

ANALYSIS OF IDEAL LEGAL PROTECTION FOR WORKERS FOLLOWING THE ENACTMENT OF THE OMNIBUS LAW CONCERNING JOB CREATION

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Received: Oct 24, 2023; Reviewed: Nov 10, 2023; Accepted: Des 27, 2023; Published:
January 10, 2024

Abstract

This article aims to discover the ideal form of protection for workers after the Job Creation Omnibus Law was passed, scrapping several articles such as articles 161, 164, 165, and 167 of Law Number 13 of 2003 concerning Employment which were considered detrimental to workers. This study seeks to provide recommendations for the ideal form of regulation for the protection of local workers by employing a juridical approach based on juridical reviews and statutory regulations using secondary data. For this reason, regulations regulating these matters are needed as ideal protection based on an agreement binding the parties, business entities, and workers to satisfy all their rights and obligations, thereby ensuring that good working relationships are established and prosperity is achieved. Business entities must work in tandem with individuals in fulfilling their rights and obligations according to the mandate of the 1945 Constitution. Apart from that, the author hopes that the government will consider amendments to the Job Creation Law by adding articles that support and provide protection for workers to bring about welfare without further thought at a global level.

Artikel ini bertujuan untuk mencari bentuk perlindungan ideal kepada para pekerja pasca disahkannya Undang-Undang Omnibus Law Cipta Kerja yang menghapus beberapa pasal seperti pasal 161, 164, 165, 167 Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan yang dinilai merugikan pekerja. Kajian ini mencoba memberikan rekomendasi bentuk peraturan yang ideal untuk perlindungan pekerja local yang disajikan dengan menggunakan pendekatan yuridis berdasarkan tinjauan yuridis dan peraturan perundang-undangan dengan menggunakan data sekunder. Untuk itu, diperlukan peraturan yang memuat perlindungan ideal berdasarkan kesepakatan berupa perjanjian para pihak, badan usaha, dan pekerja untuk memenuhi seluruh hak dan kewajibannya sehingga dapat terjalin hubungan kerja yang baik dan tercapai kesejahteraan. Jadi, tidak hanya terfokus pada badan usaha saja melainkan antara badan usaha dan perseorangan yang harus saling bekerjasama dalam memenuhi hak dan kewajibannya sesuai amanat UUD 1945. Selain itu, hasil penelitian ini diharapkan bagi pemerintah untuk merevisi Undang-Undang Cipta Kerja dengan menambahkan pasal-pasal yang memihak dan memberikan perlindungan bagi pekerja untuk mendapatkan kesejahteraan tanpa berpikir berlebihan secara global.

Keywords: *agreement, employment, job creation omnibus law, ideal protection*

Introduction

Globalization has triggered numerous changes in all sectors of life, both in terms of technology and the economy, leaving indirect impacts on the legal sector. Moreover, new regulations are needed to regulate new policies that fit current developments. Considering that prevailing regulations are no longer relevant these days, significant improvements must be made so that they can reach every side of life. This is the motivation for the government to transplant the omnibus law regulations. In his speech, President Jokowi identified at least 74 laws that were affected by the Omnibus law. The most prioritized regulations for discussion in the DPR are the economic sector, such as tax laws, job creation, and MSME empowerment¹. The presence of several new regulations is expected to be

¹ Muhammad Idris, "Still Confused about What Omnibus Law Is," 2020, <https://money.kompas.com/read/2020/02/18/160300026/masih-bingung-apa-itu-omnibus-law?page=all>.

effective in supporting national development. However, the discourse on this law was not immediately well received by the public, especially the omnibus law on job creation. Outcries were expressed by workers, both in writing and in large demonstrations on Labor Day. In the demonstration commemorating International Labor Day (May Day) in May 2022, there were four labour organizations, namely the Labor Party, the Confederation of All Indonesian Trade Unions (KSPSI), the Confederation of Prosperous Indonesian Trade Unions (KSBSI), and the Confederation of Indonesian Trade Unions (KPBI) also voicing their rejection of the omnibus law on job creation².

They staged protests over the scrapping of articles in several bills, causing huge losses. Articles 161, 164, 165, and 167 of Law Number 13 of 2003 concerning Employment which are considered beneficial to workers have been removed and replaced with new articles of the Job Creation Law³. The government considers this article able to increase economic growth and investment favouring the country, not workers. Workers are an important part of the country's economic growth, so their rights and obligations need to be protected by the state. Article 1 number 2 of Law Number 13 of 2003 concerning Employment affirms that Labor refers to every person who can execute a task to produce goods and services, either for themselves or others. The right to protection is part of the workers who have performed work, either working for themselves and in an employment relationship or for employers (companies, entrepreneurs, legal entities and other entities).

