketidak Kooperatifan Perusahaan Dalam Memberikan Hak Karyawan Setelah di PHK," Accounting and Management Journal 5(1)

The lack of synchronization between normative rules and practice in the field creates legal uncertainty for workers and employers. Many decisions of the Industrial Relations Court (PHI) and the Supreme Court show that judges do not immediately accept force majeure claims as a reason for layoffs without concrete and comprehensive evidence showing that the employment relationship really cannot continue. This condition emphasizes the need for an in-depth study regarding the extent to which the force majeure clause can be applied as a basis for layoffs, what its limitations are, and what the judge's consideration pattern is in assessing cases related to this issue. Thus, this research is important to provide a clearer picture of the direction of development of labor law in Indonesia in the face of extraordinary conditions that have the potential to affect the sustainability of industrial relations.

RESEARCH METHODS

This study employs normative legal research using statutory, case, and conceptual approaches. The issue of applying *force majeure* as the basis for termination of employment is closely linked to the interpretation of labor norms and their judicial application. Primary legal materials include Law No. 13/2003 on Manpower and its amendments, the Job Creation Law, Government Regulation No. 35/2021, and relevant judicial decisions—particularly rulings of the Supreme Court and Industrial Relations Court concerning *force majeure*.

Secondary legal materials consist of literature, scholarly articles, expert opinions, and doctrinal writings addressing *force majeure*, worker protection principles, and limits on termination under Indonesian labor law. Legal materials were obtained through library research involving statutory documents, judicial databases, and academic sources. The analysis was conducted qualitatively by interpreting norms, comparing court decisions, and drawing conclusions regarding the legal appropriateness of invoking *force majeure* as the basis for termination.

RESULTS AND DISCUSSION

Force Majeure Regulations In Employment Relations According To Indonesian Laws And Regulations

The regulation of force majeure in employment relations in Indonesia essentially develops from basic concepts that have long been known in civil law, especially those regulated in Article 1244 and Article 1245 of the Civil Code regarding force majeure. In civil law, force majeure is understood as an extraordinary event that is beyond the control of the parties concerned and cannot be predicted in advance, resulting in the inability of one party to fulfill its obligations.

This principle emphasizes the existence of objective elements in the form of events that are inevitable, which cannot be blamed, and which causally cause the inability to achieve achievements. However, when this concept is applied in the context of employment relations, especially in Indonesia, a number of significant adjustments occur due to the unique character of industrial relations. In contrast to ordinary civil relations which are purely contractual in nature, industrial relations have a strong social dimension, where the protection of workers is one of the basic principles that must be accommodated in every employment policy or regulation. The concept of force majeure in employment relations, therefore, cannot be seen only as an objective reason to free employers from contractual obligations, but must be considered proportionally to the rights and interests of workers, as well as the continuity of the company's business.

In practice, Indonesian labor law does not explicitly formulate force majeure as written in the Civil Code, but adopts its substance and principles normatively through several sectoral regulations and jurisprudence. For example, Law no. 13 of 2003 concerning Employment, although it does not mention the term force majeure directly, contains principles regarding layoffs related to extraordinary circumstances that can disrupt business continuity. Thus, even though it is not written down, the application of force majeure in the context of layoffs is regulated through the interpretation of general principles of civil law, combined with the principles of social justice and worker protection which are at the core of employment law. This approach makes force majeure not just a formal legal reason, but also an instrument that must be balanced with ethical and social considerations, so that layoffs due to force majeure are not merely a tool to avoid employers' obligations towards workers.

In this context, the characteristics of industrial relations require additional mechanisms that are not found in civil law. One of these mechanisms is bipartite dialogue between employers and workers or trade unions, which is an absolute requirement before layoffs can be carried out for reasons of force majeure. This dialogue aims to explore all possible alternatives so that working relationships can be maintained. These alternatives could be in the form of adjusting working hours, internal rotation, implementing annual leave, temporarily reducing mutually agreed salaries, or redistributing workers between operational units. This procedure confirms that layoffs based on force majeure must be implemented as a last resort, in line with the principle of ultimum remedium, where all other options have been considered and proven to be impossible. Thus, force majeure in employment relations is not only about the occurrence of extraordinary events, but also about

proving that the employer's actions are proportional, transparent and in accordance with legal procedures.