Therefore, the government's policy in drafting the omnibus law on job creation has risen as a polemic among workers. The term omnibus is new in the Indonesian law. Omnibus comes from the Latin *omnis* which means everything. Also termed an omnibus bill, omnibus law is a method or concept for making regulations that combines several regulations with different regulatory substances into one regulation in one law. That is, omnibus law is cross-sectoral, which is interpreted as "sapu jagad law"⁴. Omnibus law has never been implemented in Indonesia, but it has in many

² Ahmad Naufal Dzulfaroh, "What Are the 18 Demands of Workers in Today's May Day Demonstration?," 2022, <https://www.kompas.com/tren/read/2022/05/14/134500265/18-tuntutan-buruh-dalam-demo-may-day-hari-ini-apa-saja-?page=all>.

³ Sapariah Saturi, "The Horror of the Job Creation Bill, From Disappearing Environmental Permits to Weakening Sanctions," 2020, www.Mongabay.co.id/2020/02/14/horor-ruu-cipta-kerja-dari-izin-lingkungan-hilang-sampai-lemahkan-sanksi-hukum/amp/.

⁴ Sri Humana et al, *The Role of the Prosecutor's Office in the Omnibus Law Bill* (Jakarta: Indonesian Attorney General's Research and Development Center, 2020), p. 2 .

other countries with varying degrees of success. In legal history, omnibus law has been applied in Common Law countries such as America, which has long adopted omnibus law. Can omnibus law be implemented in a country with a civil law system like Indonesia, considering that Civil Law and Common Law are two different legal systems? According to Satjipto Rahardjo in his book, the legal system includes elements such as structure, categories and concepts⁵. From its structure, Common Law (Anglo-Saxon) relies on court decisions as its source of law. Meanwhile, the Civil Law legal system (Continental Europe) adheres to legal codification as the main source of law, as is the case in mainland European countries and their colonies.

The Draft Omnibus Law on Job Creation which was ratified and signed by President Joko Widodo on 2 November 2020 and became Law Number 11 of 2020 consisting of 79 laws with 15 chapters and 174 articles discussing 11 clusters⁶ was rejected by the Constitutional Court (MK). This law was declared unconstitutional because its elements contravened the 1945 Constitution. Moreover, the Omnibus Law was not conditionally legally binding since it was not interpreted. The Constitutional Court gave time to revise the implementation of the Job Creation Omnibus law until 2023. Failing to execute the revision will result in the revocation of the law. This has brought fresh air for workers because improvements and changes to the articles in the Job Creation Omnibus law are deemed not to protect workers. However, the Government argues that this law was made for the benefit of society as mandated under the 1945 Constitution. Regulatory reform through the omnibus law is a form of investment-friendly strategy and reduces the unemployment rate in Indonesia.

Article 86 paragraph (1) of Law Number 13 of 2003 concerning Employment states that every worker has the right to moral and decency protection and treatment according to dignity and human values as well as religious values. Legal protection for workers includes the freedom to improve their standard of living, prevent a reduction in workers' purchasing power, and protect their rights to work and income due to work accidents, illness, or death. The Job Creation Law is a product of legal regulations initiated by the government and the DPR to carry out deregulation and

⁵ Rahardjo Satjipto, *Legal Science* (Bandung: PT Citra Aditya Bakti, 1991), p. 235 .

⁶ DPR RI, "The Job Creation Law Is Here for a More Advanced Indonesia," accessed July 22, 2022, [https://www.dpr.go.id/berita/detail/id/30590/t/UU+Ciptaker+Hadir+Untuk+Indonesia+lembih+Maju#:~:text=Anggota Badan Legislati \(Baleg\) DPR RI Guspari Gaus mengatakan bahwa,akan dapat meningkatkan iklim investasi.](https://www.dpr.go.id/berita/detail/id/30590/t/UU+Ciptaker+Hadir+Untuk+Indonesia+lembih+Maju#:~:text=Anggota Badan Legislati (Baleg) DPR RI Guspari Gaus mengatakan bahwa,akan dapat meningkatkan iklim investasi.)

bureaucratic regulations using the Omnibus Law method to invite investors to invest in the country. Rumour had it that investors were reluctant to invest in Indonesia because of unclear and uncertain regulations, overlapping, complicated bureaucracy, and rigid labour regulations.⁷

However, the ratification of the Omnibus Law on Job Creation is considered a failure to fulfil the elements of protection needed for workers. Employers (companies, entrepreneurs, legal entities or other bodies) must treat workers well and provide severance pay for workers who have served at workplace for a long time, show good behavior and then ask to leave the job even though it is not stated in the agreement⁸. As explained in Article 161 paragraph 3 of Law Number 13 of 2003 concerning Employment, workers/laborers who experience termination of employment due to the reasons referred to in paragraph (1) receive 1 (one) time severance pay as regulated in Article 156 paragraph (2), one-time service award pay as intended in Article 156 paragraph (3) and compensation for rights in accordance with the provisions of Article 156 paragraph (4). On the other hand, in the Omnibus Law on Job Creation, the provisions on providing severance pay to workers were scrapped.

This is detrimental to workers so they rejected the omnibus law on job creation and now hope that this regulation will be scrapped and changed into a regulation to protect workers. Departing from these considerations, this research intends to analyze the form of legal protection for workers after the Job Creation Omnibus Law was passed, especially in terms of providing wages or severance pay. This research is different from previous research conducted by May Linda Iswaningsih, I Nyoman Putu Budiarta, Ni Made Puspasutari Ujiti entitled Legal Protection of Local Workers in Law Number 11 of 2020 concerning Job Creation⁹ which examined the regulation of the omnibus law job creation for local workers in foreign investment companies in Indonesia, the research by Solihin and Markoni entitled Legal Protection of Workers After the Implementation of Law No.

⁷ Fitri W dan Hidayah L, "Problems with the Law on Job Creation in Indonesia: A Perspective Study of Legislation, Journal of the Yustisia Community," *Journal of the Yustisia Community* 2, no. 725–735 (2021), <https://doi.org/DOI:https://doi.org/10.23887/jatayu.v4i2.38719>.

⁸ Djumaldji, *Job Agreement* (Jakarta: Bina Aksara, 1977), p.6.

⁹ Ni Made Puspasutari Ujiti May Linda Iswaningsih, I Nyoman Putu Budiarta, "Legal Protection for Local Workers in Law Number 11 of 2020 Concerning the Omnibus Law on Job Creation," *Legal Reference Journal* 2, no. 3 (2021): 478–84.

11 of 2020 concerning Job Creation¹⁰ focusing on collective work agreements (PKB) to protect workers, the research by Garda Yustisia Pambudi, Fatma Ulfatun Najicha entitled Juridical Review of Leave Rights for Workers After the Enactment of Law Number 11 of 2020 concerning Job Creation¹¹ focusing on workers' leave rights according to Law Number 11 of 2020 concerning Job Creation (Job Creation Law), the research by Oti Ilham Khair entitled Analysis of the Job Creation Law on Labor Protection in Indonesia¹² only focusing on finding out what forms of labor protection apply in general as a result of the enactment of the Job Creation Law, the research by Yusril Rahman Hakim entitled Omnibus Law Policy in the Perspective of Labor Policy in Indonesia¹³ focusing on the policy analysis of Van Horn & Van Metter in studying the omnibus law policy towards workers.

Therefore, the author chose this research topic because the previous research explained the forms of legal protection for workers according to state administrative law or legal protection for workers in Law 11 of 2020 concerning Job Creation. This research focuses on the ideal form of legal protection for workers following the enactment of the Job Creation Omnibus Law. In the discussion, a comparison will be made between the Employment Law and the Job Creation Law.

Research Methods

The research "Analysis of Ideal Legal Protection for Workers Post Ratification of the Job Creation Omnibus Law" is descriptive with a normative juridical type of research. The study was carried out on statutory regulations regarding employment, including Law No. 13 of 2003 concerning Employment and Law Number 11 of 2020 concerning Job Creation. This research employed secondary data. Secondary legal materials were obtained from literature studies such as laws, books, theses and other literature. Apart from that, data collection was carried out on tertiary legal

¹⁰ Solihin and Markoni, "Legal Protection of Workers After the Implementation of Law No. 11 of 2020 Concerning Job Creation," *Locus Research and Community Service Journal* 1, no. 9 (2022).

¹¹ Fatma Ulfatun Najicha, "Juridical Review of Leave Rights for Workers After the Enactment of Law Number 11 of 2020 Concerning Job Creation," *Gema Justice Journal* 9, no. 1 (2022): 1–10.

¹² Oti Ilham Khair, "Analysis of the Job Creation Law on Labor Protection in Indonesia," *Widya Pranata Hukum* 3, no. 1 (2021): 1–19.

¹³ Yusril Rahman Hakim, "Omnibus Law Policy in the Perspective of Labor Policy in Indonesia," *PolGov Journal* 3, no. 1 (2021): 235–67.

materials from printed and online news, involving qualitative analysis with empirical normative aspects through descriptive analysis methods to produce inductive conclusions¹⁴. The articles in the labour law and the new omnibus law on job creation were analyzed and compared. This research focuses on wages, work contracts, and severance pay by comparing the articles that were deleted and replaced in previous regulations to find regulations ideal for the welfare of workers based on the 1945 Constitution.

Discussion

The Omnibus Law on job creation was legalized and signed by President Joko Widodo on November 2nd, 2020 ratified into Law No. 11 of 2020. Omnibus is a new term in the legal scope in Indonesia. Omnibus is derived from the Latin *omnis* which means for everything. The term, which is also called an omnibus bill, represents a method or concept of making regulations that combines several rules with different regulatory substances into one regulation under one law. The Omnibus Law has its characteristics with the substance of the material combining various cross-sectoral issues, cross-regulations, and improvements. It also rearranges or deletes articles that are considered inconsistent with their goals. In the Prolegnas, the government will initiate at least 5 (five) bills, such as the Job Creation Bill, the UMKM Bill, the Pharmaceutical Bill, the Tax Provisions and Facilities Bill for Economic Strengthening, and the State Capital Bill.