Supreme Court Jurisprudence And Industrial Relations Court Decisions Further Strengthen This Standard. In Various Cases Of Layoff Disputes, The Supreme Court Emphasized Two Main Things In Assessing The Reasons For Force Majeure: First, Whether The Character Of The Event Really Meets The Elements Of A Force Majeure That Is Beyond The Employer's Capabilities; Second, Whether The Employer Has Taken Reasonable And Proportionate Alternative Steps Before Finally Carrying Out Layoffs. Many Decisions Reject The Reason Of Force Majeure Because There Is No Causal Connection Between Extraordinary Events And The Company's Inability To Continue Working Relations. In Other Words, Force Majeure Can Only Be Recognized If It Really Causes Absolute Disruption That Makes Layoffs A Last Resort. This Shows That The Existence Of Force Majeure In Employment Relations Has Subjective And Objective Dimensions, Where The Objectivity Of The Event Must Be Concretely Proven, And The Subjectivity Of The Employer's Actions Must Be In Accordance With The Principles Of Justice And Worker Protection.

However, the application of force majeure reasons in practice does not always run smoothly. Problems often arise when force majeure is used inappropriately or even abused. In a number of cases, layoffs were carried out under the pretext of compelling circumstances even though the company still had operational capacity or there were still other alternatives that should have been taken first. This raises the risk of misuse of the concept of force majeure as a form of legal evasion, namely an attempt by entrepreneurs to avoid legal obligations, including severance pay, benefits and other normative rights. This abuse not only harms workers economically, but also creates social conflict in the workplace, damages industrial relations, and can trigger protracted lawsuits in court. Therefore, it is important for employment law regulations and practices to emphasize that force majeure must be proven in detail, documented, and carried out within the framework of fair and transparent procedures.

Apart from formal legal aspects, the application of force majeure also requires ethical and social considerations. This concept must not only be a legal mechanism, but must take into account the social impact on workers, including aspects of welfare, job security and psychological stability. Employers who implement layoffs for reasons of force majeure without dialogue, negotiation or providing fair compensation, risk violating the principle of distributive justice which is the basis of industrial relations. On the other hand, workers also need to understand that force

majeure is extraordinary, so flexible and deliberative solutions are still needed to maintain business continuity while protecting their rights.

Furthermore, force majeure regulations in employment relations reflect the philosophy of Indonesian employment law which combines legal certainty with social justice. In other words, labor law not only emphasizes compliance with formal rules, but also demands fair treatment of workers as part of corporate social responsibility. The application of force majeure in layoffs must always consider the balance between business continuity and workers' rights, so that it does not become a unilateral instrument that harms either party. This principle is reinforced by international norms, such as those contained in the ILO Convention regarding workers' rights and employment protection in crisis situations, which emphasize that employers must prioritize mitigation efforts, social protection and dialogue with workers before taking extreme decisions such as layoffs.

In this framework, force majeure in employment relations can be understood as a flexible but controlled legal instrument, which allows companies to adapt to extraordinary circumstances without unilaterally compromising workers' rights. Implementation requires coordination between various parties, clear documentation, and compliance with legal procedures. Entrepreneurs must be able to show concrete evidence regarding the impact of force majeure, ranging from production disruptions, damage to facilities, to economic conditions that threaten business continuity. Meanwhile, workers must be provided with information, opportunities for dialogue, and compensation in accordance with legal provisions to ensure that layoffs are carried out fairly and proportionally.[7]

Historically, employment relations in Indonesia were constructed through several fundamental principles, including job security, business sustainability, and minimum protection for workers. Therefore, every termination of an employment relationship has strict limits and cannot be carried out unilaterally by employers without valid reasons and strong evidence. In this context, force majeure can only be interpreted as a condition that causes business activities to not be able to run at all, different from simply a decrease in profits or sluggish economic conditions. The Civil Code defines force majeure as the inability to fulfill achievements due to circumstances beyond the ability and will of the parties.[8] However, in employment law, this definition must be read together with the principle of non-discrimination,