In his speech, President Jokowi identified at least 74 laws that were affected by the Omnibus law. The regulations that are most targeted to be discussed in the DPR are the economic sector, such as the tax law, job creation, and empowerment of MSMEs¹⁵. The framework and purpose of the government are to make a bill that can reach other laws to address the slow growth of the global economy, mitigate the potential of economic stagnation, and optimize investment competitiveness in Indonesia. DPR RI ratified the draft Omnibus Law on Job Creation into Law Number 11 of 2020 concerning Job Creation (UU Ciptaker or UU CK) through its 7th plenary session on October 5th, 2020. Creating jobs and increasing foreign investment in the country by reducing the requirements and regulations for business licensing and land acquisition are some of the goals of the ratification of Law Number 11 of 2020 concerning Job Creation which

¹⁴ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: Universitas Indonesia Press, 1986), p.112.

¹⁵ Muhammad Idris, "Still Confused about What Omnibus Law Is."

contains 1,187 pages.¹⁶ The Job Creation law is expected to be part of efforts to restore the national economy, especially in encouraging economic transformation to provide new job opportunities for the community. The purpose of the Law on Job Creation is to create employment opportunities as widely as possible for the people of Indonesia equally throughout the territory of the Republic of Indonesia¹⁷.

In the Omnibus Law technique, the Government realizes around 80 laws and more than 1,200 articles can be revised at once with only one Job Creation Law that regulates multi-sectors. The Job Creation Law is useful for improving the investment atmosphere and creating legal certainty. Eleven clusters contained in the Job Creation law are Simplification of Licensing, Employment Investment Requirements, Land Acquisition, Facility of Business Support for Research and Innovation, Government Administration, Imposition of Convenient Sanctions, Empowerment and Protection of MSMEs Investment and Government Projects in Economic Zones¹⁸.

However, the ratification of Law No. 11 of 2020 concerning job creation caused a lot of protests in various communities because it was not congruous with the government's goal to protect workers but on the contrary. As a result, this law is unconstitutional, as declared by the Constitutional Court, unless it is amended in 2023. For this reason, this research aims to examine the ideal form of protection for workers after the ratification of the Omnibus Law on Job Creation. Thus, this rule is very different from other rules concerning workers in any section, especially concerning the protection of workers who plan to retire or who have special conditions regarding health, status and so on. This section will compare two rules and what ideal form is available to regulate workers.

¹⁶ Bambang Wiyono Catur JS, Djongga, Heriyandi, Herry Poerwanto, Jelita Hutasoit, Khairul Anam, "Legal Protection of Workers' Welfare through Law Number 11 of 2020 Concerning Job Creation," *Lex Specialis Journal* 1, no. 2 (2020): 178–88, https://doi.org/DOI: http://dx.doi.org/10.29303/ius.v8i1.752_.

¹⁷ Detikfinance, "Omnibus Law, Definition, Objectives and Benefits," 2022, <https://finance.detik.com/berita-ekonomi-bisnis/d-5971850/omnibus-law-pengertian-tujuan-dan-manfaatnya>.

¹⁸ Ministry of Education and Culture, "Job Creation Omnibus Law Booklet," 2022, <https://dikti.kemdikbud.go.id/wp-content/uploads/2020/10/Booklet-UU-Cipta-Kerja.pdf>.

Comparative Nexus between Law No. 13 of 2003 concerning Workers and Law No. 11 of 2020 concerning Job Creation

The presence of the Omnibus Law on Job Creation has sparked obvious controversy in diverse communities. The existence of this law brings changes to business entities and workers because there are a lot of improvements to the rules in this law. The government prepared the Job Creation Law with the omnibus law concept to be used as a scheme to build the economy to attract investors to invest in Indonesia. The focus of the Job Creation Law is made to be more global for economic growth in the investment sector by having several clusters, including Simplification of Licensing, Employment Investment Requirements, Land Acquisition, Facility of Business Support for Research and Innovation, Government Administration, Imposition of Convenient Sanctions, Empowerment and Protection of UMKM Investment and Government Projects in Economic Zones.

This improvement is also made to the employment cluster. The government seeks to harmonize several laws that overlap and result in losses particularly affecting workers. First, Law 13/2003 concerning employment, Second Law 40/2004 concerning the System of National Social Security, and third Law 24/2011 concerning Social Security Administering Body. However, it is not balanced with a regulatory substance that can avoid conflicts that have occurred so far, including changes in leave, severance pay and others. These changes further narrow the space for workers to fight for their rights¹⁹. A lot of regulations aimed at protecting workers' rights in the Employment Law 2003 were replaced or even abolished. Instead of creating decent jobs for workers, the Job Creation Law is considered to make the conditions of workers more vulnerable and uncertain.

Article 3 of Law Number 11 of 2020 concerning Job Creation states that this Law aims to create jobs for all Indonesian people by creating and increasing employment, providing convenience, and protection for MSMEs and cooperatives, ensuring that every citizen gets a job and improvement of the investment ecosystem. The existence of the Job Creation Law Number 11 of 2020 improves the quality of workers in Indonesia so that they can adapt to the current Industrial Revolution, which is the Industrial Revolution 4.0 while other developed countries such as Japan have initiated new

¹⁹ Vivid Matompo, OS dan Iziziyana, W, "The Omnibus Law Concept and Problems with the Job Creation Bill," *Rechstaat Nieuw* 5, no. 1 (2020): 22–29, https://doi.org/https://doi.org/10.52429/rn.v6i1__.

concepts such as Society 5.0. At least, the workers are expected to adjust so that our competitiveness in the eyes of the international community will increase.