[7] Dwi Aryanti R, Yuliana Yuli W, & Sulastri. (2019). Implementasi Undang-Undang Ketenagakerjaan Dalam Perjanjian Kerja Antara Perusahaan dan Tenaga Kerja di Perseroan Terbatas (PT). Jurnal Yuridis, 1(2)

[8] Amran Suadi. 2018. Penyelesaian Sengketa Ekonomi Syariah: Penemuan dan Kaidah Hukum. Jakarta: Prenamedia Group.

the principle of protection, and the principle of prioritizing the continuity of the employment relationship.

Law Number 13 of 2003 concerning Employment—although it does not explicitly define force majeure—recognizes a number of certain circumstances that can affect a company's sustainability. This regulation was updated through the Job Creation Law which was then explained in more detail in Government Regulation Number 35 of 2021. In this PP, provisions regarding layoffs due to certain circumstances, including company losses and force majeure, are placed in a more systematic framework. Article 36 and Article 42 provide the basis for layoffs when the company is truly unable to continue operations, including due to force majeure. However, this provision remains open because it does not directly define what is meant by force majeure. This gap was then filled by the judge's interpretation through the PHI and Supreme Court decisions.

Court jurisprudence is an important legal source in understanding the limits of the application of force majeure in layoffs. Judges generally determine that a situation can only be classified as force majeure if it meets three main parameters: first, the event must be external and uncontrollable; secondly, the event could not have been predicted or prevented by reasonable efforts; third, the incident had a direct impact that caused business activities to not be able to continue. On the other hand, there is a special parameter in the employment context: whether the employer has exhausted all alternative measures before referring to *force majeure*.[9]

Judges often reject force majeure reasons if it is proven that the company can still carry out restructuring, renegotiation with workers, or operational reorganization.[10] In certain decisions, the Supreme Court (MA) firmly emphasized that force majeure cannot be used as an automatic reason to justify layoffs, especially if the company still has the ability to operate, even though the profits obtained are minimal or the losses incurred are limited. This confirms that the concept of force majeure in employment relations differs substantially from its use in ordinary civil contracts.

For example, in the context of the COVID-19 pandemic, many companies have proposed force majeure reasons to carry out mass layoffs. However, the Industrial Relations Court (PHI) and the Supreme Court rejected this claim if the company could not prove that the pandemic had actually stopped all business activities. In

[9] Tiara Indah Sartika, C., Bafadhal, F., & Triganda Sayuti, A. (2022). Pemutusan Hubungan Kerja Di Masa Pandemi Covid–19. Zaaken: Journal of Civil and Business Law, 3(3)

[10] Simamora, H. (2020). *Hukum Ketenagakerjaan di Indonesia: Perlindungan Pekerja dan Hubungan Industrial*. Jakarta: Rajawali Pers. hlm. 11

assessing force majeure claims, judges consider whether the company is still able to carry out some operations, for example with a work from home system, production adjustments, or redistribution of resources. This approach shows that the force majeure parameters in employment relations are stricter, because they not only assess the economic impact but also the company's operational capacity.

Apart from material aspects, jurisprudence also emphasizes the importance of proper legal processes. Force majeure cannot be used as a basis for layoffs if the company does not carry out bipartite negotiation obligations with workers or labor unions. Several Supreme Court decisions emphasize that force majeure reasons are irrelevant if layoff procedures are violated, because compliance with procedures is part of the principle of due process of law in industrial relations. In other words, formal and material aspects must be fulfilled simultaneously so that force majeure can be used as a legal basis for layoffs.[11]

From the overall legal regulations and practices, it can be concluded that force majeure in employment relations in Indonesia is an open concept but is still tied to the principle of labor protection. The lack of clarity of definition in the law leaves room for judges to interpret and set concrete limits. Therefore, the use of force majeure is not easy or arbitrary, but must be supported by objective circumstances, strong evidence, and strict compliance with legal procedures. This judge's approach emphasizes that the balance between company interests and worker protection remains the main principle in resolving employment relations disputes.[12]

Force majeure criteria that can be used as a basis for termination of employment

The application of force majeure as a basis for termination of employment (PHK) cannot be done haphazardly. Although the concept of force majeure is rooted in civil law, in the Indonesian employment context, the force majeure criteria are stricter because the principle of worker protection is the main pillar of industrial relations policy. Therefore, not every extraordinary event can automatically be used as a reason for layoffs. Only certain events with very significant and absolute operational impact can be legally recognized as a basis for termination of employment.[13]

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[11] Rahardjo, M. (2018). *Hukum Perusahaan dan Risiko Bisnis: Perspektif Hukum Ketenagakerjaan*. Yogyakarta: Gava Media. hlm. 14

[12] Santoso, E. (2020). "Prinsip Ultimum Remedium dalam Pemutusan Hubungan Kerja: Telaah Yurisprudensi Mahkamah Agung." *Jurnal Hukum Bisnis dan Ketenagakerjaan*, 7(2)

[13] Rahman, F. (2019). "Kepatuhan Prosedural dalam PHK Berdasarkan Force Majeure." *Jurnal Ilmu Hukum*, 12(1)

First, the event must meet the elements of force majeure as known in civil law, namely: it occurred against the will of the parties, was unexpected, and could not be avoided despite maximum efforts. In the realm of employment, the application of these elements becomes more specific. Force majeure must be an external event that completely closes all business activities, so that work relations objectively cannot be carried out. Examples of events that meet these criteria include: large-scale natural disasters such as flash floods, earthquakes, or tsunamis, which destroy production facilities; major fires that are not the result of the entrepreneur's negligence; social unrest or mass conflict that damages production facilities; as well as government policies that prohibit all forms of operations in certain sectors, such as the total operational ban that occurred during the COVID-19 pandemic.

Apart from material aspects, the application of force majeure also requires strict procedural compliance. Companies are required to carry out bipartite negotiations with workers or labor unions before layoffs are carried out.[14] This procedure is part of the principle of due process of law in industrial relations, which emphasizes that layoffs must be carried out in a fair and transparent manner. Without negotiations or the implementation of valid procedures, the reasons for force majeure become irrelevant and can be overturned by the court.[15]

In addition, companies are also required to carry out objective proof that operational activities really cannot be carried out. This includes documentation that shows the immediate impact of extraordinary events on production, services or daily operations. With clear evidence, layoffs can be seen as a rational and legally valid final step. Thus, force majeure in employment relations in Indonesia is not just a theoretical concept, but is a legal instrument bound by the principle of labor protection.[16] The use of force majeure requires a balance between the company's interests in maintaining business continuity and workers' rights to obtain adequate legal protection. The unclear definition in the law provides room for judges to interpret and set concrete boundaries, so that court decisions become very decisive in providing legal certainty.[17] This approach emphasizes that force majeure is not an easy excuse to use; every step of layoff must be supported by objective

[14] Putri, L. (2021). "Force Majeure dan Batasan Impossibility dalam Hukum Ketenagakerjaan Indonesia." *Jurnal Hukum Pekerja dan Industrial Relations*, 4(1)

[15] Nugroho, H. (2022). "Peran Perundingan Bipartit dalam Pemutusan Hubungan Kerja Akibat Keadaan Memaksa." *Jurnal Hukum dan Keadilan*, 15(2)

[16] Simanjuntak, R. (2022). *Hukum Perdata Indonesia dan Force Majeure*. Jakarta: Kencana. hlm. 20

[17] Arifin, M. (2020). "PHK Akibat Force Majeure: Studi Yurisprudensi Mahkamah Agung." *Jurnal Hukum & Peradilan*, 12(2)

circumstances, strong evidence, and full compliance with applicable legal procedures.