There are changes in the Employment System in Law Number 11 of 2020 concerning Job Creation from Law Number 13 of 2003 concerning Employment: First Wages, Article 88 is amended; article 89 is deleted; addition of articles 88B, 88C, 88D Regency/city and sectoral minimum wages are removed. The minimum wage is determined by the provincial minimum wage set by the governor. The addition of articles 88E and 90B provisions on minimum wages for micro and small businesses and labour-intensive industries are regulated separately. In terms of both work contracts and outsourcing, Article 59 removed the previous provisions that limit contract workers or a temporary work agreement to work outside the main activity or production process directly and temporarily (maximum 3 years). Contract workers can work in all types of work and without time limits. Articles 64, and 65 were deleted; Article 66 amended the previous provisions that limit work chartering and outsourced workers to work outside the main activity or production process. All types of work including main activities can use outsourced workers²⁰.

However, this study will focus on the omissions and changes to articles 161, 164, 165, and 167 of Law No. 13 of 2003 concerning Employment (UUE). Article 161 of the UUE states: (1) If a labourer violates the provisions stipulated in the work agreement, company regulations or employment contract, the entrepreneur may terminate the employment relationship, after a labourer is given the first, second, and third warning letters in a row. Meanwhile, the Job Creation Law abolishes severance pay for labourers who have been laid off because of a warning letter. Whereas Article 161 of the Employment Law states that labourers who are laid off because they receive a warning letter have the right to receive severance pay²¹.

In addition, Articles 164 and 165 of the UUE stipulate that labourers who are laid off because the company is bankrupt will receive severance pay. Article 166 of the UUE regulates the rights of worker's families or workers,

²⁰ Ni Made Puspasutari Ujianti May Linda Iswaningsih, I Nyoman Putu Budiarta, "Legal Protection for Local Workers in Law Number 11 of 2020 Concerning the Omnibus Law on Job Creation," *Journal of Legal Preference* 2, no. 3 (2021): 478–84, <https://doi.org/https://doi.org/10.22225/jph.2.3.3986>.

²¹ Disnakertrans, "Differences between the Employment Law and the Omnibus Law Bill," 2020, <https://disnakertrans.ntbprov.go.id/perbedaan-uu-ketenagakerjaan-dengan-ruu-omnibus-law-cipta-kerja/>.

where a company must give money to the heirs upon the demise of a worker. Furthermore, article 167 of the UUE regulates severance pay for labourers who have been laid off at their retirement age. Meanwhile, in the Employment Creation Law, the government has scrapped the Employment Law Articles 164 and 165 of the Job Creation Bill. Therefore, labourers laid off following the bankruptcy of a company will not receive severance pay and will exclude compensation, such as severance pay given to heirs or family members upon the demise of a worker. The Employment Creation Law has also scrapped Article 167 of the UUE regulating severance pay for labourers who have been laid off when they are at retirement age and compensation such as severance pay, the right of tenure award, and compensation for the heirs left behind.

In addition, Article 167 subsection (5) of the UUE also stipulates that employers do not include labourers terminated due to retirement age in the retirement program. If this is the case, the company must provide workers with two-time severance pay as in the provisions of Article 156 subsection (2), reward for 1 (one) tenure as mentioned in Article 156 subsection (3) and compensation for entitlements according to the provisions of Article 156 subsection (4). However, the Employment Creation Law scrapped criminal sanctions for companies that do not include labourers in the retirement insurance program by removing Article 184 of the Employment Law which states “Whoever violates the provisions as referred to in Article 167 subsection (5), he/she is subject to at least one year and a maximum of 5 (five) year prison sentencing and or a minimum fine of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 500,000,000.00 (five hundred million rupiah)”.

This is detrimental to workers because there is no guarantee for workers to increase their employment status to permanent and receive severance pay if they have worked in a company for a long time. However, the existence of the Job Creation Law removes these points, making workers feel disadvantaged and unprotected until their old age as workers. The Job Creation Law is seen to prioritize foreign workers because it removes several requirements for foreign workers working in Indonesia. Therefore, local workers lose competitiveness and can be evicted by competitive workers. This is contrary to the government's goals to promote investment growth and increase global competitiveness for workers, aiming to improve their skills and minimize inferiority to foreign workers.

Improvement of the business system is very important in efforts to grow the national economy, but the welfare of workers also needs to be

studied in the Job Creation Law. It is difficult for a company to develop when an imbalance between entrepreneurs as owners of capital and workers as human resources is pronounced. Having reliable and productive workers, the company will be healthy. One of the factors that encourage worker productivity to increase is increasing the welfare of the workers by guaranteeing the rights which are regulated in the Job Creation Law²². Even though the government offers a form of social security managed by BPJS for workers, it is considered not enough with several points removed from the employment law. Thus, workers feel that they are not protected by the government, and the government's goal in ratifying the Job Creation Law seems to favour the interest of the political elite.