Second, an event that is categorized as force majeure must give rise to circumstances that factually make it impossible for the company to continue work activities, not just make operations difficult or reduce profit levels. Many layoff disputes that arise in practice are rejected by judges because the reasons put forward by employers only revolve around a decrease in income, reduced orders, or an internal financial crisis. These conditions, even though they have a negative impact on business performance, are not included in the force majeure category because they still allow the company to continue carrying out its activities, albeit with certain efficiencies or adjustments.[18]

The court emphasized that economic difficulties alone cannot be used as a reason for force majeure unless accompanied by concrete evidence that the company cannot operate at all. This emphasizes the fundamental difference between ordinary business risks and legally enforceable circumstances. In this context, the element of impossibility (impossibility) becomes a clear boundary between mere loss or financial pressure and forced circumstances that meet legal requirements.[19]

In other words, force majeure requires an absolute and real impact, which makes business continuity impossible, not just unprofitable.[20] Employers who wish to rely on this reason for layoffs must demonstrate that the company's activities have actually come to a complete halt due to uncontrollable external events.[21] This proof usually includes operational documentation, production reports, financial data showing inoperability, as well as external evidence such as official letters from the government, natural disaster reports, or recommendations from relevant authorities. This approach emphasizes the principle that force majeure in employment relations is not a shortcut to avoid legal obligations, but rather a valid instrument only when the company is in a truly critical and inevitable condition, while still prioritizing the protection of workers' rights which is the core of industrial relations.[22]

Third, before using force majeure as a basis for termination of employment (PHK), employers are obliged to prove that all alternatives other than layoffs have

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[18] Nugroho, D. (2019). "Kepatuhan Prosedural dan Perlindungan Pekerja dalam PHK Force Majeure." *Jurnal Hukum Pekerja*, 7(2)

[19] Putra, T. & Rahmawati, S. (2022). "Implementasi Ultimum Remedium dalam Hubungan Industrial." *Jurnal Hukum & Keadilan*, 15(1)

[20] Wirawan, P. (2022). *Pemutusan Hubungan Kerja: Aspek Hukum dan Praktik Perusahaan*. Bandung: Refika Aditama. hlm. 95

[21] Marbun, T. (2019). *Hukum Perjanjian dan Force Majeure di Indonesia*. Jakarta: Kencana. hlm. 20

[22] Santika, R. (2020). "Force Majeure dalam Praktik PHK Selama Pandemi COVID-19 di Indonesia." *Jurnal Hukum dan Ekonomi*, 11(3)

been taken, in accordance with the principle of ultimum remedium, namely that layoffs may only be carried out as a last resort. These alternative steps can be in the form of adjusting working hours, implementing a shift work system, relocating or temporary housing for workers, transferring workers to other units, reducing non-productive costs, or renegotiating employment relations. Each of these efforts must be clearly documented as proof that the company has good intentions to maintain work relations and minimize negative impacts on workers.[23]

Bipartite efforts and open dialogue with workers or labor unions are fundamental requirements in proving the company's good faith. Without proof that the entrepreneur has taken maximum efforts, a force majeure claim cannot be accepted. In this context, layoffs will be considered to be carried out prematurely or even have the potential to be a method of transferring business risks to workers, thus contrary to the principle of labor protection. Fourth, the force majeure criteria as a basis for layoffs also include compliance with applicable legal procedures.[24] Employers are still obliged to provide written notification to workers, resolve workers' normative rights, such as severance pay, gratuity pay, and compensation for rights, as well as following legal mechanisms if a dispute occurs, including a request for dismissal to the Industrial Relations Court. Extraordinary events, no matter how strong their impact on companies, do not eliminate employers' legal obligations to fulfill workers' rights that have been regulated normatively.[25]

Thus, the use of force majeure as a basis for termination of employment (PHK) does not only require the existence of objective circumstances that are inevitable, but must also be accompanied by concrete evidence regarding alternative efforts that have been carried out by the employer. These efforts include restructuring working hours, implementing a shift system, transferring or redistributing workers, and other internal mechanisms aimed at maintaining working relationships before finally deciding on layoffs. In addition, bipartite dialogue with trade unions or employee representatives is an integral part of the procedure, in accordance with the principles of openness, transparency and respect for workers' rights.