Ideal Form of Legal Protection for Workers

Legal protection for workers is something that has been regulated by the Government, which is inherent and protected by the constitution as stipulated in Article 27 subsection (2) of the 1945 Constitution of the Republic of Indonesia, which mentions that Every citizen has the right to work and a decent life for humanity. With comprehensive protection, not only job security but also economic income is regulated in Article 33 subsection 1, stating that the economy is structured as a joint effort for kinship. Protection of workers is aimed at guaranteeing workers' rights and ensuring equal opportunity and treatment without discrimination to realize the welfare of workers and their families while taking into account the progress of the business world and the interests of entrepreneurs to realize the welfare of workers as mandated under the 1945 Constitution²³.

The role and function of law as a regulator and legal protection of the public interest is essential. Moreover, the law serves as a reference to protect society in Indonesia as a state law. Therefore, every action of society and the government must be based on the law. However, the rights and obligations of citizens must be guaranteed in carrying out their activities by providing legal protection. In addition to a socioeconomic perspective, workers need legal protection from the state against the possibility of unfair treatment from employers²⁴. Protecting workers is essential to bring about

²² Fitri W dan Hidayah L, "Problems with the Law on Job Creation in Indonesia: A Perspective Study of Legislation," *Journal of the Yustisia Community* 4, no. 2 (2021): 725–35, <https://doi.org/https://doi.org/10.23887/jatayu.v4i2.38719>.

²³ Andriyanto Adhi Nugroho Heru Suyanto, "Legal Protection of Outsourcing Workers' Rights Based on Justice Principles," *Juridical Journal* 3, no. 2 (2016): 1–14, <https://doi.org/http://dx.doi.org/10.35586/.v3i2.179>.

²⁴ Asri wijayanti, *Post-Reformation Employment Law* (Jakarta: Sinar Grafika, 2009),p.49 .

prosperity and support the government to realize economic development as one of the ideals of the State these days.

The protection of labourers according to Law No. 13 of 2003 concerning Employment guarantees the basic rights of labourers and ensures equal opportunity and treatment without discrimination to realize the welfare of workers and their families while taking into account the progress of the business world. In other words, the employment Law in each article pays attention to the protection of individual and family workers for the development of the State. The scope of protection for workers provided and regulated in Law No. 13 of 2003 concerning Employment, among others, involves the following: a. Protection of workers' basic rights. The objects of this protection are as follows: 1) Protection of female workers is related to the working time limit for those under 18 (eighteen) years old, as regulated in Article 76 subsection (1) of the employment law; working prohibition for pregnant women for certain hours is also regulated in Article 76 subsection (2) of the employment law; Terms and conditions that must be done by employers when employing women between 23.00 and 07.00 according to Article 76 subsection (3) of the employment law are set out; Employers are required to provide shuttle transportation for those who work between 23.00 and 07.00, as well as a form of protection regulated in Article 76 subsection (4) of the employment law. 2) The employment law also regulates the protection of child labourers, stating "they or any person who works under the age of 18 (eighteen), as regulated in Article 1 point 26 of the employment law. Protection of child workers includes matters or provisions concerning procedures for employing children, as regulated in Article 68, 69 subsection (1) and (2), Article 72, 73 and 74 subsection (1) of the Employment Law. 3) Article 76 subsection (1) of the Employment Law regulates protection for persons with disabilities. If employers employ workers with disabilities, they are obliged to protect them according to the type and degree of disability, such as providing accessibility, providing work equipment and personal protection. b. The Employment Law regulates the protection of occupational safety and health which is one of the rights of workers or laborers as regulated in the provisions of Article 86 subsection (1) of the Employment Law. This protection aims to protect the safety of workers to achieve optimal work productivity by preventing accidents and occupational diseases, health promotion, treatment and rehabilitation. c. Social security in the provisions of the Job Creation Law as guaranteed by the government is a polemic. However, the protection of Social Security for Workers is also stated in Article 88 subsection 1 of the Employment Law

that every worker has the right to earn an income that supports a decent living for humanity. Therefore, the amount of income received by workers should fairly cover the life necessities of workers and their families, such as food, clothing, housing, education, health, recreation and old-age insurance.

These forms of protection are considered important for workers today. Non-comprehensive protection may disappoint workers and make them feel legally unprotected. Meanwhile, in the job creation law, the government focuses more on vertical protection by protecting business entities, UMKM or cooperatives. Furthermore, investment and economic growth are going well, which is expected to have an impact on the protection of workers. As explained in the Job Creation Law, it is necessary to adjust various regulatory aspects related to the convenience, protection, and empowerment of cooperatives and micro, small and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic projects, including increasing protection and welfare of workers. For this reason, it is necessary to take policies and strategic measures on job creation that require the involvement of all relevant parties, and for this, it is necessary to formulate and stipulate a law on job creation. It aims to create the widest possible employment for the people of Indonesia evenly throughout the territory of the Republic of Indonesia to fulfill the right to a decent life²⁵.

One of the forms of worker protection is the creation of employment opportunities through regulations related to increasing protection and welfare of workers with temporary work agreements, protection of employment relations for work based on outsourcing, protection of decent work needs of minimum wages, protection of dismissed workers, and ease of licensing for foreign workers who have certain skills needed for the process of producing goods or services. Job creation carried out based on regulations related to the convenience, empowerment, and protection of MSMEs at least contains provisions regarding ease of establishment, member meetings, cooperative business activities, and criteria, single database, integrated management, ease of Business Licensing, partnerships, incentives, and MSMEs financing²⁶.

The form of protection regulated in the Job Creation Law is global because it focuses on protecting business entities, MSMEs or Cooperatives as a forum to provide jobs for workers. So the concept of protection between the Employment and the Job Creation Law is different in focus.

²⁵ "Law No. 11 of 2020 Concerning Job Creation" (2020).

²⁶ Law No. 11 of 2020 concerning Job Creation.

This is what makes workers disapprove of the Job Creation Law because it disfavours individuals and gives flexibility to foreign workers.

Thus, this study aims to ensure that the ideal form of legal protection for workers is according to the 1945 Constitution, namely fulfilling the rights and obligations of workers to create prosperity for workers, business entities and their families by prioritizing good work, and the relationship between business entities and their workers. The employment relationship cannot be separated from the employment agreement made by the parties. The rights and obligations stated in the agreement must be duly implemented without either party committing a violation.

Law no. 13 of 2003 concerning Employment regulates work relations between Workers and Companies in the form of Work Agreements, Temporary Work Agreements, Indefinite Work Agreements, Company Regulations, Collective Work Agreements, Charter Agreements, Job Protection, all aiming to guarantee continuity of the work relation system without involving pressure from the strong party against the weak one. Juridically, Article 5 of Law Number 13 of 2003 protects every worker by ensuring that they have the same rights and opportunities to obtain work and live a decent life regardless of gender, ethnicity, race, religion political beliefs, capabilities, and physical conditions.²⁷ Furthermore, Article 6 of Law Number 13 of 2003 requires employers to provide rights and obligations to workers or labourers regardless of gender, ethnicity, race, religion and political choices. The scope of protection for workers includes 1). Protection regarding wages, welfare, and social security for workers; 2). Protection of occupational safety and health; 3). Legal protection for establishing and becoming members of labour organizations; 4). Protection of workers' basic rights to negotiate by focusing on work agreements so that each party can fulfil their rights and obligations with various regulations governing wages, working hours, leave/holidays, work health and safety, labour organizations and so on. Apart from that, a social security program is also implemented in the employment sector which includes social security and health as regulated in Law Number 24 of 2011 concerning The Social Security Administering

²⁷ Suhartoyo, "Legal Protection for Workers in the National Labor Law System," *Administrative Law & Governance Journal* 2, no. 2 (2019): 326–36, <https://doi.org/https://doi.org/10.14710/alj.v2i2>.

Body (BPJS).²⁸ As discussed in Law Number 11 of 2020 concerning Job Creation, other points may not be changed or deleted.

These points must be protected and even improved for workers because the existence of an agreement can be a guarantee for workers to work both for themselves and their families. So, in the Employment Law, this article must also be revised because it contains the phrase 'by law'. Many employing companies refuse to release inspection notes and/or written directives by labour inspectors, from temporary work agreements to indefinite time work agreements, thereby detrimental to workers. Apart from that, other articles in Law Number 13 of 2003 concerning Employment were submitted for judicial reviews at the Constitutional Court by community groups whose constitutional rights are guaranteed by the Constitution. Among other things, Article 155 paragraph (2) of Law Number 13 of 2003 concerning Employment was submitted for judicial review following the failure to fulfil the constitutional rights of justice seekers, especially workers who seek justice in processing wages, disharmony in industrial relations between workers/labour unions and companies, and a lack of legal certainty, and disharmonious institutional relations in judicial power²⁹. Several other articles such as Article 59 paragraph (7), Article 65 paragraph (8) and Article 66 paragraph (4) were also submitted for judicial review because some phrases sparked debate.

Moreover, the enactment of the Job Creation Law has led to a disproportionate position between companies and workers because workers' rights to, among others, annual leave are no longer guaranteed by law but by work agreements between companies and employees, positioning companies higher in regulating workers' leave rights than that of the workers. Moreover, access to severance pay and wages is hampered because work agreements or contracts that should serve as a guarantee for workers can become the pretext to subjugate workers and ignore their rights with full productivity as the justification. The revocation of the provisions in several articles previously mentioned in the Manpower Law is considered a measure that reduces workers' leverage in obtaining their rights. This is, of course, contrary to the general objectives and responsibilities of the state as a

²⁸ Ngabidin Nurcahyo, "Legal Protection of Labor Based on the Laws and Regulations in Indonesia," *Journal of Legal Cakrawala* 12, no. 1 (2021): 69–78, <https://doi.org/https://doi.org/10.26905/idjch.v12i1.5781>.