This approach emphasizes the principle of ultimum remedium, namely layoffs as a last resort that can only be taken after all other alternatives are impossible. In this context, compliance with legal procedures, including labor laws and internal

[23] Adi, K. (2020). "Force Majeure dan PHK di Indonesia: Analisis Yurisprudensi MA." *Jurnal Hukum & Pembangunan*, 50(2)

[24] Wibowo, D. (2021). "Kriteria Force Majeure dalam Hubungan Kerja dan Perlindungan Pekerja." *Jurnal Hukum Pekerja dan Industrial Relations*, 5(1),

[25] Fitriani, N. (2019). "Ultimum Remedium dalam PHK: Perspektif Hukum Ketenagakerjaan Indonesia." *Jurnal Hukum & Keadilan*, 14(2)

company guidelines, is key to maintaining the legitimacy of employers' actions. The Supreme Court, through a number of jurisprudences, provides additional guidance regarding the assessment of force majeure in layoff disputes. In the practice of trials at the Industrial Relations Court (PHI) and the Supreme Court, judges assess two main aspects: first, the character of the event claimed to be force majeure, whether it really fulfills the elements of a force majeure that is beyond human control; and second, the employer's actions, whether the steps taken are proportional, transparent, and have explored all possible alternatives before finally deciding on layoffs. Many decisions reject the reason of force majeure because there is no causal connection between extraordinary events and the company's inability to continue working relations. This emphasizes that force majeure is only recognized if it really causes absolute damage or disruption which makes layoffs a last resort. In other words, the recognition of force majeure is not just a matter of a major event, but is related to detailed evidence, compliance with procedures, and the conformity of the entrepreneur's actions with the principles of fair and balanced industrial relations.

These criteria are designed to prevent misuse of the concept of force majeure as an excuse to avoid responsibility or disproportionately harm workers. Thus, every layoff based on force majeure must be carried out carefully, proportionally and fairly, so that it not only protects the continuity of the company's business but also ensures that workers' rights are maintained.[26]

CONCLUTIONS

1. The application of force majeure as a basis for termination of employment (PHK) in employment practices in Indonesia must be understood carefully and cannot be equated with the application of force majeure in civil law in general. Even though the basic concept originates from civil contracts, employment law provides stricter restrictions because the principle of worker protection is the main basis.
2. There are several points that must be understood regarding the application of force majeure. *First*, force majeure regulations in employment relations are mentioned in the Employment Law, PP No. 35 of 2021, and the Minister of Manpower Regulation, which essentially emphasizes that compelling circumstances can only be used as a reason for layoffs if the company is truly unable to continue its operations. However, the regulation does not provide a closed definition, so its interpretation really depends on objective facts, the good faith of the entrepreneur, and the judge's assessment. *Second*, the force

[26] *Ibid*

majeure criteria that can be used as a basis for layoffs must meet the elements of unpredictability, extraordinary nature, unavoidability, and causing the objective impossibility of continuing the employment relationship. In addition, entrepreneurs are required to prove a causal relationship between the event and the cessation of business activities. Economic difficulties, decreased turnover, or business losses alone cannot be considered force majeure without truly paralyzing operational conditions. *Third*, force majeure can only be used after all alternative measures other than layoffs have been taken, such as adjusting working hours, transferring tasks, temporary housing, and reducing non-productive internal costs. The principle of ultimum remedium requires layoffs to be the last step, not the main way to solve company problems. *Fourth*, the Supreme Court's jurisprudence shows the tendency of judges to strictly assess the evidence of the elements of force majeure and to look at the proportionality of the entrepreneur's actions. Many layoff requests are rejected because employers fail to prove a direct link between extraordinary events and the inability to carry out work relations. This shows that the concept of force majeure should not be used as an excuse to smuggle in unilateral layoff actions. Overall, the application of force majeure in employment relations is limitative, full of evidence, and must be in accordance with the principles of fair, balanced and equitable industrial relations.

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