²⁹ Suparto and Zulkifli, "Position of M Decisions Position of Constitutional Court Decisions in Employment Law (Kaji Aan (Review of Terh An of Ap Decisions Constitutional Court Decision No. Tusi No. 37/Puu-I. 37/Puu- Ix/2011)," *Journal of Law & Development* 52, no. 1 (2022): 78–110.

lawmaker in forming labour law as a manifestation of protecting the welfare of workers, the provisions of Article 28 D paragraph (2) of the 1945 Constitution, stating: "Everyone has the right to work and receive adequate compensation and treatment, and to fair and decent work relationships".

The ideal form of protection is based on an agreement between the parties, business entities and workers to fulfil all their rights and obligations so that good working relationships can be established and prosperity is achieved. Business entities and individuals must work together in fulfilling their rights and obligations as mandated under the 1945 Constitution. To apply the working relationship, the parties enter into a work agreement³⁰, as regulated in the provisions of Article 52 of the Law. Law No. 13 of 2003 concerning Employment, covering agreements between both parties, skills in carrying out legal actions, certain work, and the work agreed upon does not conflict with public order, morality, and applicable laws. The regulations also strengthen the negotiating position of workers which is not adequately reinforced. These four conditions are in line with the *Pacta Sun Servanda*, which is implicitly regulated in the provisions of Article 1338 of the Civil Code.³¹ This model is faced with a legal system that is heteronomous, where policies in labour law involve the government, such as when to set district minimum wage standards or periodic wage increases under the decision of the Governor; the legal protection for workers is regulated in employment development policies.³² The government should actively provide various training programs to workers to ensure that they meet market standards so that foreign workers are no longer needed to welcome the 2.0 era.

As regulations relating to wages are specified under Article 88 of Law Number 13 of 2003 concerning Employment, they can be the basis for

³⁰ A work agreement is made between a worker/labourer and an entrepreneur or employer, specifying the work conditions, rights and obligations of the parties. (Art. 1 sub. 14 Law No. 13 of 2003 concerning Employment). Aloysius Uwiyono said that work agreements from the perspective of the legal relationship between workers and employers carry special (essential) characteristics, namely: work, orders and wages. Failing to fulfil one or two elements spoils the essence of a work agreement. In the employment relationship between workers and employers/entrepreneurs, these three elements must be fulfilled Aloysius, as an expert witness in the case: Application for review of Law No. 13 of 2003 concerning Employment against the 1945 Constitution of the Republic of Indonesia (2003),p.67.

³¹ Subekti and Tjitrosudibio, *Civil Code* (Jakarta: Pradnya Paramitra, 1979),p.307. *Pacta Sun Servanda*: all agreements legally made are valid as law for those who make them; agreements that have been made by the parties cannot be withdrawn, except by agreement of both parties or for reasons deemed sufficient by law; Agreements must be carried out in good faith.

³² Article 4 of Law no. 13 of 2003 concerning Employment.

entrepreneurs or employers to implement provisions regarding wages for workers or labourers, including workers/labourers with Temporary Work Agreements or contract workers/labourers. The wage provisions above also do not indicate any discrimination in wage distribution because the provisions regarding wages and provincial minimum wages and district/city minimum wages are the same for all workers/labourers and those under short-term work agreements, certain conditions and workers/labourers with temporary work agreements³³. However, the revocation of this provision in the Job Creation Law means that worker protection regarding wages is not appropriate. Thus, the author assesses that the form of protection contained in Law Number 13 of 2003 concerning Employment is more concrete even though several points must be added and revised, especially those submitted for judicial review. In addition, new regulations regarding labour protection are needed to cover several aspects, such as wages, social security, pensions, improvement of the skills of local workers and protection for business entities to attract investment and grow the country's economy to achieve shared prosperity, thereby providing ideal protection for workers, ranging from wages to health insurance as regulated in BPJS.

Conclusion

Legal protection is a right and obligation that workers must obtain; however, many articles were revoked from Law Number 13 of 2003 concerning Employment after the ratification of the Job Creation Law. For this reason, ideal protection is needed for workers regarding all needs, be it wages, social security, or pension funds by setting a performance agreement as explained in Law Number 13 of 2003 on Employment; however, the agreement must be based on an agreement between the parties, the business entity, and workers to fulfil all their rights and obligations, that are not only focused on business entities, including workers/labourers with fixed-term work agreements or contract workers/labourers. However, the revocation of this provision in the Job Creation Law means that worker protection regarding wages is not appropriate. Therefore, the presence of the Job Creation Omnibus Law with all its aims is not suitable for Indonesian workers. Thus, the author assesses that the form of protection contained in Law Number 13 of 2003 concerning Employment is more concrete even though several points must be added and revised, especially those submitted for judicial review.

³³ Suhartoyo, "Legal Protection Regarding Wages for Workers/Labourers with Specific Time Work Agreements," *Administrative Law & Governance Journal* 3, no. 3 (2020): 502.

Apart from that, the Government needs to make new regulations regarding labour protection that cover several aspects, such as wages, social security, pensions, improvement of the skills of local workers and protection for business entities to attract investment and grow the country's economy to achieve shared prosperity to create ideal protection for workers, covering aspects that range from wages to health insurance as regulated in the BPJS Law. This study is expected to encourage the government to revise the Job Creation Law by adding articles that fairly favour and provide protection for workers to ensure their well-being.

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